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FINAL

CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. December 14, 2010

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

-- Call to Order

-- Invocation

-- Pledge of Allegiance

-- Approve the minutes of the regular meeting on December 7, 2010

AWARDS AND PROCLAMATIONS

-- Service Award

Greg Jones

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. Matt Goolsby - Co-op Plan for Trash.
2. Tyler Cooper - Trash Co-op Plan.
3. Craig Gabel, Trash Consortium.
4. John Todd - The proposed trash plan.
5. Paul Weigand - Trash.
6. Mike Patterson - City-wide recycling project.

COUNCIL BUSINESS

II. UNFINISHED COUNCIL BUSINESS

1. 2011 Special Liquor Tax Fund Allocations and Requests for Proposals (RFPs).
(Deferred December 7, 2010)

RECOMMENDED ACTION: Approve the Special Liquor Tax Coalition 2011 funding allocations, authorize provider contracts developed for those allocations and authorize the release of two additional Special Liquor Tax RFPs.

III. NEW COUNCIL BUSINESS

1. 2011 State and Federal Legislative Agenda.

RECOMMENDED ACTION: Approve the 2011 State and Federal Legislative Agendas.

2. 2011 Memorandum of Understanding between City of Wichita and Wichita Festivals Inc, for 2011 River Festival.

RECOMMENDED ACTION: Approve the Memorandum of Understanding (MOU) between the City of Wichita (City) and Wichita Festivals, Inc., (WFI) and approve funding from Convention and Tourism Fund.

3. Ordinance appropriating the 2011 budget; ratifying the payment of claims against the 2010 budget.

RECOMMENDED ACTION: Approve the passage of the ordinance.

4. Ordinance Amendment repealing permit procedure currently allowing Charitable Solicitation Events upon public roadways, Section 11.44.050.

RECOMMENDED ACTION: Approve first reading of the ordinance.

5. Wichita Employees' Retirement System Proposed Revisions of City Code Sections 2.28.090 and 2.28.400, Repealing the originals of said sections.

RECOMMENDED ACTION: Approve the first reading of the Ordinance revising City Code Sections 2.28.090 and 2.28.400, and repealing the originals of said sections.

6. Police and Fire Retirement System Proposed Revisions of Charter Ordinance Sections 1 through 40, inclusive.

RECOMMENDED ACTION: Approve the first reading of the Charter Ordinance revising Sections 1 through 40, inclusive, and repealing the original of charter Ordinance 209.

7. DER2009-08-Downtown Masterplan. (Districts I, IV, and VI)

   RECOMMENDED ACTION: Adopt the Project Downtown: The Master Plan for Wichita, November 2010 as an amendment to The Wichita-Sedgwick County Comprehensive Plan, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

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

IV. NON-CONSENT PLANNING AGENDA

None

V. CONSENT PLANNING AGENDA (ITEMS 1 AND 2)

1. *DED2010-00009 -- Drainage and Utility Easement Dedication located west of Seneca, north of 47th Street South. (District IV)

   RECOMMENDED ACTION: Accept the Dedication.

2. *SUB2010-00052 -- Plat of QuikTrip 11th Addition located south of Kellogg and on the west side of Hillside. (District I)

   RECOMMENDED ACTION: Approve the documents and plat and authorize the necessary signatures for approval of the plat.

HOUSING AGENDA

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

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

VI. NON-CONSENT HOUSING AGENDA

None

VII. CONSENT HOUSING AGENDA (ITEMS 1 THROUGH 4)

1. *Public Housing Capital Fund Budget Revisions.

   RECOMMENDED ACTION: Approve the revisions of the 2010 Capital Fund Grant budget.

2. *Public Housing Declaration of Trust.

   RECOMMENDED ACTION: Approve the Declaration of Trust and authorize the necessary signatures.

3. *Board Resolution Approving 2011 Project Based Budget.

   RECOMMENDED ACTION: Adopt the resolution approving the Public Housing Project-Based budget for 2011 and authorize the necessary signatures.

4. *Submission to HUD for 2011 Section 8 Mainstream Funding.

   RECOMMENDED ACTION: Approve the submission of the 2011 requisition for payment of annual contributions for the Section 8 Mainstream Program and authorize the necessary signatures.

AIRPORT AGENDA

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

VIII. NON-CONSENT AIRPORT AGENDA

None

IX. CONSENT AIRPORT AGENDA

1. *Administration Building Rehabilitation - Change Order No. 4 - Mid-Continent Airport.

   RECOMMENDED ACTION: Approve the change order and authorize the necessary signatures.

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUGH 22A)

1. Report of Board of Bids and Contracts dated December 13, 2010.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2010	(Consumption on Premises)
J. Larry Fugate	Pizza Hut of Southeast Kansas, Inc.*	550 North West Street
J. Larry Fugate	Pizza Hut of Southeast Kansas, Inc.*	8977 West Central

Renewal	2010	(Consumption off Premises)
James Steindler	Gotta Stop	5600 West MacArthur Road
Dat Huynh	D & T Station	895 South Woodlawn

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

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

RECOMMENDED ACTION: Receive and file.

4. Statement of Costs:
   a. Statements of Cost.

RECOMMENDED ACTION: Approve and file.

5. Agreements/Contracts:
   a. Easement Encroachment Agreement for NewMarket V, LLC, east of Maize Road, south of 29th Street North. (District V)

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

6. Design Services Agreement:
   a. Traffic Signalization Design Agreements. (Districts I and II)

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

7. Change Order:
   a. Change Order No. 1, Completion of the Transit Maintenance Facility.

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

8. Property Acquisitions:
   a. Acquisition of Land Adjacent to Interstate 135 between 18th Street North and 19th Street North for the Interstate 135 to K-96 Proposed Bike Path Project. (District I)
   b. Partial Acquisition of 2513 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)
   c. Partial Acquisition of 1356 North Popular for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)

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

9. Minutes of Advisory Boards/Commissions

Board of Electrical Appeals, October 12, 2010
Wichita Board of Appeals of Plumbers and Gas Fitters, November 3, 2010
Joint Investment Committee, November 4, 2010

RECOMMENDED ACTION: Receive and file.

10. Aquifer Storage and Recovery Project Point-to-Point Network Services.

RECOMMENDED ACTION: Approve Addendum No. 2 and authorize the necessary signatures.

11. 2011 Insurance Program.

RECOMMENDED ACTION: Receive, file and ratify the 2011 Insurance Program, subject to minor modifications and verification of coverage details.

12. HOME Housing Development Loan Program Funding.

RECOMMENDED ACTION: Approve the funding allocations, and authorize the necessary signatures.

13. Removal of Delinquent Sewer Assessment. (District V)

RECOMMENDED ACTION: Approve removal of the special assessment on the property.

14. Sanitary Sewer Mains for Future Development (CIP S-5).

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

15. Water Distribution for Future Development (CIP W-65).

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

16. Water Distribution Main Replacement (CIP W-67).

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

17. Reconstruction and/or Rehabilitation of Sanitary Sewers (CIP S-4).

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

18. Contracts and Agreements for November 2010.

RECOMMENDED ACTION: Receive and File

19. Park Facilities Renovation. (District VI)

    RECOMMENDED ACTION: Amend the bonding resolution.

20. Victim Advocate Contract with Kansas Legal Services, Inc.

    RECOMMENDED ACTION: Approve the contract and authorize the Mayor to sign.

21. Federal Payments Payment Processing Agreement.

    RECOMMENDED ACTION: Approve the contract.

22. Second Reading Ordinances: (First Read December 7, 2010)
    a. List of Second Reading Ordinances. (See Attached)

    RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Agenda Item No. II-1.

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: 2011 Special Liquor Tax Fund Allocations and Requests for Proposals (RFPs)

INITIATED BY: City Manager's Office

AGENDA: Unfinished Business

- -

Recommendation: Approve 2011 recommended funding allocations, authorize contracts developed for those allocations and authorize the release of two additional RFPs.

Background: In December of 1999, the City Council set policy guidelines for the use and administration of the Special Liquor Tax dollars received for alcohol and substance abuse prevention and treatment. These policy guidelines were reviewed and reaffirmed at a May 24, 2005 City Council workshop and are being used in the operation and administration of the 2010 Special Liquor Tax Program. The 2010 program has a provider operating budget of $1,637,577 and uses 13 different organizations to operate 14 projects in the provision of alcohol and substance abuse prevention, treatment, detoxification, case management and administrative services. There is no option to renew current non-administrative providers through the 2011 calendar year.

In September of 2010, a comprehensive Special Liquor Tax services RFP was issued by the City's Purchasing Office to procure services for the 2011 calendar year. Twenty-seven (27) proposals were initially received in response to the RFP issuance, with two Parallax proposals subsequently withdrawn by proposer request. The withdrawal of the Parallax proposals left no other social detoxification respondent to the RFP.

The RFP process was coordinated and administered by COMCARE staff, the City's contractor for program administration. COMCARE is also responsible for monitoring current programs and reviewing the outcomes of the providers funded by the Special Liquor Tax.

A selection committee comprised of members of the Special Liquor Tax Coalition (representatives from the Department of Corrections, City of Wichita, United Way, the Division of Human Services and COMCARE) were convened to review the proposals. The proposers were asked to clearly define services provided, demonstrate strong outcome measurements and demonstrate the qualifications and experience of the organization. Providers were asked to provide information on the following: the organization's ability to carry out the project, the skills of the professional staff assigned to the program, the adequacy of the staffing plan, and the ability to provide services in the required time frame. Additionally, providers were asked to provide information that demonstrates evidence based programming.

Based on the reviews, the Coalition recommended that the City Council approve allocations and contracts for 14 currently funded projects and two newly proposed projects, at a total of $1,276,166. These allocations would leave a balance of $381,611 from the initial RFP budget of $1,657,777. The Coalition recommended using this balance for the immediate release of two additional RFPs, a social detoxification services RFP budgeted at $276,000 and an innovative projects RFP budgeted at $105,611. The Kansas Office of Disability and Behavioral Health Services will coordinate a release of a State RFP for social detoxification services, with the City's release of its RFP, to maximize the funding available to establish a local social detoxification program. The Coalition's recommendations were presented to the City Council at its December 7, 2010 meeting.

Analysis: The 16 Special Liquor Tax proposals recommended for 2011 funding include both prevention and treatment projects, with case management services built into the projects, where appropriate. Recommended projects address diverse populations, which include children and adults, men and women, various ethnic groups and judicially detained/referred individuals. Recommended projects include eight prevention projects and eight treatment programs.

The attached proposal summaries for recommended and non-recommended programs includes short descriptions of each program and, for those proposals not recommended for funding, the reasoning behind that recommendation. All proposals recommended for funding contain outcome-based measures, which will be monitored for successful performance during 2011.

The following chart lists the 25 proposals for 2011 funding, which totaled $2,569,920.69. Of the 25 proposals received, 14 received a total of $1,062,297 of funding in 2010. The coalition recommended $1,156,166 in funding for these 14 programs in 2011. In addition, the coalition recommended funding for 2 new programs, totaling $120,000. This makes the coalitions total recommended funding for programs in 2011 at $1,276,166 for 16 proposals

Proposals Received in Response to RFP	**2010 Funding Level**	**2011 Proposal Request**	**2011 Recommended Funding**
Big Brothers/Big Sisters	$98,400	$98,400	$98,400
Boys and Girls Club	N/A	$49,500	$0
Center for Health & Wellness, SF	$100,000	$ 94,310	$ 94,000
Center for Health & Wellness, Treatment	$150,000	$150,000	$150,000
Communities in Schools	$31,652	$ 33,780	$32,766
Hope Street Youth Development	N/A	$279,894	$0
Knox Center	$40,000	$131,652	$80,000
Mental Health Association, GEP	$55,000	$ 60,008	$60,000
Mental Health Association, Pathways	$42,000	$ 81,205	$80,000
Mental Health Association, Wraparound	N/A	$299,471	$0
Miracles, Children's Prevention	$72,000	$220,000	$112,000
Mirror/Regional Prevention Center	$73,245	$103,570	$49,000
Partners for Wichita	$50,000	$89,538	$50,000
Rainbows United	N/A	$35,175	$0
Recovery Concepts (formerly IATS)	$50,000	$75,000	$50,000
St. Francis, All Stars	N/A	$32,680	$0
St. Francis, Amazing Alternatives	N/A	$18,776	$0
St. Francis, Common Sense Parenting	N/A	$20,206	$0
St. Francis, Outpatient Treatment	N/A	$60,318	$0
Substance Abuse Center of Kansas	$150,000	$204,486	$150,000
Tiyospaye, Higher Ground, CBC	$70,000	$70,000	$70,000
Tiyospaye, Higher Ground, Pueblo Path	$80,000	$80,000	$80,000
Wichita Community Action, Inc.	N/A	$98,065	$0
Subtotal of recurring providers	**$1,062,297**	**$2,386,034**	**$1,156,166**
Tiyospaye, Higher Ground, Turning Point	N/A	$80,667	$80,000
DCCCA, Inc., Women's Recovery Center	N/A	$103,219.69	$40,000
Subtotal new providers		**183,886.69**	**$120,000**
Providers not submitting a proposal for 2011	$575,280	N/A	N/A
Total	**$1,637,577**	**$2,569,920.69**	**$1,276,166**

The Council considered the recommended allocations at its December 7, 2010 meeting. During the public hearing one provider, who had not been recommended for funding by the Coalition, provided comments on the services it provided and the resulting benefits to the community. As a result of the City Council discussion, staff continues to recommend funding for pilot programs. However, to better assist organizations with building capacity, staff also recommends authorizing funding for technical assistance relating to organizational capacity, financial management, and evidence based programming as an eligible activity for funding. Proposers will be given the opportunity to participate in a pre-proposal meeting which will provide technical assistance on the requirements of the RFP.

Financial Considerations: 2011 Special Liquor Tax funding will be available to develop contracts for providers of the sixteen (16) recommended projects totaling $1,276,166 and to fund a Social Detoxification RFP at $276,166 and an Innovative Projects RFP at $105,611. Program administration funds are budgeted at $111,123 for 2011. No general fund monies are obligated. A summary of City expenditures from the Special Alcohol and Drug Abuse Fund is shown below:

	2010 Projected Expenditures	**2011 Recommended Expenditures**
Service Providers	$1,637,577	$1,276,166
Detoxification RFP		276,000
Innovative Projects RFP		105,611
Total funding recommended	$1,637,577	$1,657,777
COMCARE Program Admin.	147,720	111,123
Administrative costs	1,100	1,100
Municipal Drug Court	75,000	75,000
TOTAL FUND EXPENDITURES	$1,861,397	$1,845,000

At the December 7, 2010 the City Council requested revenue and expense information for the past two years. This information is attached. In 2009, revenues totaled $1,714,288 and expenditures were $1,690,512. The fund balance was $541,717 at year end 2009. Revenues are projected to be nearly the same in 2010, $1,732,474, with expenditures projected to be $1,861,397. The estimated fund balance for 2010 would be reduced to $412,794. For 2011, revenues are estimated at $1,800,976 and expenditures of $1,845,000 leaving a fund balance of $368,770. The expenditure and balance amounts do not included a budgeted contingency for $25,000 in 2010.

A fund balance is necessary to provide stability to contracted providers in the event that revenues are lower than budgeted. In addition, for cash flow purposes, City policy is to maintain a balance of 25% of fund expenditures. Distributions are received quarterly from the State on a lagging basis and providers are paid monthly. The projected 2010 balance would total 22% of expenditures.

Goal Impact: The fulfillment of provider agreements will Enhance the Quality of Life of Wichita residents by reducing the negative consequences of alcohol and other drug abuse.

Legal Considerations: Approval as to form by the Law Department will be obtained prior to the execution of all 2011 Special Liquor Tax provider agreements.

Recommendation/Actions: It is recommended that the City Council approve the Special Liquor Tax Coalition 2011 funding allocations, authorize provider contracts developed for those allocations and authorize the release of two additional Special Liquor Tax RFPs.

Attachments:
Background Summary of the Special Alcohol Fund
Proposal summaries for recommended and non-recommended programs.

Fund History

The Special Alcohol Fund was created in 1980, in response to the Kansas Legislature's passage of 1979 SB 467. This bill imposed a 10% tax liquor sales in clubs, with the proceeds credited to the State's Local Alcoholic Liquor Fund. From this state fund, 75% of revenues are distributed quarterly to each city and county from whence the sales of liquor took place.

Fund Balance

City policy is to maintain a fund balance of 25% of expenditures, due to cash flow volatility and the quarterly distributions of revenues from the State. For most of the last two decades, the balance has remained close to this target. With on exception, the City began transitioning in 1999 to a system of funding allocations based on quarterly performance towards outcome based measurements. During the implementation of this system fund balances grew; however, since 2001, they have returned to the target range.

Reasons for Maintaining a Fund Balance

- Maintaining a balance is prudent due to volatile revenue flows
- Fund balance is necessary for cash flow purposes, since the funds are distributed only once every quarter
- A modest cash balance is a buffer in case revenues are lower than budgeted, allowing full payments to be made to funded agencies throughout the year

Usage of Funds

Consistent with statutory requirements, funds are spent primarily with contract treatment providers. Smaller amounts fund program management and administrative costs. Beginning in 2010, funds will be used to partially fund Municipal Court's Drug Court program, in accordance with the 2010 Revised Budget that was approved by the City Council on August 10, 2010. Expenditures for 2008, 2009 and the budget for 2010 are shown on the reserve. Fund activity is summarized through the 2012 budget below.

RECEIPTS & EXPENSES: 2008—2012

	2008	2009	2010	2011	2012
Total Revenue	**$1,840,376**	**$1,714,288**	**$1,732,474**	**$1,800,976**	**$1,890,525**
Programs	1,616,170	1,573,341	1,713,677	1,733,877	1,733,877
Program Admin.	201,898	117,171	147,720	111,123	111,123
Total Expenses	**$1,818,068**	**$1,690,512**	**$1,861,397**	**$1,845,000**	**$1,845,000**
Variance	**$22,308**	**$23,776**	**($128,923)**	**($44,024)**	**$45,525**
Ending Balance	**$517,941**	**$541,717**	**$412,794**	**$368,770**	**$414,295**

FUNDED AGENCIES

Agency	2008	2009	2010	2011 Committee Recommendation
Big Brothers/Big Sisters	98,400	98,400	98,400	98,400
Center of Health & Wellness, SF		100,000	100,000	94,000
Center of Health & Wellness, Treatment	150,000	150,000	150,000	150,000
Communities in Schools	31,652	31,652	31,652	32,766
DCCCA, Women's Recovery Center				40,000
Evidence Based Training		20,000		
Friends in Recovery	68,000			
Knox Center	40,000	40,000	40,000	80,000
Mental Health Association, GEP		55,000	55,000	60,000
Mental Health Association, Pathways	42,000	42,000	42,000	80,000
Miracles, Children Prevention	72,000	72,000	72,000	112,000
Miracles, Case Management Services	150,000	150,000	150,000	
Parallax Detoxification	275,870	275,870	275,870	
Parallax Relapse Program	109,410	109,410	109,410	
Tiyospaye, Higher Ground,CBC	70,000	70,000	70,000	70,000
Tiyospaye, Higher Ground, Pueblo	80,000	80,000	80,000	80,000
Tiyospaye, Higher Ground, Turning Pt				80,000
Recovery Concepts	50,000	49,321	50,000	50,000
Mirror, Regional Prevention Center	100,000	73,245	73,245	49,000
St. Paul's Lutheran Church		50,000	50,000	50,000
Substance Abuse Center of Kansas	150,000	150,000	150,000	150,000
Youth Development Services	40,000	40,000	40,000	
TOTAL SERVICE PROVIDERS	$1,637,577	$1,656,898	$1,637,577	$1,276,166
Administrative Charge	2,540	2,540	1,100	1.100
Drug Court			75,000	75.000
Misc Expense	86,298	(86,097)		
Totals	**$1,616,170**	**$1,573,341**	**$1,713,677**	**$1,352,266**

Miscellaneous expenses are the result of accounting adjustments made with encumbrances during the annual CAFR process, meaning that the yearly totals may not match the CAFR but do match when taken as a whole.

PROGRAMS RECOMMENDED FOR FUNDING

Prevention (8)

Big Brothers Big Sisters		
Currently: $98,400.00	Requested: $98,400.00	Awarded: $98,400.00
BBBS provides an evidence-based prevention program that matches children ages 5-17 who are at-risk of alcohol and/or drug abuse with a carefully screened mentor who helps the youth avoid negative social behaviors while encouraging achievement of their full potential. They plan to serve 200 youth at risk for substance abuse with this funding.		

Center for Health and Wellness- Strengthening Families		
Currently: $100,000.00	Requested: $94,310.00	Awarded: $94,000.00
Strengthening Families is an evidence-based prevention program that teaches families the skills they need to prevent substance abuse by their children and improves management of behavioral problems. Families participate together, learning to solve problems as a unit, building positive relationships, and strengthening family values. They plan to serve 100 families with this funding, and while all families are accepted, preference is given to those with a history of substance use.		

Communities in Schools		
Currently: $31,652.00	Requested: $33,780.00	Awarded: $32,766.00
Communities in Schools works within the public school system, determining student needs and establishing relationships with a variety of local organizations to align and deliver needed resources so that students can focus on learning, and teachers can focus on teaching. Communities in Schools utilizes the evidence-based LifeSkills and Second Step curricula to provide students with this extra support, both in small groups and individually. CIS plans to serve 500 youth with this funding.		

Mental Health Association of South Central Kansas- Girl Empowerment Program		
Currently: $55,000.00	Requested: $60,008.00	Awarded: $60,000.00
Girl Empowerment Program is a gender specific support group targeted to middle and high school age girls at risk for alcohol and substance abuse, academic failure, and juvenile delinquency. The program utilizes the research-based Girls Circle curriculum, with the aim to counteract social and interpersonal forces that impede girls' positive growth and development. GEP plans to support 250 girls with this funding.		

Mental Health Association of South Central Kansas- Pathways		
Currently: $42,000.00	Requested: $81,205.00	Awarded: $80,000.00
Pathways is a school-based preventative education program designed to address the needs and issues that face today's youth. The program is targeted to middle and high school students that are at risk for substance abuse due to their parent's alcohol or drug addiction, lack of preventative factors in their homes, reoccurring drug related crimes in their neighborhoods, and lack of protective factors. They plan to serve 900 youth with this funding.		

Mirror Inc.- Positive Youth Development Program		
Currently: $73,245.00	Requested: $103,570.00	Awarded: $49,000.00
The Positive Youth Development Program includes the Wichita Mayor's Youth Council and the Wichita Promise Youth Council. Both are designed to enhance awareness of social, political, and environmental issues, motivate action for the common good, build capacity for taking effective action individually, in groups, and in organizations, and to strengthen abilities to work cooperatively across races, ethnicities, genders, geographic, and socioeconomic backgrounds. This funding is intended to support the Mayor's Youth Council, and they plan to serve around 40 youth with this funding per year. The Coalition decided not to allocate any funding for the Wichita Promise Youth Council, because despite efforts to improve membership, this Council has consistently low numbers of participating students, typically fewer than 10. The Coalition was also not clear that the selected outcomes were strong measures for preventing substance abuse.		

Partners for Wichita- Safe Streets		
Currently: $50,000.00	Requested: $89,538.00	Awarded: $50,000.00
Safe Streets is a citizen driven community organization, which strives to bring neighbors together to prevent crime and substance abuse in the "Communidad de Paz" (Community of Peace) program by using neighborhood mobilization, partnership formation, and youth engagement. The targeted neighborhood is over 50% Hispanic, and it is estimated that approximately 15% of the City's active gang members live in this area. They plan to serve 300 individuals with this funding.		

Tiyospaye (Higher Ground)- Challenge By Choice		
Currently: $70,000.00	Requested: $70,000.00	Awarded: $70,000.00
Higher Grounds's school-based Challenge by Choice substance abuse prevention initiative is designed to build life skills and protective factors by accessing youth before they have developed serious substance abuse problems, criminal involvement, or school expulsions. They do this through the use of active-learning experiential services to produce functional change, with programming tailored to the needs of each school. They plan to serve 375 youth with this funding.		

Treatment (8)

Center for Health and Wellness- Substance Abuse Treatment		
Currently: $150,000.00	Requested: $150,000.00	Awarded: $150,000.00
The Center for Health and Wellness Alcohol and Drug Treatment services use a community approach to serve minority populations in the northeast area of Wichita. The program utilizes evidence-based pre-treatment, intensive outpatient, outpatient, and continuing care services. They plan to serve 150 consumers with this funding.		

DCCCA Inc.- Women's Recovery Center		
Currently: N/A	Requested: $103,219.69	Awarded: $40,000.00
The Women's Recovery Center offers a continuum of alcohol and drug treatment specifically designed to meet the unique needs of women, pregnant women, and women with dependent children. This funding allocation has been made to support their effort to implement case management services for chemically dependent women and their children. They plan to serve 315 women with this funding.		

Knox Center		
Currently: $40,000.00	Requested: $131,652.00	Awarded: $80,000.00
Knox Center is a well-established community provider, located in a predominantly African American neighborhood where they offer culturally competent substance abuse intervention and treatment programs. This funding is intended to help support their implementation of a case management program to provide more holistic and long term recovery for clients. They plan to service 160 with this funding.		

Miracles Inc.		
Currently: $72,000.00	Requested: $220,000.00	Awarded: $112,000.00
Miracles Inc. is a substance abuse prevention and treatment agency targeting services for women and women with children using a systems approach to incorporate the strengths of the individual, family, community, and society. They plan to serve 110 women and 43 children. The Coalition did not allocate funding for the newly proposed adolescent runaway/homeless treatment program. It was not clear to the Evaluation Committee that the main issue addressed by the proposal was substance abuse, or if it was mainly homelessness.		

Recovery Concepts		
Currently: $50,000.00	Requested: $75,000.00	Awarded: $50,000.00
Recovery Concepts provides alcohol and drug abuse outpatient treatment primarily, but not exclusively, to Native Americans. The program offers counseling, outpatient (Level I and II), adolescent, and referral services. They plan to serve 150 consumers with this funding.		

Substance Abuse Center of Kansas (SACK)		
Currently: $150,000.00	Requested: $204,486.00	Awarded: $150,000.00
SACK serves individuals in south-central Kansas through assessment, pre-treatment groups, referral, and care coordination services. This grant funds services for a variety of populations, including indigent persons, inmates detained in the Sedgwick County Adult Detention Facility, those persons located in Sedgwick County hospitals or medical centers, and persons who are or will be on Parole supervision. SACK plans to serve 800 people with this funding.		

Tiyospaye (Higher Ground)- Turning Point		
Currently: N/A	Requested: $80,667.00	Awarded: $80,000.00
The Turning Point program serves adult clients who require "support-rich" services to effectively address their alcohol and other drug related problems as they have chronic relapse histories. They offer assessment and referral, outpatient and intensive outpatient, continuing care, family counseling, and case management services. Higher Ground plans to serve 120 individuals with this funding.		

Tiyospaye (Higher Ground)- Pueblo Path		
Currently: $80,000.00	Requested: $80,000.00	Awarded: $80,000.00
Pueblo Path serves adult Hispanic clients and their families, who require culturally competent, bilingual services in Spanish to effectively address their alcohol and other drug problems. They offer assessment and referral, outpatient and intensive outpatient, continuing care, family counseling, and case management services, all in Spanish. Higher Ground plans to serve 120 individuals with this funding.		

PROGRAMS NOT RECOMMENDED FOR FUNDING

Prevention

Boys and Girls Club- Targeted Outreach Program		
Currently: N/A	Requested: $49,500.00	Awarded: $0.00
Boys and Girls Club Targeted Outreach Program was created to serve children expelled from USD 259 and surrounding areas by providing an alternative educational resource aid for students to continue earning credits during their expulsion period, and to learn to make good decisions. This program was not selected for funding as the majority of outcomes of the program are not related to substance abuse prevention or treatment. The focus of the program is on gang and violence prevention, which while important, is not the focus of liquor tax funding. There was not a clear link described between the services the organization provides and substance abuse.		

Hope Street Youth Development- The Reality Project		
Currently: N/A	Requested: $279,894.00	Awarded: $0.00
The Reality Project is a prevention program which uses social media through the "Popular Opinion Leader" model to plan, host, and evaluate 6 large scale drug and alcohol free social events for middle and high school students. This program was not selected for funding because the outcomes and measurement tools included were not strong. Additionally, the program requested an increasing amount over three years, when the second and third years of funding are not guaranteed, and the first year of funding was dedicated solely to planning the next two years of the project.		

Rainbows United- The Incredible Years		
Currently: N/A	Requested: $35,175.00	Awarded: $0.00
The Incredible Years program is targeted to parents who are recovering from substance abuse, and is intended to increase their parenting skills and their capacity to prevent high risk behaviors in their children. This program was not selected for funding because there are limited dollars available, and the Coalition did not see a pressing need in the community to fund additional parenting programs. Also, the program set very low expectations for parent participation and completion- the program planned to serve 36 parents, 24 of which would complete 9 of the 12 sessions, and of those 17 will actually meet the outcome goals.		

St. Francis- Amazing Alternatives		
Currently: N/A	Requested: $18,776.00	Awarded: $0.00
The Amazing Alternatives prevention program focuses on alcohol and drug education for youth under age 15 who have been experimenting with substances or need additional education due		

to exposure to drugs or alcohol within their environment. This program was not funded because the administrative costs were very high, and the Coalition was unclear about the need in the community at this time for this type of program.

St. Francis- All Stars		
Currently: N/A	Requested: $32,680.00	Awarded: $0.00
The All Stars prevention program is designed for students in the sixth through ninth grades, and delivered in the public school classroom, educating students about making positive decisions that avert substance use and abuse. This program was not selected for funding because while cooperation from USD 259 was verbally asserted from St. Francis, there was no support or agreement indicated in the proposal, though the program is entirely school-based. The Coalition was unsure about their ability to get the program going in the necessary timeframe without formal approval from USD 259.		

St. Francis- Common Sense Parenting		
Currently: N/A	Requested: $20,206.00	Awarded: $0.00
Common Sense Parenting is a prevention program aimed at parents of youth who are involved in alcohol and drug prevention or treatment services through St. Francis. The program utilizes the Boys Town Teaching Model in order to develop or enhance parenting skills that encourage positive behavior, discourage negative behavior, and teach alternatives to problem behavior in children. This program was not selected for funding because again, given limited funds, the Coalition did not see a pressing need for additional parent trainings in the area.		

<u>Treatment</u>

Mental Health Association of South Central Kansas- Wraparound Project		
Currently: N/A	Requested: $299,471.00	Awarded: $0.00
The Wraparound Project is a treatment program providing a variety of services for youth and their families who have been identified and referred due to positive assessment of active alcohol and/or substance abuse/use. Services include individual, group, and family therapy as well as case management services. This program was not selected for funding because the Coalition did not feel like the suggested services and format would be effective for the population they are planning to target. The proposal described a mental health model, which while effective with that population, would not necessarily translate into effective substance abuse treatment. The Coalition decided to focus the dollars for MHA into their other two programs, Pathways and GEP, and increase their funding, as they have been proven effective substance abuse prevention programs.		

St. Francis- Outpatient Alcohol and Drug Treatment		
Currently: N/A	Requested: $60,318.00	Awarded: $0.00
The St. Francis Outpatient treatment program utilizes the Matrix Model for Youth and is designed to educate participants ages 12-18 about the effects of drug and alcohol on physical and mental health, and the negative impact substance abuse has on relationships. This program was not selected for funding because the Evaluation Committee was not clear about the model being proposed. Though the Matrix Model has been demonstrably effective with young adults struggling with stimulant dependence, the impact on those outside of that population was unclear.		

Wichita Community Action Inc.		
Currently: N/A	Requested: $98,065.00	Awarded: $0.00
Wichita Community Action Inc. requested funding for their outpatient treatment program, which includes peer support and case management services. The program focuses on creating the social support needed for individuals in recovery to continue to live drug free post-treatment. This program was not selected for funding because they did not provide outcomes, describe any credentialing requirements for staff, describe the criteria for admission, or include a majority of the required attachments. Additionally, the Coalition had some concern that the program, which is currently 100% volunteer, had the administrative capacity to meet the contractual requirements of a government grant this size.		

Agenda Item No. III-1

City of Wichita
City Council Meeting
December 14, 2010

To: Mayor and City Council

Subject: 2011 State and Federal Legislative Agenda

Initiated By: City Manager's Office

Agenda: New Business

Recommendation: Approve the 2011 State and Federal Legislative Agendas.

Background: Each year, City Departments are asked to submit requests for inclusion in the state and federal legislative agendas. Those suggestions, along with other issues developed by community partners such as Visioneering Wichita and the south-central Kansas Regional Economic Area Partnership (REAP). Once approved, the agendas will be published on the City's website, and circulated to the state and federal legislative delegations. Legislative strategies will be developed to secure positive outcomes for the respective agenda. The federal agenda will be formally presented to the Congressional delegation during the City Council's annual visit to Washington, D.C., for the National League of Cities conference.

Analysis: The presentation contains both the state and federal agendas. Each of the two agendas contains requests for appropriations and policy actions that relate to municipal practices, transportation, park and recreation, flood control, water quality and various issues of community-wide interest. The state legislative list is subdivided into three issue areas: 1) municipal, 2) community and 3) issues relating to home rule and the agendas of the National League of Cities and League of Kansas. The federal list is divided into two areas: 1) policy issues and 2) authorized appropriations. Both lists may be expanded as additional issues evolve before the State Legislature and Congress. Legislative action on both the federal and state agendas would take place prior to the end of the 2012 federal fiscal year on Sept. 30, 2012, and the 2012 state fiscal year on June 30, 2012.

Financial Consideration: Some federal requests will require a commitment of local resources to fulfill the project's objectives. None of the projects on the list include a formal commitment of local matching funds beyond existing authorizations.

Goal Impact: On Jan. 4, 2006, the City Council adopted five goals for the City of Wichita. They include: Provide a safe and secure community; promote economic\ vitality and affordable living; ensure efficient infrastructure; enhance quality of life, and support a dynamic core area and vibrant neighborhoods. The proposals in the 2011 Federal and State Legislative Agendas address all five goals.

Legal Consideration: Contracts and/or memorandums of understanding will be initiated as needed for fulfillment of federal and state funding appropriations.

Recommendation/Actions: It is recommended that the City Council approve the 2011 State and Federal Legislative Agendas.

Attachment: Summation of the 2011 state and federal legislative agenda.

2011 City of Wichita State and Federal Legislative Agenda

Dec. 14, 2010

Dale Goter

Government Relations Manager

State Issue Categories

- City of Wichita local issues
- Community Agenda (Visioneering, REAP)
- Home Rule, LKM, NLC issues

City of Wichita local issue
Special Assessment Fees

Sedgwick County collects interest charges on delinquent taxes, including special assessments due the City of Wichita. The County does not pass on any of the additional charges and fees to the City, even though the debt belongs to the City and the burden of the delinquent payment falls on the City.

- RECOMMENDED ACTION: Introduction of corrective legislation requiring the payment of delinquent special assessment interest charges to the government entity that created the special assessment district.

Most Current County Report

DELINQUENT SPECIALS FOR THE CITY OF WICHITA
03/01/10

- TOTALS FOR THOSE HALF PAID
173,285.62
- TOTALS FOR THOSE WHO HAVE PAID NOTHING
5,045,962.96
- GRAND TOTALS FOR THIS REPORT
5,219,248.58

SNAPSHOT ESTIMATE: Charges on delinquent taxes and an estimate of delinquent interest charge if the delinquency remains outstanding for multiple years.

YEAR	Sum Of Delinquent Specials	Annual Rate of Interest	First Year Interest Charges	Delinquencies Plus Interest Compounded Annually
2002	$20,000.44	10%	$2,000.04	$22,000.48
2003	$207,421.93	9%	$18,667.97	$20,648.02
2004	$265,279.23	8%	$21,222.34	$41,069.57
2005	$502,200.01	7%	$35,154.00	$72,575.44
2006	$839,515.64	9%	$75,556.41	$172,031.54
2007	$1,737,506.80	11%	$191,125.75	$409,697.73
			$343,726.51	$738,022.78

City of Wichita local issue
Cereal Malt Beverage licensing

A recent ruling by the state division of Alcohol Beverage Control has voided the local practice of temporary licenses for sale of CMB.

- RECOMMENDED ACTION: Introduction of corrective legislation restoring the City's temporary license authority.

City of Wichita local issue
State Water Policy

RECOMMENDED ACTION:

The City of Wichita encourages a reevaluation of state water policy and governance, including the collection and distribution of Water Fund revenue and the legislative process for adoption of the annual Kansas Water Authority budget.

City of Wichita local issue

Residential fire sprinklers

The 2010 Legislature passed a one-year prohibition against cities requiring residential sprinklers in single-family and duplex residences. The 2011 Legislature will consider a permanent extension of that ban.

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City of Wichita local issue
Residential Fire Sprinklers

- Supporters include the Wichita Area Homebuilders Association. Opponents include the LKM.

- RECOMMENDED ACTION: Monitor the 2011 legislation and its potential conflict with Home Rule principles. Continue to explore possible compromises.

City of Wichita local issue
Passenger Rail

RECOMMENDED ACTION: Monitor state funding aspect. Continued support for daytime or a combination of daytime and nighttime passenger rail connecting Kansas City to Dallas-Ft. Worth through Wichita and Oklahoma City. The position is consistent with previous Council resolutions and the Downtown Master Plan recommendations in support of passenger rail.

City of Wichita local issue
Air Quality

RECOMMENDED ACTION: The City of Wichita encourages EPA to follow its normal schedule for review of ozone standards. A new designation should not be made until 2014.

Air Quality (cont.)

The City of Wichita will also pursue the following outcomes during the interim period:

- Accommodate local concerns in resolution of Flint Hills burning issue. (State Burn Management Plan)
- Adopt voluntary initiatives.
- Verify activities in other regions which may reduce transport contributions.
- Develop a better understanding of the local health implications.

City of Wichita local issue
Economic Development

RECOMMENDED ACTION: City of Wichita supports continued use of effective private-public partnerships and the appropriate intervention of state and local governments to spur economic development.

City of Wichita local issue
E911

Legislature will consider renewal of current funding of E911.

E911 is administered by Sedgwick County, but City of Wichita law enforcement is greatly dependent on the maintenance of this service.

- RECOMMENDED ACTION: City of Wichita supports continued funding of E911 as a vital public safety service to our citizens.

City of Wichita local issue

Local Tax Issues

RECOMMENDED ACTION: Support public policy that vests local taxation and revenue decisions with locally elected officials. Oppose the constraints of state-imposed tax lids or other devices intended to alter the locally-determined tax structure.

Community Agenda
Visioneering Wichita/REAP

RECOMMENDED ACTION: Support Visioneering Wichita/REAP agendas:

- Affordable Airfares
- NIAR National Institute for Aviation Research
- NCAT National Center for Aviation Training
- CIBOR Center of Innovation for Biomaterials in Orthopaedic Research
- Equus Beds ASR ($1 million annual/8 yrs)
- Reauthorization 1998 Workforce Reinvestment Act (REAP)

City of Wichita local issue

Home Rule Issues

RECOMMENDED ACTION: Support Home Rule and local control as the most valid solution for recurring legislative issues:

- Annexation/Eminent Domain
- Consolidated Local Government
- Residential Fire Sprinklers
- Solid Waste Franchising
- Public building concealed carry

League of Kansas Municipalities

2011 State Legislative Action Agenda

RECOMMENDED ACTION: Support when consistent with City of Wichita agenda

- Oppose collective bargaining mandate
- Support 911 funding
- Support property tax cuts from gaming $$$
- Support local control of local tax, revenue issues
- Review of cities' role in state emergency planning

FY2012 Federal Agenda

- CATEGORY 1: Policy issues
- CATEGORY 2: Existing authorizations

FY2012 Federal Agenda
Category 1

Wichita floodway system

RECOMMENDED ACTION: Petition the Federal Emergency Management Administration to provide the necessary flexibility allowing recertification in a timely and cost effective manner.

FY2012 Federal Agenda
Category 1

13th Street Flyover

RECOMMENDED ACTION: Petition the Federal Highway Administration for approval of a "break in access" on I-235, allowing construction of the 13th Street Flyover.

FY2012 Federal Agenda
Category 1

Collective bargaining

RECOMMENDED ACTION: Support the National League of Cities and League of Kansas Municipalities in opposing any federal or state mandate requiring collective bargaining at local governmental levels.

FY2012 Federal Agenda
Category 2

Land And Water Conservation Fund

RECOMMENDED ACTION: Support allocation of 40 percent of LWCF for state and local parks and recreation. Current practice allocates 84 percent to federal projects on federal lands.

FY2012 Federal Agenda
Category 2

Equus Beds ASR funding

RECOMMENDED ACTION: Encourage Congress to honor the existing authorization of a 25 percent match of qualified local expenses. Eligible expenses will total $29 million by end of FY2012. To date, $4.1 million has been awarded. Under federal law, $40 million is authorized.

FY2012 Federal Agenda
Category 2

Dry Creek Retention Pond

RECOMMENDED ACTION: Request release of $8 million in federal funds for the Dry Creek Retention Pond. Kansas Department of Emergency Management has endorsed the use of existing federal emergency management funds for the Dry Creek project. FEMA has denied the funding.

FY2012 Federal Agenda
Category 2

Airport funding

RECOMMENDED ACTION: Support appropriate federal funding to assist in construction of a new Mid-Continent Airport terminal.

National League of Cities

RECOMMENDED ACTION: Support when consistent with City of Wichita agenda

- Partner with Cities to Save and Create Jobs
- Strengthen and Stabilize the Housing Market
- Invest in Transportation Infrastructure
- Support Local Energy Efficiency and Conservation Efforts
- Reject Mandatory Collective Bargaining

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Memorandum of Understanding between City of Wichita and Wichita Festivals, Inc., for 2011 River Festival (All Districts)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: New business

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Recommendation: Approve the Memorandum of Understanding (MOU) between the City of Wichita (City) and Wichita Festivals, Inc., (WFI) and approve funding from Convention and Tourism Fund for the 2011 Wichita River Festival and make necessary budget adjustments.

Background: On December 16, 2008, the City Council repealed Chapter 3.14 of the ordinances of the City of Wichita relating to River Festivals. The new ordinance imposes general uniform requirements and conditions on special events conducted within the City. A MOU with WFI, to maintain levels of previous economic support, became necessary as a result of this new ordinance.

There are many positive, significant changes ahead for the 2011 River Festival. To mark its 40th anniversary and respond to community feedback, WFI is moving the festival dates to June 3-11, 2011. In addition to the change in dates, the location for many festival activities will move to the banks of the Arkansas River to take advantage of the green space and walking paths. Both sides of the river bank will be utilized for concerts, events, family activities and food courts in 2011.

Analysis: The City continues its collaboration with WFI to annually produce the River Festival. The City and WFI have drafted a MOU that clearly delineates the rights and obligations of each party and defines the respective roles for the Wichita River Festival. This will ensure that the terms and conditions of the community event ordinance do not negatively impact or cause WFI to incur additional expenses.

The MOU addresses sponsorship and in-kind services to be provided by the City. Reporting responsibilities of WFI within 90 days upon completion of the event**,** as well as security during the event. The term of this MOU is for a period of two (2) years with a one year automatic extension unless either party gives written notice, no less than 60 days prior to the one year anniversary of the agreement.

Financial Consideration: City sponsorship of $40,000 will be allocated from the Convention and Tourism fund. The City also agrees to meet the commitment of $50,000 for in-kind services to WFI which is a level similar to the previous year. In addition, WFI agrees to pay all police staffing costs at a rate of $30 per hour.

Goal Impact: This project impacts the Quality of Life by ensuring citizens the continuation of the annual Wichita River Festival which serves approximately 300,000 citizens and has significant economic impact on the Wichita community.

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

Recommendation/Action: For the 2011 Wichita River Festival, it is recommended that the City Council approve the Memorandum of Understanding (MOU) between the City of Wichita (City) and Wichita Festivals, Inc., (WFI) and approve funding from Convention and Tourism Fund.

Attachment: MOU with WFI for 2011 Wichita River Festival.
Schedule A – Riverfest Sponsor Rights and Privileges

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") is entered into this ___ day of _____, 2010 between Wichita Festivals, Inc., 1820 E. Douglas, Wichita, Kansas 67214, a non-for-profit 501(c) (3) corporation existing under the laws of the State of Kansas ("WFI") and the City of Wichita, Kansas (the "City") to memorialize the agreement of the parties concerning their ongoing relationship for the purpose of conducting the 2011 Wichita River Festival, hereinafter known as Riverfest.

Recitals

WHEREAS, since 1972, WFI has organized, promoted and conducted Riverfest as a unique annual event and community celebration;

WHEREAS, since at least sometime prior to 1998, pursuant to Wichita City Ordinance No. 39-119, codified at Chapter 3.14 of the Code of the City of Wichita, the City has specifically authorized and permitted WFI to conduct Riverfest under the terms and conditions, and with the support and cooperation of the City, as set forth in Chapter 3.14 of the Code of the City of Wichita;

WHEREAS, on December 9, 2008, the City amended Chapter 3.11 of the Code of the City of Wichita relating to community events, (the "Special Event Ordinance") in order to impose general uniform requirements and conditions on special events conducted within the City of Wichita, and rescinded Wichita City Ordinance No. 39-119, codified at Chapter 3.14 of the Code of the City of Wichita which was specifically applicable to WFI and Riverfest;

WHEREAS, it is the intent of the City of Wichita and Wichita Festivals, Inc. to work in cooperation and partnership with the each other to annually produce Riverfest; and

WHEREAS, the City of Wichita seeks to continue its' support of Riverfest at the same level as in previous year, to ensure that the requirements and conditions of the Special Event Ordinance do not cause WFI to incur additional expense or suffer economic detriment, WFI and the City enter into this MOU that delineates the respective rights and obligations of the parties and defines their relationship for Riverfest.

Agreement

NOW THEREFORE, for these reasons, and in consideration of the conditions, covenants and agreements set forth below, WFI and the City agree as follows:

1. RELATIONSHIP BETWEEN THE PARTIES

The parties agree that the relationship of the parties is between two separate and independent entities. There is not a joint venture, partnership, employer-employee relationship or any principal-agent relationship.

2. EXCLUSIVITY

Except for WFI's use of Century II indoor facilities, which shall be the subject of a separate agreement, WFI shall have exclusive operational and vending control over and within the geographic area and locations at which Riverfest will be conducted, as such geographic area and locations are defined in the event application and permits relating thereto (the "Riverfest Event Area"). The City shall not (a) authorize or permit any other person or entity to conduct any other special event, or (b) grant any other person or entity a transient merchant license to conduct any type of business, within the Riverfest Event Area during the time period of Riverfest, which begins the Friday after Memorial Day and ends eight days later, i.e. June 3-11, 2011, without WFI's prior approval. Businesses located within the Riverfest Event Area shall be allowed access to and from their establishments and are allowed the use of sidewalk areas, doorways and any other private property owned by or leased by such business which is immediately adjacent to such businesses.

3. SECURITY FOR THE WICHITA RIVER FESTIVAL

WFI shall be responsible, according to Section 3.11.060 of the Code of the City of Wichita, to pay the police staffing costs for event specific assignments Riverfest. All security and police staffing, as may be required, is to be provided by certified law enforcement officers or other licensed and certified private security personnel.

WFI will contract with Wichita Police Department officers to fill the required security positions based on historical data and as required by the Chief of Police through the WPD special operations/special events coordinator. WFI will pay Wichita Police Department officers at the special event rate of $30 per hour or an amount agreed upon between WFI and the individual officer. In the event sufficient numbers of Wichita Police Department officers do not sign up to fill the required positions, security staffing may be obtained by employing licensed and certified private security personnel and certified law enforcement from other jurisdictions, as approved by the City through the Wichita Police Department. Officers hired by WFI shall be considered contract employees of WFI. Wichita Police Department Officers hired for Riverfest shall be entitled to workers compensation coverage provided by the City of Wichita.

The City of Wichita agrees to pay for extraordinary police services which exceed the requirements set forth above and are deemed necessary by the Chief of Police. Such services include, but are not limited to: mounted patrol officers, bomb squad, SCAT and SWAT officers and officers required for the operation of the command center. The Wichita Police Department will work in cooperation with WFI to define which of the above groups represent necessary safety components for use during Riverfest.

4. IN KIND SERVICES FOR RIVERFEST

The City agrees to provide in kind services to WFI in an amount not to exceed $50,000.00 annually (the "City In Kind Contribution"). Such in kind services are those additional services and items required specifically for Riverfest, and which the City would not provide in the absence of Riverfest. Such in kind services include, but are not limited to: additional street sweeping, additional trash removal, barricading and the removal of such barricades for streets and public parking lots for various events, constructing the West Bank Stage Road, use of the portable stage, use of available City picnic tables (not to exceed fifty) , use of City portable bleachers, use of Century II facilities, space and parking, and other similar services that the City has provided to WFI for past festivals. The City will also designate a specific staff person to facilitate and coordinate WFI requests for information related to any new Festival event and manage the WFI special event application process to facilitate timely approval. To help insure availability, WFI will make reservations for use of the portable bleachers and portable stage no later than twelve months prior to the event for which such bleachers or stages are requested.

A meeting shall be held between representatives of WFI and the City departments impacted by Riverfest, to outline the in kind services requested by WFI and those deemed necessary by the City in preparation and execution of the Riverfest. Requests for the set up, use and delivery of picnic tables, portable bleachers and the portable stage shall be finalized with the Director of Park and Recreation, or his designee, no later than thirty days prior to the start of the festival. The City shall determine the value of the City In Kind Contribution by utilizing the salary costs associated with City staff, equipment costs, the rental value of items such as the stage, tables and barricades and any additional actual costs incurred by the City.

WFI may request the City to provide additional levels of cash sponsorship, and/or in kind services in excess of the amount of the City's In Kind Contribution and/or cash sponsorship set forth in this MOU. Any requests for such additional services must be made no later than thirty days in advance of the festival event for which such services are requested. Such requests shall be made to the Manager of Arts & Cultural Services, and must be approved by the City Manager and/or the City Council depending upon the amount of any such request.

WFI agrees to waive event fees, for festival events sponsored by the City of Wichita Park and Recreation Department. Such events shall include, but not be limited to: the softball tournament and the event at Botanica.

5. CITY SPONSORSHIP

In addition to the in kind services outlined in section 4 above, the City of Wichita will provide WFI with $40,000 in cash sponsorship for Riverfest. In exchange, WFI shall include the City of Wichita as a sponsor of the event, providing the City with sponsor promotion, recognition and all other benefits as are described in more detail on the attached Schedule A; sponsorship benefits to be provided for the total in- kind and cash contributions made by the City for the event.

6. REPORTS & ACCOUNTING

Within 90 days after the completion of Riverfest, the City shall provide WFI with a report and accounting that sets forth and itemizes the City's determination of the value of the City In Kind Contribution as described in Section 4 above. The parties agree that they will cooperate with each to provide information and documents that either party may request with regard to the parties' obligations under Sections 3 and 4 above.

7. APPLICATION PROCESS

For the 2011 Riverfest, the City agrees to accept the format and details provided in the Riverfest Report to the City for the 2010 Riverfest as being sufficient for compliance with the application process contained in the Special Event Ordinance. All additional applicable licenses required by the City must be completed and submitted with the special event application. WFI shall be responsible for payment of the multiple day community event permit fee, $1,000.00 as set forth by City Resolution 08-538 and all other licensing fees which may be applicable to specific events conducted by WFI. All proposed activities must be submitted by WFI for approval by the City of Wichita, no later than forty-five (45) days prior to the event.

8. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

WFI and the City agree that they have a joint obligation to comply with the Americans with Disabilities Act. (ADA). WFI and the City agree that they have the obligation to consider the accommodation request(s) from qualified disabled individuals. WFI will ensure, to the full extent required by the ADA, that qualified individuals with disabilities receive equitable access to the programs and activities provided by WFI.

9. INDEMNIFICATION

The parties agree to indemnify and hold harmless the other party, its governing board, officers, agents, and employees against any and all claims, damage, liability, injury expense, demands, causes of actions, judgments including court costs and attorney's fees arising out of or resulting from the negligence or intentional acts of its officers, agents or employees. In the event such loss is proximately caused by the acts of parties and their officers, agents or employees, each shall be responsible for its proportionate share of claimant's damages under the law of the state of Kansas. Provided, however, that such indemnification shall not be required to the extent that the City has a defense against or limitation of its liability under the Kansas Tort Claims Act.

The parties agree this provision shall survive the termination of this MOU.

10. GOVERNING LAW

The parties agree that the law of the state of Kansas shall govern this MOU, and that any suit or cause of action by either party against the other shall be filed in the Eighteenth Judicial District of the State of Kansas.

11. COMPLETE AGREEMENT

The parties agree that this MOU constitutes the entire agreement of the parties and that no prior agreement or representation, written or oral, shall be binding or of any force or effect. Further, this MOU may not be amended, modified, altered or enlarged except in writing signed by the duly authorized representatives of the parties hereto.

12. AGREEMENT BINDING

The parties agree that this MOU shall be binding upon the successors and legal representatives of the parties hereto. Neither party shall assign this MOU or any of their respective rights, obligations or interest in it.

13. TERM

The term of this MOU will be for two (2) years from the date of the parties' execution, with a one year automatic extension, unless a party gives written notice to the other party, not less than sixty (60) days prior to such anniversary date, that the term of the MOU shall not be extended. Such notice shall be given as provided for by Section 14 below.

14. NOTICES

All notices with respect to this MOU shall be given by first class mail or hand-delivery to the parties as follows:

City:	WFI:
Carl Brewer, Mayor, City of Wichita 455 N. Main, 13th Floor Wichita, Kansas 67202	Ms. Janet Wright, CEO 1820 E. Douglas Wichita, Kansas 67214

15. SEVERABILITY

If any term, provision, covenant or condition of this MOU is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this MOU will nonetheless remain in full force and effect as to all remaining terms, provisions, covenants and conditions.

IN WITNESS HEREOF, the duly authorized representatives of the parties have hereunto set their hand on the date and year written.

Wichita Festivals Inc,	City of Wichita
By: _____	By: _____
Chief Operating Officer	Mayor, City of Wichita
Date: _____	Date: _____

Schedule A

2011 Riverfest Sponsor Rights and Privileges:

Activation Assistance

Assistance in developing creative ideas to maximize return on sponsorship investment.

On-Site Product Marketing

Sampling, giveaways, etc., utilizing a designated 10' x 10' site or individualized on-site marketing for all 9 days of the Festival. This will be confirmed by February 1st.

Web Site Presence

- Opportunity to place a banner ad on homepage of the Riverfest web site highlighting partnership.
- Link to sponsor web site from sponsorship page or event listing
- Weblink in event description on web site
- Editorial information about sponsor on sponsorship web page

Signage & Print Materials

- Company Name/logo in Riverfest Guide (distribution 150,000)
- Feature article in an issue of *Festivities* noting sponsor role in Riverfest and information about company. (Circulation 4,000)
- Identification in all print materials related specifically to sponsor event.

Media

- Inclusion of company name in all event press releases recognizing major Riverfest sponsors
- Name/logo included in official radio and television promotional campaign

Licensing

- Authorization to use Riverfest poster artwork and tag line on sponsor product advertisements, web site, merchandise and other marketing materials using WFI identity standards. WFI approval of the art and product will be required.

Public Recognition

- Public address announcements throughout the Festival.

Hospitality

- Priority placement in Riverfest Sundown Parade
- 6 Invitations (for 4 guests each) to the WFI Sponsor Recognition Party. Additional guest tickets may be purchased at $25 each.
- Fifteen (15) Riverfest cloisonné logo lapel pins or twenty-one (21) Riverfest buttons.
- 20% discount for all employees on Festival merchandise purchased prior to the Festival.

- Framed and signed Riverfest poster.
- An official 2011 sponsor recognition plaque.
- 5 VIP parking passes good for all nine days

Sponsor Obligations:

- Utilize existing marketing mechanisms to promote and market Riverfest and role in the Festival.
- Assign liaison to work with WFI in fulfillment of sponsor privileges and obligations.
- Purchase Riverfest buttons to be given or re-sold to customers, vendors, employees or a charitable organization for use by their clients. Suggested amount to be no less than 1% of sponsorship investment.

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Ordinance appropriating the 2011 budget; ratifying the payment of claims against the 2010 budget

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendation: Approve the Ordinance.

Background: Each year the City Council must appropriate and approve the spending of the next year's budget according to the approved budget and also authorize, approve and ratify the payments which have occurred against the current year budget.

Analysis: Kansas law requires the amounts established in the 2011 Adopted Budget be appropriated, authorizing the payment of all claims and charges. Payments of claims and charges against each fund shall all be made by a combination of checks and warrants, drawn by the Director of Finance and counter-signed by the City Manager and Treasurer as provided by law.

The payment of all claims and charges against respective accounts and funds provided in the budget for the year 2010 are also required to be authorized, ratified and approved.

The legal requirements can be met by passage of the presented ordinance.

Financial Considerations: None.

Goal Impact: The Internal Perspective is advanced by complying with state statutes and providing information to the Citizens of Wichita.

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 passage of the Ordinance.

Published in the Wichita Eagle

ORDINANCE NO. _____

AN ORDINANCE APPROPRIATING THE AMOUNTS SET UP IN EACH FUND IN THE BUDGET; PROVIDING FOR THE PAYMENT OF ALL CLAIMS AND CHARGES AGAINST THE ACCOUNTS PROVIDED FOR THEREIN; AND APPROVING AND RATIFYING THE PAYMENT OF ALL CLAIMS AGAINST THE ACCOUNTS.

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

SECTION 1. That there is hereby appropriated the amounts set up in each fund in the budget for the fiscal year 2011 for the payment of all claims and charges against each fund. Payments of all claims and charges against each fund shall be made by combination of checks and warrants, drawn by the Director of Finance and counter-signed by the City Manager and Treasurer as provided by law, provided, however, that such officers shall at all times comply with the provisions of the Budget Law and the Cash Basis Law of the State of Kansas.

SECTION 2. That the payment of all claims and charges against the respective accounts and funds provided in the budget for the year 2010 are hereby authorized, ratified and approved.

SECTION 3. It is hereby attested that in order to maintain the public services essential for the citizens of this city in the budget year 2011, it will be necessary to utilize property tax revenue in an amount exceeding the revenues expended in the budget year 2010. The estimated amount of increased property tax revenue is $2,242,590.

SECTION 4. This Ordinance shall take effect and be in force from and after its passage and publication once in the official city paper.

PASSED by the Governing Body of the City of Wichita, Kansas, this _____ day of December, 2010.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary Rebenstorf,
City Attorney and Director of Law

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Ordinance Amendment repealing permit procedure currently allowing Charitable Solicitation Events upon public roadways, Section 11.44.050 (All Districts)

INITIATED BY: Wichita Police Department

AGENDA: New Business

Recommendation: Approve first reading of the ordinance.

Background: In 1995, the Kansas legislature amended K.S.A. 8-1538 which prohibits any person from standing on a highway for purpose of soliciting business, employment or contributions from the occupant of any vehicle. The amendment provided an exception to this prohibition, allowing the solicitation of contributions if a person or organization first obtains a permit allowing the activity from local authorities. In 2000, the City of Wichita revised the local ordinance to create a permit process for such solicitation by charitable organizations pursuant to guidelines established and maintained by the City Manager. The guidelines require a license fee ($30.00 with two weeks notice, $60.00 with less than two weeks notice) and limits the frequency, duration and location of charitable solicitation events. Each organization is allowed no more than two events per year and an individual event is limited to three consecutive days. The guidelines further provide a list of 42 intersections within the City were solicitation events are allowed to take place.

Since the inception of the permit process, the safety of persons conducting these solicitation events and the traffic hazards it creates have become a growing concern. The number of licenses for solicitation events has steadily increased, with 23 licenses granted in 2010. During the same time, many of the approved intersections have been enlarged, resulting in increased traffic flow. Complaints from citizens have also increased, expressing concern about traffic and pedestrian safety, as well as the conduct of those soliciting donations. Because the solicitation events are governed by the City Manager's guidelines rather than by ordinance, the police have limited means to enforce safety measures and ensure appropriate behavior on the part of the solicitors.

Analysis: Non-profit organizations are a vital part of any successful community and fundraising is a necessary activity for most of these organizations. In the past ten years, licenses to solicit donations in Wichita roadways have been granted to 38 organizations of which 23 were local. However, other avenues exist for the solicitation of donations that do not impact public safety. It is the genuine concern regarding the safety of both those conducting the solicitations and the driving public that has led to this recommendation to ban the practice of solicitation of contributions in a roadway.

Financial Considerations: If permits allowing charitable solicitations in public roadways are eliminated, it will result in the loss of the revenues generated by those license fees.

Goal Impact: Enhance the Safe and Secure Community by eliminating the pubic safety risks involved in the solicitation of charitable contributions by persons in public roadways.

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

Recommendations/Actions: It is recommended that the City Council approve first reading of the ordinance.

Attachments: Copy of the proposed new ordinance.

OCA #083303 **First Published in The Wichita Eagle on _____**

11/30/10

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTION 11.44.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE PROHIBITION AGAINST SOLICITATION OF RIDES, BUSINESS OR CONTRIBUTIONS ON A ROADWAY, AND THE EXCEPTIONS THERETO; AND REPEALING THE ORIGINAL OF SAID SECTION.

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

SECTION 1. Section 11.44.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "**Soliciting rides, business or contributions prohibited--Exceptions**.

(a) No person shall stand in or in proximity to a roadway for the purpose of soliciting a ride from the driver or occupant of any vehicle.

(b) No person shall stand on a street or highway for the purpose of soliciting employment, business or contributions from an occupant of any vehicle.

(c) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

SECTION 2. The original of Section 11.44.050 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

OCA #083303 **First Published in The Wichita Eagle on _____**

DELINEATED 11/03/10

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTION 11.44.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE PROHIBITION AGAINST SOLICITATION OF RIDES, BUSINESS OR CONTRIBUTIONS ON A ROADWAY, AND THE EXCEPTIONS THERETO; AND REPEALING THE ORIGINAL OF SAID SECTION.

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

SECTION 1. Section 11.44.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "**Soliciting rides, business or contributions prohibited--Exceptions**.

(a) No person shall stand in or in proximity to a roadway for the purpose of soliciting a ride from the driver or occupant of any vehicle.

(b) No person shall stand on a street or highway for the purpose of soliciting employment, business or contributions from an occupant of any vehicle.

(c) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

~~(d) The soliciting of contributions under subsection (b) of this section by a charitable organization shall not be prohibited if a license has first been obtained from the city which authorizes such soliciting, and the soliciting is conducted in accordance to all terms and conditions of such license. The city manager shall establish and maintain guidelines for the~~

~~issuance of such licenses. A license to solicit charitable contributions shall be obtained by making application to the city treasurer's office on a form designated for such purpose.~~

SECTION 2. The original of Section 11.44.050 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Wichita Employees' Retirement System
Proposed Revisions of City Code Sections 2.28.090 and 2.28.400, and Repealing the originals of said sections

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendation: Approve first reading of the Ordinance.

Background: Ice Miller, the Wichita Employees' Retirement System's outside legal counsel, advised the City Attorney and the Board of Trustees that it would be prudent for the System to file for an updated determination letter with the Internal Revenue Service (IRS) to ensure the continuation of the System's current tax treatment. On June 9, 2009, the City Council approved changes to various sections of the City Code to comply with recent updates made to the Internal Revenue Code and to prepare for filing and qualifying for an updated determination letter. The last favorable IRS determination letter received by the Retirement System is dated April 19, 2001.

City Code Section 2.28.090 provides investment authority for the assets of the System. The Joint Investment Committee (JIC) is charged with the duty of investing all assets of the Joint Fund. In 2010, the JIC conducted an asset allocation and asset liability study with the System's investment consultant, Callan Associates, Inc. Over a period of several months, the consultant reviewed the System's current assets and liabilities, provided educational sessions on various types of investments, and reviewed several asset allocation mixes that are modeled to generate an expected rate of return of at least 7.75%, the System's actuarial rate of return.

Analysis: In 2009, Ice Miller submitted Chapter 2.28 of the City Code, to the IRS with an application for an updated determination letter. In June 2010, Ice Miller provided the Board additional required amendments to the Internal Revenue Code (IRC), Section 415, to be in compliance with the Worker, Retiree and Employer Recovery Act of 2008. Accordingly, Section 2.28.400 of the City Code related to these plan provisions has been revised in order for the System to further comply with IRC provisions and qualify for a favorable determination letter.

As a result of the asset allocation and asset liability study conducted by Callan, the JIC and the Retirement Board made the following changes to the Fund's asset allocation policy to:

1) Decrease the exposure to domestic equities from 47% to 40%;
2) Increase the exposure to international equities from 20% to 22%;
3) Decrease the exposure to fixed income from 28% to 25% (includes a new 3% exposure to Treasury Inflation Protected Securities (TIPS));
4) Add a 3% allocation to commodities;
5) Increase exposure to alternative investments from 5% to 10%; comprised of the existing 5% allocation to real estate and the addition of a 5% allocation to timber.

This revised asset allocation mix has the potential to provide increased diversification and returns over the long-term, with a slightly decreased amount of risk.

To implement these changes, the Retirement Board is recommending revisions to the Investment Authority section of the City Code to:

1) Increase the permitted exposure to international investments from 25% to 35% (includes equities and fixed income);
2) Although investments in timber are not prohibited, since it is a new alternative investment asset class, language has been inserted to:
    a. Cap the exposure to 10%, which is consistent with the current caps for other permitted alternative investments (i.e. real estate and private equity));
    b. Require that any investment in timber be made via the purchase of a commingled fund.

The proposed revisions to Sections 2.28.090 and 2.28.400 of the City Code were unanimously approved by the Board of Trustees at their meeting on October 20, 2010.

Financial Considerations: An updated favorable determination letter and the continuation of the tax-exempt status of the Retirement System are dependent upon the revisions to Section 2.28.400 of the City Code.

Goal Impact: The City of Wichita, by offering this Retirement System, impacts the Internal Perspective goal by increasing employee motivation and satisfaction.

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

Recommendation/Actions: It is recommended that the City Council approve the first reading of the Ordinance revising City Code Sections 2.28.090 and 2.28.400, and repealing the originals of said sections.

Attachments: Ordinance amending Sections 2.28.090 and 2.28.400, and repealing the originals of said sections of the City Code.
Delineated version of the Ordinance.

(Published in The Wichita Eagle on _____)

ORDINANCE NO.

AN ORDINANCE AMENDING SECTIONS 2.28.090 and 2.28.400, OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ADMINISTRATION OF THE WICHITA EMPLOYEES' RETIREMENT SYSTEM, AND REPEALING THE ORIGINALS OF SAID SECTIONS OF THE CODE OF THE CITY OF WICHITA.

WHEREAS, the City's Pension Office is in the process of seeking updated determination letters from the Internal Revenue Service on the tax qualification of the benefit plans comprising the Wichita Employees' Retirement System; and,

WHEREAS, the Internal Revenue Service, as a condition of granting favorable determination letters, now requires that the plan provisions be amended to refer to specific mortality data for specific periods in connection with application of the Internal Revenue Code Section 415 limits, which changes have been approved and recommended by the Board of Trustees of the Wichita Employees' Retirement System; and

WHEREAS, the Board of Trustees of the Wichita Employees' Retirement System also seeks a revision to its investment authority to specifically authorize investments of up to ten percent of the Plan funds in commingled fund vehicles for investments in timber and managed timberlands, and to increase the maximum allocation to foreign securities investments from twenty-five to thirty-five percent;

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

SECTION 1. Section 2.28.090 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.090 Investment Authority.

(a) Except as provided in subsection (c), the board shall invest and reinvest any portion of the fund not needed for immediate benefit payments through a unitized joint investment fund comprised of assets of the Wichita employees' and police and fire retirement systems. The joint investment fund shall be invested by an investment committee comprised of members from both boards and a city manager's designee. The executive secretary shall be an ex officio, non-voting member of the investment committee. To achieve the investment objective which is to make the moneys as productive as possible, certain standards and limitations (based on cost at time of purchase) are set forth in this section as follows:

(1) In investing and reinvesting moneys in the fund and in acquiring, retaining, managing and disposing of investments of the fund there shall be exercised the judgment and care under the circumstances then prevailing which people of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard and subject to the following requirements, there may be acquired, retained, managed and disposed of as investments of the fund every kind of investment which people of

prudence, discretion and intelligence acquire, retain, manage and dispose of for their own account;

(2) The proportion of the funds invested in corporate, preferred and common stocks shall not exceed seventy percent;

(3) The proportion of the fund invested in securities of a corporation organized under the laws of a country other than the United States of America and securities issued by a foreign country or political subdivision thereof shall not exceed a total of thirty-five percent;

(4) Investments managed by in-house staff will be restricted to high-grade marketable fixed income securities;

(5) Investments may be made in any pooled arrangement such as a mutual fund, separate account, or commingled fund operated by a qualified investment counselor, an insurance company or a bank;

(6) Other investments separately managed by a qualified investment counselor, an insurance company or a bank, who represent that they act as a fiduciary, will be handled similarly to most other clients of the managing firm, except for holdings of money market instruments or their equivalent;

(7) The board shall impose whatever limitations are deemed appropriate under its investment policy statement.

(b) Nothing in this chapter, however, shall be construed so as to give the board at any time authority to invest directly or indirectly in any:

(1) Real estate, except in pooled arrangement such as a mutual fund, separate account or commingled fund operated by a qualified investment counselor or an insurance company. The amount of such investments shall not exceed ten percent (10%) of the Fund;

(2) Private equity; except in a commingled fund-of-funds vehicle operated by a registered advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(3) Timber; except in a commingled fund vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(4) Mortgages secured by real estate, except insured mortgages under Titles 203, 207, 220 and 221 of the Federal Housing Act;

(5) Oil and gas leases or royalties; or

(6) Commodities (including but not limited to wheat, gold or gasoline, or financial futures); provided, however, that the restriction on investment contained in this paragraph shall not apply to funds which are invested in a mutual fund, separate account or commingled fund operated by a registered investment advisor or insurance company.

(c) The board shall not be responsible for investing or reinvesting any portion of an employee's vested account for which an employee has assumed self-direction responsibility of the investing and reinvesting of such an employees' vested account as provided for in Section 2.28.060 of this chapter.

SECTION 2. Section 2.28.400 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.400 Compliance with Code Section 415 Limitations on Contributions and Benefits.

(a) Notwithstanding any other provisions of the retirement system to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.

(b) *Participation in Other Qualified Plans: Aggregation of Limits.*

(1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in

Section 414(i) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contributions plans in which the member has been a member were payable from one (1) plan.

(c) *Basic 415(b) Limitation.*

(1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to

rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(d) *Adjustments to Basic 415(b) Limitation for Form of Benefit.*

If the benefit under the plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any)

payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting which is the "least of"

when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(C) The annual amount of the straight life annuity commencing

at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009. the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(e) *Benefits Not Taken into Account for 415(b) Limitation.*

For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement

income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) *Other Adjustments in 415(b) Limitation.*

(1) In the event that the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar ($160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided in (1) above shall not apply.

(3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) *Less than Ten (10) Years of Service Adjustment for 415(b) Limitations.*

The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under subsection (c) multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(h) *Ten Thousand Dollar ($10,000) Limit.*

Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars ($10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

(i) *Effect of COLA without a Lump Sum Component on 415(b) Testing.*

Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code ("the Limit") to a member with no lump sum benefit, the following will apply:

(1) a member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard

to any cost of living adjustments under 2.28.160;

(2) to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under 2.28.160, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(j) *Effect of COLA with a Lump Sum Component on 415(b) Testing.*

On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(k) *Section 415(c) Limitations on Contributions and Other Additions.*

After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of $40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of

employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the

Internal Revenue Code).

(A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(I) the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to

the member while the member continued in employment with the employer; or

(II) the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

(III) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in paragraph (B) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the member who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the member would have received if the member had continued to perform services for the employer rather than entering qualified military service.

A member who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving

compensation from the employer during such period of qualified military service equal to (i) the compensation the member would have received during such period if the member were not in qualified military service, determined based on the rate of pay the member would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the member would have received during such period was not reasonably certain, the member's average compensation from the employer during the twelve-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(C) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

(l) *Service Purchases under Section 415(n).*

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be

treated as met only if:

(1) the requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or

(2) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

(3) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subparagraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit-

(A) recognized by the system for purposes of calculating a member's benefit under the system,

(B) which such member has not received under the system, and

(C) which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service

credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (B), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(5) The system will fail to meet the requirements of this section if-

(A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the system.

(6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term “nonqualified service credit” means permissive service credit other than that allowed with respect to-

(A) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code),

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed.

(C) service as an employee of an association of employees who are described in clause (A), or

(D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.

In the case of service described in clause (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer)-

(A) the limitations of paragraph (5) will not apply in

determining whether the transfer is for the purchase of permissive service credit, and

(B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the system before January 1, 1998.

(m) *Modification of Contributions for 415(c) and 415(n) Purposes.* Notwithstanding any other provision of law to the contrary, the system may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Section 415(c) or

415(n) of the Internal Revenue Code, the system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(n) *Repayments of Cashouts.*

Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the retirement system shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(o) *Reduction of Benefits Priority.*

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the

agreement of the plan and the plan administrator of all other plans covering such member.

SECTION 3. The prior versions of Sections 2.28.090 and 2.28.400 of the Code of the City of Wichita, Kansas are hereby repealed.

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

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2010.

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

Approved as to Form:

_____

Gary E. Rebenstorf, Director of Law

(Published in The Wichita Eagle on _____)

ORDINANCE NO.

AN ORDINANCE AMENDING SECTIONS 2.28.090 and 2.28.400, OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ADMINISTRATION OF THE WICHITA EMPLOYEES' RETIREMENT SYSTEM, AND REPEALING THE ORIGINALS OF SAID SECTIONS OF THE CODE OF THE CITY OF WICHITA.

WHEREAS, the City's Pension Office is in the process of seeking updated determination letters from the Internal Revenue Service on the tax qualification of the benefit plans comprising the Wichita Employees' Retirement System; and,

WHEREAS, the Internal Revenue Service, as a condition of granting favorable determination letters, now requires that the plan provisions be amended to refer to specific mortality data for specific periods in connection with application of the Internal Revenue Code Section 415 limits, which changes have been approved and recommended by the Board of Trustees of the Wichita Employees' Retirement System; and

WHEREAS, the Board of Trustees of the Wichita Employees' Retirement System also seeks a revision to its investment authority to specifically authorize investments of up to ten percent of the Plan funds in commingled fund vehicles for investments in timber and managed timberlands, and to increase the maximum allocation to foreign securities investments from twenty-five to thirty-five percent;

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

SECTION 1. Section 2.28.090 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.090 Investment Authority.

(a) Except as provided in subsection (c), the board shall invest and reinvest any portion of the fund not needed for immediate benefit payments through a unitized joint investment fund comprised of assets of the Wichita employees' and police and fire retirement systems. The joint investment fund shall be invested by an investment committee comprised of members from both boards and a city manager's designee. The executive secretary shall be an ex officio, non-voting member of the investment committee. To achieve the investment objective which is to make the moneys as productive as possible, certain standards and limitations (based on cost at time of purchase) are set forth in this section as follows:

(1) In investing and reinvesting moneys in the fund and in acquiring, retaining, managing and disposing of investments of the fund there shall be exercised the judgment and care under the circumstances then prevailing which people of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard and subject to the following requirements, there may be acquired, retained, managed and disposed of as investments of the fund every kind of investment which people of

prudence, discretion and intelligence acquire, retain, manage and dispose of for their own account;

(2) The proportion of the funds invested in corporate, preferred and common stocks shall not exceed seventy percent;

(3) The proportion of the fund invested in securities of a corporation organized under the laws of a country other than the United States of America and securities issued by a foreign country or political subdivision thereof shall not exceed a total of thirty-five percent;

(4) Investments managed by in-house staff will be restricted to high-grade marketable fixed income securities;

(5) Investments may be made in any pooled arrangement such as a mutual fund, separate account, or commingled fund operated by a qualified investment counselor, an insurance company or a bank;

(6) Other investments separately managed by a qualified investment counselor, an insurance company or a bank, who represent that they act as a fiduciary, will be handled similarly to most other clients of the managing firm, except for holdings of money market instruments or their equivalent;

(7) The board shall impose whatever limitations are deemed appropriate under its investment policy statement.

(b) Nothing in this chapter, however, shall be construed so as to give the board at any time authority to invest directly or indirectly in any:

(1) Real estate, except in pooled arrangement such as a mutual fund, separate account or commingled fund operated by a qualified investment counselor or an insurance company. The amount of such investments shall not exceed ten percent (10%) of the Fund;

(2) Private equity; except in a commingled fund-of-funds vehicle operated by a registered advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(3) Timber; except in a commingled fund vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(4) Mortgages secured by real estate, except insured mortgages under Titles 203, 207, 220 and 221 of the Federal Housing Act;

(5) Oil and gas leases or royalties; or

(6) Commodities (including but not limited to wheat, gold or gasoline, or financial futures); provided, however, that the restriction on investment contained in this paragraph shall not apply to funds which are invested in a mutual fund, separate account or commingled fund operated by a registered investment advisor or insurance company.

(c) The board shall not be responsible for investing or reinvesting any portion of an employee's vested account for which an employee has assumed self-direction responsibility of the investing and reinvesting of such an employees' vested account as provided for in Section 2.28.060 of this chapter.

SECTION 2. Section 2.28.400 of the Code of the City of Wichita, Kansas is amended to read as follows:

Section 2.28.400 Compliance with Code Section 415 Limitations on Contributions and Benefits.

(a) Notwithstanding any other provisions of the retirement system to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.

(b) *Participation in Other Qualified Plans: Aggregation of Limits.*

(1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in

Section 414(i) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contributions plans in which the member has been a member were payable from one (1) plan.

(c) *Basic 415(b) Limitation.*

(1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to

rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(d) *Adjustments to Basic 415(b) Limitation for Form of Benefit.*

If the benefit under the plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any)

payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member, or

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting which is the "least of"

when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(C) The annual amount of the straight life annuity commencing

at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009. the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(e) *Benefits Not Taken into Account for 415(b) Limitation.*

For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement

income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) *Other Adjustments in 415(b) Limitation.*

(1) In the event that the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar ($160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided in (1) above shall not apply.

(3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) *Less than Ten (10) Years of Service Adjustment for 415(b) Limitations.*

The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under subsection (c) multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(h) *Ten Thousand Dollar ($10,000) Limit.*

Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars ($10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

(i) *Effect of COLA without a Lump Sum Component on 415(b) Testing.*

Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code ("the Limit") to a member with no lump sum benefit, the following will apply:

(1) a member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard

to any cost of living adjustments under 2.28.160;

(2) to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under 2.28.160, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(j) *Effect of COLA with a Lump Sum Component on 415(b) Testing.*

On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(k) *Section 415(c) Limitations on Contributions and Other Additions.*

After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of $40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of

employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the

Internal Revenue Code).

(A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(I) the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to

the member while the member continued in employment with the employer; or

(II) the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

(III) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

Any payments not described in paragraph (B) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the member who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the member would have received if the member had continued to perform services for the employer rather than entering qualified military service.

A member who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving

compensation from the employer during such period of qualified military service equal to (i) the compensation the member would have received during such period if the member were not in qualified military service, determined based on the rate of pay the member would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the member would have received during such period was not reasonably certain, the member's average compensation from the employer during the twelve-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(C) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

(l) *Service Purchases under Section 415(n).*

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be

treated as met only if:

(1) the requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or

(2) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

(3) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subparagraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit-

(A) recognized by the system for purposes of calculating a member's benefit under the system,

(B) which such member has not received under the system, and

(C) which such member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service

credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (B), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the system.

(5) The system will fail to meet the requirements of this section if-

(A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the system.

(6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term “nonqualified service credit” means permissive service credit other than that allowed with respect to-

(A) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Section 415(k)(3) of the Internal Revenue Code),

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed.

(C) service as an employee of an association of employees who are described in clause (A), or

(D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.

In the case of service described in clause (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer)-

(A) the limitations of paragraph (5) will not apply in

determining whether the transfer is for the purchase of permissive service credit, and

(B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the system before January 1, 1998.

(m) *Modification of Contributions for 415(c) and 415(n) Purposes.* Notwithstanding any other provision of law to the contrary, the system may modify a request by a member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Section 415(c) or

415(n) of the Internal Revenue Code, the system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(n) *Repayments of Cashouts.*

Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the retirement system shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(o) *Reduction of Benefits Priority.*

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the

agreement of the plan and the plan administrator of all other plans covering such member.

SECTION 3. The prior versions of Sections 2.28.090 and 2.28.400 of the Code of the City of Wichita, Kansas are hereby repealed.

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

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2010.

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

Approved as to Form:

_____

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Police and Fire Retirement System
Proposed Revisions of Charter Ordinance Sections 1 through 40, inclusive

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendation: Approve first reading of the Charter Ordinance.

Background: Ice Miller, the Police and Fire Retirement System's outside legal counsel, advised the City Attorney and the Board of Trustees that it would be prudent for the System to file for an updated determination letter with the Internal Revenue Service (IRS) to ensure the continuation of the System's current tax treatment. On June 9, 2009, the City Council approved changes to various sections of the City Code to comply with recent updates made to the Internal Revenue Code and to prepare for filing and qualifying for an updated determination letter. The last favorable IRS determination letter received by the Retirement System is dated November 7, 2002.

The current Charter Ordinance 209, Section 12, provides investment authority for the assets of the System. The Joint Investment Committee (JIC) is charged with the duty of investing all assets of the Joint Fund. In 2010, the JIC conducted an asset allocation and asset liability study with the System's investment consultant, Callan Associates, Inc. Over a period of several months, the consultant reviewed the System's current assets and liabilities, provided educational sessions on various types of investments, and reviewed several asset allocation mixes that are modeled to generate an expected rate of return of at least 7.75%, the System's actuarial rate of return.

Analysis: In 2009, Ice Miller submitted the System's Charter Ordinance 209 to the IRS with an application for an updated determination letter. In June 2010, Ice Miller provided the Board additional required amendments to the Internal Revenue Code (IRC), Section 415, to be in compliance with the Worker, Retiree and Employer Recovery Act of 2008. Accordingly, Section 36 of the Ordinance related to these plan provisions has been revised in order for the System to further comply with IRC provisions and qualify for a favorable determination letter.

As a result of the asset allocation and asset liability study conducted by Callan, the JIC and the Retirement Board made the following changes to the Fund's asset allocation policy to:

1) Decrease the exposure to domestic equities from 47% to 40%;
2) Increase the exposure to international equities from 20% to 22%;
3) Decrease the exposure to fixed income from 28% to 25% (includes a new 3% exposure to Treasury Inflation Protected Securities (TIPS));
4) Add a 3% allocation to commodities;
5) Increase exposure to alternative investments from 5% to 10%; comprised of the existing 5% allocation to real estate and the addition of a 5% allocation to timber.

This revised asset allocation mix has the potential to provide increased diversification and returns over the long-term, with a slightly decreased amount of risk.

To implement these changes, the Retirement Board is recommending revisions to the Investment Authority section of the Charter Ordinance to:

1) Increase the permitted exposure to international investments from 25% to 35% (includes equities and fixed income);
2) Although investments in timber are not prohibited, since it is a new alternative investment asset class, language has been inserted to:
    a. Cap the exposure to 10%, which is consistent with the current caps for other permitted alternative investments (i.e. real estate and private equity));
    b. Require that any investment in timber be made via the purchase of a commingled fund.

These proposed revisions to Charter Ordinance 209 were unanimously approved by the Board of Trustees at their meeting on October 27, 2010.

Financial Considerations: An updated favorable determination letter and the continuation of the tax-exempt status of the Retirement System are dependent upon the revisions to Section 36 of the Charter Ordinance.

Goal Impact: The City of Wichita, by offering this Retirement System, impacts the Internal Perspective goal by increasing employee motivation and satisfaction.

Legal Considerations: The Law Department has approved the proposed revisions to the Charter Ordinance as to form.

Recommendation/Actions: It is recommended that the City Council approve the first reading of the Charter Ordinance revising Sections 1 through 40, inclusive, and repealing the original of Charter Ordinance 209.

Attachments: Charter Ordinance amending Sections 1 through 40, inclusive, and repealing the original Charter Ordinance 209.
Delineated version of Charter Ordinance 209.

Charter Ord. _____ Police and Fire Retirement
(Published in the Wichita Eagle on _____ and _____

CHARTER ORDINANCE NO. ____

A CHARTER ORDINANCE OF THE CITY OF WICHITA KANSAS, AMENDING CHARTER ORDINANCE NO. 209 RELATING TO THE POLICE AND FIRE RETIREMENT SYSTEM OF THE CITY OF WICHITA AND REPEALING THE ORIGINAL OF SAID CHARTER ORDINANCE.

WHEREAS, the City of Wichita, Kansas, has created and continued, by various charter ordinances, a retirement system for commissioned officers of the Wichita Police Department and Wichita Fire Department (the "Retirement System"); and,

WHEREAS, since their original adoption, the charter ordinances providing for the creation, modification and continuation of the Retirement System have been from time to time amended, supplemented and/or replaced; and,

WHEREAS, the City of Wichita desires to amend certain provisions of the retirement plans within the Retirement System.

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

SECTION 1

The City of Wichita, Kansas, a city of the first class, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby continues its election, initially made in Charter Ordinance No. 19 of the City of Wichita, and preserved in subsequent charter ordinances amendatory thereto, to exempt itself from and makes inapplicable to it Section 13-14a01 through and including Section 13-14a14 of the Kansas Statutes Annotated; and further, the City hereby enacts the following sections hereof in substitution of, and as a complete replacement for, all currently existing provisions of Charter Ordinance No. 209 of the City of Wichita.

SECTION 2

Name and Effective Date.

The Police & Fire Retirement System of Wichita, Kansas, hereinafter referred to as the “Retirement System” is hereby established to provide retirement, survivor, death and other

benefits for Police and Fire Officers of the City of Wichita and their dependents, continuing the provisions of the Retirement System, which was established January 1, 1965.

SECTION 3

Definitions.

The following words and phrases as used in this ordinance, unless a different meaning is plainly required by the context, shall have the following meanings:

"Act of Duty" means an act performed by a Member within the scope of occupational duties inherently involving special risks not generally assumed by a citizen in the ordinary walks of life, for the purpose of protecting life or property, including any act of heroism as a Member.

"Actuarial Tables" means such tables of mortality and rates of interest as may be adopted by the Board.

"Board" means the Board of Trustees of the Police & Fire Retirement System.

"City" means the municipal government of the City of Wichita, Kansas.

"City Council" means the governing body of the City of Wichita, Kansas.

"Deferral Period" means that period of time between the date a vested employee leaves Service and the date upon which the employee is eligible for and begins to receive a pension benefit.

"Deferred Retiree" means a vested Member who has withdrawn from Service, has not elected to receive a refund of contributions and any applicable interest, and is eligible to receive retirement benefits at a future date.

"Disability" means total inability to perform permanently the duties of the position held by the Member at date of Disability due to a physical or mental incapacity resulting from external force or violence or disease.

"DROP" means the Deferred Retirement Option Plan available to Retirement System Members for a maximum period of five (5) years. The DROP is to be phased in over a three (3) year period starting on January 1, 2000. From January 1, 2000 to December 31, 2000, no Member may utilize the DROP; beginning January 1, 2001 to December 31, 2001, Members may select a backward DROP of up to one (1) year; beginning January 1, 2002 to December 31, 2002, Members may select a backward DROP of up to three (3) years; beginning January 1, 2003, Members may select a backward DROP of up to five (5) years.

"DROP Period" means the number of months between the actual retirement date under the DROP and the Member's date of Withdrawal from Service.

"Final Average Salary" means the average annual Salary for the three (3) highest consecutive years of Service within the last ten (10) years of Service as a Member, and which

shall be computed on the basis of the seventy-eight (78) consecutive pay periods within which the Salary is the highest.

"Fund" means the Police & Fire Retirement Fund as first established by Charter Ordinance No. 5 of the City of Wichita, Kansas.

"Internal Revenue Code" refers to the Internal Revenue Code of 1986 or 1954, as applicable to governmental plans, and regulations promulgated with respect to the Internal Revenue Code.

"Member" means any Police or Fire Officer of the City receiving compensation and contributing to the Police & Fire Retirement System of Wichita.

"Minor Child" or "Minor Children" eligible for consideration under the provisions of the ordinance means children of the blood and adopted children, provided the proceedings for adoption shall have been initiated at least one (1) year prior to the date of death of the Member or Retiree.

"Police or Fire Officer" means, in the case of a Police Officer, any employee of the Police Department of the City holding the rank of Police Officer, including probationary Police Officers or any higher rank; and, in the case of a Fire Officer, any employee of the Fire Department of the City holding the rank of fire fighter, including probationary fire fighter or any higher rank; and in any case, commissioned officers. Effective June 29, 1996, the term "Police or Fire Officer" includes safety officers employed by the Wichita Airport Authority who shall be considered Fire Officers for purposes of electing representatives to the Board. The term "Police or Fire Officer" shall not include: (1) any person privately employed as a Police or Fire Officer; (2) any person temporarily employed as a Police or Fire Officer for an emergency; (3) any civilian employee in the Police or Fire departments; or, (4) any person permanently appointed to the position of Chief of Police under an offer of employment which provides the option of either membership in this Retirement System or the International City Management Association deferred compensation and/or retirement programs, unless such person files in writing a selection of membership in this Retirement System within ninety (90) days of commencing employment, such selection of membership is irrevocable.

"Prior Service" means service rendered by a Member prior to January 1, 1965.

"Regular Interest" means interest at seven percent (7%) per annum, compounded monthly.

"Retiree" means a Police or Fire Officer who is receiving a retirement benefit from the Retirement System.

"Salary" means the base monthly rate of pay being paid in accordance with a Salary ordinance (and shall include longevity pay, educational pay, EMT pay, MICT, acting, Kelly, court appearance, bomb tech pay, flight pay, standby pay, and shift differential in the

computation of benefits). Salary in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded.

"Service" means employment with the City as a Police or Fire Officer and those periods of military service, Sick Leave, and/or Disability for which Members are entitled to Service credit under the provisions of this ordinance.

"Service-Connected Disability" means any physical or mental incapacity resulting from external force, violence, or occupational disease occasioned by an Act of Duty as a Police or Fire Officer, imposed by the ordinance or rules and regulations of the City, or any other Disability, which may be directly attributable to the performance of an Act of Duty.

"Service-Connected Disease" shall be applicable to any Member having five (5) years of Service or more, and shall mean any sickness, disease, or illness of the heart, lungs, or respiratory tract of a Member which may be determined to be directly attributable to his or her employment as a Police or Fire Officer, including exposures to heat and extreme cold, inhalation of heavy smoke, fumes or poisonous, toxic or chemical gases, while in the performance of an Act of Duty.

"Sick Leave" shall be defined as part of Service: provided that unused accumulated Sick Leave shall not be used to meet the existing age or Service requirements heretofore established under Plans A, B, and C-79.

"Withdrawal from Service" means complete severance of employment of any Member as an employee of the City by resignation, discharge, or dismissal.

SECTION 4

Continuation of Three Plans.

There are hereby continued in existence Plans A, B, and C-79. Plan A applies to all Police and Fire Officers entering the Service of the City between December 31, 1964 and January 1, 1979. Plan B applies to those Police and Fire Officers with Prior Service who chose to participate in Plan B. Plan C-79 applies to Police and Fire Officers newly employed or re-employed by the City on or after January 1, 1979.

It is the intent that the Police & Fire Retirement System of Wichita, KS plan be established as a qualified governmental pension plan under Section 401(a) and 414(d) of the Internal Revenue Code. Retirement plan assets are to be held in a trust as required under Section 401(a) of the Internal Revenue Code. The Board shall distribute the corpus and income of the retirement plan to the members and their beneficiaries in accordance with the retirement plan's law. At no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries shall any part of the corpus and income be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries. Upon complete or

partial termination of the retirement plan, the rights of members to benefits accrued to the date of termination, to the extent funded, or to the amounts in their accounts are nonforfeitable, and amounts in their accounts may be distributed to them.

SECTION 5

Membership.

Membership of the Retirement System shall include:

(a) Any person becoming a Police or Fire Officer on or after January 1, 1965.

(b) Any person who was a Police or Fire Officer on December 31, 1964. Any Police or Fire Officer who was temporarily absent on December 31, 1964, due to sickness or Disability, and any such person on an approved leave of absence on said date for any cause, provided such leave shall not have extended for more than one (1) year continuously, except for military service, shall be considered as a Police or Fire Officer on such date.

SECTION 6

Retirement System Funding.

An annual determination shall be made of the actuarial reserve requirements for the benefits provided herein for the Members and their beneficiaries based upon such Member's current and future Services. In addition to interest income and other income accruing to the Retirement System, these requirements shall be by Member contributions and City contributions as follows:

(a) From and after August 7, 1999, each Member of Plan A shall contribute eight percent (8%) of Salary earned and accruing after such date, each Member of Plan B shall contribute six percent (6%) of Salary earned and accruing after such date, and each Member of Plan C-79 shall contribute seven percent (7%) of Salary earned and accruing after such date as their share of the cost of the benefits provided herein.

These contributions shall be made in the form of a deduction from Salary.

(b) The City shall make bi-weekly contributions in an amount, which will be sufficient to provide actuarial reserves for earned benefits and the expenses of plan administration. In the event that Police and Fire Officers are paid other than on a bi-weekly basis, the City shall make such contributions with the same frequency as Police and Fire Officers are paid.

(1) To provide for any unfunded accrued liability, the City shall contribute a sum sufficient to amortize such liability over a period of not more than twenty years.

(2) The amount of City contribution provided in this section shall be established by applying percentage rates of contribution as actuarially determined to the salaries being paid to the Members during each payroll period, and the resulting amounts shall be remitted by the City to the Retirement System concurrently with the payment of the salaries of the Members.

(3) For the purpose of funding all obligations of the Retirement System under the provisions of this ordinance over and above Member contributions and other income accruing to the Retirement System, as herein provided, the City may levy a tax, which levy shall be in addition to the levies now authorized by law for corporate or other purposes.

(4) The City shall pick up the employee contribution required by subsection (a) of this section for all Salary earned after the effective date of this subsection. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code. The City shall pick up these employee contributions from funds established and available in the salaries account, which fund would otherwise have been designated as employee contributions and paid to the Retirement System. Employer contributions picked up by the City pursuant to this subsection shall be treated for all other purposes of this and other laws of the City in the same manner and to the same extent as employer contributions made prior to the effective date of this subsection. This subsection is effective for pay periods beginning on and after January 1, 1994.

(5) Forfeitures may be used to reduce City contributions but should not be used to increase benefits, in compliance with Section 401(a)(8) of the Internal Revenue Code.

SECTION 7

Composition; Expenditures.

(a) The Fund shall consist of all moneys received from contributions made by employees, refunds made by employees on re-employment, investments, earnings, and moneys paid into the Fund by the City.

(b) All benefits paid from the Retirement System shall be distributed in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. This is being adopted in accordance with Section 823 of the Pension Protection Act of 2006. In order to meet these requirements, the Retirement System shall be administered in accordance with the following provisions:

(1) Distribution of a Member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the Member attains age 70 ½ or April 1 of the year following the calendar year in which the Member retires. If a Member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit as required by this rule in the form provided in Sections 13 or 15;

(2) The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated beneficiary, or over a period not extending beyond the life expectancy of the Member or of the Member and a designated beneficiary. The life expectancy of a Member or the Member's spouse may not be recalculated after the benefits commence;

(3) The Retirement System, pursuant to a qualified domestic relations order, may establish separate benefits for a Member and nonmember;

(4) If a Member dies before the required distribution of the Member's benefits has begun, the Member's entire interest much be either:

(A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year in which the Member died; or

(B) distributed within five years of the Member's death;

(5) If a Member dies after the required distribution of benefits has begun, the remaining portion of the Member's interest must be distributed at least as rapidly as under the method of distribution before the Member's death;

(6) The amount of an annuity paid to a Member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A 2;

(7) The death and disability benefits provided by the Retirement System are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code, and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the Members' benefits received from the Retirement System; and

(8) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

(c) The Board is authorized to expend funds for the following purposes: clerical and secretarial work, stationery, supplies and printing; and professional services of actuaries, accountants, physicians, and attorneys, the foregoing list not being intended to limit or exclude expenditures for other proper purposes.

(d) The Board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(e) Effective as of July 1, 1989, the Board will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board by rule; such benefits will not be subject to employer discretion. The Board rules adopted for this purpose are incorporated into this section as part of the plan document.

SECTION 8

Accounting and Actuarial.

(a) The assets of the Retirement System shall be held for the express purposes set forth in the provisions of this ordinance. An adequate system of accounts and records shall be established and maintained.

(b) An actuarial experience study of the Retirement System shall be made at least once every five (5) years by an actuary engaged by the Board to check demographic and economic assumptions used in the calculations of liabilities

and costs. An annual actuarial valuation of the Retirement System shall be made as of December 31st of each year for the purpose of establishing its financial condition and checking its current operating experience.

(c) Any excess balance in the Retirement System as determined in such valuation shall be applied to reduce the City's rate of contribution in succeeding years. Such contribution adjustments shall be made upon recommendation of the actuary.

SECTION 9

Management-Policy Direction.

The Retirement System continued and maintained by this ordinance shall be construed to be a trust, separate and distinct from all other entities. The responsibility for the direction and operation of the Retirement System, and for making effective the provisions hereof, is hereby vested in a Board. The Board shall consist of sixteen (16) Members, as follows:

(a) The City Manager, or an individual appointed by the City Manager (the City Manager's Designee);

(b) The Chief of the Police Department and the Chief of the Fire Department;

(c) Seven (7) trustees appointed by the City Council who need not be employees of the City. Trustees appointed by the Council shall be appointed for such terms and shall be subject to such limitation of terms as adopted by ordinance;

(d) Three (3) Police Officers and three (3) Fire Officers, each having at least five (5) years of Service, who shall be Members of the Retirement System and shall be elected by the Members from the respective occupational groups according to rules of election to be adopted by the Board. Elected trustees shall serve four-year terms expiring on December 31st of the fourth year following their election;

(e) The City Manager's designee shall serve a two (2) year term ending on August 31st of the second year following appointment;

(f) An elected or appointed trustee shall continue in office until the trustee's successor is elected or appointed, and has qualified. Any elected trustee shall be disqualified to serve in that capacity upon termination of Service with the City. If a vacancy occurs in the office of elected trustees, a successor shall be elected for the unexpired term of office within thirty (30) days by a special election, unless the regular bi-annual election occurs sooner. If a vacancy occurs in the office of an appointive trustee, such vacancy shall be filled for the unexpired term in the same manner as the office was previously filled;

(g) Each trustee shall take an oath that, so far as it devolves upon the trustee, the trustee will diligently and honestly administer the affairs of the Board, and that the trustee will not knowingly or willfully permit to be violated any of the provisions of the ordinances applicable to the Retirement System. Such oath shall be subscribed by the trustee making it, and certified by the officer before whom it is taken, and immediately filed with the City Clerk. A trustee shall be deemed to have qualified for membership on the Board when such oath shall have been filed;

(h) Subject to the limitations prescribed herein, the Board shall from time to time establish rules and regulations for the administration of the Retirement System and to implement the provisions of this ordinance as may be required. It shall hold regular meetings at least quarterly in each year and such special meetings as may be deemed necessary. The annual meeting shall be held in the month of January of each year. All meetings shall be open to the public. A record of proceedings of all meetings shall be kept by the Board;

(i) Each trustee shall be entitled to one (1) vote on the Board, and the concurrence of a majority vote of the trustees present at the meeting shall be necessary; provided, however, that in all matters relating to: (1) changes in the ordinances requiring City Council action; (2) Disability applications; (3) hiring or dismissal of consultants; and (4) alteration of the Investment Committee's recommendations for investment advisor, actuary, asset allocation plan and investment policy, at least nine (9) affirmative votes shall be required for passage; and

(j) A trustee shall receive no Salary while serving in that capacity, provided, however, that Police and Fire Officers elected to the Board shall be permitted to receive their regular Salary from the City of Wichita.

SECTION 10

Officers and Their Duties.

The Board shall have the following officers, whose duties shall be prescribed by the by-laws to be adopted by the Board:

(a) A President, a First Vice President, and a Second Vice President shall be elected from among its trustees.

(b) The Administrator of the Retirement System shall be the Pension Manager who is appointed to such position by the City Manager.

(c) The City Treasurer, ex-officio, shall be treasurer of the Retirement System.

(d) The City Attorney, ex-officio, shall be legal counsel to the Board, and shall represent the Board in all litigation affecting the Retirement System.

(e) An actuary shall be appointed to serve as technical advisor in the administration of the Retirement System on matters pertaining to the technical and actuarial aspects thereof.

(f) A specializing physician or physicians shall be appointed at the discretion of the Board to pass upon claims for Service–Connected and non-Service Connected Disability benefits, on medical questions pertaining to such claims, and on any other matters requiring medical advice that may arise in administration of the Retirement System.

SECTION 11

Administration.

Subject to the direction of the Board, the Administrator of the Retirement System shall:

(a) Employ such clerical and professional services as may be required for the proper operation of the Retirement System, whose compensation shall be fixed by the City Council;

(b) Establish and maintain records, files, and accounts in such form and scope as will give effect to the requirements of the Retirement System in accordance with the provisions hereof;

(c) Accumulate actuarial data concerning the operating experience of the Retirement System in such form as is necessary for the annual actuarial valuations and periodic actuarial studies in accordance with the recommendations of the actuary;

(d) Prepare periodic reports as may be required for the efficient administration of the Retirement System;

(e) The Administrator shall also prepare each year the annual report of the Board, to be submitted to the City Council embodying, among other things, a statement of assets, liabilities and reserves certified by the actuary, an accountant's balance sheet supported by a statement of income and expenditures, a listing of investments owned by the Retirement System, a detailed statement of investments acquired and disposed of during the year covered by the report, and such other financial and statistical data as may be deemed necessary for a proper interpretation of the condition of the Retirement System and the results of its operations. The Board shall cause to be distributed among the Members of the Retirement System a synopsis of such annual report.

SECTION 12

Investments.

(a) The Board shall invest and reinvest any portion of the Fund not needed for immediate benefit payments through a joint investment fund comprised of assets of the Wichita Employees' and Police & Fire Retirement Systems. The joint investment fund shall be overseen by an investment committee comprised of trustee representatives elected from both Boards and a City Manager's designee. The administrator shall be an ex-officio, non-voting Member of the investment committee.

(b) To achieve the investment objective of making the Fund as productive as possible, the following standards and limitations are set forth:

(1) In investing and reinvesting monies in the Fund and in acquiring, retaining, managing, and disposing of investments of the Fund, there shall be exercised the judgment and care under the circumstances then prevailing which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard and subject to the following requirements, there may be acquired, retained, managed, and disposed of as investments of the Fund every kind of investment which people of prudence, discretion, and intelligence acquire, retain, manage, and dispose of for their own account;

(2) The proportion of the funds invested in corporate preferred and common stocks shall not exceed seventy percent (70%);

(3) Investments may be made in any pooled arrangement such as a mutual fund, separate account, or commingled fund operated by a qualified investment counselor, an insurance company, or a bank;

(4) Investments managed by in-house staff will be restricted to high-grade marketable fixed income securities;

(5) Other investments separately managed by a qualified investment counselor, an insurance company, or a bank, who represent that they act as a fiduciary, will be handled similarly to most other clients of the

managing firm, except for holdings of money market instruments or their equivalent;

(6) The Board shall impose whatever limitations are deemed appropriate under its investment policy statement;

(7) The proportion of the Fund invested in securities of a corporation organized under the laws of a country other than the United States of America and securities issued by a foreign country or political subdivision thereof shall not exceed a total of thirty-five percent (35%).

(c) Nothing in this ordinance, however, shall be construed so as to give the Board at any time authority to invest directly or indirectly in any:

(1) Real estate; except in pooled arrangements such as a mutual fund, separate account or commingled fund operated by a qualified investment counselor or an insurance company. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(2) Private equity; except in a commingled fund-of-funds vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(3) Timber; except in a commingled fund vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(4) Mortgages secured by real estate, except insured mortgages under Titles 203, 207, 220 and 221 of the Federal Housing Act;

(5) Oil and gas leases or royalties; or

(6) Commodities (including but not limited to wheat, gold, gasoline, options, or financial futures); provided, however, that the restriction on investments contained in this paragraph shall not apply to funds which are invested in a mutual fund, separate account or commingled fund operated by a registered investment advisor or insurance company.

(d) The Board shall have the power to hold, purchase, sell, assign, transfer, and dispose of any of the securities in which monies of the Retirement System have been invested, as well as the proceeds from such investments, and any other property belonging to the Retirement System.

(e) All investments shall be clearly marked to indicate ownership of the Retirement System, and to the extent possible, shall be registered in its name. No securities

shall be purchased or sold, or in any manner hypothecated, except by action of the Board duly entered in the record of its proceedings.

(f) Any limitations affecting the purchase of securities shall be applicable only at the time of purchase and shall not require the liquidation of an investment at any time.

(g) No trustee or employee of the Board shall have any direct interest in the income or gains from any investment made by the Board, nor shall any such person receive any pay or emolument for services in connection with any investment. No trustee or employee of the Board shall become an endorser or surety, or in any manner an obligor for money loaned or borrowed from the Retirement System. Proof that any such person has violated any of these restrictions shall make him guilty of a misdemeanor or larceny, as the case may be, and such person shall be punishable therefore as provided by law.

SECTION 13

Distribution of Contributions.

(a) Any Member withdrawing from Service prior to retirement shall be entitled to a distribution, in a single sum, of the Member's accumulated contributions. Those Members withdrawing from Service after December 31, 1999 shall receive interest at the rate of five percent (5%) per year on such contributions, which shall be credited to accumulated contributions as of the last day of December of each year beginning with the year 1999 through the year 2006. Beginning January 31, 2007 interest shall be credited monthly to accumulated contributions at the rate of five percent (5%) per year, compounded monthly. No interest shall be allowed in any case in which the contributions, and any prior interest earned, were in the fund for any period following termination. The payment of a distribution under the provisions of this section shall automatically effect a waiver and forfeiture of all of such Member's accrued rights and benefits in the Retirement System. The Board may, in its sole discretion, withhold payment of a distribution for a period of not to exceed ninety (90) days after receipt of a written request for the same.

(b) Any Member who has received such distribution shall be considered a new Member under Plan C-79 upon re-employment provided that if such Member shall render at least three (3) years of Service following such Member's latest re-employment, such Member shall be entitled to regain his or her previously

forfeited Service credits upon repayment of all amounts received as refunds, including Regular Interest from date of refund to date of repayment. The time and manner of making such repayments shall be fixed by the Board. Any Member who terminates employment and leaves the Member's contributions in the Retirement System, if rehired, shall be classified as a Member under Plan C-79.

(c) Upon death of a Member leaving no survivors eligible for a benefit from the Retirement System, such Member's accumulated contributions plus interest, if applicable, shall be paid in a single sum to such person or persons as the member shall have nominated by written designation duly executed and filed with the Board. If no such designation shall have been made, payment shall be made to the Member's legal representative.

(d) After termination of all benefit payments to the Member, surviving spouse, and/or Minor Children, a distribution shall be made to the designated beneficiary or legal representative of the Member, surviving spouse, or Minor Children consisting of the excess, if any, of the Member's accumulated contributions, together with interest thereon if applicable, over all such benefit payments made by the Retirement System to or for the benefit of the Member.

(e) Optional direct transfer of eligible rollover distribution shall be as required under Section 401(a)(31) of the Internal Revenue Code.

SECTION 14

Eligibility for Service Retirement; Indexing Deferred Benefits.

(a) Under Plan A or Plan B, any Member having at least twenty (20) years of Service may retire and receive a Service retirement benefit.

(b) Under Plan C-79, all Police and Fire Officers employed on or after January 1, 1979, having at least twenty (20) years of Service, and having attained age fifty (50), may retire on a Service retirement benefit; provided, that from and after January 1, 1979, any Member who has completed thirty (30) years of Service shall be eligible to receive, regardless of age, a retirement benefit, computed in accordance with a Service retirement benefit.

(c) A Member under Plan C-79 having at least twenty (20) years of Service may retire prior to the attainment of age fifty (50) by leaving active Service as a Police or Fire Officer of the City; leaving the Member's contributions in the Retirement Fund; and deferring the payment of the Member's retirement benefits until the

Member has attained age fifty (50). If such Member has a Deferral Period of at least one (1) full month, such Member shall be entitled to a retirement benefit calculated as follows:

(1) A base retirement benefit calculated under Section 15 and

(2) A benefit (which may calculate as no actual increase in benefits), which shall be calculated for each calendar year or full months, in the case of a partial year in such Member's Deferral Period.

(3) The benefit calculation in subparagraph (2) shall be the base benefit calculation in subparagraph (1) adjusted annually for each calendar year or full months in the Member's Deferral Period. The determination of whether a Member is due a benefit increase for a specific calendar year in which the Member has at least one (1) full month of Deferral Period shall be made by determining, for that calendar year, the smaller of (1) 1.055; or (2) the ratio of national average earnings for the second preceding calendar year to national average earnings for the third preceding calendar year. If the smaller of these two amounts is greater than 1.0, the Member shall be entitled to a benefit increase for that calendar year equal to the Member's base retirement benefit, as calculated under subparagraph (1), multiplied by such smaller amount. Any benefit increase for a partial year in the Member's Deferral Period shall be pro-rated for each month, based on the full year increase.

(d) A Member under Plan C-79 with at least ten (10) years of Service may withdraw from Service and elect to leave such Member's contributions in the Retirement System until such time as such Member is eligible to receive a retirement benefit. If such Member has a Deferral Period of at least one (1) full month, such Member shall be entitled to a retirement benefit calculated as provided for above.

SECTION 15

Calculation of Retirement Benefit.

(a) Any Member in Plan A or Plan B having twenty (20) years or more of Service may make application to be retired, and if such application is made, the Board shall retire such Member and shall pay such Member a monthly benefit in an amount equal to fifty percent (50%) of such Member's Final Average Salary at date of his

or her retirement, plus an additional two and one-half percent (2.50%) per year for each year above twenty (20) years up to a maximum of seventy-five percent (75%) of Final Average Salary. For purposes of computing a retirement benefit, unused Sick Leave will be added to Service so long as the computed benefit does not exceed seventy-five percent (75%) of Final Average Salary. The accumulated, unused Sick Leave shall not be used to meet the twenty (20) year Service requirement. A fractional period of Service of less than a full year shall be considered in the calculation of the benefit.

(b) Any Member in Plan C-79 having twenty (20) years or more of Service and who has attained the age of fifty (50) years may make application to be retired, and if such application is made, the Board shall retire such Member and shall pay such Member a monthly benefit in an amount equal to fifty percent (50%) of such Member's Final Average Salary at date of retirement, plus an additional two and one-half percent (2.50%) per year for each year above twenty (20) years up to a maximum of seventy-five percent (75%) of Final Average Salary. For purposes of computing the retirement benefit, unused Sick Leave will be added to Service so long as the computed benefit does not exceed seventy-five percent (75%) of Final Average Salary. The accumulated, unused Sick Leave shall not be used to meet the twenty (20) year Service requirement. A fractional period of Service of less than a full year shall be considered in the calculation of the benefit.

(c) Any Member having ten (10) years and less than twenty (20) years of Service may become a Deferred Retiree by electing to leave such Member's contributions and interest, if any, in the Retirement System. If such Member leaves the Member's contributions and interest in the Retirement System until the Member reaches age fifty-five (55) years, the Member shall be entitled to a retirement benefit as calculated in Section 14(d) herein.

(Such benefit shall be calculated by multiplying the Member's years of Service by an amount equal to two and one-half percent (2.50%) and multiplying that product by the Member's Final Average Salary.) Upon retirement and commencement of the receipt of the retirement benefit, such Member shall not be entitled to any survivor's benefits.

SECTION 16

Military Service.

(a) Notwithstanding any provisions of this plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

(b) Effective with respect to deaths occurring on or after January 1, 2007, while a Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a Member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the Member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the Member's death while employed.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, a Member receiving differential wage payments (while the Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated Members in a reasonably equivalent manner.

SECTION 17

Monthly Payments.

Any benefit hereunder shall be payable in monthly installments.

SECTION 18

Optional Annuity.

An optional annuity, as herein provided, means a benefit computed according to the approximate equivalent formula recommended by the actuary and adopted by the Board, payable during the lifetime of the specified beneficiary only if such beneficiary survives the Retiree who was receiving a reduced Service retirement annuity. If the specified beneficiary predeceases the Retiree, the Retiree's reduced Service retirement annuity shall revert to the Service retirement annuity calculated for the Member had the Member not selected the optional annuity. This recalculated Service retirement annuity shall be payable beginning the first of the month following notice of the beneficiary's death.

The amount of the optional annuity shall be that specified in the Member's notice of election, and shall not, in any event, be more than the amount of the Member's reduced Service retirement annuity.

The optional annuity shall begin on the day following the death of the Retiree.

SECTION 19

Permanent Service-Connected Disability Benefits.

Any Member, who shall, while engaged in the performance of his or her duties, be permanently injured or disabled, other than as the result of an occupational disease, and upon an examination by a physician or physicians appointed by the Board of Trustees, be found to be physically or mentally disabled as a result of such permanent Disability or injury so as to render him incapable to perform the duties of the position held by the Member at date of Disability, shall be entitled to be retired, and the Board of Trustees shall thereupon order such Member's retirement and upon being retired, the Member shall be paid a benefit equal to seventy-five percent (75%) of the Salary in effect on the date when Salary payments ceased. The benefit shall be established according to the charter ordinance that is in effect at the time Salary payments ceased.

Any Police or Fire Officer incurring an occupational disease due to service-connected causes, who upon examination by a physician or physicians appointed by the Board is found by at least two (2) out of three (3) such physicians to be physically or mentally disabled as the direct result and proximate cause of such disease so as to render him incapable to perform the duties of the position held by the Member at date of Disability, shall be entitled to be retired at a benefit equal to fifty percent (50%) of his or her Salary in effect upon the date when Salary payments ceased. The benefit shall be established according to the charter ordinance that is in effect at the time Salary payments ceased.

The Board of Trustees may, when they deem it advisable, call back for re-examination by a physician, any Member retired by reason of permanent Disability under the provisions of this ordinance, and if said examination discloses that said Member is then able to perform his or her duties in said department, he or she may be returned to Service; and if said Member, upon request, fails or refuses to return to duty, then all payments from said System shall cease.

The Disability benefit shall be recomputed when the Member attains age fifty-five (55). At such time the Member attains age fifty-five (55), the Disability benefit shall be recomputed in the same manner as a Service retirement benefit which would have been received had the Member been continuously in Service in the grade occupied at date absence on account of Disability began, subject to periodic Salary changes in such grade. In such a case, Service credit shall be granted during the period of payment of the Disability benefit, prior to attainment of age fifty-five (55), toward the recomputed Disability benefit.

SECTION 20

Non-Service Connected Disability.

Any Member having at least seven (7) years of credited Service, under the age of fifty-five (55) years, who becomes totally and permanently disabled due to any cause other than Service-Connected Disability, while an employee of the City, shall be entitled to a Non-Service Connected Disability benefit. The benefit shall be equal to thirty percent (30%) of the Final Average Salary plus one (1) percentage point for each year of Service above seven (7) years, up to a maximum of fifty percent (50%) of Final Average Salary. Accumulated unused Sick Leave will be added to Service so long as the computed benefit does not exceed fifty percent (50%) of Final Average Salary. The benefit shall be reduced by any amounts received by the Member from public funds as Salary, or other forms of compensation during Disability, exclusive of payments under Federal Social Security.

Non-Service Connected Disability shall be considered total and permanent if it results in some impairment of mind or body due to mental or physical incapacity resulting from external force, or violence, or disease that substantially precludes a Member from performing with reasonable regularity the substantial and material parts of any gainful work or occupation that the Member would be competent to perform were it not for the fact that the impairment is founded upon conditions which render it reasonably certain that it will continue indefinitely.

The benefit shall be payable during continuing Disability of the Member, but the Member shall be subject to periodic medical examinations as herein provided.

Should a Member recover from Disability and re-enter the Service of the City as a Police or Fire Officer, and shall render at least three (3) years of Service thereafter, the Member shall be credited for Service retirement benefit purposes with the periods of time during which the Member shall have received a Non-Service Connected Disability benefit; otherwise, such Member re-entering Service shall not be entitled to Service credit for the periods of such Disability.

Disability incurred while in military service shall not be considered for benefits under the provisions of this ordinance.

A Non-Service Connected Disability shall begin to accrue upon commencement of Disability, provided that if the Member is receiving Salary, the benefit shall begin to accrue from the date Salary has ceased. If written application for the benefit shall not have been filed with the Board prior to the expiration of ninety (90) days from date of Disability, the benefit shall begin to accrue from the date application therefore has been filed, but in no event prior to the time when payments to the Member on account of Salary have ceased.

SECTION 21

Administration of Disability Annuities.

(a) The determination of Disability from any cause shall be made upon the basis of reports of examinations made by at least two (2) physicians designated by the Board.

(b) A Member receiving service-connected or non-Service Connected Disability benefits shall be required, at the discretion by the Board of Trustees, to submit to an examination at least once each year by a physician or physicians designated by the Board to establish that the Member is incapacitated for active Service as a Police or Fire Officer and is entitled to continue to receive a Disability benefit. The Board may terminate a Disability benefit upon evidence that the Member is no longer disabled for Service. If such termination occurs and the Member does not re-enter the Service, he or she shall be entitled to a refund of the excess, if any, of the contributions made by the Member, without interest, over the amounts received by the Member on the Disability benefit.

If medical examination or an investigation made by the Board discloses that the Member is engaged in or is able to engage in any gainful occupation resulting in earnings for services rendered in any capacity, payment of the Disability benefit shall be reduced to an amount which, when added to the Member's income from such gainful occupation, does not exceed the rate of Salary currently being paid for the rank similar to that held by the Member at commencement of Disability.

(c) Each Member in receipt of a Disability benefit shall submit to the Board at least once each year, an authenticated copy or duplicate original of the Member's complete United States Income Tax Return, being a statement of income from gainful occupation for the preceding twelve (12) months. Any adjustment in benefit payments, as aforesaid, shall be based upon such statement of income.

(d) Should any Member receiving a Disability benefit refuse to submit to a medical examination or supply the Board with required statements of income, as herein above provided, benefit payments by the Retirement System shall be discontinued until compliance with the provisions hereof. Should such refusal continue for one (1) year, all rights of the Member to any Disability benefit shall be revoked by the Board. Upon finding that a Member receiving a Disability benefit has deliberately falsified information contained in his or her statement of income, all rights of the Member in any Disability benefit shall be revoked by the Board.

SECTION 22

Backward Deferred Retirement Option Plan (DROP).

(a) Any Member eligible to retire on or after January 1, 2001 may, at the time of applying for retirement benefits, elect a backward DROP benefit with payment as provided herein. A Member electing a backward DROP must select an effective backward DROP date. The Member must be eligible to receive a Service retirement benefit on the effective backward DROP date.

(b) The maximum allowable DROP Period for a backward DROP is sixty (60) months. The DROP Period is the period between the Member's effective backward DROP date and the date of the Member's Withdrawal from Service.

(c) For purposes of benefit calculations, the Member's retirement date will be the effective backward DROP date.

(d) A Member's unused Sick Leave credit at the Member's date of election of the backward DROP may be added to the Member's Service at the Member's effective backward DROP date.

(e) The Member's monthly retirement benefit is calculated as of the Member's effective backward DROP date and is payable at the Member's Withdrawal from Service.

(f) The Member's DROP benefit is calculated by:

(1) multiplying the Member's monthly retirement benefit from (e), times the number of months selected by the Member as the backward DROP Period;

(2) plus any applicable post-retirement adjustments;

(3) plus interest at an annual rate of five percent (5%) compounded monthly.

(g) Application for withdrawal of the DROP account balance shall be made within ninety (90) days of the Member's Withdrawal from Service. Payment of the amount calculated in (f) shall be made only in a lump sum payment, a direct rollover, or some combination of the two.

SECTION 23

Service-Connected Death.

(a) Upon death of a Member, regardless of the Member's age or length of Service, resulting directly from service-connected causes; or an occupational disease if the Member had at least five (5) years of Service, and in the case of an

occupational disease if death occurred within three (3) years from the date of commencement of the disease and the cessation of Salary payments to the Member, whichever is later, a surviving spouse shall be entitled to a benefit equal to fifty percent (50%) of the Member's final Salary at the date of the Member's death. This benefit payable to a surviving spouse hereunder shall be payable during such surviving spouse's lifetime.

(b) If such Member is also survived by a Minor Child or Minor Children, each such child shall be entitled to a benefit of ten percent (10%) of such Member's final Salary. Such benefit shall be paid to the custodial parent or guardian/conservator of each such child. The combined payments to a surviving spouse and Minor Children shall in no event exceed seventy-five percent (75%) of such Member's final Salary. In the event that the combined payments do exceed such amount, the benefit of the surviving spouse shall be reduced so that combined payments equal seventy-five percent (75%) of such Member's final Salary. At the time that combined payments no longer exceed such amount, the benefit of the surviving spouse shall be increased so that combined payments equal seventy-five percent (75%) of such Member's final Salary, but in no event shall the benefit of the surviving spouse be an amount greater than fifty percent (50%) of such Member's final Salary.

(c) If such Member dies leaving no surviving spouse, each Minor Child of such Member then surviving shall be entitled to a benefit of twenty percent (20%) of such Member's final Salary. Such benefit shall be paid to the custodial parent or guardian/conservator of each child. The combined payments on account of such Minor Children shall not exceed sixty percent (60%) of such Member's final Salary. In the event that combined payments exceed such amount, the benefits for such children shall be reduced pro rata so that total payments equal sixty percent (60%) of such Member's final Salary.(d) Benefits paid on account of Minor Children shall terminate upon the first to occur of the following:

(1) The Minor Child reaching the age of eighteen (18) years;

(2) Death of the Minor Child; or

(3) Marriage of the Minor Child.

(e) The determination of whether death is Service-Connected or not shall be made in the manner provided for in the administration of Disability benefits.

SECTION 24

Non-Service Connected Death.

(a) Upon death of a Member who has at least three (3) years of Service:

(1) whose death is not due to Service-Connected causes; or

(2) who is on Sick Leave receiving Salary on the date of death and whose death is not due to Service-Connected causes; or

(3) who is on approved leave of absence extending not more than twelve (12) continuous months on the date of death and whose death is not due to Service-Connected causes,

the surviving spouse of such Member shall be eligible to receive a benefit if such surviving spouse was the lawfully wedded spouse at the time of the death of such Member. Such surviving spouse shall continue to be eligible to receive a benefit for such spouse's lifetime. The amount of such benefit shall be as calculated in subparagraph (c) below and shall be subject to adjustment as provided in subparagraph (e) below.

(b) Upon death of a Retiree:

(1) who is receiving Service or Non-Service Connected Disability pension benefits on the date of death; or

(2) who is receiving a Service retirement benefit or is a Deferred Retiree and has at least twenty (20) years of Service at the date of death,

the surviving spouse of such Retiree shall be eligible to receive a benefit if i) such surviving spouse was the lawfully wedded spouse of such Retiree on the date such Retiree retired or began receiving either a Service or Non-Service Connected Disability pension benefit, and ii) such surviving spouse is at least forty (40) years of age at the time of the death of such Retiree, or if less than forty (40) years of age has, at the time of death of such Retiree, the care and custody of a Minor Child or Children of such Retiree. A surviving spouse who is not eligible to receive a benefit because such surviving spouse is less than forty (40) years of age shall become eligible to receive a benefit on the date that such surviving spouse attains the age of forty (40) years, so long as such surviving spouse has not remarried. A surviving spouse who is eligible to receive a benefit shall continue to receive a benefit for such spouse's lifetime so long as such surviving spouse does not remarry after the date such Retiree dies and prior to such surviving spouse attaining the age of forty (40) years. The amount of such

benefit shall be calculated as provided in subparagraph (c) below and shall be subject to adjustment as provided in subparagraph (e) below.

(c) Subject to adjustment because of the requirements of subparagraph (e) below, the benefit to be paid to a surviving spouse who is eligible to receive such a benefit under either paragraph (a) or (b) above, shall be equal to thirty-five percent (35%) of such Member or Retiree's Final Average Salary, increased by one percentage point for each year of Service greater than three (3) years, up to a maximum benefit of fifty percent (50%) of Final Average Salary. Provided, however, for a Member or Retiree under Plan B, such benefit shall be equal to fifty percent (50%) of such Member or Retiree's final Salary.

(d) If a Member or Retiree dies under circumstances set out in subsection (a) or (b) above, each surviving Minor Child of such Member or Retiree shall be entitled to a benefit as calculated herein and subject to adjustment because of the requirements of subparagraph (e) below. The amount of such benefit, if a benefit is also being paid to a surviving spouse of such Member or Retiree, shall be ten percent (10%) of such Member or Retiree's Final Average Salary. The amount of such benefit, if no benefit is being paid to a surviving spouse of such Member or Retiree, shall be fifteen percent (15%) of such Member or Retiree's Final Average Salary. The benefit for a Minor Child shall be paid to the custodial parent or conservator of each such Minor Child. When a Minor Child is receiving a ten percent (10%) benefit and the benefit being paid to a surviving spouse of the Member or Retiree on account of whose death each benefit was initially paid is terminated, the benefit to be paid to such Minor Child shall increase to fifteen percent (15%) of such Member or Retiree's Final Average Salary.

(e) (1) The combined monthly benefit payment to a surviving spouse and Minor Children shall not exceed sixty-six and two-thirds percent (66 2/3%) of the Final Average Salary of the Member or Retiree on account of whose death the benefits are being paid. In the event that the calculation of such benefit results in such combined monthly benefit payment in excess of that amount, the benefit of the surviving spouse shall be reduced so that the combined monthly benefit payment equals sixty-six and two-thirds percent (66 2/3%) of such Member or Retiree's Final Average Salary. The benefit for such surviving spouse shall be increased at such time as the combined monthly benefit payment no

longer exceeds such sixty-six and two-thirds percent (66 2/3%) limit, but in no event shall such increase result in such surviving spouse's benefit exceeding the amount originally calculated under subsection (c). When no benefit is being paid to a surviving spouse because the benefit calculated for the surviving spouse has been reduced to zero because of the adjustment set out above, any adjustment to the benefits paid to Minor Children because the combined monthly benefit payments exceed sixty-six and two-thirds percent (66 2/3%) of such Member or Retiree's Final Average Salary shall be made pro rata among such Member or Retiree's Minor Children, and such adjustment shall continue until the combined monthly benefit payment can be paid to eligible Minor Children without exceeding such sixty-six and two-thirds percent (66 2/3%) limit.

(2) The combined monthly benefit payment to Minor Children where there is no benefit being paid to a surviving spouse because no surviving spouse is eligible for such a benefit shall not exceed fifty percent (50%) of the Final Average Salary of the Member or Retiree on account of whose death the benefits are being paid. In the event that combined monthly payments exceed such amount, the benefit of each such Minor Child shall be reduced pro rata so that combined monthly payments equal fifty percent (50%) of such Member or Retiree's Final Average Salary. In no event shall the benefit paid a Minor Child exceed fifteen percent (15%).

(3) The combined monthly benefit payment to a surviving spouse and Minor Children or to Minor Children shall not exceed the amount of the monthly Service retirement or Disability retirement benefit being paid on the date of the death of the Retiree on account of whose death such benefit payments are being made. In the event that the calculation of such benefit results in a combined monthly benefit payment in excess of such amount, i) the benefit of the surviving spouse shall be reduced so that the combined monthly benefit payment equals such Service retirement or Disability retirement benefit; or ii) if no benefit payment is being paid to a surviving spouse, the benefits of all Minor Children shall be reduced pro rata so that the combined monthly benefit payment equals such Service retirement or Disability retirement benefit. Once

reduced, these benefit payments shall be increased in the same manner and subject to the same limitations as set forth in (e) (1) and (e) (2) above.

(f) Benefit payments for a Minor Child shall terminate upon such child reaching eighteen (18) years of age, the death of such child, or the marriage of such child, whichever shall occur first.

(g) The surviving spouse of a Retiree who retired on or after January 1, 2000 and thereafter dies under circumstances set out in subsections (b)(1) or (b)(2) above, shall not be limited by either the age requirement or the remarriage limitations set forth in subparagraph (b) herein. Provided, however that such surviving spouse, in order to be eligible to receive a benefit, shall have been such Retiree's lawfully wedded spouse for at least twelve (12) months immediately preceding the death of such Retiree.

(h) A Member who, on or after January 1, 2000, selects an effective backward DROP date which is prior to January 1, 2000, shall nevertheless be considered to have retired on or after January 1, 2000 for the purposes of determining the eligibility of such Member's surviving spouse for a benefit.

(i) For a Member or Retiree under Plan B, benefit payments on account of Minor Children shall be paid only if such Member or Retiree dies leaving no surviving spouse or dies leaving a surviving spouse who remarries prior to age forty (40). Under either such circumstance, the Minor Children of such Member or Retiree shall share equally a benefit equal to fifty percent (50%) of such Member or Retiree's final Salary.

SECTION 25

Post Retirement Adjustments.

For all Members retiring for any reason from and after February 1, 1974, upon completion of thirty-six (36) months of retirement, the monthly retirement benefits payable to such Retiree, or the monthly retirement benefits payable to the spouse or the Minor Child or Children of such Retiree, shall be increased two percent (2%) per year based on the original benefit, not compounded.

SECTION 26

Funeral Benefit.

The designated beneficiary of a Member who retired after November 21, 1973 under either Plan A, Plan B, or Plan C-79 shall be paid a funeral benefit of seven hundred fifty dollars ($750.00).

SECTION 27

Assignments Prohibited.

The right to a refund or a service retirement, Disability, death, or any benefit under the provisions of this ordinance, whatever name called, is personal with the recipient thereof, and the assignment or transfer of any such benefit, or any part thereof shall be void, except as may be provided herein. Any such refund or benefit shall not answer for debts contracted by the person receiving the same, and it is the intention of this ordinance that they shall not be subject to execution, attachment, garnishment, or affected by any judicial proceedings, except such benefit or any accumulated contributions due and owing from the System to any recipient are subject to claims of an alternate payee under a "qualified domestic relations order".

SECTION 28

Qualified Domestic Relations Orders.

As used in this section, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the Internal Revenue Code. The City of Wichita shall not be a party to any action under Article 10 of Chapter 60 of the Kansas Statutes Annotated but is subject to orders from such actions issued by the district court of the county where such action was filed and may also accept orders which it deems to be qualified under this section from courts having jurisdiction of such actions outside the State of Kansas. Orders from such actions shall specify either a specific amount or specific percentage of the amount of the benefit or any accumulated contributions due and owing from the Fund and to be distributed to the alternate payee. The order must contain the following information:

(a) Name, address, and social security number of the employee and alternate payee;

(b) Clearly identifies the appropriate Police & Fire Retirement System and plan;

(c) Creates or recognizes the existence of an alternate payee's rights to, or assigns to an alternate payee the right to receive a portion of the benefits otherwise payable to the employee;

(d) The date of marriage and divorce/separation;

(e) Statement that the benefit is payable only at the time of retirement of the employee or at the time the employee withdraws from Service, if the employee withdraws his or her contributions from the Fund;

(f) That the benefit is payable only during the lifetime of the retired employee or alternate payee should the alternate payee predecease the employee;

(g) Payment to the alternate payee shall be a lump sum if payment to the employee is lump sum, monthly if payment to the employee is monthly; and

(h) An employee who elects to participate in the DROP shall be treated as having retired for the purposes of a qualified domestic relations order.

The order to be qualified cannot allow the calculation of the lump sum payment or monthly benefit to be calculated in a manner which results in a payment or benefit in excess of the limits of the plan; cannot allow the alternate payee to be named as a surviving spouse or a survivor at the death of the retired employee; and cannot allow the alternate payee to name a beneficiary.

SECTION 29

Current Retiree Benefit Catch-Up Provision.

For Retirees who have been receiving a Service or Disability retirement benefit for ten (10) years or more as of January 1, 2000, and for the surviving spouses of deceased Retirees who retired and began receiving a Service or Disability retirement benefit prior to January 1, 1990, the pension benefit payable to such Retirees and such surviving spouses shall be increased by a factor of two percent (2%) per year for each year since such Retiree or the deceased Retiree began receiving a Service retirement benefit. This increase is a one-time benefit adjustment. This increase shall be applied to both the base pension benefit and any post-retirement adjustment, combined. The increased pension benefit calculated under this section shall in no event exceed $8,183.00 annually.

SECTION 30

Special Provisions for Safety Officers Employed by the Wichita Airport Authority.

Safety officers employed by the Wichita Airport Authority of the City of Wichita on June 29, 1996 shall be transferred on that date from the Wichita Employees' Retirement Plans to the Police and Fire Retirement System's Plan C-79. Notwithstanding provisions of any other sections contained herein, the following provisions shall be applicable for such safety officers transferred as of June 29, 1996:

(a) Service credit under the Wichita Employees' Retirement Plans shall be considered Service for purposes of meeting Service eligibility requirements for benefits under the Police and Fire Retirement System Plan C-79;

(b) Service under the Wichita Employees' Retirement Plans shall not be considered in the determination of the amount of any benefit payable by the Police and Fire Retirement System Plan C-79; and

(c) Under no circumstances will the total retirement benefit payable to a safety officer as a result of this transfer exceed an amount equal to seventy-five percent

(75%) of his or her Final Average Salary regardless whether the source of the benefit is the Wichita Employees' Retirement System or the Police and Fire Retirement System.

SECTION 31

Re-employment of Retirees.

(a) Any Member under the Retirement System who is receiving a retirement benefit and who is re-employed as a commissioned Police or Fire Officer with the City of Wichita, or in a non-commissioned position under the Wichita Employee's Retirement System, shall have such Member's retirement benefit immediately suspended, and no benefit payments shall be made during the entire time such Member is so employed. However, nothing is intended to prohibit such member from participation in the appropriate retirement system and the accrual of additional Service for credit.

(b) Upon termination of such employment as a commissioned officer, payment of the retirement benefit shall be resumed; provided, however, nothing herein shall be construed to prohibit the employment of a retired police or fire commissioned officer in an advisory or consultant capacity on an independent contractor basis.

(c) Under no circumstances will the total retirement benefit payable to a re-employed Member exceed an amount equal to seventy-five percent (75%) of his or her Final Average Salary regardless whether the source of the benefit is the Wichita Employees' Retirement System or the Police and Fire Retirement System.

SECTION 32

Fraud.

Any person who knowingly makes a false statement in connection with the application for or the receipt of benefits, or falsifies or permits to be falsified, any record or records of this Retirement System, in an attempt to defraud the Retirement System, shall forfeit all rights to benefits hereunder. The Retirement System and the City shall have the right to recover by setoff or otherwise, any payments based on such false statement or falsified record.

SECTION 33

Limited Extension of Option and its Effective Date.

Any Police or Fire Officer who had previously elected to participate in Plan B shall have an option at any time prior to retirement to elect participation in Plan A by paying into the Retirement System a sum of money, without interest, equal to the difference in contributions which would have been paid by such Police or Fire Officer had they elected Plan A on January

1, 1965; provided, that once having made such election, such Police or Fire Officer shall not be permitted to revert back to Plan B.

SECTION 34

Benefit and Disability Rights Under Prior Laws Saved.

This ordinance shall not affect the rights nor decrease the Disability or retirement benefits of any Member or such Member's beneficiaries, who has died, been permanently disabled, or retired under any previously authorized and existing pension or retirement system. Any Member in service at the time of the effective date of this ordinance, who is at said time entitled to a benefit under any previously authorized pension or Retirement System shall not have such benefit reduced by virtue of the application of the provisions of this ordinance.

SECTION 35

Invalidity of Part.

If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance, which can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are declared to be severable.

SECTION 36

Compliance with Code Section 415 Limitations on Contributions and Benefits.

a) Notwithstanding any other provisions of the Retirement System to the contrary, the Member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.

(b) *Participation in Other Qualified Plans: Aggregation of Limits.*

(1) The 415(b) limit with respect to any Member who at any time has been a Member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the Member has been a Member were payable from one (1) plan.

(2) The 415(c) limit with respect to any Member who at any time has been a Member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total annual additions under

all such defined contributions plans in which the Member has been a Member were payable from one (1) plan.

(c) *Basic 415(b) Limitation.*

(1) Before January 1, 1995, a Member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a Member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the Retirement System. In no event shall a Member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(d) *Adjustments to Basic 415(b) Limitation for Form of Benefit.*

If the benefit under the plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any) payable to the Member under the plan commencing at the same annuity starting date as the form of benefit to the Member, or

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a

5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code; or

(C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(e) *Benefits Not Taken into Account for 415(b) Limitation.*

For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) *Other Adjustments in 415(b) Limitation.*

(1) In the event the Member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar ($160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the Member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in (1) above shall not apply.

(3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) *Ten Thousand Dollar ($10,000) Limit.*

Notwithstanding the foregoing, the retirement benefit payable with respect to a Member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such Member under this plan and under all other qualified defined benefit pension plans to which the Member's employer contributes, do not exceed ten thousand dollars ($10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the Member participated.

(h) *Effect of COLA without a Lump Sum Component on 415(b) Testing.*

Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a Member with no lump sum benefit, the following will apply:

(1) a Member's applicable Limit will be applied to the Member's annual benefit in the Member's first limitation year without regard to any cost of living adjustments under Section 25;

(2) to the extent that the Member's annual benefit equals or exceeds the Limit, the Member will no longer be eligible for cost of living increases

until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a Member's annual benefit, including any cost of living increases under Section 25, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(i) *Effect of COLA with Lump Sum Component on 415(b) Testing.*

On and after January 1, 2009, with respect to a Member who receives a portion of the Member's annual benefit in a lump sum, a Member's applicable Limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(j) *Section 415(c) Limitations on Contributions and Other Additions.*

After-tax Member contributions or other annual additions with respect to a Member may not exceed the lesser of $40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the Member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, Member contributions, and forfeitures credited to a Member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that Member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be

determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

(A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code.

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a Member's severance from employment or the end of the limitation year that includes the date of the Member's severance from employment if:

(I) the payment is regular compensation for services during the Member's regular working hours, or compensation for services outside the Member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the Member while the Member continued in employment with the employer; or

(II) the payment is for unused accrued bona fide sick, vacation or other leave that the Member would have been able to use if employment had continued; or

(III) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Member at the same time if the Member had continued employment with the employer and only to the extent that the payment is includible in the Member's gross income.

Any payments not described in paragraph (B) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to a Member who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the Member would have received if the Member had continued to perform services for the employer rather than entering qualified military service.

A Member who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the Member would have received during such period if the Member were not in qualified military service, determined based on the rate of pay the Member would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the Member would have received during such period was not reasonably certain, the Member's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(C) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a Member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

(k) *Service Purchases under Section 415(n).*

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

(1) the requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such

contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or

(2) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

(3) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subparagraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit-

(A) recognized by the system for purposes of calculating a Member's benefit under the system,

(B) which such Member has not received under the system, and

(C) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (B), may include service credited in order to provide an increased benefit for service credit which a Member is receiving under the system.

(5) The system will fail to meet the requirements of this section if-

(A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the system.

(6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to-

(A) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State

or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of repayment described in Section 415(k)(3) of the Internal Revenue Code),

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(C) service as an employee of an association of employees who are described in clause (A), or

(D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.

In the case of service described in clause (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a Member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer)-

(A) the limitations of paragraph (5) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible Member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible

Member is an individual who first became a Member in the system before January 1, 1998.

(l) *Modifications of Contributions for 415(c) and 415(n) Purposes.*

Notwithstanding any other provision of law to the contrary, the system may modify a request by a Member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the Member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the system may either reduce the Member's contribution to an amount within the limits of those sections or refuse the Member's contribution.

(m) *Repayments of Cashouts.*

Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the Retirement System shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(n) *Reduction of Benefits Priority.*

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such Member.

SECTION 37

Direct Rollovers of Defined Benefit Plan Distributions.

(a) Except as otherwise indicated herein, this section shall apply to all rollovers made after December 31, 2001.

(b) For purposes of compliance with Section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than $200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after

January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of an eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

(2) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(A) an individual retirement account described in Section 408(a) of the Internal Revenue Code;

(B) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;

(C) an annuity plan described in Section 403(a) of the Internal Revenue Code;

(D) a qualified trust described in Section 401(a) of the Internal Revenue Code;

(E) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;

(F) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the Retirement System; or

(G) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account

or annuity will be treated as an "inherited" individual retirement account or annuity.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(c) Rollover contributions and/or direct rollovers of distributions made after December 31, 2001 will be accepted for the purchase of prior or future service credit from the types of plans specified.

(d) The plan will accept a direct rollover of an eligible rollover distribution from:

(1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.

(2) An annuity contract described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state.

(e) The plan will accept a participant contribution of an eligible rollover distribution from:

(1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.

(2) An annuity contract described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state.

(f) The plan will accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408 (b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income.

SECTION 38

The Original of Charter Ordinance No. 209 of the City of Wichita, Kansas, is hereby repealed.

SECTION 39

Publication.

This ordinance shall be published once each week for two (2) consecutive weeks in the official city newspaper.

SECTION 40

Petition for Referendum.

This is a charter ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3), of the Constitution of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED by the governing body of the City of Wichita, Kansas, this ___ day of _____, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

Charter Ord. _____ Police and Fire Retirement
(Published in the Wichita Eagle on _____ and _____

CHARTER ORDINANCE NO. ____

A CHARTER ORDINANCE OF THE CITY OF WICHITA KANSAS, AMENDING CHARTER ORDINANCE NO. 209 RELATING TO THE POLICE AND FIRE RETIREMENT SYSTEM OF THE CITY OF WICHITA AND REPEALING THE ORIGINAL OF SAID CHARTER ORDINANCE.

WHEREAS, the City of Wichita, Kansas, has created and continued, by various charter ordinances, a retirement system for commissioned officers of the Wichita Police Department and Wichita Fire Department (the "Retirement System"); and,

WHEREAS, since their original adoption, the charter ordinances providing for the creation, modification and continuation of the Retirement System have been from time to time amended, supplemented and/or replaced; and,

WHEREAS, the City of Wichita desires to amend certain provisions of the retirement plans within the Retirement System.

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

SECTION 1

The City of Wichita, Kansas, a city of the first class, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby continues its election, initially made in Charter Ordinance No. 19 of the City of Wichita, and preserved in subsequent charter ordinances amendatory thereto, to exempt itself from and makes inapplicable to it Section 13-14a01 through and including Section 13-14a14 of the Kansas Statutes Annotated; and further, the City hereby enacts the following sections hereof in substitution of, and as a complete replacement for, all currently existing provisions of Charter Ordinance No. 209 of the City of Wichita.

SECTION 2

Name and Effective Date.

The Police & Fire Retirement System of Wichita, Kansas, hereinafter referred to as the “Retirement System” is hereby established to provide retirement, survivor, death and other

benefits for Police and Fire Officers of the City of Wichita and their dependents, continuing the provisions of the Retirement System, which was established January 1, 1965.

SECTION 3

Definitions.

The following words and phrases as used in this ordinance, unless a different meaning is plainly required by the context, shall have the following meanings:

"Act of Duty" means an act performed by a Member within the scope of occupational duties inherently involving special risks not generally assumed by a citizen in the ordinary walks of life, for the purpose of protecting life or property, including any act of heroism as a Member.

"Actuarial Tables" means such tables of mortality and rates of interest as may be adopted by the Board.

"Board" means the Board of Trustees of the Police & Fire Retirement System.

"City" means the municipal government of the City of Wichita, Kansas.

"City Council" means the governing body of the City of Wichita, Kansas.

"Deferral Period" means that period of time between the date a vested employee leaves Service and the date upon which the employee is eligible for and begins to receive a pension benefit.

"Deferred Retiree" means a vested Member who has withdrawn from Service, has not elected to receive a refund of contributions and any applicable interest, and is eligible to receive retirement benefits at a future date.

"Disability" means total inability to perform permanently the duties of the position held by the Member at date of Disability due to a physical or mental incapacity resulting from external force or violence or disease.

"DROP" means the Deferred Retirement Option Plan available to Retirement System Members for a maximum period of five (5) years. The DROP is to be phased in over a three (3) year period starting on January 1, 2000. From January 1, 2000 to December 31, 2000, no Member may utilize the DROP; beginning January 1, 2001 to December 31, 2001, Members may select a backward DROP of up to one (1) year; beginning January 1, 2002 to December 31, 2002, Members may select a backward DROP of up to three (3) years; beginning January 1, 2003, Members may select a backward DROP of up to five (5) years.

"DROP Period" means the number of months between the actual retirement date under the DROP and the Member's date of Withdrawal from Service.

"Final Average Salary" means the average annual Salary for the three (3) highest consecutive years of Service within the last ten (10) years of Service as a Member, and which

shall be computed on the basis of the seventy-eight (78) consecutive pay periods within which the Salary is the highest.

"Fund" means the Police & Fire Retirement Fund as first established by Charter Ordinance No. 5 of the City of Wichita, Kansas.

"Internal Revenue Code" refers to the Internal Revenue Code of 1986 or 1954, as applicable to governmental plans, and regulations promulgated with respect to the Internal Revenue Code.

"Member" means any Police or Fire Officer of the City receiving compensation and contributing to the Police & Fire Retirement System of Wichita.

"Minor Child" or "Minor Children" eligible for consideration under the provisions of the ordinance means children of the blood and adopted children, provided the proceedings for adoption shall have been initiated at least one (1) year prior to the date of death of the Member or Retiree.

"Police or Fire Officer" means, in the case of a Police Officer, any employee of the Police Department of the City holding the rank of Police Officer, including probationary Police Officers or any higher rank; and, in the case of a Fire Officer, any employee of the Fire Department of the City holding the rank of fire fighter, including probationary fire fighter or any higher rank; and in any case, commissioned officers. Effective June 29, 1996, the term "Police or Fire Officer" includes safety officers employed by the Wichita Airport Authority who shall be considered Fire Officers for purposes of electing representatives to the Board. The term "Police or Fire Officer" shall not include: (1) any person privately employed as a Police or Fire Officer; (2) any person temporarily employed as a Police or Fire Officer for an emergency; (3) any civilian employee in the Police or Fire departments; or, (4) any person permanently appointed to the position of Chief of Police under an offer of employment which provides the option of either membership in this Retirement System or the International City Management Association deferred compensation and/or retirement programs, unless such person files in writing a selection of membership in this Retirement System within ninety (90) days of commencing employment, such selection of membership is irrevocable.

"Prior Service" means service rendered by a Member prior to January 1, 1965.

"Regular Interest" means interest at seven percent (7%) per annum, compounded monthly.

"Retiree" means a Police or Fire Officer who is receiving a retirement benefit from the Retirement System.

"Salary" means the base monthly rate of pay being paid in accordance with a Salary ordinance (and shall include longevity pay, educational pay, EMT pay, MICT, acting, Kelly, court appearance, bomb tech pay, flight pay, standby pay, and shift differential in the

computation of benefits). Salary in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded.

"Service" means employment with the City as a Police or Fire Officer and those periods of military service, Sick Leave, and/or Disability for which Members are entitled to Service credit under the provisions of this ordinance.

"Service-Connected Disability" means any physical or mental incapacity resulting from external force, violence, or occupational disease occasioned by an Act of Duty as a Police or Fire Officer, imposed by the ordinance or rules and regulations of the City, or any other Disability, which may be directly attributable to the performance of an Act of Duty.

"Service-Connected Disease" shall be applicable to any Member having five (5) years of Service or more, and shall mean any sickness, disease, or illness of the heart, lungs, or respiratory tract of a Member which may be determined to be directly attributable to his or her employment as a Police or Fire Officer, including exposures to heat and extreme cold, inhalation of heavy smoke, fumes or poisonous, toxic or chemical gases, while in the performance of an Act of Duty.

"Sick Leave" shall be defined as part of Service: provided that unused accumulated Sick Leave shall not be used to meet the existing age or Service requirements heretofore established under Plans A, B, and C-79.

"Withdrawal from Service" means complete severance of employment of any Member as an employee of the City by resignation, discharge, or dismissal.

SECTION 4

Continuation of Three Plans.

There are hereby continued in existence Plans A, B, and C-79. Plan A applies to all Police and Fire Officers entering the Service of the City between December 31, 1964 and January 1, 1979. Plan B applies to those Police and Fire Officers with Prior Service who chose to participate in Plan B. Plan C-79 applies to Police and Fire Officers newly employed or re-employed by the City on or after January 1, 1979.

It is the intent that the Police & Fire Retirement System of Wichita, KS plan be established as a qualified governmental pension plan under Section 401(a) and 414(d) of the Internal Revenue Code. Retirement plan assets are to be held in a trust as required under Section 401(a) of the Internal Revenue Code. The Board shall distribute the corpus and income of the retirement plan to the members and their beneficiaries in accordance with the retirement plan's law. At no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries shall any part of the corpus and income be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries. Upon complete or

partial termination of the retirement plan, the rights of members to benefits accrued to the date of termination, to the extent funded, or to the amounts in their accounts are nonforfeitable, and amounts in their accounts may be distributed to them.

SECTION 5

Membership.

Membership of the Retirement System shall include:

(a) Any person becoming a Police or Fire Officer on or after January 1, 1965.

(b) Any person who was a Police or Fire Officer on December 31, 1964. Any Police or Fire Officer who was temporarily absent on December 31, 1964, due to sickness or Disability, and any such person on an approved leave of absence on said date for any cause, provided such leave shall not have extended for more than one (1) year continuously, except for military service, shall be considered as a Police or Fire Officer on such date.

SECTION 6

Retirement System Funding.

An annual determination shall be made of the actuarial reserve requirements for the benefits provided herein for the Members and their beneficiaries based upon such Member's current and future Services. In addition to interest income and other income accruing to the Retirement System, these requirements shall be by Member contributions and City contributions as follows:

(a) From and after August 7, 1999, each Member of Plan A shall contribute eight percent (8%) of Salary earned and accruing after such date, each Member of Plan B shall contribute six percent (6%) of Salary earned and accruing after such date, and each Member of Plan C-79 shall contribute seven percent (7%) of Salary earned and accruing after such date as their share of the cost of the benefits provided herein.

These contributions shall be made in the form of a deduction from Salary.

(b) The City shall make bi-weekly contributions in an amount, which will be sufficient to provide actuarial reserves for earned benefits and the expenses of plan administration. In the event that Police and Fire Officers are paid other than on a bi-weekly basis, the City shall make such contributions with the same frequency as Police and Fire Officers are paid.

(1) To provide for any unfunded accrued liability, the City shall contribute a sum sufficient to amortize such liability over a period of not more than twenty years.

(2) The amount of City contribution provided in this section shall be established by applying percentage rates of contribution as actuarially determined to the salaries being paid to the Members during each payroll period, and the resulting amounts shall be remitted by the City to the Retirement System concurrently with the payment of the salaries of the Members.

(3) For the purpose of funding all obligations of the Retirement System under the provisions of this ordinance over and above Member contributions and other income accruing to the Retirement System, as herein provided, the City may levy a tax, which levy shall be in addition to the levies now authorized by law for corporate or other purposes.

(4) The City shall pick up the employee contribution required by subsection (a) of this section for all Salary earned after the effective date of this subsection. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code. The City shall pick up these employee contributions from funds established and available in the salaries account, which fund would otherwise have been designated as employee contributions and paid to the Retirement System. Employer contributions picked up by the City pursuant to this subsection shall be treated for all other purposes of this and other laws of the City in the same manner and to the same extent as employer contributions made prior to the effective date of this subsection. This subsection is effective for pay periods beginning on and after January 1, 1994.

(5) Forfeitures may be used to reduce City contributions but should not be used to increase benefits, in compliance with Section 401(a)(8) of the Internal Revenue Code.

SECTION 7

Composition; Expenditures.

(a) The Fund shall consist of all moneys received from contributions made by employees, refunds made by employees on re-employment, investments, earnings, and moneys paid into the Fund by the City.

(b) All benefits paid from the Retirement System shall be distributed in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. This is being adopted in accordance with Section 823 of the Pension Protection Act of 2006. In order to meet these requirements, the Retirement System shall be administered in accordance with the following provisions:

(1) Distribution of a Member's benefit must begin by the required beginning date, which is the later of the April 1 following the calendar year in which the Member attains age 70 ½ or April 1 of the year following the calendar year in which the Member retires. If a Member fails to apply for retirement benefits by the later of either of those dates, the Board shall begin distribution of the monthly benefit as required by this rule in the form provided in Sections 13 or 15;

(2) The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated beneficiary, or over a period not extending beyond the life expectancy of the Member or of the Member and a designated beneficiary. The life expectancy of a Member or the Member's spouse may not be recalculated after the benefits commence;

(3) The Retirement System, pursuant to a qualified domestic relations order, may establish separate benefits for a Member and nonmember;

(4) If a Member dies before the required distribution of the Member's benefits has begun, the Member's entire interest much be either:

(A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year in which the Member died; or

(B) distributed within five years of the Member's death;

(5) If a Member dies after the required distribution of benefits has begun, the remaining portion of the Member's interest must be distributed at least as rapidly as under the method of distribution before the Member's death;

(6) The amount of an annuity paid to a Member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation Section 1.401(a)(9)-6, Q&A 2;

(7) The death and disability benefits provided by the Retirement System are limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the Internal Revenue Code, and Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed 25% of the cost for all of the Members' benefits received from the Retirement System; and

(8) Notwithstanding the other provisions of this rule or the provisions of the Treasury Regulations, benefit options may continue so long as the option satisfies Section 401(a)(9) of the Internal Revenue Code based on a reasonable and good faith interpretation of that section.

(c) The Board is authorized to expend funds for the following purposes: clerical and secretarial work, stationery, supplies and printing; and professional services of actuaries, accountants, physicians, and attorneys, the foregoing list not being intended to limit or exclude expenditures for other proper purposes.

(d) The Board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(e) Effective as of July 1, 1989, the Board will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board by rule; such benefits will not be subject to employer discretion. The Board rules adopted for this purpose are incorporated into this section as part of the plan document.

SECTION 8

Accounting and Actuarial.

(a) The assets of the Retirement System shall be held for the express purposes set forth in the provisions of this ordinance. An adequate system of accounts and records shall be established and maintained.

(b) An actuarial experience study of the Retirement System shall be made at least once every five (5) years by an actuary engaged by the Board to check demographic and economic assumptions used in the calculations of liabilities

and costs. An annual actuarial valuation of the Retirement System shall be made as of December 31st of each year for the purpose of establishing its financial condition and checking its current operating experience.

(c) Any excess balance in the Retirement System as determined in such valuation shall be applied to reduce the City's rate of contribution in succeeding years. Such contribution adjustments shall be made upon recommendation of the actuary.

SECTION 9

Management-Policy Direction.

The Retirement System continued and maintained by this ordinance shall be construed to be a trust, separate and distinct from all other entities. The responsibility for the direction and operation of the Retirement System, and for making effective the provisions hereof, is hereby vested in a Board. The Board shall consist of sixteen (16) Members, as follows:

(a) The City Manager, or an individual appointed by the City Manager (the City Manager's Designee);

(b) The Chief of the Police Department and the Chief of the Fire Department;

(c) Seven (7) trustees appointed by the City Council who need not be employees of the City. Trustees appointed by the Council shall be appointed for such terms and shall be subject to such limitation of terms as adopted by ordinance;

(d) Three (3) Police Officers and three (3) Fire Officers, each having at least five (5) years of Service, who shall be Members of the Retirement System and shall be elected by the Members from the respective occupational groups according to rules of election to be adopted by the Board. Elected trustees shall serve four-year terms expiring on December 31st of the fourth year following their election;

(e) The City Manager's designee shall serve a two (2) year term ending on August 31st of the second year following appointment;

(f) An elected or appointed trustee shall continue in office until the trustee's successor is elected or appointed, and has qualified. Any elected trustee shall be disqualified to serve in that capacity upon termination of Service with the City. If a vacancy occurs in the office of elected trustees, a successor shall be elected for the unexpired term of office within thirty (30) days by a special election, unless the regular bi-annual election occurs sooner. If a vacancy occurs in the office of an appointive trustee, such vacancy shall be filled for the unexpired term in the same manner as the office was previously filled;

(g) Each trustee shall take an oath that, so far as it devolves upon the trustee, the trustee will diligently and honestly administer the affairs of the Board, and that the trustee will not knowingly or willfully permit to be violated any of the provisions of the ordinances applicable to the Retirement System. Such oath shall be subscribed by the trustee making it, and certified by the officer before whom it is taken, and immediately filed with the City Clerk. A trustee shall be deemed to have qualified for membership on the Board when such oath shall have been filed;

(h) Subject to the limitations prescribed herein, the Board shall from time to time establish rules and regulations for the administration of the Retirement System and to implement the provisions of this ordinance as may be required. It shall hold regular meetings at least quarterly in each year and such special meetings as may be deemed necessary. The annual meeting shall be held in the month of January of each year. All meetings shall be open to the public. A record of proceedings of all meetings shall be kept by the Board;

(i) Each trustee shall be entitled to one (1) vote on the Board, and the concurrence of a majority vote of the trustees present at the meeting shall be necessary; provided, however, that in all matters relating to: (1) changes in the ordinances requiring City Council action; (2) Disability applications; (3) hiring or dismissal of consultants; and (4) alteration of the Investment Committee's recommendations for investment advisor, actuary, asset allocation plan and investment policy, at least nine (9) affirmative votes shall be required for passage; and

(j) A trustee shall receive no Salary while serving in that capacity, provided, however, that Police and Fire Officers elected to the Board shall be permitted to receive their regular Salary from the City of Wichita.

SECTION 10

Officers and Their Duties.

The Board shall have the following officers, whose duties shall be prescribed by the by-laws to be adopted by the Board:

(a) A President, a First Vice President, and a Second Vice President shall be elected from among its trustees.

(b) The Administrator of the Retirement System shall be the Pension Manager who is appointed to such position by the City Manager.

(c) The City Treasurer, ex-officio, shall be treasurer of the Retirement System.

(d) The City Attorney, ex-officio, shall be legal counsel to the Board, and shall represent the Board in all litigation affecting the Retirement System.

(e) An actuary shall be appointed to serve as technical advisor in the administration of the Retirement System on matters pertaining to the technical and actuarial aspects thereof.

(f) A specializing physician or physicians shall be appointed at the discretion of the Board to pass upon claims for Service–Connected and non-Service Connected Disability benefits, on medical questions pertaining to such claims, and on any other matters requiring medical advice that may arise in administration of the Retirement System.

SECTION 11

Administration.

Subject to the direction of the Board, the Administrator of the Retirement System shall:

(a) Employ such clerical and professional services as may be required for the proper operation of the Retirement System, whose compensation shall be fixed by the City Council;

(b) Establish and maintain records, files, and accounts in such form and scope as will give effect to the requirements of the Retirement System in accordance with the provisions hereof;

(c) Accumulate actuarial data concerning the operating experience of the Retirement System in such form as is necessary for the annual actuarial valuations and periodic actuarial studies in accordance with the recommendations of the actuary;

(d) Prepare periodic reports as may be required for the efficient administration of the Retirement System;

(e) The Administrator shall also prepare each year the annual report of the Board, to be submitted to the City Council embodying, among other things, a statement of assets, liabilities and reserves certified by the actuary, an accountant's balance sheet supported by a statement of income and expenditures, a listing of investments owned by the Retirement System, a detailed statement of investments acquired and disposed of during the year covered by the report, and such other financial and statistical data as may be deemed necessary for a proper interpretation of the condition of the Retirement System and the results of its operations. The Board shall cause to be distributed among the Members of the Retirement System a synopsis of such annual report.

SECTION 12

Investments.

(a) The Board shall invest and reinvest any portion of the Fund not needed for immediate benefit payments through a joint investment fund comprised of assets of the Wichita Employees' and Police & Fire Retirement Systems. The joint investment fund shall be overseen by an investment committee comprised of trustee representatives elected from both Boards and a City Manager's designee. The administrator shall be an ex-officio, non-voting Member of the investment committee.

(b) To achieve the investment objective of making the Fund as productive as possible, the following standards and limitations are set forth:

(1) In investing and reinvesting monies in the Fund and in acquiring, retaining, managing, and disposing of investments of the Fund, there shall be exercised the judgment and care under the circumstances then prevailing which people of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard and subject to the following requirements, there may be acquired, retained, managed, and disposed of as investments of the Fund every kind of investment which people of prudence, discretion, and intelligence acquire, retain, manage, and dispose of for their own account;

(2) The proportion of the funds invested in corporate preferred and common stocks shall not exceed seventy percent (70%);

(3) Investments may be made in any pooled arrangement such as a mutual fund, separate account, or commingled fund operated by a qualified investment counselor, an insurance company, or a bank;

(4) Investments managed by in-house staff will be restricted to high-grade marketable fixed income securities;

(5) Other investments separately managed by a qualified investment counselor, an insurance company, or a bank, who represent that they act as a fiduciary, will be handled similarly to most other clients of the

managing firm, except for holdings of money market instruments or their equivalent;

(6) The Board shall impose whatever limitations are deemed appropriate under its investment policy statement;

(7) The proportion of the Fund invested in securities of a corporation organized under the laws of a country other than the United States of America and securities issued by a foreign country or political subdivision thereof shall not exceed a total of thirty-five percent (35%).

(c) Nothing in this ordinance, however, shall be construed so as to give the Board at any time authority to invest directly or indirectly in any:

(1) Real estate; except in pooled arrangements such as a mutual fund, separate account or commingled fund operated by a qualified investment counselor or an insurance company. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(2) Private equity; except in a commingled fund-of-funds vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(3) Timber; except in a commingled fund vehicle operated by a registered investment advisor or a bank. The amount of such investment shall not exceed ten percent (10%) of the Fund;

(4) Mortgages secured by real estate, except insured mortgages under Titles 203, 207, 220 and 221 of the Federal Housing Act;

(5) Oil and gas leases or royalties; or

(6) Commodities (including but not limited to wheat, gold, gasoline, options, or financial futures); provided, however, that the restriction on investments contained in this paragraph shall not apply to funds which are invested in a mutual fund, separate account or commingled fund operated by a registered investment advisor or insurance company.

(d) The Board shall have the power to hold, purchase, sell, assign, transfer, and dispose of any of the securities in which monies of the Retirement System have been invested, as well as the proceeds from such investments, and any other property belonging to the Retirement System.

(e) All investments shall be clearly marked to indicate ownership of the Retirement System, and to the extent possible, shall be registered in its name. No securities

shall be purchased or sold, or in any manner hypothecated, except by action of the Board duly entered in the record of its proceedings.

(f) Any limitations affecting the purchase of securities shall be applicable only at the time of purchase and shall not require the liquidation of an investment at any time.

(g) No trustee or employee of the Board shall have any direct interest in the income or gains from any investment made by the Board, nor shall any such person receive any pay or emolument for services in connection with any investment. No trustee or employee of the Board shall become an endorser or surety, or in any manner an obligor for money loaned or borrowed from the Retirement System. Proof that any such person has violated any of these restrictions shall make him guilty of a misdemeanor or larceny, as the case may be, and such person shall be punishable therefore as provided by law.

SECTION 13

Distribution of Contributions.

(a) Any Member withdrawing from Service prior to retirement shall be entitled to a distribution, in a single sum, of the Member's accumulated contributions. Those Members withdrawing from Service after December 31, 1999 shall receive interest at the rate of five percent (5%) per year on such contributions, which shall be credited to accumulated contributions as of the last day of December of each year beginning with the year 1999 through the year 2006. Beginning January 31, 2007 interest shall be credited monthly to accumulated contributions at the rate of five percent (5%) per year, compounded monthly. No interest shall be allowed in any case in which the contributions, and any prior interest earned, were in the fund for any period following termination. The payment of a distribution under the provisions of this section shall automatically effect a waiver and forfeiture of all of such Member's accrued rights and benefits in the Retirement System. The Board may, in its sole discretion, withhold payment of a distribution for a period of not to exceed ninety (90) days after receipt of a written request for the same.

(b) Any Member who has received such distribution shall be considered a new Member under Plan C-79 upon re-employment provided that if such Member shall render at least three (3) years of Service following such Member's latest re-employment, such Member shall be entitled to regain his or her previously

forfeited Service credits upon repayment of all amounts received as refunds, including Regular Interest from date of refund to date of repayment. The time and manner of making such repayments shall be fixed by the Board. Any Member who terminates employment and leaves the Member's contributions in the Retirement System, if rehired, shall be classified as a Member under Plan C-79.

(c) Upon death of a Member leaving no survivors eligible for a benefit from the Retirement System, such Member's accumulated contributions plus interest, if applicable, shall be paid in a single sum to such person or persons as the member shall have nominated by written designation duly executed and filed with the Board. If no such designation shall have been made, payment shall be made to the Member's legal representative.

(d) After termination of all benefit payments to the Member, surviving spouse, and/or Minor Children, a distribution shall be made to the designated beneficiary or legal representative of the Member, surviving spouse, or Minor Children consisting of the excess, if any, of the Member's accumulated contributions, together with interest thereon if applicable, over all such benefit payments made by the Retirement System to or for the benefit of the Member.

(e) Optional direct transfer of eligible rollover distribution shall be as required under Section 401(a)(31) of the Internal Revenue Code.

SECTION 14

Eligibility for Service Retirement; Indexing Deferred Benefits.

(a) Under Plan A or Plan B, any Member having at least twenty (20) years of Service may retire and receive a Service retirement benefit.

(b) Under Plan C-79, all Police and Fire Officers employed on or after January 1, 1979, having at least twenty (20) years of Service, and having attained age fifty (50), may retire on a Service retirement benefit; provided, that from and after January 1, 1979, any Member who has completed thirty (30) years of Service shall be eligible to receive, regardless of age, a retirement benefit, computed in accordance with a Service retirement benefit.

(c) A Member under Plan C-79 having at least twenty (20) years of Service may retire prior to the attainment of age fifty (50) by leaving active Service as a Police or Fire Officer of the City; leaving the Member's contributions in the Retirement Fund; and deferring the payment of the Member's retirement benefits until the

Member has attained age fifty (50). If such Member has a Deferral Period of at least one (1) full month, such Member shall be entitled to a retirement benefit calculated as follows:

(1) A base retirement benefit calculated under Section 15 and

(2) A benefit (which may calculate as no actual increase in benefits), which shall be calculated for each calendar year or full months, in the case of a partial year in such Member's Deferral Period.

(3) The benefit calculation in subparagraph (2) shall be the base benefit calculation in subparagraph (1) adjusted annually for each calendar year or full months in the Member's Deferral Period. The determination of whether a Member is due a benefit increase for a specific calendar year in which the Member has at least one (1) full month of Deferral Period shall be made by determining, for that calendar year, the smaller of (1) 1.055; or (2) the ratio of national average earnings for the second preceding calendar year to national average earnings for the third preceding calendar year. If the smaller of these two amounts is greater than 1.0, the Member shall be entitled to a benefit increase for that calendar year equal to the Member's base retirement benefit, as calculated under subparagraph (1), multiplied by such smaller amount. Any benefit increase for a partial year in the Member's Deferral Period shall be pro-rated for each month, based on the full year increase.

(d) A Member under Plan C-79 with at least ten (10) years of Service may withdraw from Service and elect to leave such Member's contributions in the Retirement System until such time as such Member is eligible to receive a retirement benefit. If such Member has a Deferral Period of at least one (1) full month, such Member shall be entitled to a retirement benefit calculated as provided for above.

SECTION 15

Calculation of Retirement Benefit.

(a) Any Member in Plan A or Plan B having twenty (20) years or more of Service may make application to be retired, and if such application is made, the Board shall retire such Member and shall pay such Member a monthly benefit in an amount equal to fifty percent (50%) of such Member's Final Average Salary at date of his

or her retirement, plus an additional two and one-half percent (2.50%) per year for each year above twenty (20) years up to a maximum of seventy-five percent (75%) of Final Average Salary. For purposes of computing a retirement benefit, unused Sick Leave will be added to Service so long as the computed benefit does not exceed seventy-five percent (75%) of Final Average Salary. The accumulated, unused Sick Leave shall not be used to meet the twenty (20) year Service requirement. A fractional period of Service of less than a full year shall be considered in the calculation of the benefit.

(b) Any Member in Plan C-79 having twenty (20) years or more of Service and who has attained the age of fifty (50) years may make application to be retired, and if such application is made, the Board shall retire such Member and shall pay such Member a monthly benefit in an amount equal to fifty percent (50%) of such Member's Final Average Salary at date of retirement, plus an additional two and one-half percent (2.50%) per year for each year above twenty (20) years up to a maximum of seventy-five percent (75%) of Final Average Salary. For purposes of computing the retirement benefit, unused Sick Leave will be added to Service so long as the computed benefit does not exceed seventy-five percent (75%) of Final Average Salary. The accumulated, unused Sick Leave shall not be used to meet the twenty (20) year Service requirement. A fractional period of Service of less than a full year shall be considered in the calculation of the benefit.

(c) Any Member having ten (10) years and less than twenty (20) years of Service may become a Deferred Retiree by electing to leave such Member's contributions and interest, if any, in the Retirement System. If such Member leaves the Member's contributions and interest in the Retirement System until the Member reaches age fifty-five (55) years, the Member shall be entitled to a retirement benefit as calculated in Section 14(d) herein.

(Such benefit shall be calculated by multiplying the Member's years of Service by an amount equal to two and one-half percent (2.50%) and multiplying that product by the Member's Final Average Salary.) Upon retirement and commencement of the receipt of the retirement benefit, such Member shall not be entitled to any survivor's benefits.

SECTION 16

Military Service.

(a) Notwithstanding any provisions of this plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

(b) Effective with respect to deaths occurring on or after January 1, 2007, while a Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a Member in a State or local retirement or pension system, are entitled to any additional benefits that the system would provide if the Member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the Member's death while employed.

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(2) of the Internal Revenue Code, a Member receiving differential wage payments (while the Member is performing qualified military service (as defined in chapter 43 of title 38, United States Code)) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated Members in a reasonably equivalent manner.

SECTION 17

Monthly Payments.

Any benefit hereunder shall be payable in monthly installments.

SECTION 18

Optional Annuity.

An optional annuity, as herein provided, means a benefit computed according to the approximate equivalent formula recommended by the actuary and adopted by the Board, payable during the lifetime of the specified beneficiary only if such beneficiary survives the Retiree who was receiving a reduced Service retirement annuity. If the specified beneficiary predeceases the Retiree, the Retiree's reduced Service retirement annuity shall revert to the Service retirement annuity calculated for the Member had the Member not selected the optional annuity. This recalculated Service retirement annuity shall be payable beginning the first of the month following notice of the beneficiary's death.

The amount of the optional annuity shall be that specified in the Member's notice of election, and shall not, in any event, be more than the amount of the Member's reduced Service retirement annuity.

The optional annuity shall begin on the day following the death of the Retiree.

SECTION 19

Permanent Service-Connected Disability Benefits.

Any Member, who shall, while engaged in the performance of his or her duties, be permanently injured or disabled, other than as the result of an occupational disease, and upon an examination by a physician or physicians appointed by the Board of Trustees, be found to be physically or mentally disabled as a result of such permanent Disability or injury so as to render him incapable to perform the duties of the position held by the Member at date of Disability, shall be entitled to be retired, and the Board of Trustees shall thereupon order such Member's retirement and upon being retired, the Member shall be paid a benefit equal to seventy-five percent (75%) of the Salary in effect on the date when Salary payments ceased. The benefit shall be established according to the charter ordinance that is in effect at the time Salary payments ceased.

Any Police or Fire Officer incurring an occupational disease due to service-connected causes, who upon examination by a physician or physicians appointed by the Board is found by at least two (2) out of three (3) such physicians to be physically or mentally disabled as the direct result and proximate cause of such disease so as to render him incapable to perform the duties of the position held by the Member at date of Disability, shall be entitled to be retired at a benefit equal to fifty percent (50%) of his or her Salary in effect upon the date when Salary payments ceased. The benefit shall be established according to the charter ordinance that is in effect at the time Salary payments ceased.

The Board of Trustees may, when they deem it advisable, call back for re-examination by a physician, any Member retired by reason of permanent Disability under the provisions of this ordinance, and if said examination discloses that said Member is then able to perform his or her duties in said department, he or she may be returned to Service; and if said Member, upon request, fails or refuses to return to duty, then all payments from said System shall cease.

The Disability benefit shall be recomputed when the Member attains age fifty-five (55). At such time the Member attains age fifty-five (55), the Disability benefit shall be recomputed in the same manner as a Service retirement benefit which would have been received had the Member been continuously in Service in the grade occupied at date absence on account of Disability began, subject to periodic Salary changes in such grade. In such a case, Service credit shall be granted during the period of payment of the Disability benefit, prior to attainment of age fifty-five (55), toward the recomputed Disability benefit.

SECTION 20

Non-Service Connected Disability.

Any Member having at least seven (7) years of credited Service, under the age of fifty-five (55) years, who becomes totally and permanently disabled due to any cause other than Service-Connected Disability, while an employee of the City, shall be entitled to a Non-Service Connected Disability benefit. The benefit shall be equal to thirty percent (30%) of the Final Average Salary plus one (1) percentage point for each year of Service above seven (7) years, up to a maximum of fifty percent (50%) of Final Average Salary. Accumulated unused Sick Leave will be added to Service so long as the computed benefit does not exceed fifty percent (50%) of Final Average Salary. The benefit shall be reduced by any amounts received by the Member from public funds as Salary, or other forms of compensation during Disability, exclusive of payments under Federal Social Security.

Non-Service Connected Disability shall be considered total and permanent if it results in some impairment of mind or body due to mental or physical incapacity resulting from external force, or violence, or disease that substantially precludes a Member from performing with reasonable regularity the substantial and material parts of any gainful work or occupation that the Member would be competent to perform were it not for the fact that the impairment is founded upon conditions which render it reasonably certain that it will continue indefinitely.

The benefit shall be payable during continuing Disability of the Member, but the Member shall be subject to periodic medical examinations as herein provided.

Should a Member recover from Disability and re-enter the Service of the City as a Police or Fire Officer, and shall render at least three (3) years of Service thereafter, the Member shall be credited for Service retirement benefit purposes with the periods of time during which the Member shall have received a Non-Service Connected Disability benefit; otherwise, such Member re-entering Service shall not be entitled to Service credit for the periods of such Disability.

Disability incurred while in military service shall not be considered for benefits under the provisions of this ordinance.

A Non-Service Connected Disability shall begin to accrue upon commencement of Disability, provided that if the Member is receiving Salary, the benefit shall begin to accrue from the date Salary has ceased. If written application for the benefit shall not have been filed with the Board prior to the expiration of ninety (90) days from date of Disability, the benefit shall begin to accrue from the date application therefore has been filed, but in no event prior to the time when payments to the Member on account of Salary have ceased.

SECTION 21

Administration of Disability Annuities.

(a) The determination of Disability from any cause shall be made upon the basis of reports of examinations made by at least two (2) physicians designated by the Board.

(b) A Member receiving service-connected or non-Service Connected Disability benefits shall be required, at the discretion by the Board of Trustees, to submit to an examination at least once each year by a physician or physicians designated by the Board to establish that the Member is incapacitated for active Service as a Police or Fire Officer and is entitled to continue to receive a Disability benefit. The Board may terminate a Disability benefit upon evidence that the Member is no longer disabled for Service. If such termination occurs and the Member does not re-enter the Service, he or she shall be entitled to a refund of the excess, if any, of the contributions made by the Member, without interest, over the amounts received by the Member on the Disability benefit.

If medical examination or an investigation made by the Board discloses that the Member is engaged in or is able to engage in any gainful occupation resulting in earnings for services rendered in any capacity, payment of the Disability benefit shall be reduced to an amount which, when added to the Member's income from such gainful occupation, does not exceed the rate of Salary currently being paid for the rank similar to that held by the Member at commencement of Disability.

(c) Each Member in receipt of a Disability benefit shall submit to the Board at least once each year, an authenticated copy or duplicate original of the Member's complete United States Income Tax Return, being a statement of income from gainful occupation for the preceding twelve (12) months. Any adjustment in benefit payments, as aforesaid, shall be based upon such statement of income.

(d) Should any Member receiving a Disability benefit refuse to submit to a medical examination or supply the Board with required statements of income, as herein above provided, benefit payments by the Retirement System shall be discontinued until compliance with the provisions hereof. Should such refusal continue for one (1) year, all rights of the Member to any Disability benefit shall be revoked by the Board. Upon finding that a Member receiving a Disability benefit has deliberately falsified information contained in his or her statement of income, all rights of the Member in any Disability benefit shall be revoked by the Board.

SECTION 22

Backward Deferred Retirement Option Plan (DROP).

(a) Any Member eligible to retire on or after January 1, 2001 may, at the time of applying for retirement benefits, elect a backward DROP benefit with payment as provided herein. A Member electing a backward DROP must select an effective backward DROP date. The Member must be eligible to receive a Service retirement benefit on the effective backward DROP date.

(b) The maximum allowable DROP Period for a backward DROP is sixty (60) months. The DROP Period is the period between the Member's effective backward DROP date and the date of the Member's Withdrawal from Service.

(c) For purposes of benefit calculations, the Member's retirement date will be the effective backward DROP date.

(d) A Member's unused Sick Leave credit at the Member's date of election of the backward DROP may be added to the Member's Service at the Member's effective backward DROP date.

(e) The Member's monthly retirement benefit is calculated as of the Member's effective backward DROP date and is payable at the Member's Withdrawal from Service.

(f) The Member's DROP benefit is calculated by:

(1) multiplying the Member's monthly retirement benefit from (e), times the number of months selected by the Member as the backward DROP Period;

(2) plus any applicable post-retirement adjustments;

(3) plus interest at an annual rate of five percent (5%) compounded monthly.

(g) Application for withdrawal of the DROP account balance shall be made within ninety (90) days of the Member's Withdrawal from Service. Payment of the amount calculated in (f) shall be made only in a lump sum payment, a direct rollover, or some combination of the two.

SECTION 23

Service-Connected Death.

(a) Upon death of a Member, regardless of the Member's age or length of Service, resulting directly from service-connected causes; or an occupational disease if the Member had at least five (5) years of Service, and in the case of an

occupational disease if death occurred within three (3) years from the date of commencement of the disease and the cessation of Salary payments to the Member, whichever is later, a surviving spouse shall be entitled to a benefit equal to fifty percent (50%) of the Member's final Salary at the date of the Member's death. This benefit payable to a surviving spouse hereunder shall be payable during such surviving spouse's lifetime.

(b) If such Member is also survived by a Minor Child or Minor Children, each such child shall be entitled to a benefit of ten percent (10%) of such Member's final Salary. Such benefit shall be paid to the custodial parent or guardian/conservator of each such child. The combined payments to a surviving spouse and Minor Children shall in no event exceed seventy-five percent (75%) of such Member's final Salary. In the event that the combined payments do exceed such amount, the benefit of the surviving spouse shall be reduced so that combined payments equal seventy-five percent (75%) of such Member's final Salary. At the time that combined payments no longer exceed such amount, the benefit of the surviving spouse shall be increased so that combined payments equal seventy-five percent (75%) of such Member's final Salary, but in no event shall the benefit of the surviving spouse be an amount greater than fifty percent (50%) of such Member's final Salary.

(c) If such Member dies leaving no surviving spouse, each Minor Child of such Member then surviving shall be entitled to a benefit of twenty percent (20%) of such Member's final Salary. Such benefit shall be paid to the custodial parent or guardian/conservator of each child. The combined payments on account of such Minor Children shall not exceed sixty percent (60%) of such Member's final Salary. In the event that combined payments exceed such amount, the benefits for such children shall be reduced pro rata so that total payments equal sixty percent (60%) of such Member's final Salary.(d) Benefits paid on account of Minor Children shall terminate upon the first to occur of the following:

(1) The Minor Child reaching the age of eighteen (18) years;

(2) Death of the Minor Child; or

(3) Marriage of the Minor Child.

(e) The determination of whether death is Service-Connected or not shall be made in the manner provided for in the administration of Disability benefits.

SECTION 24

Non-Service Connected Death.

(a) Upon death of a Member who has at least three (3) years of Service:

(1) whose death is not due to Service-Connected causes; or

(2) who is on Sick Leave receiving Salary on the date of death and whose death is not due to Service-Connected causes; or

(3) who is on approved leave of absence extending not more than twelve (12) continuous months on the date of death and whose death is not due to Service-Connected causes,

the surviving spouse of such Member shall be eligible to receive a benefit if such surviving spouse was the lawfully wedded spouse at the time of the death of such Member. Such surviving spouse shall continue to be eligible to receive a benefit for such spouse's lifetime. The amount of such benefit shall be as calculated in subparagraph (c) below and shall be subject to adjustment as provided in subparagraph (e) below.

(b) Upon death of a Retiree:

(1) who is receiving Service or Non-Service Connected Disability pension benefits on the date of death; or

(2) who is receiving a Service retirement benefit or is a Deferred Retiree and has at least twenty (20) years of Service at the date of death,

the surviving spouse of such Retiree shall be eligible to receive a benefit if i) such surviving spouse was the lawfully wedded spouse of such Retiree on the date such Retiree retired or began receiving either a Service or Non-Service Connected Disability pension benefit, and ii) such surviving spouse is at least forty (40) years of age at the time of the death of such Retiree, or if less than forty (40) years of age has, at the time of death of such Retiree, the care and custody of a Minor Child or Children of such Retiree. A surviving spouse who is not eligible to receive a benefit because such surviving spouse is less than forty (40) years of age shall become eligible to receive a benefit on the date that such surviving spouse attains the age of forty (40) years, so long as such surviving spouse has not remarried. A surviving spouse who is eligible to receive a benefit shall continue to receive a benefit for such spouse's lifetime so long as such surviving spouse does not remarry after the date such Retiree dies and prior to such surviving spouse attaining the age of forty (40) years. The amount of such

benefit shall be calculated as provided in subparagraph (c) below and shall be subject to adjustment as provided in subparagraph (e) below.

(c) Subject to adjustment because of the requirements of subparagraph (e) below, the benefit to be paid to a surviving spouse who is eligible to receive such a benefit under either paragraph (a) or (b) above, shall be equal to thirty-five percent (35%) of such Member or Retiree's Final Average Salary, increased by one percentage point for each year of Service greater than three (3) years, up to a maximum benefit of fifty percent (50%) of Final Average Salary. Provided, however, for a Member or Retiree under Plan B, such benefit shall be equal to fifty percent (50%) of such Member or Retiree's final Salary.

(d) If a Member or Retiree dies under circumstances set out in subsection (a) or (b) above, each surviving Minor Child of such Member or Retiree shall be entitled to a benefit as calculated herein and subject to adjustment because of the requirements of subparagraph (e) below. The amount of such benefit, if a benefit is also being paid to a surviving spouse of such Member or Retiree, shall be ten percent (10%) of such Member or Retiree's Final Average Salary. The amount of such benefit, if no benefit is being paid to a surviving spouse of such Member or Retiree, shall be fifteen percent (15%) of such Member or Retiree's Final Average Salary. The benefit for a Minor Child shall be paid to the custodial parent or conservator of each such Minor Child. When a Minor Child is receiving a ten percent (10%) benefit and the benefit being paid to a surviving spouse of the Member or Retiree on account of whose death each benefit was initially paid is terminated, the benefit to be paid to such Minor Child shall increase to fifteen percent (15%) of such Member or Retiree's Final Average Salary.

(e) (1) The combined monthly benefit payment to a surviving spouse and Minor Children shall not exceed sixty-six and two-thirds percent (66 2/3%) of the Final Average Salary of the Member or Retiree on account of whose death the benefits are being paid. In the event that the calculation of such benefit results in such combined monthly benefit payment in excess of that amount, the benefit of the surviving spouse shall be reduced so that the combined monthly benefit payment equals sixty-six and two-thirds percent (66 2/3%) of such Member or Retiree's Final Average Salary. The benefit for such surviving spouse shall be increased at such time as the combined monthly benefit payment no

longer exceeds such sixty-six and two-thirds percent (66 2/3%) limit, but in no event shall such increase result in such surviving spouse's benefit exceeding the amount originally calculated under subsection (c). When no benefit is being paid to a surviving spouse because the benefit calculated for the surviving spouse has been reduced to zero because of the adjustment set out above, any adjustment to the benefits paid to Minor Children because the combined monthly benefit payments exceed sixty-six and two-thirds percent (66 2/3%) of such Member or Retiree's Final Average Salary shall be made pro rata among such Member or Retiree's Minor Children, and such adjustment shall continue until the combined monthly benefit payment can be paid to eligible Minor Children without exceeding such sixty-six and two-thirds percent (66 2/3%) limit.

(2) The combined monthly benefit payment to Minor Children where there is no benefit being paid to a surviving spouse because no surviving spouse is eligible for such a benefit shall not exceed fifty percent (50%) of the Final Average Salary of the Member or Retiree on account of whose death the benefits are being paid. In the event that combined monthly payments exceed such amount, the benefit of each such Minor Child shall be reduced pro rata so that combined monthly payments equal fifty percent (50%) of such Member or Retiree's Final Average Salary. In no event shall the benefit paid a Minor Child exceed fifteen percent (15%).

(3) The combined monthly benefit payment to a surviving spouse and Minor Children or to Minor Children shall not exceed the amount of the monthly Service retirement or Disability retirement benefit being paid on the date of the death of the Retiree on account of whose death such benefit payments are being made. In the event that the calculation of such benefit results in a combined monthly benefit payment in excess of such amount, i) the benefit of the surviving spouse shall be reduced so that the combined monthly benefit payment equals such Service retirement or Disability retirement benefit; or ii) if no benefit payment is being paid to a surviving spouse, the benefits of all Minor Children shall be reduced pro rata so that the combined monthly benefit payment equals such Service retirement or Disability retirement benefit. Once

reduced, these benefit payments shall be increased in the same manner and subject to the same limitations as set forth in (e) (1) and (e) (2) above.

(f) Benefit payments for a Minor Child shall terminate upon such child reaching eighteen (18) years of age, the death of such child, or the marriage of such child, whichever shall occur first.

(g) The surviving spouse of a Retiree who retired on or after January 1, 2000 and thereafter dies under circumstances set out in subsections (b)(1) or (b)(2) above, shall not be limited by either the age requirement or the remarriage limitations set forth in subparagraph (b) herein. Provided, however that such surviving spouse, in order to be eligible to receive a benefit, shall have been such Retiree's lawfully wedded spouse for at least twelve (12) months immediately preceding the death of such Retiree.

(h) A Member who, on or after January 1, 2000, selects an effective backward DROP date which is prior to January 1, 2000, shall nevertheless be considered to have retired on or after January 1, 2000 for the purposes of determining the eligibility of such Member's surviving spouse for a benefit.

(i) For a Member or Retiree under Plan B, benefit payments on account of Minor Children shall be paid only if such Member or Retiree dies leaving no surviving spouse or dies leaving a surviving spouse who remarries prior to age forty (40). Under either such circumstance, the Minor Children of such Member or Retiree shall share equally a benefit equal to fifty percent (50%) of such Member or Retiree's final Salary.

SECTION 25

Post Retirement Adjustments.

For all Members retiring for any reason from and after February 1, 1974, upon completion of thirty-six (36) months of retirement, the monthly retirement benefits payable to such Retiree, or the monthly retirement benefits payable to the spouse or the Minor Child or Children of such Retiree, shall be increased two percent (2%) per year based on the original benefit, not compounded.

SECTION 26

Funeral Benefit.

The designated beneficiary of a Member who retired after November 21, 1973 under either Plan A, Plan B, or Plan C-79 shall be paid a funeral benefit of seven hundred fifty dollars ($750.00).

SECTION 27

Assignments Prohibited.

The right to a refund or a service retirement, Disability, death, or any benefit under the provisions of this ordinance, whatever name called, is personal with the recipient thereof, and the assignment or transfer of any such benefit, or any part thereof shall be void, except as may be provided herein. Any such refund or benefit shall not answer for debts contracted by the person receiving the same, and it is the intention of this ordinance that they shall not be subject to execution, attachment, garnishment, or affected by any judicial proceedings, except such benefit or any accumulated contributions due and owing from the System to any recipient are subject to claims of an alternate payee under a "qualified domestic relations order".

SECTION 28

Qualified Domestic Relations Orders.

As used in this section, the terms "alternate payee" and "qualified domestic relations order" shall have the meaning ascribed to them in section 414(p) of the Internal Revenue Code. The City of Wichita shall not be a party to any action under Article 10 of Chapter 60 of the Kansas Statutes Annotated but is subject to orders from such actions issued by the district court of the county where such action was filed and may also accept orders which it deems to be qualified under this section from courts having jurisdiction of such actions outside the State of Kansas. Orders from such actions shall specify either a specific amount or specific percentage of the amount of the benefit or any accumulated contributions due and owing from the Fund and to be distributed to the alternate payee. The order must contain the following information:

(a) Name, address, and social security number of the employee and alternate payee;

(b) Clearly identifies the appropriate Police & Fire Retirement System and plan;

(c) Creates or recognizes the existence of an alternate payee's rights to, or assigns to an alternate payee the right to receive a portion of the benefits otherwise payable to the employee;

(d) The date of marriage and divorce/separation;

(e) Statement that the benefit is payable only at the time of retirement of the employee or at the time the employee withdraws from Service, if the employee withdraws his or her contributions from the Fund;

(f) That the benefit is payable only during the lifetime of the retired employee or alternate payee should the alternate payee predecease the employee;

(g) Payment to the alternate payee shall be a lump sum if payment to the employee is lump sum, monthly if payment to the employee is monthly; and

(h) An employee who elects to participate in the DROP shall be treated as having retired for the purposes of a qualified domestic relations order.

The order to be qualified cannot allow the calculation of the lump sum payment or monthly benefit to be calculated in a manner which results in a payment or benefit in excess of the limits of the plan; cannot allow the alternate payee to be named as a surviving spouse or a survivor at the death of the retired employee; and cannot allow the alternate payee to name a beneficiary.

SECTION 29

Current Retiree Benefit Catch-Up Provision.

For Retirees who have been receiving a Service or Disability retirement benefit for ten (10) years or more as of January 1, 2000, and for the surviving spouses of deceased Retirees who retired and began receiving a Service or Disability retirement benefit prior to January 1, 1990, the pension benefit payable to such Retirees and such surviving spouses shall be increased by a factor of two percent (2%) per year for each year since such Retiree or the deceased Retiree began receiving a Service retirement benefit. This increase is a one-time benefit adjustment. This increase shall be applied to both the base pension benefit and any post-retirement adjustment, combined. The increased pension benefit calculated under this section shall in no event exceed $8,183.00 annually.

SECTION 30

Special Provisions for Safety Officers Employed by the Wichita Airport Authority.

Safety officers employed by the Wichita Airport Authority of the City of Wichita on June 29, 1996 shall be transferred on that date from the Wichita Employees' Retirement Plans to the Police and Fire Retirement System's Plan C-79. Notwithstanding provisions of any other sections contained herein, the following provisions shall be applicable for such safety officers transferred as of June 29, 1996:

(a) Service credit under the Wichita Employees' Retirement Plans shall be considered Service for purposes of meeting Service eligibility requirements for benefits under the Police and Fire Retirement System Plan C-79;

(b) Service under the Wichita Employees' Retirement Plans shall not be considered in the determination of the amount of any benefit payable by the Police and Fire Retirement System Plan C-79; and

(c) Under no circumstances will the total retirement benefit payable to a safety officer as a result of this transfer exceed an amount equal to seventy-five percent

(75%) of his or her Final Average Salary regardless whether the source of the benefit is the Wichita Employees' Retirement System or the Police and Fire Retirement System.

SECTION 31

Re-employment of Retirees.

(a) Any Member under the Retirement System who is receiving a retirement benefit and who is re-employed as a commissioned Police or Fire Officer with the City of Wichita, or in a non-commissioned position under the Wichita Employee's Retirement System, shall have such Member's retirement benefit immediately suspended, and no benefit payments shall be made during the entire time such Member is so employed. However, nothing is intended to prohibit such member from participation in the appropriate retirement system and the accrual of additional Service for credit.

(b) Upon termination of such employment as a commissioned officer, payment of the retirement benefit shall be resumed; provided, however, nothing herein shall be construed to prohibit the employment of a retired police or fire commissioned officer in an advisory or consultant capacity on an independent contractor basis.

(c) Under no circumstances will the total retirement benefit payable to a re-employed Member exceed an amount equal to seventy-five percent (75%) of his or her Final Average Salary regardless whether the source of the benefit is the Wichita Employees' Retirement System or the Police and Fire Retirement System.

SECTION 32

Fraud.

Any person who knowingly makes a false statement in connection with the application for or the receipt of benefits, or falsifies or permits to be falsified, any record or records of this Retirement System, in an attempt to defraud the Retirement System, shall forfeit all rights to benefits hereunder. The Retirement System and the City shall have the right to recover by setoff or otherwise, any payments based on such false statement or falsified record.

SECTION 33

Limited Extension of Option and its Effective Date.

Any Police or Fire Officer who had previously elected to participate in Plan B shall have an option at any time prior to retirement to elect participation in Plan A by paying into the Retirement System a sum of money, without interest, equal to the difference in contributions which would have been paid by such Police or Fire Officer had they elected Plan A on January

1, 1965; provided, that once having made such election, such Police or Fire Officer shall not be permitted to revert back to Plan B.

SECTION 34

Benefit and Disability Rights Under Prior Laws Saved.

This ordinance shall not affect the rights nor decrease the Disability or retirement benefits of any Member or such Member's beneficiaries, who has died, been permanently disabled, or retired under any previously authorized and existing pension or retirement system. Any Member in service at the time of the effective date of this ordinance, who is at said time entitled to a benefit under any previously authorized pension or Retirement System shall not have such benefit reduced by virtue of the application of the provisions of this ordinance.

SECTION 35

Invalidity of Part.

If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance, which can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are declared to be severable.

SECTION 36

Compliance with Code Section 415 Limitations on Contributions and Benefits.

a) Notwithstanding any other provisions of the Retirement System to the contrary, the Member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of Section 415 of the Internal Revenue Code for a qualified pension plan.

(b) *Participation in Other Qualified Plans: Aggregation of Limits.*

(1) The 415(b) limit with respect to any Member who at any time has been a Member in any other defined benefit plan as defined in Section 414(j) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the Member has been a Member were payable from one (1) plan.

(2) The 415(c) limit with respect to any Member who at any time has been a Member in any other defined contribution plan as defined in Section 414(i) of the Internal Revenue Code maintained by the Member's employer in this plan shall apply as if the total annual additions under

all such defined contributions plans in which the Member has been a Member were payable from one (1) plan.

(c) *Basic 415(b) Limitation.*

(1) Before January 1, 1995, a Member may not receive an annual benefit that exceeds the limits specified in Section 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that section. On and after January 1, 1995, a Member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Section 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the Retirement System. In no event shall a Member's benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(2) For purposes of Section 415(b) of the Internal Revenue Code, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Section 415(n) of the Internal Revenue Code) and to rollover contributions (as defined in Section 415(b)(2)(A) of the Internal Revenue Code). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

(d) *Adjustments to Basic 415(b) Limitation for Form of Benefit.*

If the benefit under the plan is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any) payable to the Member under the plan commencing at the same annuity starting date as the form of benefit to the Member, or

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code); or

(3) For a benefit paid in a form to which Section 417(e)(3) of the Internal Revenue Code applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) of the Internal Revenue Code limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a

5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code; or

(C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(e) *Benefits Not Taken into Account for 415(b) Limitation.*

For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under Section 415(b)(2) of the Internal Revenue Code and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Section 415(b)(1) of the Internal Revenue Code.

(f) *Other Adjustments in 415(b) Limitation.*

(1) In the event the Member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar ($160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

(2) In the event the Member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, the adjustments provided for in (1) above shall not apply.

(3) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) *Ten Thousand Dollar ($10,000) Limit.*

Notwithstanding the foregoing, the retirement benefit payable with respect to a Member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such Member under this plan and under all other qualified defined benefit pension plans to which the Member's employer contributes, do not exceed ten thousand dollars ($10,000) for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the Member participated.

(h) *Effect of COLA without a Lump Sum Component on 415(b) Testing.*

Effective on and after January 1, 2009, for purposes of applying the limits under Section 415(b) of the Internal Revenue Code (the "Limit") to a Member with no lump sum benefit, the following will apply:

(1) a Member's applicable Limit will be applied to the Member's annual benefit in the Member's first limitation year without regard to any cost of living adjustments under Section 25;

(2) to the extent that the Member's annual benefit equals or exceeds the Limit, the Member will no longer be eligible for cost of living increases

until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a Member's annual benefit, including any cost of living increases under Section 25, shall be tested under the then applicable benefit Limit including any adjustment to the Section 415(b)(1)(A) of the Internal Revenue Code dollar limit under Section 415(d) of the Internal Revenue Code, and the regulations thereunder.

(i) *Effect of COLA with Lump Sum Component on 415(b) Testing.*

On and after January 1, 2009, with respect to a Member who receives a portion of the Member's annual benefit in a lump sum, a Member's applicable Limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Internal Revenue Code and applicable Treasury Regulations.

(j) *Section 415(c) Limitations on Contributions and Other Additions.*

After-tax Member contributions or other annual additions with respect to a Member may not exceed the lesser of $40,000 (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) or 100% of the Member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, Member contributions, and forfeitures credited to a Member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Section 415(c) of the Internal Revenue Code and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2, or successor regulation; provided, however, that Member contributions picked up under Section 414(h) of the Internal Revenue Code shall not be treated as compensation.

(3) Compensation will be defined as wages within the meaning of Section 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Sections 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code and will be

determined without regard to any rules under Section 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code).

(A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code.

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a Member's severance from employment or the end of the limitation year that includes the date of the Member's severance from employment if:

(I) the payment is regular compensation for services during the Member's regular working hours, or compensation for services outside the Member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the Member while the Member continued in employment with the employer; or

(II) the payment is for unused accrued bona fide sick, vacation or other leave that the Member would have been able to use if employment had continued; or

(III) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the Member at the same time if the Member had continued employment with the employer and only to the extent that the payment is includible in the Member's gross income.

Any payments not described in paragraph (B) above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to a Member who does not currently perform services for the employer by reason of qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) to the extent these payments do not exceed the amounts the Member would have received if the Member had continued to perform services for the employer rather than entering qualified military service.

A Member who is in qualified military service (within the meaning of Section 414(u)(1) of the Internal Revenue Code) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the Member would have received during such period if the Member were not in qualified military service, determined based on the rate of pay the Member would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the Member would have received during such period was not reasonably certain, the Member's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(C) Back pay, within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a Member's compensation for purposes of subsection (k) shall not exceed the annual limit under Section 401(a)(17) of the Internal Revenue Code.

(k) *Service Purchases under Section 415(n).*

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of Section 415(n) of the Internal Revenue Code will be treated as met only if:

(1) the requirements of Section 415(b) of the Internal Revenue Code are met, determined by treating the accrued benefit derived from all such

contributions as an annual benefit for purposes of Section 415(b) of the Internal Revenue Code, or

(2) the requirements of Section 415(c) of the Internal Revenue Code are met, determined by treating all such contributions as annual additions for purposes of Section 415(c) of the Internal Revenue Code.

(3) For purposes of applying this section, the system will not fail to meet the reduced limit under Section 415(b)(2)(C) of the Internal Revenue Code solely by reason of this subparagraph and will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Internal Revenue Code solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit-

(A) recognized by the system for purposes of calculating a Member's benefit under the system,

(B) which such Member has not received under the system, and

(C) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (B), may include service credited in order to provide an increased benefit for service credit which a Member is receiving under the system.

(5) The system will fail to meet the requirements of this section if-

(A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the system.

(6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to-

(A) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State

or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of repayment described in Section 415(k)(3) of the Internal Revenue Code),

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (A)) of an education organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code which is public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(C) service as an employee of an association of employees who are described in clause (A), or

(D) military service (other than qualified military service under Section 414(u) of the Internal Revenue Code) recognized by the system.

In the case of service described in clause (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a Member to receive a retirement benefit for the same service under more than one plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Section 403(b)(13)(A) of the Internal Revenue Code or Section 457(e)(17)(A) of the Internal Revenue Code applies (without regard to whether the transfer is made between plans maintained by the same employer)-

(A) the limitations of paragraph (5) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible Member, the limitation of Section 415(c)(1) of the Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of a Plan as in effect on August 5, 1997. For purposes of this paragraph an eligible

Member is an individual who first became a Member in the system before January 1, 1998.

(l) *Modifications of Contributions for 415(c) and 415(n) Purposes.*

Notwithstanding any other provision of law to the contrary, the system may modify a request by a Member to make a contribution to the system if the amount of the contribution would exceed the limits provided in Section 415 of the Internal Revenue Code by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the system may establish a periodic payment plan for the Member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the Internal Revenue Code.

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Section 415(c) or 415(n) of the Internal Revenue Code, the system may either reduce the Member's contribution to an amount within the limits of those sections or refuse the Member's contribution.

(m) *Repayments of Cashouts.*

Any repayment of contributions (including interest thereon) to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the Retirement System shall not be taken into account for purposes of Section 415 of the Internal Revenue Code, in accordance with applicable Treasury Regulations.

(n) *Reduction of Benefits Priority.*

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with respect to the plan in which the Member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such Member.

SECTION 37

Direct Rollovers of Defined Benefit Plan Distributions.

(a) Except as otherwise indicated herein, this section shall apply to all rollovers made after December 31, 2001.

(b) For purposes of compliance with Section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than $200 during the year. Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only (i) to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code; (ii) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or (iii) on or after

January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code. Effective January 1, 2002, the definition of an eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

(2) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(A) an individual retirement account described in Section 408(a) of the Internal Revenue Code;

(B) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;

(C) an annuity plan described in Section 403(a) of the Internal Revenue Code;

(D) a qualified trust described in Section 401(a) of the Internal Revenue Code;

(E) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;

(F) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the Retirement System; or

(G) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(3) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account

or annuity will be treated as an "inherited" individual retirement account or annuity.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(c) Rollover contributions and/or direct rollovers of distributions made after December 31, 2001 will be accepted for the purchase of prior or future service credit from the types of plans specified.

(d) The plan will accept a direct rollover of an eligible rollover distribution from:

(1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.

(2) An annuity contract described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state.

(e) The plan will accept a participant contribution of an eligible rollover distribution from:

(1) A qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code.

(2) An annuity contract described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state.

(f) The plan will accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Section 408(a) or 408 (b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income.

SECTION 38

The Original of Charter Ordinance No. 209 of the City of Wichita, Kansas, is hereby repealed.

SECTION 39

Publication.

This ordinance shall be published once each week for two (2) consecutive weeks in the official city newspaper.

SECTION 40

Petition for Referendum.

This is a charter ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3), of the Constitution of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED by the governing body of the City of Wichita, Kansas, this ___ day of _____, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
December 14, 2010

To: Mayor and City Council

Subject: DER2009-08: Downtown Master Plan (Districts I, IV, and VI)

Initiated By: Metropolitan Area Planning Department

Agenda: New Business

Recommendation: Adopt *Project Downtown: The Master Plan for Wichita, November 2010*.

Background: In late 2008, Mayor Brewer attended dozens of meetings throughout the community to discuss a vision of creating a downtown master plan. The response from the community was overwhelmingly positive, and the meetings that the Mayor attended garnered hundreds of comments and suggestions from citizens about their vision for downtown Wichita.

The Wichita City Council unanimously voted on December 16, 2008, to initiate a downtown master plan and approved the appointment of the Downtown Revitalization Steering Committee to help engage the public on a vision for downtown. The Wichita Downtown Development Corporation (WDDC) Board of Directors unanimously voted on April 23, 2009, to commit $175,000 to a downtown master plan as seed capital to forge partnerships and secure additional funding through the City of Wichita and the private sector. Private sector contributions to the development of a downtown plan have exceeded $100,000.

On May 5, 2009, the City Council authorized $225,000 in funding for a downtown master plan and initiated the process to select a design team to prepare a downtown master plan. A Request for Qualifications was sent to over 170 local, regional, and national vendors. A total of 32 design teams responded, and a 13-member selection committee appointed by the City Manager reviewed and analyzed the responses, interviewed respondents, and selected Goody Clancy, an award-winning architecture, planning, and preservation firm with significant downtown planning experience, to develop the downtown master plan. The Downtown Revitalization Steering Committee endorsed Goody Clancy on September 25, 2009. On October 13, 2009, the City Council approved a $500,000 contract with Goody Clancy to develop a downtown master plan.

The plan took approximately 12 months to complete and involved input from thousands of community stakeholders. The end result is *Project Downtown: The Master Plan for Wichita, November 2010* that was unanimously adopted by the Wichita-Sedgwick County Metropolitan Area Planning Commission (MAPC) on November 18, 2010 as an amendment to *The Wichita-Sedgwick County Comprehensive Plan*.

Analysis: *Project Downtown: The Master Plan for Wichita, November 2010* is comprised of eight chapters and four appendices that together comprise a 20-year blueprint for the revitalization of downtown Wichita. The plan identifies market demand for as much as $500 million in private-sector capital investment over the next 15-20 years that would result in an estimated 1,500-1,600 new housing units, 125,000-175,000 square feet of retail space, 400,000-480,000 square feet of office space, and 350-475 hotel rooms. The plan also outlines 43 action steps for accomplishing this revitalization potential through efforts focused on creating unique downtown places, expanding transportation choices and enabling development. An estimated $100 million in parking, streets, and parks/open space improvements are recommended to be made in conjunction with the private-sector revitalization projects. More detailed information regarding *Project Downtown: The Master Plan for Wichita, November 2010* is available online at: http://www.wichita.gov/CityOffices/Planning/AP/NR/Downtown/

In addition to being adopted by the MAPC by a 14-0 vote, the Plan has received unanimous endorsements from the Wichita Downtown Development Corporation, Visioneering Wichita, Wichita Metro Chamber of Commerce, Young Professionals of Wichita, Transit Advisory Board, Go Wichita, and Wichita Area Association of Realtors. Support of the Plan also was indicated at presentations to the Historic Preservation Board, Park Board, Library Board, Sedgwick County Association of Cities, Wichita Independent Neighborhoods, and Old Town Association. Only the Park Board had any members that expressed opposition to the Plan, and their opposition was based on the expense of the Plan and subsidies to developers rather than concerns with the park-related elements of the plan. The District Advisory Boards are scheduled to consider the Plan at their December meetings.

Financial Consideration: Adopting *Project Downtown: The Master Plan for Wichita, November 2010* involves no commitment of funding for the City of Wichita. Any City of Wichita funding of projects identified in the Plan will require future City Council action.

Goal Impact: *Project Downtown: The Master Plan for Wichita, November 2010* will help achieve the goals of Promoting Economic Vitality, Creating Vibrant Neighborhoods, and Ensuring Efficient Infrastructure.

Legal Consideration: The MAPC, in accordance with Kansas state statutes, published the required public hearing notice in the official City and County newspaper on October 28, 2010, held a public hearing for the proposed *Project Downtown: The Master Plan for Wichita, November 2010* and approved a resolution adopting the Plan as an amendment to *The Wichita-Sedgwick County Comprehensive Plan* on November 18, 2010.

The adopting ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council adopt the *Project Downtown: The Master Plan for Wichita, November 2010* as an amendment to *The Wichita-Sedgwick County Comprehensive Plan*, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading.

Attachment: *Project Downtown: The Master Plan for Wichita, November 2010*
MAPC Resolution
Ordinance

RESOLUTION

WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION

WHEREAS, pursuant to the authority granted by the statutes of the State of Kansas, in K.S.A. 12-747 et seq., the Wichita-Sedgwick County Metropolitan Area Planning Commission developed a Comprehensive Plan, adopted by the City of Wichita and Sedgwick County in 1993, and amended in 1996, 2000, 2002, 2005, 2006, 2007, 2008, 2009, and 2010; and

WHEREAS, the Comprehensive Plan may be amended as needed to ensure it reflects timely and relevant information and the needs of the community; and

WHEREAS, the City of Wichita in collaboration with the Wichita Downtown Development Corporation and Visioneering Wichita, did initiate the development of the *Project Downtown: The Master Plan for Wichita, November 2010* to document an agreed upon revitalization strategy for downtown Wichita; and

WHEREAS, before the adoption of any Comprehensive Plan or amendment thereto, the Wichita-Sedgwick County Metropolitan Area Planning Commission is required by K.S.A. 12-747 et seq. to hold a public hearing; and

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission did give notice by publication in the official City and County newspaper on October 28, 2010, of a public hearing on said area plan; and

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission, on November 18, 2010, did hold a public hearing at which a quorum was present, and did hear all comments and testimony relating to said area plan;

NOW, BE IT THEREFORE RESOLVED, the Wichita-Sedgwick County Metropolitan Area Planning Commission hereby adopts *Project Downtown: The Master Plan for Wichita, November 2010* as an official amendment to the Wichita-Sedgwick County Comprehensive Plan; and

BE IT FURTHER RESOLVED, that notice of this action be transmitted to the City Council of the City of Wichita and to the Sedgwick County Board of County Commissioners for their consideration and adoption.

ADOPTED at Wichita, Kansas, this 18th day of November 2010.

_____
Debra Miller-Stevens, Chair
Wichita-Sedgwick County
Metropolitan Area Planning Commission

Attest:

_____
John L. Schlegel, Secretary
Wichita-Sedgwick County
Metropolitan Area Planning Commission

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law
City of Wichita

OCA150004 BID #37529-009 CID #76383

PUBLISHED IN THE WICHITA EAGLE ON_____

ORDINANCE NO._____

AN ORDINANCE ADOPTING PROJECT DOWNTOWN: THE MASTER PLAN FOR WICHITA, NOVEMBER 2010 AS AN AMENDMENT TO THE WICHITA-SEDGWICK COUNTY COMPREHENSIVE PLAN.

WHEREAS, pursuant to the authority granted by the statutes of the State of Kansas, in K.S.A. 12-747 *et seq.*, the Wichita-Sedgwick County Metropolitan Area Planning Commission developed a Comprehensive Plan, adopted by the City of Wichita and Sedgwick County in 1993, and amended in 1996, 2000, 2002, 2005, 2006, 2007; 2008, 2009, and 2010; and

WHEREAS, the Comprehensive Plan may be amended, as needed, to ensure it reflects timely and relevant information and the needs of the community; and

WHEREAS, the City of Wichita in collaboration with the Wichita Downtown Development Corporation and Visioneering Wichita, did initiate the development of the Project Downtown: The Master Plan for Wichita, November 2010 to document an agreed upon revitalization strategy for downtown Wichita; and

WHEREAS, before the adoption of any Comprehensive Plan or amendment thereto, the Wichita-Sedgwick County Metropolitan Area Planning Commission is required by K.S.A. 12-747 to hold a public hearing; and

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission did give notice by publication in the official City and County newspaper on October 28, 2010, of a public hearing on said plan area; and

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission, on November 18, 2010, did hold a public hearing at which a quorum was present, and did hear all comments and testimony relating to said plan area, and approved a resolution adopting *Project Downtown: The Master Plan for Wichita, November 2010*, as an amendment to *The Wichita-Sedgwick County Comprehensive Plan.*

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

SECTION 1. The City of Wichita hereby adopts *Project Downtown: The Master Plan for Wichita, November 2010*, as an amendment to *The Wichita-Sedgwick County Comprehensive Plan*; and

SECTION 2. Notice of this action shall be transmitted to the Sedgwick County Board of County Commissioners and to all other taxing subdivisions in the planning area that request a copy of the plan.

SECTION 3. 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 _____.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

Agenda Item No. V-1

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: DED2010-00009 -- Drainage and Utility Easement Dedication located west of Seneca, north of 47th Street South. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Accept the Dedication.

Background: The Dedication is associated with Lot Split Case No. SUB2010-00053 (Vilm Gardens 2nd Addition) and was requested by City Storm Water Management.

Analysis: The Dedication is for construction and maintenance of drainage systems and other public utilities.

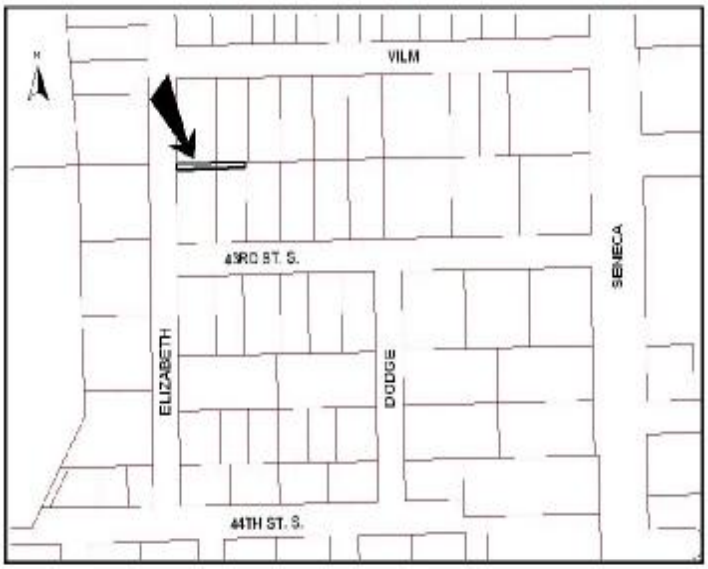
Financial Considerations: There are no financial considerations associated with this dedication.

Goal Impact: Approval of the dedication will Ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The Dedication has been approved as to form by the Department of Law and recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedication.

Attachment: Drainage and Utility Easement Dedication.



Sedgwick County
Register of Deeds - Bill Meek
DOC.#, .M-PG: 29182080
Receipt #: 1764976
Pages Recorded: 1
Cashier Initials: CP
Recording Fee: $8.00
Authorized By:
Date Recorded: 11/12/2010 8:25:59 AM

DRAINAGE & UTILITY EASEMENT

This EASEMENT made this 8 day of November, 2010, by and between , Comfort Homes Inc. of the first part and the City of Wichita of the second part.

WITNESSETH: That the said first party, in consideration of the sum of One Dollar ($1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the said second party a perpetual right-of-way and easement for the purpose of constructing, maintaining, and repairing a drainage system and all other public utilities over, along, and under the following-described real estate situated in Sedgwick County, Kansas; to wit:

The North 10' of Lot 7 Block B, Vilm Gardens Second Addition Sedgwick County, Kansas.

And said second party is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing drainage systems and all other public utilities.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first above written.

By: _____
Richard Niedens (for Comfort Homes Inc.)
President

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 8 day of November, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Richard Niedens, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said corporation.
Richard Niedens, President, Comfort Homes Inc.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

_____
Notary Public

(My Appointment Expires: 6/11/13)

DANELLE K. REICHENBERGER
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 6/11/13

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: SUB2010-00052 -- Plat of QuikTrip 11th Addition located south of Kellogg and on the west side of Hillside. (District I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (14-0)

Background: The site, consisting of one lot on 2.19 acres, is a replat of a portion of the Sunnyside Addition. The site is located within Wichita's city limits and is zoned LC Limited Commercial.

Analysis: Municipal services are available to serve the site. The site is within the noise impact area of McConnell Air Force Base; therefore the applicant has submitted an Avigational Easement and Restrictive Covenant to assure that adequate construction methods will be used to minimize the effects of noise pollution. A Drive Approach Certificate has been provided regarding the driveways required to be closed by access control being dedicated by this plat. The plat is subject to a Protective Overlay (PO #244) addressing lighting, building height, screening, landscaping, setbacks and permitted uses. A Notice of Protective Overlay has been submitted.

This plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

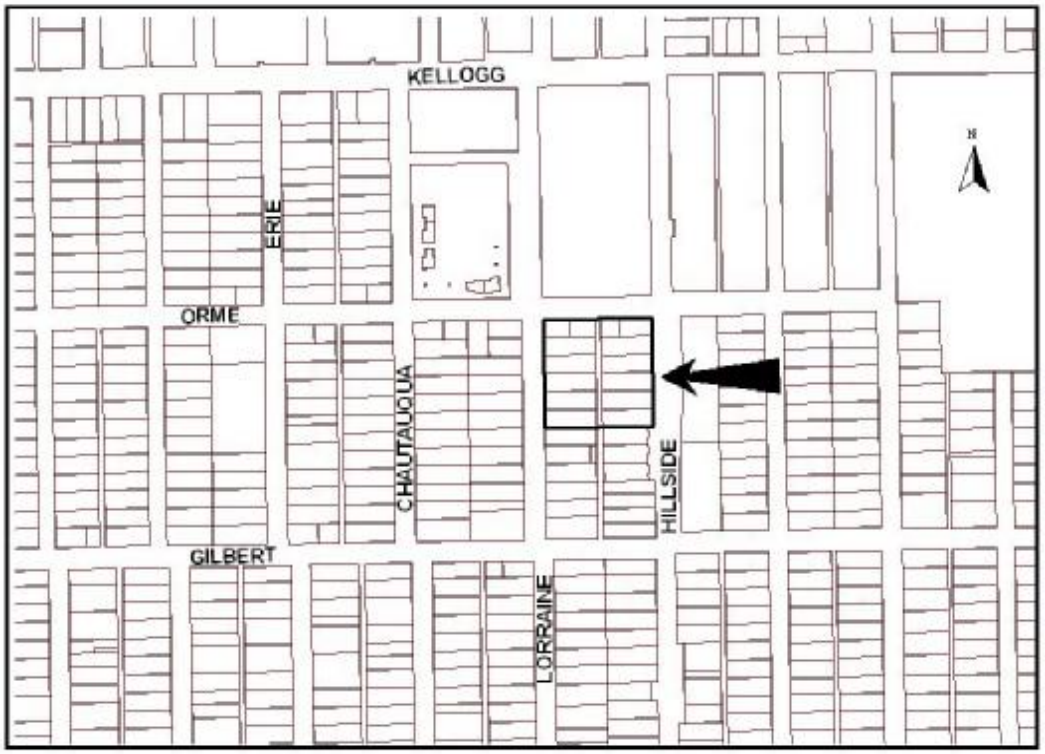
Financial Considerations: There are no financial considerations associated with the plat.

Goal Impact: Approval of the plat will Ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The Avigational Easement, Restrictive Covenant, Drive Approach Certificate and Notice of Protective Overlay have been approved as to form by the City's Law Department and will be recorded with the Register of Deeds by the applicant.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, and authorize the necessary signatures for approval of the plat.

Attachments: Avigational Easement
Restrictive Covenant
Drive Approach Certificate
Notice of Protective Overlay


KELLOGG
ERIE
ORME
CHAUTAUQUA
HILLSIDE
GILBERT
LORRAINE
N

AVIGATIONAL EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That for a good and valuable consideration, the receipt of which is hereby acknowledged, that QuikTrip Corporation, does hereby grant a permanent Avigational Easement to the public authority authorized by law to own and operate public-owned airports in Sedgwick County, Kansas, for the use of "navigable Airspace" as defined by the Federal Aviation Act of 1958, over all of the following described real estate, to wit:

All property platted as QuikTrip 11th Addition, an addition to Wichita, Sedgwick County, Kansas.

By virtue of this easement, the grantors, for and on behalf of themselves and all successors in interest to any and all of the real property above described, waives as to the public authority only any and all claims for damage of any kind whatsoever incurred as a result of aircraft using the "Navigable Airspace" granted herein. This easement does not grant or convey any surface use rights, nor is it to be construed to grant any right to private persons or corporations.

"Navigable Airspace" means air space above the minimum altitudes of flight prescribed by regulations issued under the Federal Aviation Act of 1958, Section 101 (24) 49 U.S. Code 1301, and shall include air space needed to insure safety in take-off and landing of aircraft.

To have and to hold said easement forever.

IN WITNESS WHEREOF:

The Grantors have signed these presents this _____, day of _____, 2010.

QUIKTRIP CORPORATION

By: _____
Larry D. Dickerson, Director of Real Estate

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law
City of Wichita, Kansas

Tulsa County) SS
State of Oklahoma)

Be it remembered that on this _____ day of _____, 2010, before me a Notary Public in and for said State and County, came Larry D. Dickerson, Director of Real Estate, QuikTrip Corporation, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

(SEAL)

Notary Public:_____

My Appointment Expires:_____

RESTRICTIVE COVENANT

RESTRICTIVE COVENANT AFFECTING: Lot 1, Block 1, QuikTrip 11th Addition.

THIS DECLARATION made this _____ day of _____, 2010,QuikTrip Corporation, hereinafter called the Grantors.

WITNESSETH:

WHEREAS, Grantors are owners of QuikTrip 11th Addition, an addition to Wichita, Sedgwick County, Kansas, which property is located near McConnell Air Force Base and is accordingly subject to considerable noise from the operation of aircraft, and is exposed at times to aircraft noise which may infringe upon the owners enjoyment of property and may, depending upon the degree of acoustical treatment of the structure, affect his health and/or well being, and

WHEREAS, the City of Wichita in connection with approval of the plat of said addition considers it to be in the public interest to require any building constructed in said addition to be designed and constructed giving proper consideration to noise pollution in the area.

NOW THEREFORE, Grantors, hereby declare that QuikTrip 11th Addition, shall be and the same is subjected to the following restrictive covenant, to wit:

> Any building constructed on the premises shall be so designed and constructed as to minimize noise pollution in any such structure, giving due consideration to the use for which such structure is designed and built. This covenant is for the benefit of said property and shall run with the land and shall inure to the benefit of and pass with said property and shall apply to and bind the successors in interest and any owner thereof.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

EXECUTED the day and year first above written.

QUIKTRIP CORPORATION

By: _____
Larry D. Dickerson, Director of Real Estate
City of Wichita

Tulsa County) SS
State of Oklahoma)

Be it remembered that on this _____ day of _____, 2010, before me a Notary Public in and for said State and County, came Larry D. Dickerson, Director of Real Estate, QuikTrip Corporation, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

Notary Public:_____

(SEAL)

My Appointment Expires:_____

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law
City of Wichita, Kansas

DRIVE APPROACH CERTIFICATE

QuikTrip Corporation, the owner of Lot 1, Block 1, QuikTrip 11th Addition, an addition to Wichita, Sedgwick County, Kansas, is in the process of Platting said property, and does hereby acknowledge that in accordance with the requirements of the platting process as set forth by the City of Wichita, any existing drive approaches on Lorraine and any in excess of the one allowed on Hillside Avenue, at the location designated on the plat, shall be closed.

This is to place on notice the owner of the above-described property and subsequent owners thereof that, as a result of the above-cited platting requirements, said owner and subsequent owners thereof are responsible for seeing that such drive approach or approaches are removed and closed per City of Wichita specifications for such work, and that sufficient guaranty of such closure(s), in a form acceptable to the City of Wichita (e.g. – bond, cash, letter of credit, etc.) and/or acknowledgement that the City of Wichita may withhold the issuance of an occupancy permit for any future building construction, will be a pre-condition of the issuance of any future building permit for all development on the above-described property.

Signed this _____ day of _____, 2010.

QUIKTRIP CORPORATION

By: _____
Larry D. Dickerson, Director of Real Estate

ATTEST:

Tulsa County) SS
State of Oklahoma)

BE IT REMEMBERED, that on this _____ day of _____, 2010, before me, the undersigned, a Notary Public in and for the State and County aforesaid, came Larry D. Dickerson, Director of Real Estate, QuikTrip Corporation, to me personally known to be the person who executed the foregoing instrument, and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

_____
Notary Public

(seal)

My Commission Expires: _____

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law
City of Wichita, Kansas

NOTICE OF PROTECTIVE OVERLAY

QuikTrip 11th Addition

THIS NOTICE made this ____ day of _____, 2010, by QuikTrip Corporation hereinafter called "Declarant". WITNESSETH

WHEREAS, declarant is the owner of all or a portion of the following described property;

QuikTrip 11th Addition to Wichita, Sedgwick County, Kansas.

WHEREAS, declarant is desirous to file notice that a protective overlay approved by the Wichita City council is on file with Metropolitan Area Planning Department, located on the 10th Floor, City Hall, Wichita, Kansas, (316)268-4421.

NOW, THEREFORE, the declarant wants to make notice that the approved Protective Overlay Agreement by ZON 2010-22, P.O. #244 has placed restrictions on the use and requirements on the development of the above described real property. The protective overlay shall be binding on the Owners, their heirs, successors, or assigns, and is a document running with the land and is binding on all successors in title to Lot 1, Block 1, QuikTrip 11th Addition to Wichita, Sedgwick County, Kansas.

EXECUTED the day and year first written above.

QUIKTRIP CORPORATION

By: _____
Larry D. Dickerson, Director of Real Estate

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law
City of Wichita, Kansas

Tulsa County) SS
State of Oklahoma)

Be it remembered on this _____day of _____, 2010, before me, a notary public in and for said County and State, came Larry D. Dickerson, Director of Real Estate, QuikTrip Corporation, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledge the execution of same.

(SEAL)

_____
Notary Public

My Appointment Expires:_____

City of Wichita
City Council Meeting
December 14, 2010

TO: Wichita Housing Authority Board

SUBJECT: Public Housing Capital Fund Budget Revisions

INITIATED BY: Housing and Community Services Department

AGENDA: Wichita Housing Authority Consent

Recommendation: Approve the revisions of the 2010 Capital Fund Grant budget.

Background: Since 1992, the U. S. Department of Housing and Urban Development (HUD) has awarded the City of Wichita Housing Authority, Public Housing, modernization funds through the Comprehensive Grant Program and beginning in 2000 the Capital Fund Program (CFP) for the purposes of updating or rehabilitating rental units and management systems in the Public Housing Division. Housing authorities share the national allocation, which is determined by a calculation using various characteristics of each housing authority. HUD regulations allow a housing authority to revise its approved annual budget when changes to the budget are required due to construction and administrative cost changes, HUD Notices, disasters, and emergencies outside the control of the housing authority.

Analysis: The attached line item revisions to the present Capital Fund Five-Year Plan, are allowable by HUD. The 2010 CFP funding was allocated in the amount of $1,086,315. The proposed revisions will allocate the contingency line item to the dwelling equipment and building structure line items. In addition, the fees and costs line item is being reduced and added to the site improvement line item.

Financial Considerations: No local tax funds are required for the Capital Fund Program.

Goal Impact: The Capital Fund Program contributes to the City Goal of Economic Vitality and Affordable Living.

Legal Considerations: The Capital Fund Annual Statement is a form recognized by HUD and the revisions are allowable.

Recommendation/Action: It is recommended that the Wichita Housing Authority Board approve the revisions of the 2010 Capital Fund Grant budget.

Attachments: Capital Fund Annual Statement

Annual Statement/Performance and Evaluation Report
Capital Fund Program, Capital Fund Program Replacement Housing Factor and
Capital Fund Financing Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB No. 2577-0226
Expires 4/30/2011

Part I: Summary		
PHA Name: City of Wichita Housing Authority	Grant Type and Number Capital Fund Program Grant No: KS16P00450110 Replacement Housing Factor Grant No: Date of CFFP:	FFY of Grant: 2010 FFY of Grant Approval: 2010

Type of Grant
☒ Original Annual Statement ☐ Reserve for Disasters/Emergencies ☒ Revised Annual Statement (revision no: 1)
☐ Performance and Evaluation Report for Period Ending: ☐ Final Performance and Evaluation Report

Line	Summary by Development Account	Total Estimated Cost		Total Actual Cost 1	
		Original	Revised2	Obligated	Expended
1	Total non-CFP Funds				
2	1406 Operations (may not exceed 20% of line 21) 3	$216,000	$216,000		
3	1408 Management Improvements	10,000	5,000		
4	1410 Administration (may not exceed 10% of line 21)	108,000	108,000		
5	1411 Audit	5,000	5,000		
6	1415 Liquidated Damages				
7	1430 Fees and Costs	133,000	65,000		
8	1440 Site Acquisition				
9	1450 Site Improvement	51,000	119,000		
10	1460 Dwelling Structures	425,000	458,315		
11	1465.1 Dwelling Equipment—Nonexpendable		30,000		
12	1470 Non-dwelling Structures	20,000	20,000		
13	1475 Non-dwelling Equipment	60,000	60,000		
14	1485 Demolition				
15	1492 Moving to Work Demonstration				
16	1495.1 Relocation Costs				
17	1499 Development Activities 4				

18a	1501 Collateralization or Debt Service paid by the PHA				
18ba	9000 Collateralization or Debt Service paid Via System of Direct Payment				
19	1502 Contingency (may not exceed 8% of line 20)	58,315			
20	Amount of Annual Grant:: (sum of lines 2 - 19)	$1,086,315	$1,086,315		
21	Amount of line 20 Related to LBP Activities				
22	Amount of line 20 Related to Section 504 Activities				
23	Amount of line 20 Related to Security - Soft Costs				
24	Amount of line 20 Related to Security - Hard Costs	$ 51,000	$ 51,000		
25	Amount of line 20 Related to Energy Conservation Measures	$ 175,000	$ 175,000		

Signature of Executive Director, Mary K. Vaughn Date 12/14/10	Signature of Public Housing Director, Tom Byler Date 12/14/10

1 To be completed for the Performance and Evaluation Report.
2 To be completed for the Performance and Evaluation Report or a Revised Annual Statement.
3 PHAs with under 250 units in management may use 100% of CFP Grants for operations.
4 RHF funds shall be included here.

Agenda Item No. VII-2

City of Wichita
City Council Meeting
December 14, 2010

TO: Wichita Housing Authority Board

SUBJECT: Declaration of Trust – Public Housing

INITIATED BY: Housing and Community Services Department

AGENDA: Wichita Housing Authority Consent

Recommendation: Approve the Declaration of Trust and authorize the necessary signatures.

Background: The United States Housing Act of 1937 Act requires public housing authorities to ensure a current Declaration of Trust is recorded against all property that has been acquired, developed, maintained or assisted with funds from the is established by the Act. In addition, the requirement is established by U. S. Department of Housing and Urban Development (HUD) regulations and the Annual Contributions Contract with HUD.

A Declaration of Trust is a legal instrument that grants HUD an interest in public housing property. It provides public notice that the property must be operated in accordance with all public housing federal requirements, including the requirement not to convey or otherwise encumber the property unless expressly authorized by federal law and HUD.

HUD has issued a Public and Indian Housing Notice 2010-44 to remind housing authorities of the continuing legal responsibility to ensure that a current Declaration of Trust is recorded against all of public housing real estate property.

Analysis: Staff has reviewed the current real estate inventory and has prepared a single Declaration of Trust, with legal descriptions, for the Wichita Housing Authority's entire inventory. The attached Declaration of Trust is organized by its four Asset Management Properties.

Financial Considerations: None.

Goal Impact: The Public Housing Program contributes to the Economic Vitality and Affordable Living goal.

Legal Considerations: The new Declaration of Trust will bring the Wichita Housing Authority into compliance with the Public and Indian Housing Notice 2010-44 and HUD regulations.

Recommendation/Action: It is recommended that the Wichita Housing Authority Board approve the Declaration of Trust and authorize the necessary signatures.

Attachment: Declaration of Trust

Declaration of Trust

(Public Housing Modernization Grant Projects)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB No. 2577-0270
exp. 09/30/2013

Whereas, (1, see instructions)___City of Wichita Housing Authority_____ (herein called the Public Housing Agency (PHA), a public body corporate and politic, duly created and organized pursuant to and in accordance with the provisions of the laws of the (2) __State of Kansas_____, and the United States of America, Secretary of Housing and Urban Development (herein called HUD) pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437, et seq.) and the Department of Housing and Urban Development Act (5 U.S.C. 624) entered into a certain contract with the effective date as of (mm/dd/yyyy) (3)__01/23/1996_____, (herein called the Annual Contributions Contract) and a certain Modernization Project Grant Amendment to the Annual Contributions Contract with the effective date as of (mm/dd/yyyy) (4) _____, (herein called the Modernization Grant Amendment) providing for a grant to be made by HUD to assist the PHA in modernizing lower income housing project(s); and

Whereas, as of the date of the execution of this Declaration of Trust, the Modernization Grant Amendment and the Annual Contributions Contract cover certain individual lower income housing projects located in: (5) __Wichita, Kansas_____ which will provide approximately (6) __578_____ dwelling units; and which lower income housing projects are known as Modernization Project No. (7) _KS004 _____ and individual projects as follows:
Project No. (8) _KS004000001 _____ with approximately ____176_____ dwelling units;
Project No. (8) _KS004000002 _____ with approximately _____50_____ dwelling units;
Project No. (8) _KS004000003 _____ with approximately ____193_____ dwelling units; and
Project No. (8) _KS004000004 _____ with approximately ____159_____ dwelling units.

Whereas, the modernization of each Project will have been financed with grant assistance provided by HUD.
Now Therefore, to assure HUD of the performance by the PHA of the covenants contained in the Modernization Grant Amendment and the Annual Contributions Contract, the PHA does hereby acknowledge and declare that it is possessed of and holds in trust for the benefit of HUD, for the purposes herein stated, the following described real property situated in: (9) City of Wichita, Sedgwick County, Kansas

To Wit: (Insert legal description for each individual project.)(10) legal descriptions on the attached Exhibits

and all buildings and fixtures erected or to be erected thereon or appurtenant thereto.

The PHA hereby declares and acknowledges that during the existence of the trust hereby created, HUD has been granted and is possessed of an interest in the above described Project property, **To Wit:**

The right to require the PHA to remain seized of the title to said property and to refrain from transferring, conveying, assigning, leasing, mortgaging, pledging, or otherwise encumbering or permitting or suffering any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said property or any part thereof, appurtenances thereto, or any rent, revenues, income, or receipts there from or in connection therewith, or any of the benefits or contributions granted to it by or pursuant to the Modernization Grant Amendment and the Annual Contributions Contract, or any interest in any of the same except that the PHA may (1) to the extent and in the manner provided in the Annual Contributions Contract, (a) lease dwellings and other spaces and facilities in any Project, or (b) convey or otherwise dispose of any real or personal property which is determined to be excess to the needs of any Project, or (c) convey or dedicate land for use as streets, alleys, or other public right-of-way, and grant easements for the establishment, operation, and maintenance of public utilities; or (d) enter into and perform contracts for the sale of dwelling units to members of tenant families, as authorized by the United States Housing Act of 1937, or (2) with the approval of HUD, release any Project from the trust hereby created; Provided, That nothing herein contained shall be construed as prohibiting the conveyance of title to or the delivery of possession of any Project to HUD pursuant to the Annual Contributions Contract.

The endorsement by a duly authorized officer of HUD (1) upon any conveyance or transfer made by the PHA of any real or personal property which is determined to be excess to the needs of any Project, or (2) upon any instrument of conveyance or dedication of property, or any interest therein, for use as streets, alleys, or other public right-of-way, or for the establishment, operation and maintenance of public utilities, or (3) upon any instrument transferring or conveying a dwelling unit, or an interest therein, to a member of a tenant family, or (4) upon any instrument of release made by the PHA of any Project shall be effective to release such property from the trust hereby created.

The individual projects covered by the Modernization Grant Amendment shall be subject to this Declaration of Trust for a period of twenty years beginning on the date of the Modernization Grant Amendment. Each individual project shall also be subject to this Declaration of Trust for a period of twenty years after the date of the most recent Modernization Grant Amendment applicable to that project. Upon expiration of the period during which the PHA is obligated to operate the individual projects in accordance with the Annual Contributions Contract, the trust hereby created shall terminate and no longer be effective.

In Witness Whereof, the PHA by its officers thereunto duly authorized has caused these presents to be signed in its name and its corporate seal to be hereunto affixed and attested this date (mm/dd/yyyy) _____.

(seal)

By _____ Chairperson
Attest _____ Secretary

Date (mm/dd/yyyy) _____

ref. Handbook 7485.1 form **HUD-52190-B** (3/90)

City of Wichita
City Council Meeting
December 14, 2010

TO: Wichita Housing Authority Board

SUBJECT: Board Resolution Approving 2011 Project Based Budget

INITIATED BY: Housing and Community Services Department

AGENDA: Housing Authority Consent

Recommendation: Adopt the resolution approving the Public Housing Project-Based budget for 2011 and authorize the necessary signatures.

Background: The U.S. Department of Housing and Urban Development (HUD) has adopted the "New Public Housing Operating Fund" Rule (24 CFR 990). The final rule includes two major provisions. It establishes a new formula "Operating Fund Program" for determining operating subsidy, and it introduces a new business model called asset management. Implementation of asset management is expected to lead to better management oversight of public housing by providing greater information about the operating costs and performance level of each public housing project. Under the new model the Housing Authority Board is required to adopt a resolution approving the budget in project-based format.

Analysis: HUD has mandated that Housing Authority annual budgets be prepared in a project-based format and approved by the Housing Authority Board using HUD form 52574.

Legal Considerations: The Wichita Housing Authority Board's approval is required for budget submittal to HUD.

Financial Considerations: This action establishes the 2011 funding from HUD in the project-based budget format which includes four Asset Management Projects (AMPs) and the Central Office Cost Center (COCC). Following are the totals for each project:

AMP 1	Greenway Manor and McLean Manor	$860,917
AMP 2	Rosa Gragg and Bernice Hutcherson	$200,239
AMP 3	Scattered Sites	$1,174,240
AMP 4	Scattered	$1,004,384
COCC		$2,114,033

Goal Impact: The Public Housing program contributes to the Economic Vitality and Affordable Living goal.

Recommendations/Actions: It is recommended the Wichita Housing Authority Board adopt the resolution approving the Public Housing Project-Based budget for 2011 and authorize the necessary signatures.

Attachments:
HUD Form-52574 – PHA Board Resolution

PHA Board Resolution
Approving Operating Budget

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing -
Real Estate Assessment Center (PIH-REAC)

OMB No. 2577-0026
(exp. 10/31/2009)

Public reporting burden for this collection of information is estimated to average **10 minutes per response**, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income public housing program and provides a summary of the proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the public housing agency (PHA) and the amounts are reasonable, and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

PHA Name: WICHITA HOUSING AUTHORITY PHA Code: KS004

PHA Fiscal Year Beginning: January 1, 2011 Board Resolution Number: 12/14/2010-

Acting on behalf of the Board of Commissioners of the above-named PHA as its Chairperson, I make the following certifications and agreement to the Department of Housing and Urban Development (HUD) regarding the Board's approval of (check one or more as applicable):

		DATE
☒	Operating Budgets (for COCC and all Projects) approved by Board resolution on:	12/14/2010
☐	Operating Budget submitted to HUD, if applicable, on:	
☐	Operating Budget revision approved by Board resolution on:	
☐	Operating Budget revision submitted to HUD, if applicable, on:	

I certify on behalf of the above-named PHA that:

1. All statutory and regulatory requirements have been met;
2. The PHA has sufficient operating reserves to meet the working capital needs of its developments;
3. Proposed budget expenditure are necessary in the efficient and economical operation of the housing for the purpose of serving low-income residents;
4. The budget indicates a source of funds adequate to cover all proposed expenditures;
5. The PHA will comply with the wage rate requirement under 24 CFR 968.110(c) and (f); and
6. The PHA will comply with the requirements for access to records and audits under 24 CFR 968.110(i).

I hereby certify that all the information stated within, as well as any information provided in the accompaniment herewith, if applicable, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012.31, U.S.C. 3729 and 3802)

Print Board Chairperson's Name:	Signature:	Date:
CARL BREWER, MAYOR/CHAIRMAN		12/14/2010

Previous editions are obsolete

form HUD-**52574** (08/2005)

Agenda Item No. VII-4

City of Wichita
City Council Meeting
December 14, 2010

TO: Wichita Housing Authority Board

SUBJECT: Submission to HUD for 2011 Section 8 Mainstream Funding

INITIATED BY: Housing and Community Services Department

AGENDA: Wichita Housing Authority Consent

Recommendation: Approve the submission of the 2011 requisition for payment of annual contributions for the Section 8 Mainstream Program and authorize the necessary signatures.

Background: The U.S. Department of Housing and Urban Development (HUD) requires that the Wichita Housing Authority (WHA) annually submit Section 8 Mainstream budgets for HUD approval. The budget estimates the housing assistance and administrative fees necessary to support the 75 Mainstream housing choice vouchers that HUD has allocated for the WHA to assist persons with disabilities, to obtain affordable housing. The Mainstream program allows a client to locate his or her own rental housing unit and the WHA subsidizes the rent through housing assistance payments to the landlord based on the client's household income.

Analysis: The 2011 budget will provide $334,227 for the period of January 1, 2011 through December 31, 2011, 75 vouchers and administrative costs based on the actual number of months the units are leased.

Legal Considerations: The Wichita Housing Authority Board's approval is required for budget submittal to HUD.

Goal Impact: The Mainstream program will contribute to the Economic Vitality and Affordable Living goal.

Financial Considerations: The program is completely funded by HUD grants. No local tax funds will be required for this program.

Recommendations/Actions: It is recommended the Wichita Housing Authority Board approve the submission of the 2011 requisition for payment of annual contributions for the Section 8 Mainstream Program and authorize the necessary signatures.

Attachments:

HUD Form-52663	HUD Form-50071
HUD Form-52673	Standard Form-LLL
HUD Form-52672	Standard Form-424
HUD Form-50070	

Suggested Format for **Requisition for Partial Payment of Annual Contributions**

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(Exp. 07/31/2007)

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless that collecton displays a valid OMB control number. Authority for this collection of information is the Housing and Community Development Act of 1987. Housing Agencies (HAs) required to maintain financial reports in accordance with accepted accounting standards too permit timely and effective audits. The financial records identify the amount of annual contributions that are received and disbursed by HAs. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Date of Requisition (mm/dd/yyyy):
2. No. of Months in 1st FY: 12
3. Project Number: K S 0 0 4 D V 0 0 0 1
4. Public Housing Agency (HA) (Name and Address):
HOUSING AND COMMUNITY SERVICES DEPARTMENT
332 N. RIVERVIEW
WICHITA, KS 67203
(WICHITA HOUSING AUTHORITY) (MAINSTREAM 5-YR)
5. Housing Program Type (Mark one)
☐ (a) Moderate Rehabilitation ☒ (c) Rental Vouchers
☐ (b) Rental Certificates
6. HA Fiscal Year Ending Date (Mark one box and complete year)
☐ March 31, ☐ June 30, ☐ September 30, ☒ December 31, (YYYY) 2011

7. Number of Units Under Lease to Eligible Families as of Date of Requisition	8. Average Monthly Housing Assistance Payment Per Unit as of Date of Requisition	9. Estimated Number of Units to be Under Lease at End of Requested Year	10. Unit Months Under Lease Year to Date	11. Average Monthly Housing Assistance Payment Per Unit Year to Date
69	315.77	75	848 (12 MOS)	285.36

	Funds Required for Requested Year
12. Preliminary Administrative and General Expense	
13. Estimated Housing Assistance Payments (Account 4715)	281,240
14. Estimated Ongoing Administrative Fee	51,487
15. Estimated Hard-to-House Fee (Existing Housing Certificates and Housing Vouchers Only)	1,500
16. Independent Public Accountant Audit Costs (Section 8 Only)	0
17. Total Funds Required to End of Requested Year (Sum of Lines 12 through 16)	334,227
18. Payments Previously Approved for the Fiscal Year (applicable only to revised requisition)	0
19. Adjustment to Requisition (Difference of Line 17 and Line 18. **Do not** use brackets)	0
20. Total Payment Requirement For Requested Year (Line 18 plus or minus adjustment on Line 19 if revised requisition. Total must equal Line 17)	334,227

21. ☒ Paid in Equal Installments (Original Requisition Only) ☐ Paid in Unequal Installments

22. Installment	1	2	3	4	5	6
HA Total	27,855	27,852	27,852	27,852	27,852	27,852
HUD Revision						
Installment	7	8	9	10	11	12
HA Total	27,852	27,852	27,852	27,852	27,852	27,852
HUD Revision						

23a. Total (HA) $ 334,227
23b. Total (HUD) $
24. Revised Monthly Installments Begin Month Of:

I Certify that (1) housing assistance payments have been or will be made only in accordance with Housing Assistance Payments Contracts or Housing Voucher contracts in the form prescribed by HUD and in accordance with HUD regulations and requirements; (2) units have been inspected by the HA in accordance with HUD regulations and requirements; and (3) this requisition for annual contributions has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Title of Authorized HA Official	Title of Authorized HUD Approving Official
Mayor/Chairman	
Signature / Date (mm/dd/yyyy) 12/14/2010	Signature / Date (mm/dd/yyyy)

Estimate of Total Required Annual Contributions

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(Exp.07/31/2007)

Public reporting burden for this collection of information is estimated to average 1.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless that collecton displays a valid OMB control number. Authority for this collection of information is the Housing and Community Development Act of 1987. Housing Agencies (HAs) required to maintain financial reports in accordance with accepted accounting standards too permit timely and effective audits. The financial records identify the amount of annual contributions that are received and disbursed by HAs. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Public Housing Agency (Name and Address)

HOUSING AND COMMUNITY SERVICES
332 N. RIVERVIEW
WICHITA, KS 67203
(WICHITA HOUSING AUTHORITY)

2. Project No.
K S 0 0 4 D V 0 0 0 1

3. Submission
[X] Original [ ] Revision No.

4. Annual Contributions Contract No.	5. HUD Field Office	6. HUD Regional Office	7. No. Dwelling Units	8. No. Units Months
KC7012V	Kansas City, MO	Kansas City, MO	75	900

9. Housing Program Type (Mark One)
[ ] (a) New Construction [ ] (b) Substantial Rehabilitation [ ] (c) Moderate Rehabilitation [ ] (d) Existing Housing Certificates [X] (e) Housing Vouchers

10. PHA Fiscal Year Ending Date (Mark one and complete year)
[ ] (a) March 31, [ ] (b) June 30, [ ] (c) September 30, [X] (d) December 31, YYYY 2011

I. Maximum Annual Contributions	PHA Estimate (Housing Vouchers Only)			HUD Approved (Housing Vouchers Only)		
	Housing Payments	PHA Fee	PHA Estimate Total	Housing Payments	PHA Fee	HUD Approved Total
11. Maximum Annual Contributions Commitment	281,240	51,487	332,727			
12. Prorata Maximum Annual Contributions Applicable to a Period in Excess of 12 Months	H to H Fee	1,500	1,500			
13. Maximum Annual Contributions for Fiscal Year (Line 11 plus Line 12)	281,240	52,987	334,227			
14. Project Account-Estimated or Actual Balance at Beginning of Requested Fiscal Year						
15. Total Annual Contributions Available—Estimated or Actual (Line 13 plus Line 14)	281,240	52,987	334,227			

II. Maximum Annual Contributions	PHA Estimate (Housing Vouchers Only)			HUD Approved (Housing Vouchers Only)		
	Housing Payments	PHA Fee	PHA Estimate Total	Housing Payments	PHA Fee	HUD Approved Total
16. Estimated Annual Housing Assistance Payments (form HUD-52672, Line 15)			281,240			
17. Estimated Ongoing Administrative Fee (form HUD-52672, Line 18)			51,487			
18. Estimated Hard-to-House Fee (form HUD-52672, Line 19)			1,500			
19. Estimated Independent Public Accountant Audit Costs			0			
20. Estimated Preliminary Administrative and General Expense (form HUD-52672, Lines 27 and 36)			0			
21. Carryover of Preliminary Administrative and General Expense not Expended in the Previous FY Ending ( )			0			
22. Estimated Non-Expendable Equipment Expense (form HUD-52672, Line 32)			0			
23. Carryover of Non-Expendable Equipment Expense not Expended in the Previous FY Ending ( )			0			
24. Total Annual Contributions Required—Requested Fiscal Year (Lines 16 through 23)			334,227			
25. Deficit at End of Current Fiscal Year—Estimated or Actual			0			
26. Total Annual Contributions Required (Line 24 plus Line 25)			334,227			
27. Estimated Project Account Balance at End of Requested Fiscal Year (Line 15 minus Line 26)			0			
28. Provision for Project Account Requested Fiscal Year Increase (decrease) (Line 27 minus Line 14)			0			
III. Annual Contributions Approved						
29. Total Annual Contributions Approved/Requested Fiscal Year (Line 26 plus increase, if any, on Line 28)			334,227			
30. Source of Total Contributions Approved/Requested Fiscal Year: **(a)** Requested Fiscal Year Maximum Annual Contributions Commitment (Line 13 or Line 29, whichever is smaller)			334,227			
(b) Project Account (Line 29 minus Line 30(a))			0			

Name of PHA Approving Official		Name of Approving HUD Field Office Official	
Carl Brewer			
Signature		Signature	
Title	Date (mm/dd/yyyy)	Title	Date (mm/dd/yyyy)
Mayor/Chairman	12/14/2010		

Supporting Data for Annual Contributions Estimates

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(Exp. 9/30/2002)

1. Public Housing Agency (Name and Address)

Housing and CommunityServices
332 N. Riverview
Wichita, Kansas 67203
Wichita Housing Authority

2. Project No. KS004DV0001

3. Submission: X Original ___Revision No. ____

4. No. of Dwelling Units: 75

5. No. of Unit Months: 900

Part I Estimate of Annual Housing Assistance Payments Required

	Bedroom Size Of Dwelling Units	Number of Dwelling Units	(Per Glotson) Monthly Gross Rent /Payment Standard	Amount Payable by Family Toward Gross Rent	Monthly Housing Assistance Payments	Unit Months Under Lease	Annual Housing Assistance Payments
6.	0BR					0	0
7.	1BR	45	494	231	263	530	139,390
8.	2BR	24	651	301	350	288	100,800
9.	3BR	6	870	300	570	72	41,040
10.	4BR	-	-	-	-	-	-
11.	5BR		-			-	-
75 12.	6BR		-			-	-
Based on Annual Leaseup of 890 Ums					Due to rounding		10
15.	Total						281,240

Part II Calculation of Estimated Ongoing Administrative Fee

	Unit Months (a)	HUD Published 2-BR Fair Market Rent x (b)	Product of Columns (a) x (b) = (c)	Allowable Admin Fee x (d)	Administrative Fee = (e)
16.	890	X $57.85			51,487
17.					0
18	Total				51,487

Part III Calculation of Estimated Hard-To-House (Existing Housing Certificates and Housing Vouchers Only)

	Estimated Number of Families (a)	Fee Per Family x (b)	Total Hard To House = (c)
19.	20	75	1,500

Part IV Calculation of Estimated Preliminary Expense

		Requested Amount	HUD Modifications
Administrative Expenses	20. **FSS Coordinators V00F04**		
	21. Employee Benefit Contributions		
	22. Legal Expense		
	23. Travel Expense		
	24. Sundry		
	25. Office Rent		
	26. Accounting and Auditing Fees		
	27. Total Administrative Expenses		
Non-Expendable Equipment Expenses	28. Office Equipment		
	29. Office Furnishings		
	30. Automotive		
	31. Other		
	32. Total Non-Expendable Equipment Expenses		
General Expense	33. Maint. and Operations (Non-Expend Equip Only)		
	34. Insurance		
	35. Sundry		
	36. Total General Expense		
Total Preliminary Expenses	37. Sum of Lines 27,32, and 36		

Submit three copies
Previous Editions are obsolete

form HUD-52672 (2/85)
ref Handbook 7420.7

Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

Applicant Name

City of Wichita, Kansas, Department of Housing and Community Services (Wichita Housing Authority)

Program/Activity Receiving Federal Grant Funding

Wichita Housing Authority - Section 8 Mainstream 5 Year (FY2011)

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federalagency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

332 N. Riverview, Wichita, Kansas 67203

Check here ☐ if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title
Mary K Vaughn	Director of Housing and Community Services
Signature	**Date**
X	

Certification of Payments to Influence Federal Transactions

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Applicant Name

CITY OF WICHITA, KANSAS, DEPARTMENT OF HOUSING AND COMMUNITY SERVICES
(WICHITA HOUSING AUTHORITY) 332 N. RIVERVIEW, WICHITA, KS 67203

Program/Activity Receiving Federal Grant Funding

SECTION 8 MAINSTREAM 5-YEAR FY 2011

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title
Mary K Vaughn	Director of Housing and Community Services

Signature	Date (mm/dd/yyyy)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
[B] a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	[C] a. bid/offer/application b. initial award c. post-award	[ ] a. initial filing b. material change **For Material Change Only:** year _____ quarter N/A date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
[x] Prime [ ] Subawardee Tier x, *if known*: **City of Wichita, KS-Housing & Community Services (Wichita Housing Authority)** **332 N. Riverview, Wichita, Kansas 67203** **Congressional District**, *if know* Kansas 4th	N/A **Congressional District** *if known*:
6. Federal Department/Agency: HUD	**7. Federal Program Name/Description:** Section 8 Mainstream 5-Year (FY2011) CFDA Number, *if applicable*: 14.181
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $ 334,227 (estimated)
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*): N/A	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*): N/A

11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: Mary K Vaughn
Title: Director of Housing and Community Services
Telephone No.: 316-462-3795 Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

Version 7/03

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED November 23, 2010	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application	Pre-application
☐ **Construction**	☐ **Construction**
☑ **X X Non-Construction**	☐ **Non-Construction**

5. APPLICANT INFORMATION

Legal Name: City of Wichita, Kansas	**Organizational Unit:** Department: Housing and Community Services
Organizational DUNS: 04-306-34-60	Division: Wichita Housing Authority
Address: Street: 332 N. Riverview	**Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix: Ms; First Name: Mary
City: Wichita	Middle Name: K
County: Sedgwick	Last Name: Vaughn
State: Kansas; Zip Code: 67203	Suffix:
Country: USA	Email: mkvaughn@wichita.gov
6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: 4 8 - 6 0 0 0 6 5 3	Phone Number (give area code): 316-462-3795; Fax Number (give area code): 316-462-3719

8. TYPE OF APPLICATION:

☐ **New** ☑ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es)
(See back of form for description of letters.)

Other (specify)

7. TYPE OF APPLICANT: (See back of form for Application Types)

Public Housing Agency

Other (specify)

9. NAME OF FEDERAL AGENCY:
U.S, Department of Housing and Urban Development

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 1 4 - 8 7 1

TITLE (Name of Program): Mainstream 5 yr

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
Wichita Housing Authority - S8 Mainstream 5-Year Program

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:
Wichita, Kansas

13. PROPOSED PROJECT

Start Date:	Ending Date:
01/01/2011	12/31/2011

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project
Kansas 4th	Kansas 4th

15. ESTIMATED FUNDING:

a. Federal Low Rent	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other Section 8 - Mainstream	$ 334,227 .00
f. Program Income	$ .00
g. TOTAL	$ 334,227 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE:

b. No. ☑ PROGRAM IS NOT COVERED BY E. O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes" attach an explanation. ☑ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix: Ms; First Name: Mary K	Middle Name
Last Name: Vaughn	Suffix
b. Title: Director of Housing and Community Services	c. Telephone Number (give area code): 316-462-3795
d. Signature of Authorized Representative	e. Date Signed

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

2011 Form SF-424 ms.pdf

City of Wichita
City Council Meeting
December 14, 2010

TO: Wichita Airport Authority

SUBJECT: Administration Building Rehabilitation
Change Order No. 4
Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the change order.

Background: On March 18, 2008, the Wichita Airport Authority (WAA) approved the capital project to design and renovate portions of the Airport Administration Building to better accommodate public meeting space needs, and improve the building's energy efficiency. On April 17, 2009 the WAA approved a construction contract with Martin K. Eby for the project.

Analysis: Within Change Order No. 3 was an item to assess liquidated damages for $7,000 due to the construction going beyond the contract time. Subsequent to Change Order No. 3 being executed the WAA and the contractor entered into negotiations whereby the contractor provided additional work in lieu of the liquidated damages. Change Order No. 4 has been prepared to delete the credit for liquidated damages and substitute $7,000 of needed additional work including: installation of transition strips and kick plates in restrooms, atrium screening, replacing selected lighting and sensors, airfield side screen fence and restripe remaining south parking lot. This represents an increase of less than 1%.

	Amount	Description	Date
Contract	$776,900	Construction Contract Martin K. Eby Construction, Inc.	4/17/2009
CO No. 1	15,401	Drainage corrections, landscaping, Landside Util. coordination	1/5/2010
CO No. 2	45,659	Equipment procurement, fire alarm and audio visual	3/23/2010
CO No. 3	-7,997	Landscape, audio visual, liquidated damages	8/24/2010
CO No. 4	7,000	Repay liquidated damages through "no charge" work	12/14/2010
	$836,963	Total Cost	

Financial Considerations: This change order is covered through the current budget. This project is funded with General Obligation bonds paid for with Airport revenue.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through improvements to allow uninterrupted services to be provided to the Airport System's tenants and users and to the aviation community.

Legal Considerations: The change order has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the change order and authorize the necessary signatures.

Attachments: Change Order No. 4.

AIA Contract Administration
G701 Change Order

(Instructions on the reverse side)

Distribution List:
Owner _____
Architect _____
Contractor _____
Field _____
Other _____

COPY - ORIGINAL ON FILE AT ARCHITECT'S OFFICE

PROJECT *(Name and address)*:
Wichita Airport Authority Addition and Remodel

TO CONTRACTOR *(Name and address)*:
Martin K. Eby Construction Co,, Inc.

CHANGE ORDER NUMBER: Four

DATE: November 15, 2010

ARCHITECT'S PROJECT NUMBER: 0605

CONTRACT DATE: May 9, 2009

CONTRACT FOR: General Construction

THE CONTRACT IS CHANGED AS FOLLOWS:
(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

The following work is to be done at no charge in lieu of liquidated damages. (LDs for $7,000.00 were assessed in Change Order #3 and are removed by this change order) There is no change in contract time.

-Install basement restroom carpet/tile transition strips.

-Replace damaged base tile in Room 137.

The original (Contract Sum) (~~Guaranteed Maximum Price~~) was	$ 776,900.00
The net change by previously authorized Change Orders	$ 53,063.00
The (Contract Sum) (~~Guaranteed Maximum Price~~) prior to this Change Order was	$ 829,963.00
The (Contract Sum) (~~Guaranteed Maximum Price~~) will be (increased) (~~decreased) (unchanged~~) by this Change Order in the amount of	$ 7,000.00
The new (Contract Sum) (~~Guaranteed Maximum Price~~) including this Change Order will be	$ 836,963.00

The Contract Time will be (increased) (~~decreased) (unchanged~~) by _____ ( ) days.
The date of Substantial Completion as of the date of this Change Order therefore is March 24, 2010

NOTE: *This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.*

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Richard B. Kraybill	Martin K. Eby Co., Inc	Wichita Airport Authority
ARCHITECT *(Firm name)*	**CONTRACTOR** *(Firm name)*	**OWNER** *(Firm name)*
250 Laura, Suite 105	610 N. MAIN, SUITE 500	
ADDRESS	**ADDRESS**	**ADDRESS**
Wichita, KS 67211	WICHITA, KS 66603	
BY *(Signature)*	**BY** *(Signature)*	**BY** *(Signature)*
RICHARD B. KRAYBILL	BRIAN TRUSKEY	
(Typed name)	*(Typed name)*	*(Typed name)*
11/19/2010	11/19/2010	
DATE	**DATE**	**DATE**

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures changes will not be obscured.

AIA Document G701 Change Order © 2001 The American Institute of Architects • Washington, DC • *www.aia.org* • WARNING: Reproduction, unlicensed photocopying or substantial quotation of the material herein without written permission of the AIA violates the copyright laws of the United States and will subject the violator to legal prosecution. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, *copyright@aia.org*.

RECEIVED
NOV 23, 2010
AIRPORT ENGINEERING

-Install screening on the lower portion of the basement atrium glass

-Paint upstairs break room walls.

-Motion sensor switch installed in Room 026. Sensor with the light switch is acceptable.

-Place galvanized or stainless screen on the accessible ends of the trench drains.

-Replace the 10 remaining light fixtures on main floor

-Replace two light fixtures in atrium skylight area with same style as is in the upstairs corridors.

-Re-stripe remaining south parking lot.

-Install airfield side screen fence (6'x16' with tan slats) on west side of building perpendicular from west wall. Anchor to sidewalk with galvanized bolts and plates to withstand high winds and people leaning into fence.

-Install black plastic kick plates on all restroom doors (push side only). All sized alike.

-Rework/rearrange ceiling tiles in reception/public area to provide a uniform look/style. Switching tile from other areas is acceptable.

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL DECEMBER 14, 2010

a. Harry & Rock Intersection (KDOT) (87N-0354-01/472-84577/706969/636xxx/207435) See Special Provisions. (District II) - $9,560,740.00

b. 119th Street West, Kellogg to Maple (KDOT) (87N-0388-01/472-84850/707011/635696/209476) See Special Provisions. (District V) - $5,880,000.00

c. 47th Street South, Meridian to Seneca (87N-0394-01/472-84296/706935/636239/205401/770627) See Special Provisions. (District IV) - $6,815,000.00

d. Retaining Wall Removed from Calfskin Creek Floodway (west of Maize Road, south of Hidden Valley Street) (468-84720/133116/) Does not affect existing traffic. (District V) - $17,200.00

e. Repaint Traffic Signals at Kellogg & Broadway (472-84950/132723/) See Special Provisions. (District I) - $80,000.00

f. Stormwater Sewer #655 to serve Auburn Hills 7th Addition (east of 135th Street West, south of Maple Avenue) (468-84620/133116/) Traffic maintained using flagpersons & barricades. (District V) - $35,200.00

g. Lateral 13, Main 4 Northwest Interceptor Sewer to serve Silverton Addition (north of 13th Street North, west of 135th Street West) (468-84246/744314/744314) Traffic maintained using flagpersons & barricades. (District V) - $170,000.00

h. Fontana from the east line of Lot 58, Block 1 to the east line of Lot 33, Block 1; Park Ridge from Fontana to Chambers; Chanbers from Fontana to Park Ridge to to serve Fontana 4th Addition (east of 119th Street West, north of 29th Street North) (472-84800/766244/490262) Does not affect existing traffic. (District V) - $554,000.00

i. Stormwater Drain #282 to serve Fontana, Fontana 2nd and Fontana 4th Additions (east of 119th Street West, north of 29th Street North) (468-84121/751485/485376) Does not affect existing traffic. (District V) - $481,000.00

j. Stormwater Drain #283 to serve Fontana, Fontana 2nd and Fontana 4th Additions (east of 119th Street West, north of 29th Street North) (468-84122/751486/485377) Does not affect existing traffic. (District V) - $596,000.00

k. 2010 Contract Maintenance Concrete Repairs, Phase 5 (27th Street North, Hillside to Bluff) (472-84951/472-84951/132723) Traffic maintained using flagpersons & barricades. (District I) - $25,000.00

Statements of Cost:

WATER

a. Improving Water Distribution System to serve BG's 1st Addition (south of MacArthur, west of Hoover). Total Cost - $24,195.93 (plus idle fund interest - $104.07, plus temporary note interest - $0). Financing to be issued at this time - $24,300.00. (735442/448-90452/470-115).

b. Improving Water Distribution System for I-235 and Broadway to serve Farmers & Kratzkes Addition (north of 37th Street North, east of Arkansas). Total Cost - $263,353.27 (plus idle fund interest - $436.23, plus temporary note interest - $317.50, plus Water Main Benefit Fee - $7,193.00). Financing to be issued at this time - $271,300.00. (735440/448-90447/470-113).

SEWER

c. Constructing Main 11, Northwest Interceptor Sewer to serve Via Christi West Campus Addition (east of 151st Street West, north of 21st Street North). Total Cost - $1,186,631.39 (plus idle fund interest - $1,129.63, plus temporary note interest - $438.98). Sewer Main Benefit Fee - $0. Financing to be issued at this time - $1,188,200.00. (744294/468-84543/480-983).

d. Constructing Lateral 534, Southwest Interceptor Sewer to serve Angel Fire Addition (north of 47th Street North, east of West Street). Total Cost - $126,552.14 (plus idle fund interest - $376.86, plus temporary note interest - $0). Sewer Main Benefit Fee - $18,671.00. Financing to be issued at this time - $145,600.00. (744311/468-84668/480-003).

STORM WATER SEWER AND STORM WATER DRAIN

e. Constructing Storm Water Drain No. 354 to serve Maize 54 Addition (north of Kellogg, east of Maize). Total Cost - $1,786,369.19 (less idle fund interest - $1,719.99, plus temporary note interest - $6,550.80). Financing to be issued at this time - $1,791,200.00. (751483/468-84575/485-374).

f. Constructing Storm Water Drain No. 356 to serve North Greenwich Addition (north of 29th Street North, east of Greenwich). Total Cost - $152,729.28 (plus idle fund interest - $398.26, plus temporary note interest - $72.46). Financing to be issued at this time - $153,200.00. (751488/468-84592/485-379).

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Easement Encroachment Agreement for Newmarket V, LLC. (east of Maize Road, south of 29th Street North) (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreement.

Background: An ingress and egress agreement has been prepared that will formally assign the City of Wichita the right to cross property owned by Newmarket V, LLC, located between Maize Road and a new storm water pump station.

Analysis: The agreement allows the City to construct a temporary gravel access road over the tract shown in Exhibit B of the agreement. The temporary access road will be maintained by the City of Wichita.

Upon completion of the construction of the pump station, a permanent access easement will be established that will not with interfere with Newmarket's development activities. The access easement will be executed and recorded by Newmarket.

Financial Considerations: All costs will be absorbed by the Storm Water Utility operating budget.

Goal Impact: This project addresses the Safe and Secure Community goal by providing a pump station that will service the area during rain events.

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

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

Attachments: Agreement.

AGREEMENT TO GRANT ACCESS FOR INGRESS AND EGRESS

THIS AGREEMENT TO GRANT ACCESS FOR INGRESS AND EGRESS (the "Agreement") is made and entered into this _____ day of _____, by Newmarket V, LLC, a Kansas corporation ("Newmarket"), and the City of Wichita, Kansas, ("City") a body corporate under the laws of the State of Kansas, and their successors and/or assigns.

WHEREAS, Newmarket is the owner of the real property described on Exhibit A attached here to (the "Newmarket Parcel"); and

WHEREAS, the City has constructed a pump station within a drainage easement on the Newmarket Parcel, the location of which is shown on Exhibit B (the "Pump Station Parcel"); and

WHEREAS, the City desired to obtain an easement over and across a portion of the Newmarket Parcel to provide ingress and egress to and from Maize Road and the Pump Station Parcel; and

WHEREAS, Newmarket plans to construct buildings and other site improvements on the Newmarket Parcel in the future making the establishment of a route for a permanent access easement to the Pump Station Parcel from Maize Road impossible at this time;

WHEREAS, the parties have agreed to delay the establishment of a permanent access easement over and across the Newmarket Parcel until such time as the final configuration of buildings and site improvements to be constructed thereon has been determined;

WHEREAS, in lieu of a permanent access easement over and across the Newmarket Parcel the parties have agreed that Newmarket will grant the City the right to construct a temporary gravel access road over the tract shown on Exhibit B (the "Temporary Access Road"), and Newmarket will grant the City a license to use the temporary gravel access road for ingress and egress to and from Maize Road and the Pump Station Parcel, until such time as the final configuration of buildings and site improvements to be constructed on the Newmarket Parcel have been determined.

NOW THEREFORE, for and in consideration of the sum of one dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. T*emporary Access Road.* Newmarket hereby grants the City the right to construct and maintain, at its sole cost and expense, the Temporary Access Road and a license for vehicular traffic in favor of the City over and across the Temporary Access Road to and from Maize Road and the Pump Station Parcel. The license shall be non-cancellable and shall expire only upon the recording of the Permanent Access Easement described in Paragraph 2 below.

2. *Permanent Access Easement*. At such time as construction of the improvements on the Newmarket Parcel have been completed such that the route for the Permanent Access Easement can be established without interference with Newmarket's development activities, Newmarket will execute and record a mutually agreeable Permanent Access Easement for vehicular traffic, in favor of the City providing ingress and egress to the Pump Station Parcel from Maize Road.

3. *Restrictions Applicable to the Temporary Access Road and the Permanent Access Easement*. Among other things, the Temporary Access Road and the Permanent Access Easement shall contain the following:

a. *Width of Temporary Access Road and the Permanent Access Easement*. The Temporary Access Road and the Permanent Access Easement shall not be less than 12 feet wide or more than 24 feet wide at any point.

b. *Use of Temporary Access Road and the Permanent Access Easement*. Neither the Temporary Access Road nor the Permanent Access Easement shall be used in a manner which will interfere with the rights of the owner of any part of the Newmarket parcel; and no owner of the Newmarket Parcel shall use its property in such a manner as to unreasonable interfere with the use and enjoyment of the license and easement to be granted.

c. *Grade and Elevation*. No improvement or maintenance shall alter more than minimally the present grade or elevation of the property;

d. *Work Requiring Repairs or Maintenance*. Any part constructing improvements or performing maintenance on the property subject to the license or the easement shall promptly, and at such party's expense, return the property to is present or better condition once such construction, improvement or maintenance is completed. Such work or repairs as are required to return the property to its present or better condition shall be completed promptly, but in no case more than thirty (30) days following completion of the construction.

4. *Miscellaneous*.

4.1 *Entire Agreement*. This Lease constitutes the entire agreement between the parties as to the subject matter hereof. There are no verbal understandings, agreement, representations or warranties which are not expressly set forth herein. By execution hereof each party certifies that it has read this Lease and understands the various duties and obligations assumed hereunder.

4.2 *All Amendments in Writing*. This Agreement may not be amended, modified, altered or changed in any respect except in writing, signed by the parties hereto.

4.3 *Headings*. the heading to the various Sections herein are for convenience only and do not define or limit the terms hereof and do not constitute a pat of this Agreement.

4.4 *Binding Effect*. The rights, duties and obligations contained herein shall inure to the benefit of the parties here, as well as their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to Grant Access for Ingress and Egress this ____ day of _____, 2010.

NEWMARKET, LLC	THE CITY OF WICHITA, KANSAS
_____	_____
Jerry D. Jones, Vice President	Carl Brewer, Mayor

APPROVAL TO FORM

_____

Gary Rebenstorf
Director of Law

ATTEST:

_____

Karen Sublett, City Clerk

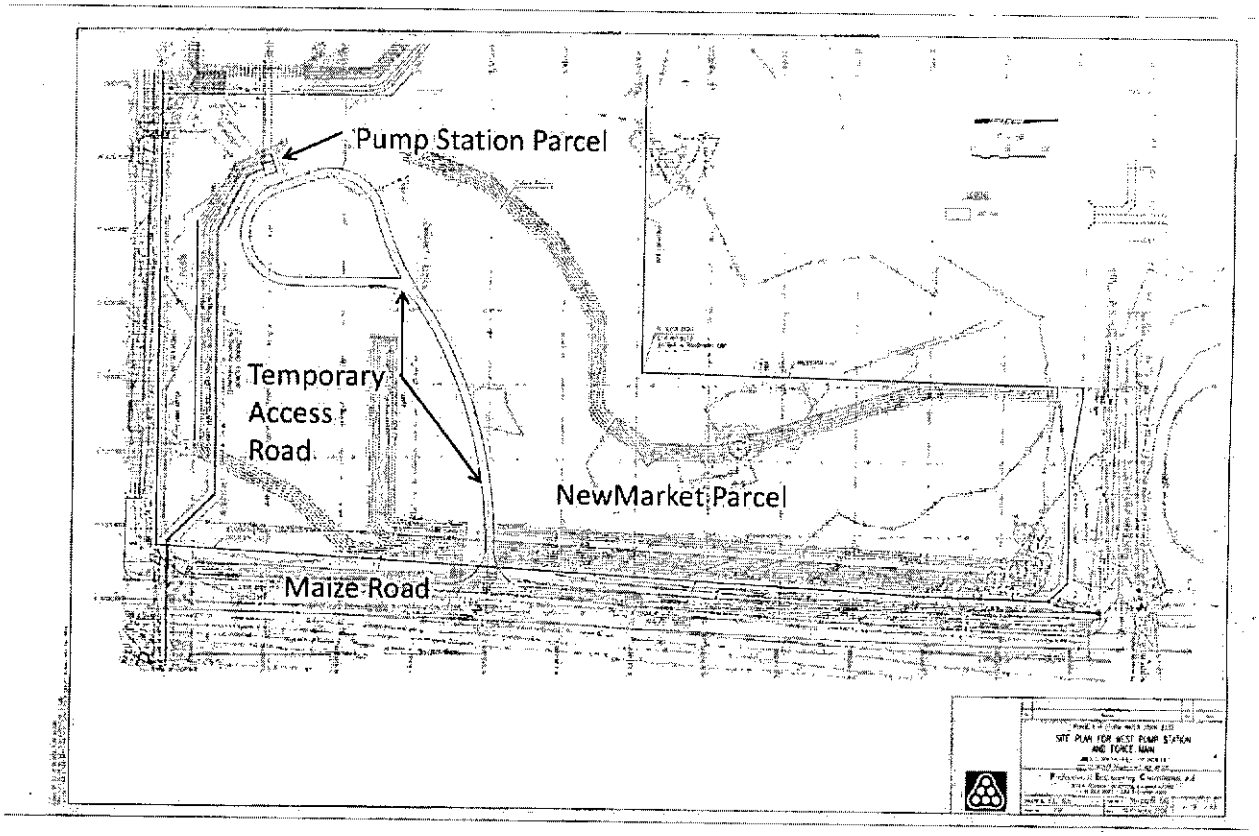
Exhibit A

Newmarket Parcel Legal Description

Lot 1, Block 1 Newmarket V Addition
an addition to Wichita, Sedgwick County, Kansas

Exhibit B

Pump Station Parcel and Temporary Gravel Access Road



City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Traffic Signalization Design Agreements (Districts I & II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the design agreements.

Background: On September 22, 2009, the City Council approved the 2009 Traffic Signalization Program. On April 19, 2010, the Staff Screening and Selection Committee reviewed proposals from seven design consultants for three projects. The selected firms met the project timelines and expected budget constraints, and were chosen based on what is shown in the section below.

Analysis: The projects to be designed, the selected design companies and fees, and the reason for selection are:

39th Street North and Webb Intersection (District II)
Professional Engineering Consultants - $12,000
Consultant recently completed design for signalization improvements at 21st & Greenleaf and 29th & Ohio. Consultant also designed site improvements at the National Center for Aviation Training, which is one leg of this intersection.

Corporate Hills and Webb Intersection (District II)
PB Americas - $37,867
Consultant is currently designing the East Kellogg project, this location is just north of Kellogg. It is important to make sure these projects coordinate together.

Pedestrian Crossing at Oliver, between 13th and 21st (District I)
Schwab-Eaton - $13,240
Consultant was the only one to submit on this project and has designed signal improvements at 55th St and Broadway.

34th Street North and Maize Intersection (District V)
TranSystems - $18,000
Consultant has designed similar signalization project at 21st & Market and 21st & Broadway.

Financial Considerations: The design fees total $81,107. Funding is included in the approved project budget. The funding source is General Obligation bonds, except for the 34th Street and Maize location which was petitioned by the Maize School District and paid by special assessments.

Goal Impact: The projects address the Efficient Infrastructure goal by improving traffic safety and flow at arterial street intersections.

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

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

Attachments: Agreements.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

for

TRAFFIC SIGNALIZATION AT 39TH STREET NORTH & WEBB ROAD

THIS AGREEMENT, made this _____ day of _____, 2010, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and PROFESSIONAL ENGINEERING CONSULTANTS, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

TRAFFIC SIGNALIZATION AT 39TH STREET NORTH & WEBB ROAD
(Project No. 472 84928)

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements to the intersection of 39th Street North and Webb Road and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action

Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

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

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

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

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $5,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

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

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

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

III. <u>THE CITY AGREES:</u>

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

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

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

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

472 84928 **$12,000.00**

During the progress of work covered by this agreement, partial payments may be made to the ENGINEER at intervals of one calendar month. The progress billings shall be supported by documentation acceptable to the City Engineer which shall include a project bar chart or other suitable progress chart indicating progress on the PROJECT and a record of the time period to complete the work, the time period elapsed, and the time period that remains to complete the work. Billings submitted during the progress of the work will be paid on the basis of satisfactory completion of major project tasks. The major tasks and accumulated partial payment amounts are listed below:

Accumulated partial payments shall not exceed $6,000.00 (fifty percent of the maximum fee payment amount) until field check plans have been received and approved by the City Engineer for distribution to utility companies. Accumulated partial payments shall not exceed $8,400.00 (seventy percent of the maximum fee payment amount) until office check plans have been received and approved by the City Engineer for distribution to utility companies. Accumulated partial payments shall not exceed $9,600.00 (eighty percent of the maximum fee payment amount) until final utility plans allowing for utility relocations or adjustments for the PROJECT have been received and approved by the City Engineer for distribution to the utilities.

Accumulated partial payments for the PROJECT shall be based on milestones in Exhibit A and shall not exceed eighty-five percent (85%) of the total fees for services prior to satisfactory completion of all work required by this agreement

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

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

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

_____
(Name & Title)

ATTEST:

_____

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

PB AMERICAS, INC.

for

TRAFFIC SIGNALIZATION AT CORPORATE HILLS & WEBB ROAD

THIS AGREEMENT, made this _____ day of _____, 2010, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and PB AMERICAS, INC., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

TRAFFIC SIGNALIZATION AT CORPORATE HILLS & WEBB ROAD
(Project No. 472 84926)

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements at Corporate Hills and Webb Road intersection and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

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

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

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

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

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

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

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

III. THE CITY AGREES:

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

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

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

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

During the progress of work covered by this agreement, partial payments may be made to the ENGINEER at intervals of one calendar month. The progress billings shall be supported by documentation acceptable to the City Engineer which shall include a project bar chart or other suitable progress chart indicating progress on the PROJECT and a record of the time period to complete the work, the time period elapsed, and the time period that remains to complete the work. Billings submitted during the progress of the work will be paid on the basis of satisfactory completion of major project tasks.

Accumulated partial payments for the PROJECT shall not exceed eighty-five percent (85%) of the total fees for services prior to satisfactory completion of all work required by this agreement

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

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

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

PB AMERICAS, INC.

_____
(Name & Title)

ATTEST:

_____

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

SCHWAB-EATON, P.A.

for

SIGNALIZED PEDESTRIAN CROSSWALK ON
OLIVER APPROXIMATELY 1/4 MILE SOUTH OF 21ST STREET NORTH

THIS AGREEMENT, made this _____ day of _____, 2010, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and SCHWAB-EATON, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

SIGNALIZED PEDESTRIAN CROSSWALK ON
OLIVER APPROXIMATELY 1/4 MILE SOUTH OF 21ST STREET NORTH
(Project No. 472 84931)

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing a signalized pedestrian crosswalk on Oliver and service layouts and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

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

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

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

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $5,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

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

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

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

III. THE CITY AGREES:

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

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

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

VI. PAYMENT PROVISIONS

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

Accumulated partial payments for the PROJECT shall be based on milestones in Exhibit A and shall not exceed eighty-five percent (85%) of the total fees for services prior to satisfactory completion of all work required by this agreement

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

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

VII. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

APPROVED:

_____
Chris Carrier, Director of Public Works

SCHWAB-EATON, P.A.

_____
(Name & Title)

ATTEST:

_____

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

TRANSYSTEMS CORPORATION

for

TRAFFIC SIGNALIZATION AT 34TH STREET NORTH & MAIZE ROAD

THIS AGREEMENT, made this _____ day of _____, 2010, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and TRANSYSTEMS CORPORATION, party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

TRAFFIC SIGNALIZATION AT 34TH STREET NORTH & MAIZE ROAD
(Project No. 472 84822)

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements to the intersection of 34th Street North & Maize Road and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by any negligent acts, errors or omissions of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

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

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

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

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

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

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

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

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is canceled or otherwise changed so that it no longer provides the coverage required hereunder.

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

III. THE CITY AGREES:

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

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

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement

shall be made on the basis of the lump sum payment plus partials made on the basis of the lump sum fee amount of **$18,000.00**.

During the progress of work covered by this agreement, partial payments may be made to the ENGINEER at intervals of one calendar month. The progress billings shall be supported by documentation acceptable to the City Engineer which shall include a project bar chart or other suitable progress chart indicating progress on the PROJECT and a record of the time period to complete the work, the time period elapsed, and the time period that remains to complete the work. Billings submitted during the progress of the work will be paid on the basis of satisfactory completion of major project tasks. The major tasks and accumulated partial payment amounts are listed below:

Accumulated partial payments shall not exceed $9,000.00 (fifty percent of the maximum fee payment amount) until field check plans have been received and approved by the City Engineer for distribution to utility companies. Accumulated partial payments shall not exceed $12,600.00 (seventy percent of the maximum fee payment amount) until office check plans have been received and approved by the City Engineer for distribution to utility companies. Accumulated partial payments shall not exceed $14,400.00 (eighty percent of the maximum fee payment amount) until final utility plans allowing for utility relocations or adjustments for the PROJECT have been received and approved by the City Engineer for distribution to the utilities.

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

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

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work, or because the services of the ENGINEER are unsatisfactory; PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

TRANSYSTEMS CORPORATION

_____
(Name & Title)

ATTEST:

_____

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Change Order No. 1, Completion of the Transit Maintenance Facility (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the change order.

Background: On October 13, 2009, the City Council approved a design/build service contract with Conco Inc. to build a Transit maintenance and storage facility just north of its existing Transit Operations Center located at 777 East Waterman. During the process of completing this facility, a list of project additions and credits were negotiated and agreed to by the City of Wichita that were in addition to the original scope of work outlined in the contract.

Analysis: Items that were added to the project are: 1) costs for removal of contaminated soil at the site, 2) the City's commercial permit office required changes to the original building plans by adding a storm sewer vault and an exterior exit door, 3) Wichita Transit enhancements not included in the original contract are: dedicated HVAC equipment and controls for the data room, drinking fountains for the maintenance bays, enhancement to the van wash power supply system, equipment shed overhead door, removal of an unleaded fuel tank, and paving costs for additional parking area, and 4) room-darkening shades for the conference room that were added as an energy efficiency recommendation.

Items that were credits to the project are: 1) Contractor and Owner contingency allowances and 2) credits for shop equipment not supplied.

Note: Please refer to the attached change order for additional explanation on each item.

Financial Considerations: The cost of the additional work, less the credits, is $62,932. Grant funds to pay for these costs have been secured through a Federal Transit Administration grant requiring a local share match in the amount of $12,864 (federal share 80%/local share 20%). The original contract amount is $3,790,277. This change order represents 1.66% of the original contract amount.

Goal Impact: The addition of this facility will conform to City Council goals and indicators for maintaining a safe, dependable transportation system by Ensuring Efficient Infrastructure.

Legal Considerations: The Law Department has approved the change order as to form. The change order amount is within the 10% construction contract cost limit set by City Council policy.

Recommendations/Actions: Staff recommends that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change order.

CITY OF WICHITA

PUBLIC WORKS – BUILDING SERVICES DIVISION

[12/01/10]

CHANGE ORDER

To: Conco Construction Company
3030 All Hallows PO Box 9166
Wichita, KS 67277

Project: ParaTransit Maintenance Facility

Change Order No.: 1
Purchase Order No.: 030556
CHARGE TO OCA No.: 792552

Project No.:
OCA No.: 792552
PPN:

Please perform the following extra work at a cost not to exceed $62,932.89

Additional Work:

1. Request for Change (RFC) #1 Storm Sewer Vault.
2. RFC #2 Power Wash Electrical Service for Future Dryers
3. RFC #3 Contaminated Soil Removal (West Site)
4. RFC #5 Exterior Exit Door @ East Hallway
5. RFC #6 Contaminated Soil Removal (East Site)
6. RFC #7 Mecho Shades Upgrade (Manual Hardware)
7. RFC #8 Independent HVAC System for Data Room
8. RFC #9 Shared Cost of Equipment Storage Building
9. RFC #10 Additional Drinking Fountains Maintenance Bays
10. RFC #11 Exterior Building Signage
11. RFC #12 Dedication Plaque
12. RFC #13 Fuel Tank Removal and Infill
13. RFC #14 Additional Paving and Parking Surfaces
14. RFC #15 Contaminated Soil @ Fuel Tank Location
15. Additional Door Frames and Hardware
16. Additional Flooring Materials and Finishes
17. Contractor Contingency to cover costs over-runs
18. Owner Contingency
19. Deletion of Tire Changer & Wheel Balancer from Contract

Reason for Additional Work:

1. City Department of Storm Water plan review required a vault be constructed at tie in location to allow removal of debris and maintenance to existing storm sewer line.
2. Electrical power and rough in for future hot air dryers @ new van wash system, in the event the dryers are added later, cost was much less to add power requirements during initial construction, than at a later date.
3. Contracted unit price for removal and disposal of contaminated soil and debris.
4. Additional egress door and panic hardware required by OCI plan review.
5. Contracted unit price for removal and disposal of contaminated soil and debris.
6. Darkening mechanical shades located in new conference room where windows are full height of structure.
7. City IT department request to have a sole source of HVAC for data room containing IT equipment and phone controls, to keep a more conditioned space.
8. Negotiated cost of equipment shed not clearly identified or defined in the

original RFP/Contract.

9. Request of City Staff during design to include drinking fountains in maintenance bays for crews working in the area.
10. Exterior building signage to match existing signage on Bus Barn facility. Greatly enhance visibility of the facility from Waterman Street.
11. Dedication plaque is standard issue for new construction of all City facilities.
12. Removal of existing abandoned fuel tank, including permits, excavation, disposal, and backfill of resulting hole.
13. Additional parking and paving areas beneficial to the facility and staff, not identified in the original RFP.
14. Expedited removal of contaminated soil on and around the removed fuel tank, to avoid delays to the project opening.
15. Additional door frames and hardware not accounted for in the original RFP, and required for functionality of the facility.
16. Additional floor covering and upgrades to floor coverings not accounted for in the original RFP, through the design build process.
17. Contractor contingency was included in the contract to cover miscellaneous over runs and price increases.
18. Owner contingency was included in the contract to cover the costs of additional items to the facility once the final design and cost was realized.
19. Tire changer and wheel balancer were removed from the contract due to "Buy American" requirements that could not be met and would jeopardize Federal Grant availability.

Item	Negot'd/Bid	Qty	Unit Price	Extension
Storm Sewer Vault	Negot'd	1	$11,251.00	$11,251.00
Electrical Service Power Dryers	Negot'd	1	$12,000.00	$12,000.00
Contaminated Soil Removal West	Bid	1	$5,109.00	$5,109.00
Exterior Exit Door	Negot'd	1	$2,980.00	$2,980.00
Contaminated Soil Removal East	Bid	1	$630.00	$630.00
Mecho Shades	Negot'd	1	$4,425.00	$4,425.00
Additional HVAC @ Data Room	Negot'd	1	$2,875.00	$2,875.00
Equipment Storage Building	Negot'd	1	$8,000.00	$8,000.00
Additional Drinking Fountains	Negot'd	1	$4,072.00	$4,072.00
Exterior Building Signage	Negot'd	1	$5,212.00	$5,212.00
Dedication Plaque	Bid	1	$1,650.00	$1,650.00
Fuel Tank Removal/Disposal	Negot'd	1	$17,778.00	$17,778.00
Additional Paving & Parking	Negot'd	1	$19,786.00	$19,786.00
Contaminated Soil @ Fuel Tank	Bid	1	$3,780.89	$3,780.89
Additional Doors, Frames, Hardware	Negot'd	12	$1,069.00	$12,828.00
Additional Flooring/Upgrades	Negot'd	1	$6,188.00	$6,188.00
Contractor Contingency	Bid	1	($25,000.00)	($25,000.00)
Owner Contingency	Bid	1	($22,632.00)	($22,632.00)
Tire Changer & Wheel Balancer	Bid	1	($8,000.00)	($8,000.00)

Federal Grant Budget Amount: $3,800,989.

Consultant: GLMV Architects
Exp. & Encum. To Date: $582,424.59

CO Amount: $13,402.81

Original Contract Amt.: $569,021.78

Current CO Amt.: $13,402.81
Amt. of Previous CO's: $0
Total of All CO's: $13,402.81
% of Orig. Contract / 10% Max.:2 %

Recommended By:

_____ _____
Stan Zienkewicz Date
Project Manager

Approved:

_____ _____
Jon Clark Date
Conco Construction

Approved as to Form:

_____ _____
Gary Rebenstorf Date
Director of Law

Approved:

_____ _____
Ed Martin Date
Building Services Manager

Approved:

_____ _____
Michael Vinson Date
Director of Public Works

By Order of the City Council:

_____ _____
Carl Brewer Date
Mayor

Attest:_____
City Clerk

Agenda Item No. XII-8a

CITY OF WICHITA
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Acquisition of Land Adjacent to Interstate 135 between 18th Street North and 19th Street North for the Interstate 135 to K-96 Proposed Bike Path Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On September 21, 2010, the City Council approved the final route and funding of the proposed bike path improvements from Interstate 135 to K-96. The bike path begins near McAdams Park and traverses northeasterly into the Grove Park area where the path will connect with the existing K-96 bike path. Where possible, the bike path will utilize existing rights-of-way however; acquisitions of private property will be required to accommodate the project. One particular property is a tract of land east of Interstate 135 between 18th Street North and 19th Street North. This particular site is primarily vacant and the improvements are removed from the proposed corridor. The acquisition area consists of 12,907 square feet. A temporary construction easement is also necessary. Said temporary easement consists of 10,027 square feet.

Analysis: The seller agreed to convey the required tracts for $4,000. This amount is comprised of an estimated appraised value of $1,000 for the land ($0.07 per square foot for the right-of-way and $0.008 per square foot for the temporary easement) together with $3,000 for administrative costs.

Financial Considerations: A grant will fund the acquisition. The American Recovery & Reinvestment Act (ARRA) Energy Efficiency and Conservation Block Grant are administrated by the Department of Energy. There is no cost to the city.

Goal Impact: The acquisition of this right-of-way is necessary to ensure Efficient Infrastructure by creating a bike path corridor through a developed part of the City.

Legal Considerations: The Law Department has approved the Real Estate Purchase Contract as to form.

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

Attachments: Real Estate Purchase Contract, tract maps and aerial map.

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 22 day of November, 2010 by and between SFX Broadcasting of Kansas, Inc. party of the First Part, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient warranty deed the following described real property, situated in Sedgwick County, Kansas, to-wit:

   That part of the SE1/4 of the NE1/4 of Sec. 9, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the northeast corner thereof; thence S00°41'56"E along the east line of said NE1/4 to a point 23.00 feet south of the north line of the SE1/4 of said NE1/4; thence S89°09'57"W, parallel with said north line, along the south line of 19th Street as described in Deed recorded at Film 1640, Page 1505, 356.00 feet to the centerline of Pennsylvania Avenue extended south; thence N00°50'03"W, along said centerline extend south, 10.00 feet; thence S89°09'57"W, parallel with said north line, 201.40 feet; thence S87°05'05"W, 77.48 feet to the place of beginning; thence S02°54'55"E, 9.70 feet; thence S39°31'48"W, 66.52 feet; thence S70°06'43"W, 76.13 feet; thence S54°47'15"W, 45.30 feet to a point 20.00 feet southeast of the east right of way line of I-135 Highway; thence S33°45'48"W, parallel with said east right of way line, 99.05 feet; thence S28°25'51"W, parallel with said east right of way line, 192.87 feet; thence S20°06'04"W, parallel with said east right of way line, 9.98 feet to the centerline of the abandoned Chisholm Creek taken from Kansas Department Of Transportation Plans for Project 35W-87I-35W-1(53)50 Part 1; thence westerly along the centerline of said creek, a chord bearing of N81°43'19"W, 20.43 feet to said east right of way line; thence N20°06'04"E along said east right of way line, 15.62 feet to a point of intersection on said east right of way line; thence N28°25'51"E along said east right of way line, 195.25 feet to a point of intersection on said east right of way line; thence N33°45'48"E along said east right of way line, 99.98 feet to a point of intersection on said east right of way line; thence N42°01'27"E along said east right of way line, 116.32 feet to a point of intersection on said east right of way line; thence N89°09'57"E along said east right of way line, 60.00 feet to a point of intersection on said east right of way line; thence N00°50'03"W along said east right of way line, 26.46 feet to the south right of way line of said 19th Street; thence N87°05'05"E along said south right of way line, 28.02 feet to the place of beginning.

2. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient temporary construction easement the following described real property, situated in Sedgwick County, Kansas, to-wit:

   That part of the SE1/4 of the NE1/4 of Sec. 9, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the northeast corner thereof; thence S00°41'56"E along the east line of said NE1/4 to a point 23.00 feet south of the north line of the SE1/4 of said NE1/4; thence S89°09'57"W, parallel with said north line, along the

south line of 19th Street as described in Deed recorded at Film 1640, Page 1505, 356.00 feet to the centerline of Pennsylvania Avenue extended south; thence N00°50'03"W, along said centerline extend south, 10.00 feet; thence S89°09'57"W, parallel with said north line, 201.40 feet; thence S87°05'05"W, 77.48 feet to the place of beginning; thence S02°54'55"E, 9.70 feet; thence S39°31'48"W, 66.52 feet; thence S70°06'43"W, 76.13 feet; thence S54°47'15"W, 45.30 feet to a point 20.00 feet southeast of the east right of way line of I-135 Highway; thence S33°45'48"W, parallel with said east right of way line, 99.05 feet; thence S28°25'51"W, parallel with said east right of way line, 192.87 feet; thence S20°06'04"W, parallel with said east right of way line, 9.98 feet to the centerline of the abandoned Chisholm Creek taken from Kansas Department Of Transportation Plans for Project 35W-87I-35W-1(53)50 Part 1; thence easterly along the centerline of said creek, a chord bearing of S84°34'40"E, 20.67 feet to a point 40.00 feet southeast of said east right of way line; thence N20°06'04"E, parallel with said east right of way line, 3.28 feet; thence N28°25'51"E, parallel with said east right of way line, 190.48 feet; thence N33°45'48"E, parallel with said east right of way line, 94.41 feet; thence N54°47'15"E, 38.90 feet; thence N70°06'43"E, 78.90 feet; thence N39°31'48"E, 79.76 feet; thence N02°54'55"W, perpendicular to the south right of way line of said 19th Street, 17.47 feet to said south right of way line; thence S87°05'05"W along said south right of way line, 20.00 feet to the place of beginning.

3. 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 Dollars and Zero Cents ($1,000.00) in the manner following to-wit: cash at closing. This amount is inclusive of any replacement housing supplement. This amount does not include any reimbursements for moving expenses, customary closing costs, or increased mortgage interest that the Seller may be eligible for pursuant to this transaction. Buyer will pay an additional sum of Three Thousand Dollars and Zero Cents ($3,000) to Buyer for attorney fees, also to be paid in cash at closing.

4. Buyer intends to construct a multi-use path on the property described in section 1 above, and in conjunction with that construction, and prior to opening the path to public use, Buyer will also construct on the land here transferred an eight foot tall, commercial grade chain link fence, with metal poles set in concrete, marked with "no trespassing" signs posted at approximately 100 foot intervals. This fence shall extend parallel to the multi-use path, running between that path and Seller's property for approximately 430 feet. Buyer will also construct a 30 foot wing extension of this fence at approximately 90 degrees to the main line of the fence at each of its ends. The northerly wing will be constructed on land described above in section 1. The southerly wing shall be constructed on the currently existing contiguous City of Wichita property, after the path crosses into that property. The City agrees to maintain the path and fence in reasonable repair.

5. A title insurance company's commitment to insure or a complete abstract of title certified to date, to the above-described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to the Office of Property Management for the City of Wichita for examination by the Buyer as promptly and expeditiously as possible, and it is understood

and agreed that the Seller shall have a reasonable time, but not to exceed thirty (30) days after said Title Evidence has been examined in which to correct any defects in title. If defects in title are not corrected to Buyer's satisfaction, Buyer, at Buyer's option, may cancel this contract. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer.

6. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

7. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer), and interest, if any shall be adjusted and prorated as of the closing date. Taxes and specials shall be pro-rated for calendar year on the basis of 100% of taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.

8. The Seller further agrees to convey the above-described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear accepted. The parties acknowledge that no improvements currently exist on the property to be conveyed.

9. Seller shall place no encumbrances on the property during the period from execution of this contract to closing. In addition, Seller shall be responsible for carrying such insurance as is reasonable on the improvements up until the closing date.

10. 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 October 31, 2010.

11. Possession to be given to Buyer at closing

12. Closing costs shall be paid 100% by Buyer and 0% by Seller.

WITNESS OUR HANDS AND SEALS the day and year first above written.

BUYER:

City of Wichita, KS, a municipal corporation

_____

Carl Brewer, Mayor

ACKNOWLEDGEMENT

STATE OF KANSAS)
)SS:
SEDGWICK COUNTY)

BE IT REMEMBERED that on this ____ day of _____, 2010, before me, a notary public in and for said County and State, came Carl Brewer, Mayor of the City of Wichita, Kansas, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said city, and such person duly acknowledged the execution of the same to be the act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand affixed my official seal, the day and year last above written.

_____
Notary Public

My Commission Expires:

_____

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

SELLER:

SFX Broadcasting of Kansas, Inc.

By: VP/market manager

ACKNOWLEDGEMENT

STATE OF KANSAS)
)SS:
Sedgwick COUNTY)

BE IT REMEMBERED that on this 22 day of November, 2010, before me, a notary public in and for said County and State, came Bob Burton; market Mgr of SFX Broadcasting of Kansas, Incorporated, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand affixed my official seal, the day and year last above written.

Victoria Gutierrez
Notary Public

My Commission Expires:

7/7/12

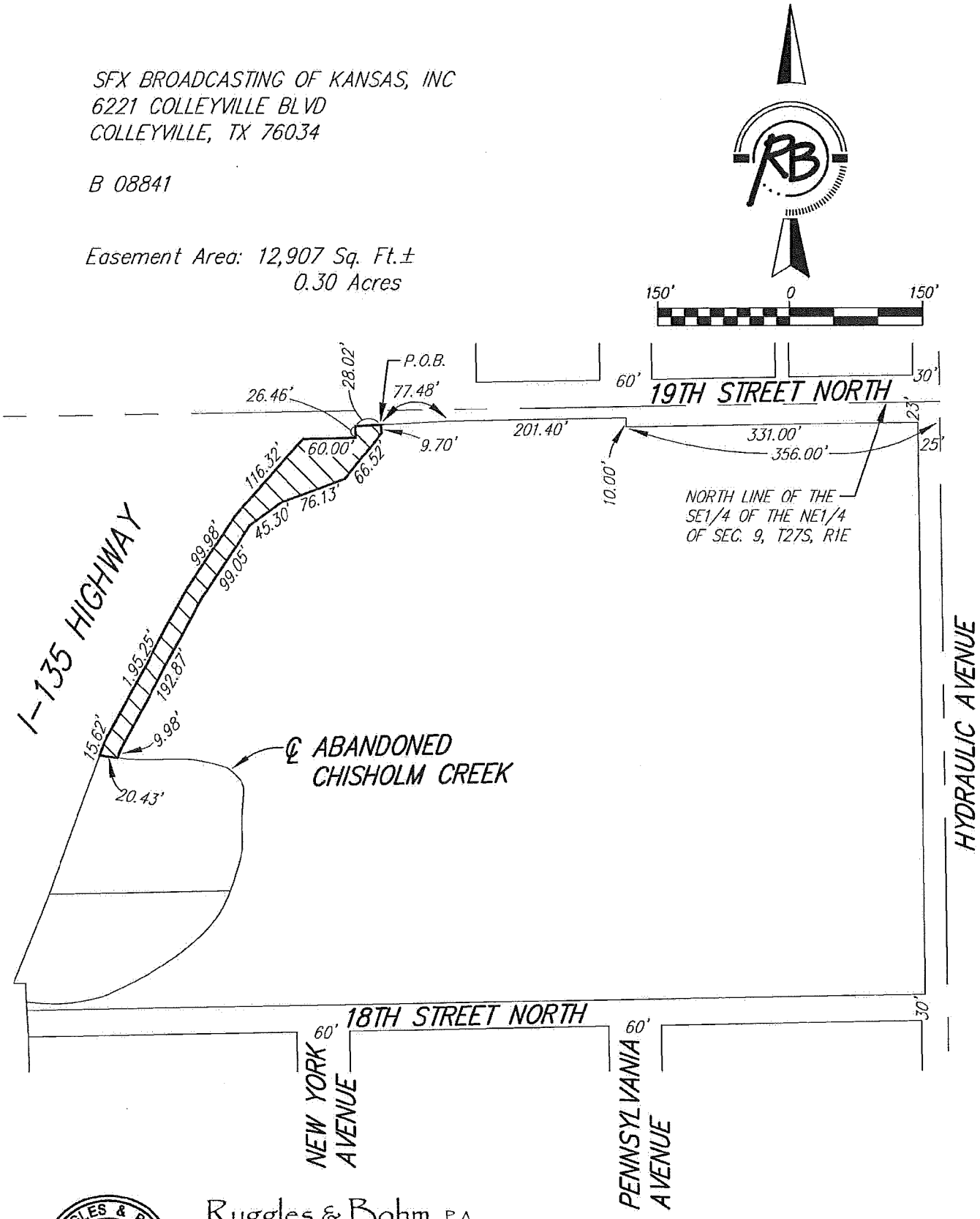
VICTORIA GUTIERREZ
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 7/7/12

RIGHT OF WAY EXHIBIT

SFX BROADCASTING OF KANSAS, INC
6221 COLLEYVILLE BLVD
COLLEYVILLE, TX 76034

B 08841

Easement Area: 12,907 Sq. Ft.±
0.30 Acres



Ruggles & Bohm, P.A.
Engineering, Surveying, Land Planning
924 North Main
Wichita, Kansas 67203
www.rbkansas.com
(316) 264-8008
(316) 264-4621 fax
E-mail: info@rbkansas.com

3334T

B 08841 Right of Way

That part of the SE1/4 of the NE1/4 of Sec. 9, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the northeast corner thereof; thence S00°41'56"E along the east line of said NE1/4 to a point 23.00 feet south of the north line of the SE1/4 of said NE1/4; thence S89°09'57"W, parallel with said north line, along the south line of 19th Street as described in Deed recorded at Film 1640, Page 1505, 356.00 feet to the centerline of Pennsylvania Avenue extended south; thence N00°50'03"W, along said centerline extend south, 10.00 feet; thence S89°09'57"W, parallel with said north line, 201.40 feet; thence S87°05'05"W, 77.48 feet to the place of beginning; thence S02°54'55"E, 9.70 feet; thence S39°31'48"W, 66.52 feet; thence S70°06'43"W, 76.13 feet; thence S54°47'15"W, 45.30 feet to a point 20.00 feet southeast of the east right of way line of I-135 Highway; thence S33°45'48"W, parallel with said east right of way line, 99.05 feet; thence S28°25'51"W, parallel with said east right of way line, 192.87 feet; thence S20°06'04"W, parallel with said east right of way line, 9.98 feet to the centerline of the abandoned Chisholm Creek taken from Kansas Department Of Transportation Plans for Project 35W-87I-35W-1(53)50 Part 1; thence westerly along the centerline of said creek, a chord bearing of N81°43'19"W, 20.43 feet to said east right of way line; thence N20°06'04"E along said east right of way line, 15.62 feet to a point of intersection on said east right of way line; thence N28°25'51"E along said east right of way line, 195.25 feet to a point of intersection on said east right of way line; thence N33°45'48"E along said east right of way line, 99.98 feet to a point of intersection on said east right of way line; thence N42°01'27"E along said east right of way line, 116.32 feet to a point of intersection on said east right of way line; thence N89°09'57"E along said east right of way line, 60.00 feet to a point of intersection on said east right of way line; thence N00°50'03"W along said east right of way line, 26.46 feet to the south right of way line of said 19th Street; thence N87°05'05"E along said south right of way line, 28.02 feet to the place of beginning.

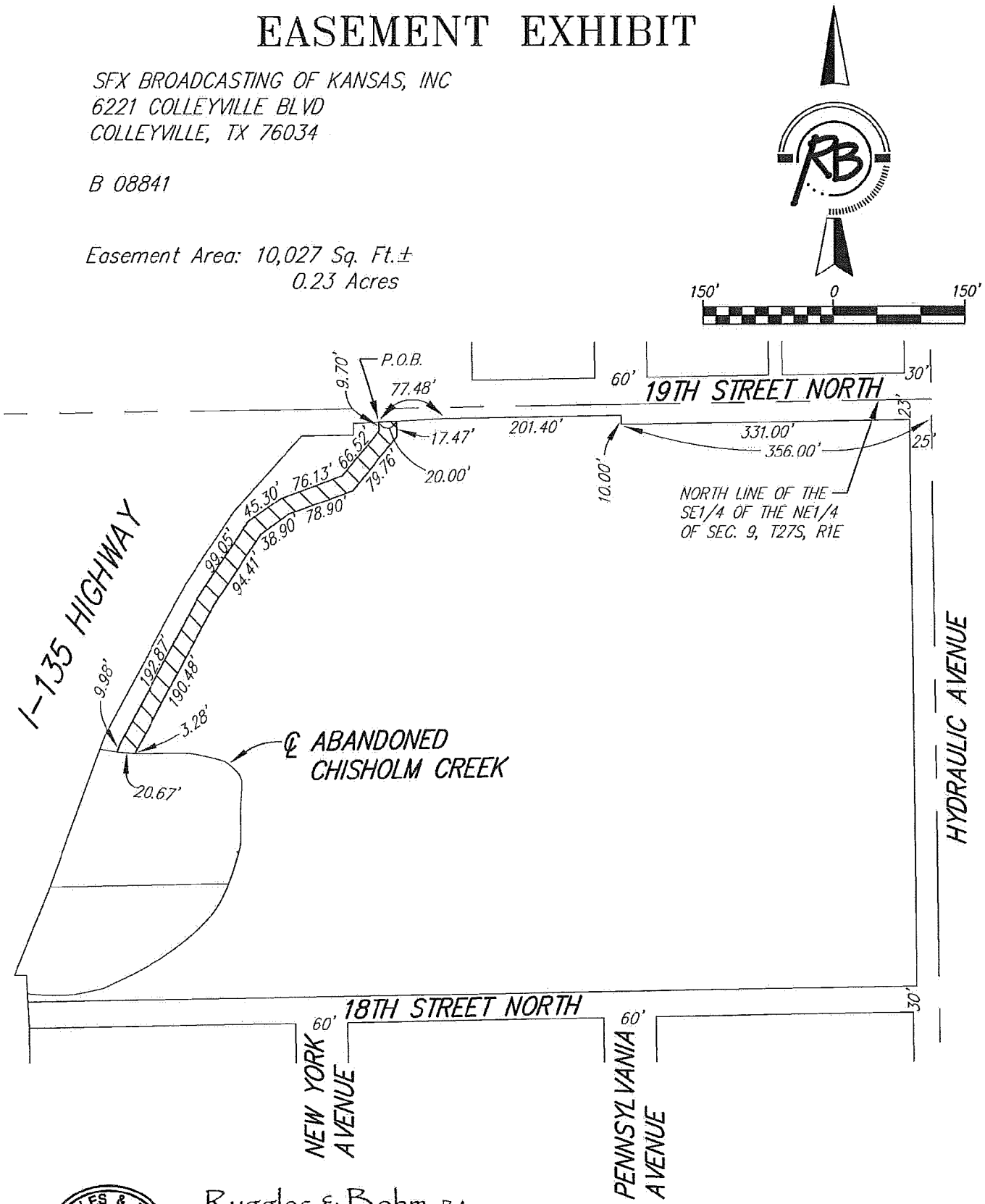
WILLIAM K. CLEVENGER
LICENSED
LS-1437
9/30/10
KANSAS
LAND SURVEYOR

TEMPORARY CONSTRUCTION EASEMENT EXHIBIT

SFX BROADCASTING OF KANSAS, INC
6221 COLLEYVILLE BLVD
COLLEYVILLE, TX 76034

B 08841

Easement Area: 10,027 Sq. Ft.±
0.23 Acres



Ruggles & Bohm, P.A.
Engineering, Surveying, Land Planning
924 North Main
Wichita, Kansas 67203
www.rbkansas.com
(316) 264-8008
(316) 264-4621 fax
E-mail: info@rbkansas.com

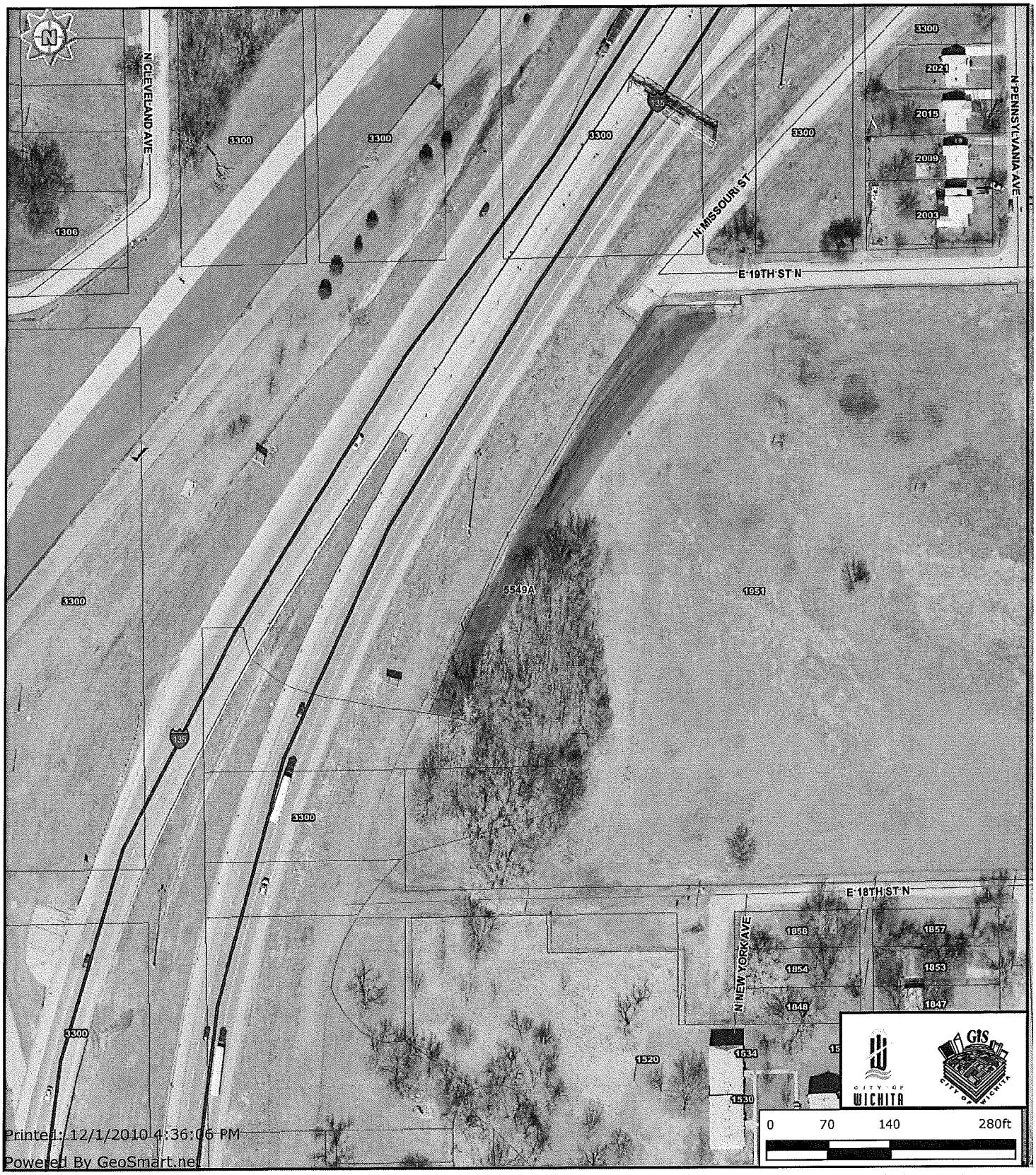
3334T

B 08841 Temporary Construction Easement

That part of the SE1/4 of the NE1/4 of Sec. 9, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the northeast corner thereof; thence S00°41'56"E along the east line of said NE1/4 to a point 23.00 feet south of the north line of the SE1/4 of said NE1/4; thence S89°09'57"W, parallel with said north line, along the south line of 19th Street as described in Deed recorded at Film 1640, Page 1505, 356.00 feet to the centerline of Pennsylvania Avenue extended south; thence N00°50'03"W, along said centerline extend south, 10.00 feet; thence S89°09'57"W, parallel with said north line, 201.40 feet; thence S87°05'05"W, 77.48 feet to the place of beginning; thence S02°54'55"E, 9.70 feet; thence S39°31'48"W, 66.52 feet; thence S70°06'43"W, 76.13 feet; thence S54°47'15"W, 45.30 feet to a point 20.00 feet southeast of the east right of way line of I-135 Highway; thence S33°45'48"W, parallel with said east right of way line, 99.05 feet; thence S28°25'51"W, parallel with said east right of way line, 192.87 feet; thence S20°06'04"W, parallel with said east right of way line, 9.98 feet to the centerline of the abandoned Chisholm Creek taken from Kansas Department Of Transportation Plans for Project 35W-87I-35W-1(53)50 Part 1; thence easterly along the centerline of said creek, a chord bearing of S84°34'40"E, 20.67 feet to a point 40.00 feet southeast of said east right of way line; thence N20°06'04"E, parallel with said east right of way line, 3.28 feet; thence N28°25'51"E, parallel with said east right of way line, 190.48 feet; thence N33°45'48"E, parallel with said east right of way line, 94.41 feet; thence N54°47'15"E, 38.90 feet; thence N70°06'43"E, 78.90 feet; thence N39°31'48"E, 79.76 feet; thence N02°54'55"W, perpendicular to the south right of way line of said 19th Street, 17.47 feet to said south right of way line; thence S87°05'05"W along said south right of way line, 20.00 feet to the place of beginning.

WILLIAM K. CLEVENGER
LICENSED
LS-1437
9/30/10
KANSAS
LAND SURVEYOR

Land Between 18th Street and 19th Street



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

Agenda Item No. XII-8b

CITY OF WICHITA
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 2513 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. A couple of feet adjacent to the existing right-of-way are required along the north property line of 2513 East 13th Street North. The site is vacant and zoned commercial. The proposed acquisition area is comprised of 169 feet.

Analysis: The owner agreed to accept the appraised value of $700, or $4 per square foot for partial acquisition.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $1,200 is requested. This includes $700 for the acquisition and $500 for title work and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

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

Recommendation/Action: It is recommended that the City Council 1) Approve the agreement and; 2) Authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and aerial map.

PROJECT: 13th Street North **DATE:** July 27, 2010

COUNTY: Sedgwick **TRACT NO.:** 27

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 22 day of Nov., 2010., by and between

James L. Lee and Doris J. Lee, husband and wife

4029 Sweet Bay Court

Wichita, KS 67226

(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 169 Sq. Ft. for Right of Way Damages including but not limited to all improvements and real property of the landowner: $ 700.00

TOTAL: $ 700.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

The City of Wichita in addition will provide 24 foot curb cut to allow ingress and egress off 13th St. in the approximate location as indicated on the attached plat.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: _____
James L. Lee

By: _____
Doris J. Lee

THE CITY OF WICHITA

By: _____
Carl Brewer, Mayor

ATTEST:

By: _____
Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

James L. Lee and Doris J. Lee, husband and wife

If mortgage or other liens, show names of holders:

n/a

REMARKS:

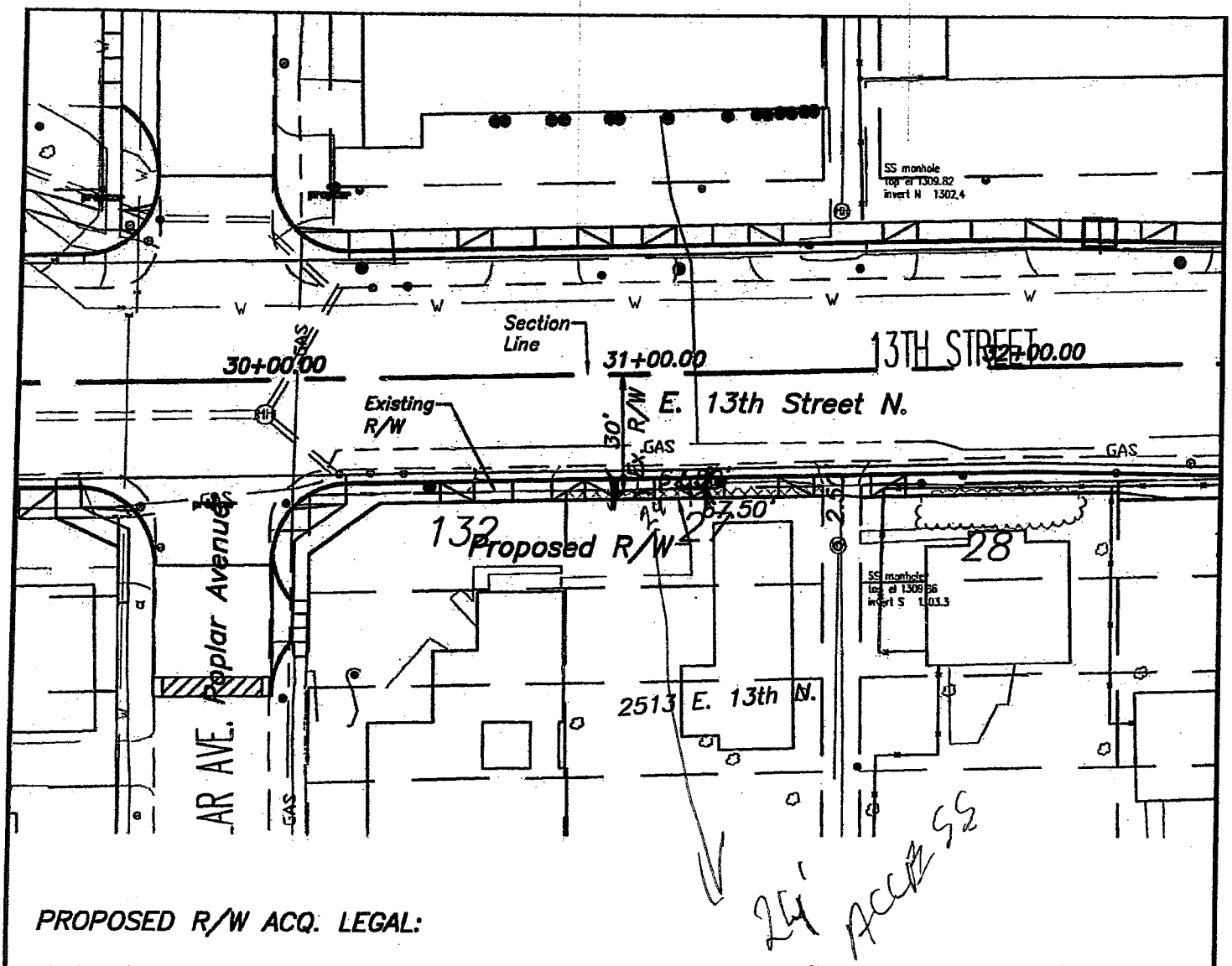
PIN/APN 125150120300200
Security Title File Number 1090232

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Joseph J. Vorstenbosch, Project Manager



PROPOSED R/W ACQ. LEGAL:

A tract of land in Lots 2, 4, 6, & 8, on Mona Avenue (now Poplar Avenue), Fairmount Park Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:

All of the North 2.5 feet of the East Half of Lot 2 on Mona (now Poplar Avenue) as platted in Fairmount Park Addition.

TAX KEY #: C02746

R/W ACQUISITION SIZE: 169 sq. ft.

PROPOSED R/W ACQUISITION

New Back of Curb to New R/W = 5.0'

Old Back of Curb to New R/W = 8.7'

13th STREET
HYDRAULIC AVENUE TO OLIVER

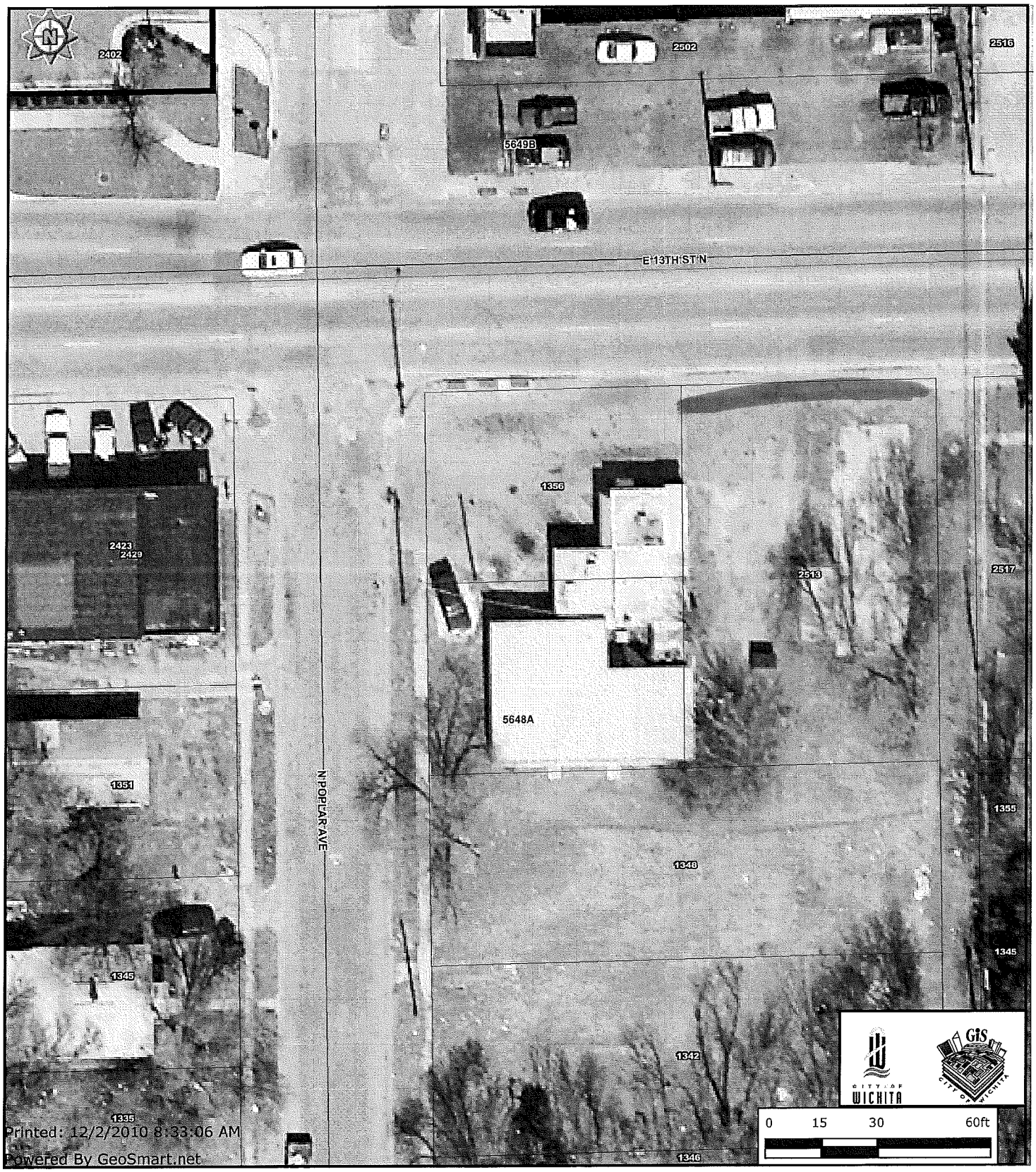
TRACT MAP

JAMES LEE
SEC 15-T27-R1E

SCALE: 1" = 40'

Tract No. 27

2513 E 13th and 1356 N Popular



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Agenda Item No. XII-8c

CITY OF WICHITA
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 1356 North Popular for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. As part of the project, the City requires a triangular acquisition area at the corner of East 13th Street and North Popular, more specifically, 1356 North Popular. The site is zoned commercial and is improved with a retail store. The improvements are removed from the project.

Analysis: The proposed acquisition area consists of 286 square feet. The owner agreed to accept the appraised value of $1,300, or $4.50 per square foot for partial acquisition and $200 for damages to the property. As a result of the irregular shaped taking at the corner, the owner will be limited on space for an advertising sign.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $2,250 is requested. This includes $1,500 for the acquisition and $750 for title work and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

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

Recommendation/Action: It is recommended that the City Council 1) Approve the agreement and; 2) Authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and aerial map.

PROJECT: 13th Street North **DATE:** July 27, 2010

COUNTY: Sedgwick **TRACT NO.:** 132

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 22 day of NOV, 2010, by and between

James L. Lee and Doris J. Lee, husband and wife

4029 Sweet Bay Court

Wichita, KS 67226

(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 286 Sq. Ft. for Right of Way Damages including but not limited to all improvements and real property of the landowner: $ 1,500.00

TOTAL: $ 1,500.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

In Addition the City of Wichita will provide a 24 foot curb cut to allow egress and ingress off of 13th St. and 20 foot curb cut off of Poplar St at the approximate location as indicated on the attached plat.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: _____
James L. Lee

By: _____
Doris J. Lee

THE CITY OF WICHITA

By: _____
Carl Brewer, Mayor

ATTEST:

By: _____
Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

James L. Lee and Doris J. Lee, husband and wife

If mortgage or other liens, show names of holders:

(Charles Kinnard)

REMARKS:

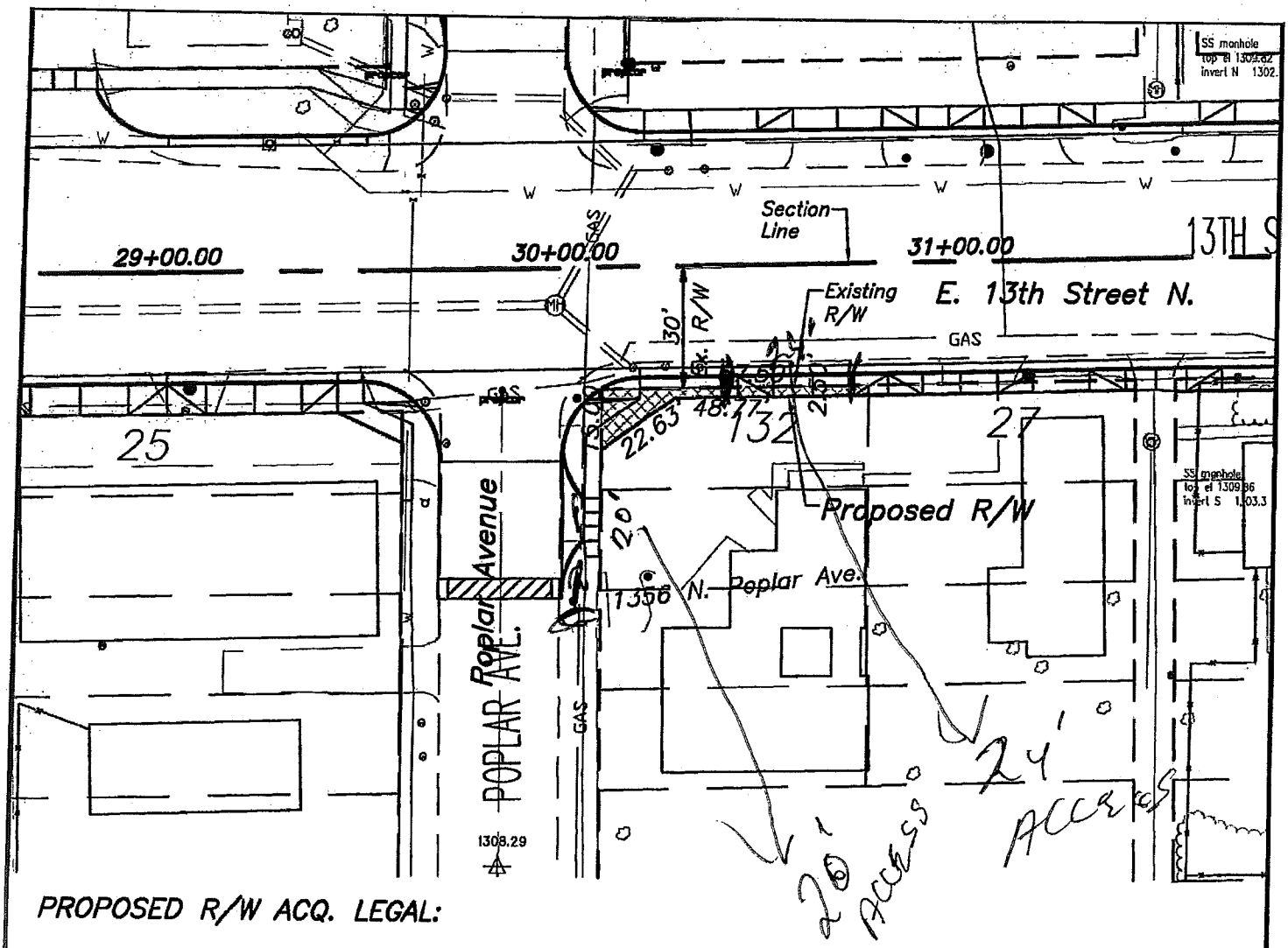
PIN/APN 125150120300300A
Security Title File Number 2000817

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Joseph J. Vorstenbosch, Project Manager



PROPOSED R/W ACQ. LEGAL:

A tract of land in Lots 2 & 4, on Mona Avenue (now Poplar Avenue), Fairmount Park Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:

Beginning at the northwest corner of said Lot 2 on Mona Avenue (now Poplar Avenue), as platted in Fairmount Park Addition; thence easterly 67.5 feet, along north line of said lot 2 to the Northeast corner of the West half of said Lot 2; thence southerly 2.50 feet along a line parallel with the west line of said Lot 2; thence westerly 48.77 feet along a line parallel with the north line of said lot 2; thence southwesterly 22.63 feet more or less to a point on the west line of said lot 2, said point being 14.93 feet south of the northwest corner of said Lot 2; thence northerly 14.93 feet along west line of said lot 2 to the point of beginning.

TAX KEY #: C02747, C027470001

R/W ACQUISITION SIZE: 286 sq. ft.

PROPOSED R/W ACQUISITION

13th STREET
HYDRAULIC AVENUE TO OLIVER

TRACT MAP

JAMES LEE
SEC 15–T27–R1E

SCALE: 1" = 40'

Tract No. 132

2513 E 13th and 1356 N Popular

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

Agenda Item No. XII-10

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Aquifer Storage and Recovery Project Point-to-Point Data Network Services (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve Addendum No. 2 to the original contract for design, installation and implementation of the Aquifer Storage and Recovery (ASR) Project Point-to-Point (P2P) Data Network Services with Electronic Technology, Inc (ETI).

Background: Due to slow and problematic transfer rates of data with the current leased cable network structure, the IT/IS Department recommended replacement of the buried cable service with a P2P telecommunications system. On March 18, 2008, City Council granted approval of funding to begin the P2P Wireless Data Network Project. After completing a Request for Proposal and selection process, the City Council approved an agreement on July 22, 2008, for approval to award the project contract to ETI. On January 27, 2009, the City Council approved Addendum No. 1 which established unit prices for the project.

Analysis: In review with Water Utilities, IT/IS recommended uniformity across the entire City network as the new ASR system would be connected to the new City P2P Network. As IT/IS had just gone through the Request for Qualification process for the ETI contract, it was determined that the ASR infrastructure could be added to the contract via an addendum.

The resultant addendum includes the work required to construct and maintain the expansion of the P2P Wireless Data Network Services to include the new infrastructure required for the ASR program as well as the required connection point located at Fire Station 13 to serve the system.

Financial Consideration: The approved project budget for the original agreement is $1,292,372. The work provided under second addendum is estimated to be $598,650, for a total project budget of $1,891,022. Funding is available in Capital Improvement Program CIP W-549-10, water supply project SCADA, ASR Phase II.

Legal Considerations: Addendum No. 2 has been approved as to form by the Law Department

Recommendations: It is recommended that the City Council approve Addendum No. 2 and authorize the necessary signatures.

Attachment: Addendum No. 2.

SECOND ADDENDUM TO CONTRACT FOR IMPLEMENTATION OF A WIRELESS COMMUNICATION NETWORK

THIS CONTRACT ADDENDUM, by and between the **City of Wichita, KANSAS,** a municipal corporation, hereinafter called "**CITY**" , and **ELECTRONIC TECHNOLOGY, INC.**, a Kansas Corporation, hereinafter called "**ETI**", shall become effective as of the date of the last required signature.

WITNESSETH THAT:

WHEREAS, the **CITY** and **ETI** entered into an original "CONTRACT FOR IMPLEMENTATION OF A WIRELESS COMMUNICATION NETWORK", for design, installation, deployment and maintenance of a wireless communication network, dated July 23, 2008, to a site, or collection of site locations, for the **CITY** as per the bid FP800044 and scope of services set forth in the contract; and

WHEREAS, the **CITY** and **ETI**, based on Section 1C of the original Contract, entered into a first Addendum to the original Contract, dated January 29, 2009, which detailed pertinent issues regarding the design, structure, installation and operation of the Wireless Communication Network Project (WCN Project); and

WHEREAS, ETI agrees to provide to the **CITY** all the provisions, commodities and services specified in the Request for Qualifications (RFQ) under Formal Proposal Number FP800044, **ETI**'s response to the Formal Proposal Number FP800044, the original Contract and the first Addendum to the original Contract, which are incorporated herein by this reference the same as if it were fully set forth; and

WHEREAS, Based on Section 5 of the original Contract and Section 2I of the first Addendum to the original Contract, the **CITY** and **ETI** wish to enter into a second Addendum to the original Contract, whereby **ETI** shall provide similar commodities and services as referenced in the original Contract and first Addendum. The services and materials would specifically address the needs of the Wichita Water Utilities (WWU) Aquifer Storage and Recovery (ASR) Phase II Project (ASR Project).

NOW, THEREFORE, the above named parties hereby agree, covenant and contract with each other that the relevant terms of the RFQ, **ETI**'s response to the RFQ, the original contract and the first Addendum, in addition to the following terms of this second Addendum, are hereby affirmed and executed for and on behalf of these parties, for the life of the Project. If any terms conflict among these documents, those listed in this second addendum shall govern:

1. **Contact**: The **CITY** and **ETI** shall maintain representatives to act as the contact person for each party of the **CITY** Project:
    a. The contact persons from the **CITY** shall be:
        1. Debra Ary, ASR Project Manager
            316-269-4760
            DAry@wichita.gov;
        2. Paul Johnson, RW Beck, ASR Process Control/SCADA Project Manager
            303-299-5262
            PJohnson@rwbeck.com;

3. Dennis McHugh, WCN Project Manager
316-268-4592
DMcHugh@wichita.gov;

b. The contact persons from **ETI** shall be:

1. Dan Carr, Certified Engineer
DCarr@directmw.com, or
2. Brad Peterson, Project Manager
BPeterson@directmw.com, or
3. Barbara Carr, Administration
BCarr@directmw.com
913-962-8083;

2. Scope of Work:

a. The Basis of Design, depicted in EXHIBITS A, B and C, herein, for the ASR microwave radio system has been defined in the *Aquifer Storage and Recovery Digital Microwave System Radio Propagation, System Parameter, Installation Standards and Preliminary Frequency Coordination Report (ASR Report)*, dated September 19, 2009 issued by Gillespie, Prudhon & Associates under separate contract to the **CITY**. If **ETI** encounters a situation other then as represented in the ASR Report, **ETI** shall notify the **CITY** of such change;

b. Any individual facility or location which has been determined to have connectivity to the **CITY** network via a wireless link, shall be referred to as a "Site Location";

c. The ASR Project requires the installation and configuration of new wireless communication facilities that will utilize portions of the WCN Project for transfer of ASR data and/or video. The **CITY**'s WCN project is depicted in EXHIBIT D, herein;

d. For purposes of this second amendment, notice by one party to the other via e-mail shall constitute sufficient written notice;

e. **ETI**'s Responsibilities:

1. **ETI** shall be responsible for design and construction of the following communications towers, each with a height of 150 feet above ground level, for the ASR Project; (see EXHIBIT E):

a. Phase 1 Surface Water Treatment Plant (SWTP1), (Lat 38.0584610905498 / Long 97.6095547154546), located on CITY property northeast of the intersection of NW 12th and N. Willow Lake Road, Burrton, Kansas;

b. Well Field Maintenance Shop (WFMS), (N 1788444.39 / E 1585101.66), located on CITY property southeast of the intersection of SW 60th and S. Spring Lake Road, Halstead, Kansas;

c. Phase 2 Surface Water Treatment Plant (SWTP2, which include the Well Field Maintenance Facility (WFMF) and the ASR Control Center), (Lat 37D, 53', 36.43" / Long 97D, 28', 59.48"), located on CITY property sat 12021 West 117th Street North, Sedgwick, Kansas; and

d. Cowskin Creek Water Quality Reclamation Facility (CCWQRF, also known as Sewer Treatment Plant 3 or STP3), (Lat 37D, 45', 29.03" / Long 97D, 29', 31.74 "), located on CITY property at 0.5 miles north of North 135th Street West on West 37th Street North, Wichita, Kansas.

2. Prior to construction of each ASR tower, **ETI** shall be responsible for structural

calculations necessary to design the tower foundation. **ETI** shall verify the presence of existing underground or aboveground structures, facilities, and piping at each site installation prior to conducting work. The **CITY** shall be notified immediately of any discrepancy or conflict;

3. ETI shall deliver a Professional Engineer stamped design for the ASR tower and construct each ASR tower structure and foundation to meet or exceed TIA/EIA 222-G specifications, or local building codes, whichever is more stringent. Based on the *ASR Report*, **ETI** shall deliver a minimum three leg self-supporting lattice tower, designed to support the equipment for two other carriers;

4. **ETI** shall supply and construct an electrical grounding system and lightning protection system for the tower to include microwave antennas, Ethernet radio Omni antenna, and cabling and equipment installed on or around the tower. The grounding, which shall be a standard Motorola R56 system, and electrical design shall be coordinated with ASR Program Phase II PC/SCADA Project design for the SWTP1, WFMS, SWTP2 and CCWQRF sites;

5. For each ASR microwave link as identified in EXHIBITS A and/or B, herein, **ETI** shall be responsible for the FCC licensing as well as supply and installation of microwave antenna, radio outdoor unit (ODU), rack-mounted radio indoor unit (IDU) within the Tower Cabinet, and contiguous coaxial cabling of sufficient length from the ODU to the IDU with adequate mounting to the tower. It is agreed by both parties that ETI will be in the best position to determine the antenna elevations, based on their path assessment;

6. Prior to any installation, **ETI** shall be responsible to perform a Path Analysis using software tools to determine each link's anticipated system reliability. If a link appears to have less than the **CITY**'s desired 99.99% system reliability, **ETI** will provide the **CITY** with recommendations for improving that particular link. **ETI** will also consider findings from the *ASR Report, in developing the wireless portion of the ASR network design;*

7. **ETI** shall be responsible for installation of the Cisco wide area network switches and any associated microwave radio power supplies within the cabinets;

8. **ETI** shall be responsible for providing conduit and raceways on the Microwave tower, terminating the cables within the Tower Cabinet, and providing / *installing* / testing the IDUs. The tower conduit and raceway design shall be coordinated with ASR Program Phase II PC/SCADA Project design for the SWTP1, WFMS, SWTP2 and CCWQRF sites;

9. For ASR towers at SWTP1, WFMS, and SWTP2, **ETI** shall be responsible for supply and installation (including adequate mounting) of Omni Ethernet antenna and adequate coaxial cable of sufficient length to the concrete pad-mounted Tower Cabinet supplied and constructed at the tower base under separate contract to the **CITY**;

10. **ETI** shall be responsible for installation and configuration of ASR network equipment (including wide area network switches supplied by the **CITY**). This task will be completed at all ASR tower sites. **ETI** shall also be responsible for installation and configuration of network equipment at Fire Station 13 (see 10.a, herein), City Hall (see 10.b, herein), and the Main Water Treatment Plant (see 10.c, herein) to integrate the ASR Project with the WCN Project. **ETI** shall coordinate the configuration of the network equipment with the **CITY** network staff:

a. The work under this contract addendum at Fire Station 13 shall only include providing and installing the microwave radio with antenna and other

equipment and wiring necessary to establish the link to the SWTP2;

b. The work under this contract addendum at City Hall shall include the providing and installing two microwave radios with antennas, and other equipment and wiring necessary to establish links to the Water Treatment Filter Plant and CCWQRF;

c. The work under this contract addendum at the Main Water Treatment Plant shall include providing and installing the wide area network switch, microwave radio with antenna and other equipment and wiring necessary to establish links to City Hall.

11. **ETI** shall be required to coordinate work, schedule and sequencing of work with WWU ASR Process Control/SCADA Project Manager. To allow for a minimum fifteen day review period, **ETI** will e-mail all submittals requiring **CITY** review and approval to the ASR Project Managers (see 1.a.1, 1.a.2.

a. Submittal Definitions:

1. Action Submittal: Written and graphic information submitted by **ETI** that requires **CITY**'s approval;

2. Informational Submittal: Information submitted by **ETI** that does not require **CITY**'s approval.

b. Required Action Submittals:

1. Shop Drawings showing structural design including tower structural steel and tower foundation;

2. Shop Drawings showing electrical design including lightning protection, tower grounding and tower cabling;

3. Equipment submittals including Ethernet radio Omni antennas and antenna cabling.

c. Required Information submittals:

1. Test and inspection reports;

2. Construction Photographs: Photographically document all phases of tower structural and foundation construction in digital format, no larger than 2 megapixels with minimum resolution of 1024 by 768;

3. Manufacturer's operations and maintenance manuals for each type of equipment provided.

d. Action Submittal Dispositions: **CITY** will review, mark, and stamp as appropriate, and distribute marked-up copies as noted:

1. Approved: **ETI** may incorporate product(s) or implement Work covered by submittal;

2. Approved as Noted: **ETI** may incorporate product(s) or implement Work covered by submittal, in accordance with **CITY**'s notations;

3. Partial Approval; Resubmit as Noted: Make corrections or obtain missing portions, and resubmit. Except for portions indicated, **ETI** may begin to incorporate product(s) or implement work covered by submittal, in accordance with **CITY**'s notations;

4. Revise and Resubmit: **ETI** may not incorporate product(s) or implement Work covered by submittal.

12. **ETI** shall be responsible for obtaining the required FCC licenses for the **CITY**;

13. **ETI** shall be responsible for providing all material, labor and incidental equipment (see Section 5b; Payment, herein) necessary to complete and make operational each designated communication link;

14. **ETI** agrees that prior to the installation of any equipment to a single or multiple site location(s), intended to be placed on the ASR network system, **ETI** shall coordinate the work through either of the ASR Project Managers (see section 1.a.1 and 1.a.2) and submit a baseline schedule of work activities for **CITY** and WWU review;

15. Prior to any installation, **ETI** shall perform Line of Sight (LOS) and Spectrum surveys for identified sites to determine network link capability. Once the surveys have been completed, **ETI** shall compare their findings with the *ASR Report*, and notify the ASR Project Manager immediately of any discrepancies;

16. Following the terms of Section 2a (Scope of Work), herein, as is applicable, **ETI** shall present the **CITY** with any recommended or required changes to the overall ASR network design or preferred deployment;

17. Upon authorization to proceed, **ETI** shall install, integrate and activate the Ceragon radio and antenna equipment as defined by this Scope of Services. **ETI** shall also demonstrate a test performance of the installed equipment (see Section 3, *Testing*);

18. In terms of City network equipment, **ETI** shall assist the **CITY** in determining which facility equipment will need replacement;

19. **ETI** shall be responsible for transport, handling and installation of all materials, equipment and supplies furnished by the **CITY** or **ETI** and used on the Project;

20. **ETI** shall provide the **CITY** with a minimum 30 day advance notice of initiating construction activities at a site;

21. **ETI** agrees that all services rendered shall be performed by or under the supervision of an appropriately certified Ceragon technician or engineer (see Section 1b, herein);

22. **ETI** agrees that all services rendered shall be in compliance with all applicable laws, statutes, codes, ordinances, rules, regulations and standards (see Section 6, Warranty, herein) and completed in a manner consistent with the level of skill ordinarily exercised by members of the profession currently practicing under similar conditions;

23. Should **ETI** have knowledge of an event which may delay the completion of a work activity and/or the Project, **ETI** shall notify the **CITY** in writing, at its earliest opportunity, and provide as much detail as possible on the cause of the delay;

24. If a work activity and/or the Project encounters a delay which is solely due to the fault of **ETI**, **ETI** shall be held responsible for the entire amount required to remedy the cause of the delay;

25. **ETI** shall provide a reasonable response to maintenance and/or emergency situations which may arise on the Project. **ETI** shall notify the **CITY** of any additional contact persons or numbers to be used in connection with such a procedure;

26. **ETI** shall be responsible for obtaining required permits, including building permits, prior to any tower erection.

f. **CITY**'s Responsibilities:

1. Under separate contract defined by ASR Bid Package #1, the **CITY** will provide network rack cabinets, including cabinet power supply and power distribution

units, within an onsite interior Network Room at the SWTP1, WFMS, SWTP2 and CCWQRF sites;

2. Under separate contract defined by ASR Bid Package J1, the **CITY** will be responsible for constructing a concrete pad-mounted Tower Cabinet at the base of towers at the SWTP1, WFMS, SWTP2 and CCWQRF sites, concrete house-keeping pad for the Tower Cabinet, and underground and interior conduit runs including hand holes and other related equipment;

3. The Tower Cabinet will be provided by the CITY under separate contract. The **CITY**, under separate contract defined by ASR Bid Package J1, will provide other components within the Tower Cabinet;

4. The **CITY**, under separate contract defined as Bid Package J1, will provide and install equipment related to the Ethernet radio network and fiber optic cabling from the Tower Cabinet to the Network Room;

5. The **CITY** will be responsible for supply of the Cisco wide area network switches for installation by **ETI**. The **CITY** shall coordinate the configuration of the network equipment with the **ETI** network staff. The ASR microwave radio design shall be coordinated with the **CITY**'s WCN Project design;

6. The **CITY**, under separate contract, will be responsible for application software development and programming of the ASR supervisory control and data acquisition (SCADA) system and network;

7. Once receiving the schedule of work activities, submitted by **ETI** (section 2e14, Scope of Work, herein), the Project Manager will, in turn, coordinate with the **CITY** Network, WWU and consulting staff, in accumulating information relating to licensing, permits, tower information, site location and preparation, facility access, provision and attachment of equipment, an appropriate time for installation and network parameters (i.e. IP addressing, etc.);

8. Any **CITY** network equipment necessary for connectivity of a site location, shall be purchased, installed, configured and powered-on by the **CITY,** prior to the beginning of an installation by **ETI**;

9. Should the **CITY** have knowledge of an event which may delay the completion of a work activity and/or the Project, the **CITY** shall notify **ETI** in writing, at its earliest opportunity, and provide as much detail as possible on the cause of the delay;

10. If a work activity and/or the Project encounters a delay which is solely due to the fault of the **CITY**, the **CITY** shall be held responsible for the entire amount required to remedy the cause of the delay;

11. Other concurrent work is anticipated at the various site installations. The **CITY** will notify **ETI** of any foreseen conflicts and determine a plan or schedule for resolution. **ETI** shall communicate any unforeseen conflicts immediately to the **CITY**;

12. The **CITY** shall provide an area for storage of all materials, equipment and supplies furnished by the **CITY** or **ETI** and used on the Project;

13. The **CITY**, under separate contract, will provide **ETI** with geotechnical data from site specific investigations to facilitate the foundation designs.

g. **ETI** and **CITY** Common Responsibilities:

1. In the event that the **CITY** or **ETI** find it necessary to propose a change to any portion of the Scope of Work, either party shall schedule a meeting to assess any respective changes to the project (i.e. design, scheduling, equipment, pricing, etc.);

2. **ETI** and the **CITY** shall jointly work on the configuration of all equipment located at an installation facility or location;

3. Should there be a need for any additional amendments to this document, or specific site design or schedule during the life of the Project, the resulting document shall require the signature of both the **CITY** and **ETI**;

4. **ETI** and the **CITY** agree to conduct weekly progress meetings when there are construction activities ongoing, and monthly progress meetings when there are no construction activities ongoing. At each progress meeting, **ETI** shall submit a 3-week look ahead schedule showing upcoming construction or other work activities;

5. The site locations for ASR network facilities and installation of equipment are presented as EXHIBIT C, herein. The possibility of additions/deletions to that list may occur, as the Project progresses. Any changes to the list shall be jointly agreed to and require the signature of both the **CITY** and **ETI**. The **CITY** shall coordinate with **ETI** for scheduling the installation and integration of any worksites within the wireless network;

6. **ETI** and the **CITY** agree to the preliminary milestone and target substantial and final completion schedule presented as EXHIBIT G, herein. Any deviation to the preliminary schedule will require prior written acceptance by the **CITY** and **ETI**;

7. Should an unforeseen delay occur on a work activity and/or the Project, **ETI** and the **CITY** shall jointly decide on a plan and schedule for a solution to remedy the cause of the delay. Should the solution cause a major change to the intended Scope of Work, the solution shall be documented in writing and signed by the **CITY** and **ETI**;

8. Both ETI and the CITY shall work jointly to guarantee the safeguarding and inventory of all materials, equipment and supplies furnished by the **CITY** or **ETI** and used on the Project.

9. The tower cabinet design will be coordinated between **ETI** and the **CITY**.

3. Testing: Licensed link testing will be conducted as follows:

a. **ETI** will utilize the RFC2544 throughput and latency tests to verify link performance;

b. **ETI** will reduce the number of iterations and durations of RFC2544 tests performed against each individual frame size to achieve a more reasonable field testing time;

c. Following the installation of any equipment by **ETI**, which renders a site location ready for connection to the **CITY** network, **ETI** shall coordinate with the **CITY** Project Manager to test the site location for determination of the full functionality and operational integration of the newly installed portion of the Project:

1. Each radio and antenna installed at a site location shall be tested utilizing a ping method which shall be set for a minimum of 10 loops. The round trip time for each ping test shall be recorded to establish the optimum average for trip latency;

2. Perform adjustment to each antenna, radio and power level to optimize and record the communication link of each path;

3. Once each path has been optimized, utilize the ping method, Iperf and manufacturer's configuration utility at the tower/structure to record the trip latency, throughput and Signal-to-Noise Ratio (SNR) for each single link;

d. Following the installation and successful testing of all site locations ; **ETI** shall coordinate with the ASR Project Manager(s) to conduct a cumulative test of the ASR system;

1. Utilizing the ping method, Iperf and the manufacturer's configuration utility at the tower/structure, record the trip latency, throughput and SNR

for each single link defined by the pair of backhaul radios and for the cumulative link from the City Hall Data Center through each site location, returning to the City Hall Data Center (ASR Communication Network);

e. Following the successful cumulative testing of the ASR Communication Network, **ETI** shall conduct a test of the Alvarion radio / antenna equipment from the City Hall Data Center to the **CITY** Water Treatment Filter Plant (1815 W Pine St).

f. Ethernet radio antenna and antenna cabling shall be tested upon completion of installation of antenna and cabling.

1. Measure voltage standing wave ratio (VSWR) and record results.
2. Measure attenuation at 1000 MHz and record results.

4. Acceptance:

a. Following a successful test performed for viability of a network connection and operational performance of a site location, and the specific site remains in the same functional mode of operation for a period of seventy-two (72) hours, the **CITY** agrees to accept the site installation;

b. Performance or throughput goals shall be:

1. Throughput goal for the licensed band ASR backbone link is 50 Mbps;
2. Latency of not more than 10ms on each individual ASR Network backhaul link;
3. Throughput goal for the unlicensed band link between City Hall and the Water Treatment Filter Plant is 10Mbps.

c. If the throughput goals are not attainable, **ETI** will provide the **CITY** with solutions to achieve improvement;

d. Ethernet radio antenna and antenna cabling parameters for acceptance are:

1. VSWR less than 1.5:1
2. Attenuation at 1000 MHz less than 2.0 decibels (dB).

e. Following acceptance of a site location or locations, **ETI** shall provide the **CITY** with hard and electronic copies of as-built drawings, completed in Microsoft Visio, and any associated specifications and drawings, if installation will deviate significantly from the plan set of specifications;

f. Any payment rendered under this contract shall not constitute full acceptance of the work performed by **ETI**.

5. Payment:

a. The **CITY** and **ETI** agree that all work under this contract addendum shall be paid on a "Unit Price" basis, up to a maximum limit of **$598,650.00**. The provisions governing the Unit Price are established in Section 2.0 of the Original Contract. The pricing associated to a specified type of unit install are provided in EXHIBIT F, herein, which shall determine all pricing for equipment. Should the maximum limit, listed herein, prove to be insufficient, **ETI** and the **CITY** shall meet to renegotiate a revised amount;

b. Any component not listed within Exhibits A, B and/or F, herein, but necessary for the system to function, shall be considered incidental and shall be furnished, installed and integrated by **ETI**. The term "Incidental" is defined as an item(s) which is associated or included in the cost of a Unit Price item and which shall not be paid for separately;

c. **ETI** shall submit monthly itemized invoices covering all charges for the services delivered during the preceding month. The submittal of an invoice from **ETI** to the **CITY** shall be

based upon acceptance of the work completed, at each site location listed within the invoice;

d. Upon receipt of an invoice for accepted work, the **CITY** will submit payment for the amounts listed within thirty (30) days;

e. Upon processing of a payment to **ETI**, for an accepted site location, the **CITY** shall retain an amount of five percent (5%), to be withheld until Final System Acceptance Testing of the ASR Project;

f. Communication Tower Equipment and Labor Costs are excluded from the **CITY**'s 5% retainage pending System Acceptance Testing, and will be invoiced as follows per the **CITY** Unit Price sheet (Exhibit F);

1. Item 2, 150' Sabre S3T-VL Steel Tower:

a. Equipment cost will be treated as initial deposit, due when placing the tower order;

b. Labor cost will be due upon completing erection of 50% of the tower;

2. Item 3, Tower Foundation – Equipment and Labor cost will be due upon completing erection of 50% of the tower;

3. Item 4, 150' Sabre S3T-VL Steel Tower Assembly:

a. Equipment cost will be due upon completing erection of 50% of the tower;

b. Labor Cost will be due on **CITY**'s receipt of tower deliverables, which include the manufacturers warranty, pictures of the completed tower and grounding test results.

g. The **CITY** is exempt from the payment of City, State and Federal taxes, thus taxes will be excluded from any invoice pricing;

h. **ETI** shall not issue any purchase orders or procure any equipment, supplies or materials for the Project, without the prior written approval of the **CITY**;

i. Should any work performed by **ETI** require an hourly wage basis for payment, an invoice listing the individuals who performed the work, the individuals rate classification, hourly rate, type of work performed and the number of hours required to perform the work, shall be presented to the **CITY**;

j. With each invoice submitted by **ETI**, a lien waiver respective of the services listed in the invoice, shall also be submitted to the **CITY**;

k. **ETI** agrees to follow the provisions of accounting and record keeping as established under Section 2e of the original Contract;

l. This contract addendum includes a cash allowance for the **CITY** to use in the procurement and delivery of the Cisco wide area network switches to each site as described in this Scope of Work;

m. For work under this contract addendum, **ETI** shall not be authorized to exceed the maximum limit identified in Section 5a without prior written notice from the **CITY**.

6. Warranty:

a. All electrical work performed by **ETI** shall conform to the standards of the National Electrical Manufacturers Association (NEMA), the Underwriters Laboratories Inc. (UL), the Electrical Testing Laboratories (ETL), the National Electrical Testing Association (NETA), or the Electronic Industries Association (EIA). All materials and workmanship shall conform to the requirement of the National Electric Code (NEC);

b. Following the acceptance of a site location (City Hall building and **CITY** Water

Treatment Filter Plant inclusive); the site installation consisting of equipment and service, shall enter a warranty period of one (1) year.

7. Independent Contractor:

a. It is agreed between the **CITY** and **ETI** that any work performed by **ETI** on the Project, shall be as that of an independent contractor. **ETI** shall be responsible for the employment and direction of all persons performing work under this contract. Such persons shall be the sole employees or subject to the control and direction of **ETI;**

b. **ETI** shall assign only full-time regular employees in connection with the performance of the services necessary to deploy and implement the network for the ASR Project. **ETI** will use a 3rd party contractor for installation of the tower structure and foundation. If **ETI** wishes to use other than full-time employees for any other phase of the project, it will first notify the ASR Project Managers of such intent;

c. If the **CITY** determines, with reasonable cause, that an employee from **ETI** or **ETI** subcontractor, is detrimental to the success of the Project, the **CITY** shall have the right to request **ETI** to remove and, if necessary, suitably replace those person(s).

8. Work Restrictions: The **CITY** and **ETI** have agreed upon the following climbing policy established for this contract:

a. Excluding national holidays and unless a climb has been scheduled outside of the following timeframe, the acceptable time of day for climbing will be from 2 (two) hours following sunrise to 2 (two) hours prior to sunset, Monday through Friday;

b. **ETI** will not be expected to perform any climbing activity during periods of rain, lightning, snow, registered temperatures below thirty-two (32) degrees and registered wind speeds over twenty (20) miles per hour.

9. Maintenance Agreement: The **CITY** and **ETI** shall develop and agree upon a joint Maintenance Agreement for the WCN and ASR Project.

10. System Network and Monitor:

a. As part of the Wireless Communication Network Project, **ETI** has provided the **CITY** with specifications for the hardware required for monitoring the network system;

b. The **CITY** is responsible for:

1. The hardware required for the Central Management system;
2. The license for Solarwinds Orion Network Performance Monitor software;
3. Entry of all network devices into the Solarwinds Orion product;

c. **ETI** is responsible for notifying the **CITY** network staff of devices to be entered into the Solarwinds Orion product;

d. Both the **CITY** and **ETI** will coordinate services necessary to properly monitor the ASR network through the Solarwinds Orion product;

11. Indemnify:

a. **ETI** agrees to indemnify, defend and hold the **CITY**, its directors, officers, agents and employees harmless from and against any and all losses, claims, demands, actions, suits, judgments, liabilities, injuries, damages and expenses (including but not limited to attorney fees, expense of litigation, fines and penalties) that **ETI**, or anyone associated with **ETI**, may have

incurred by reason of any injury, sickness, disease or death to any person or any damage or injury to any property to the extent arising out of or occurring in connection with the wireless project or any of **ETI**'s wrongful or negligent acts or omissions;

b. **ETI** warrants that any services to be provided and the use of any software, information, apparatus, documentation, method or material product furnished by **ETI**, under this contract, shall not infringe any patent, copyright, trade secret or other proprietary right of any third party. **ETI** shall, at its expense, fully defend the **CITY** against any and all claims, suits, actions or proceedings alleging that the use of any software, information, apparatus, documentation, method or material product or execution of services furnished by **ETI**, under this contract, constitutes patent infringement or a violation of any other proprietary rights;

c. **ETI** shall defend, indemnify and hold the **CITY** harmless from and against all liens and claims of lien arising out of the performance of the work completed on the Project;

d. The indemnification and insurance provisions of the original contract are incorporated as if fully set forth herein.

12. Arbitration. **ETI** and the **CITY** shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. *Any reference to arbitration in bid or proposal documents is deemed* void.

13. Termination:

a. *This contract is subject to termination by the* **CITY**, at its discretion, at any time within the Project's life or within any successive renewal, upon thirty (30) days written notice to **ETI. ETI** shall be provided a reasonable time within which to remedy such deficiencies. **ETI** shall be entitled to receive just and equitable compensation for any accepted work completed prior to the effective date of such termination;

b. **ETI** may terminate this Contract at any time for failure of the **CITY** to comply with any material terms or conditions of the Contract, effective thirty (30) days following receipt of such notice by the **CITY.** The **CITY** shall be provided a reasonable time within which to remedy such deficiencies;

c. **ETI** agrees that it is not involved in any outstanding litigation, arbitrated matter or any other dispute which, if rendered an unfavorable judgment, would reasonably have the potential to affect **ETI**'s ability to fulfill its obligations under this Contract.

14. Confidentiality:

a. The **CITY** and **ETI** agree that the term "Confidential" relates to any and all information and documentation that is not readily available to the general public and that **ETI** will take all precautions to insure that such information or documentation belonging to the **CITY** or the project, maintain such a confidential nature;

b. **ETI** agrees that all originals and copies of information, used or developed under this Contract, shall be provided to the **CITY** and that the **CITY** maintains a non-exclusive license to use any drawings, plans, spreadsheets, blueprints, schematics, flow charts or diagrams, specifications and any and all other documents, produced in any format, for any purpose;

c. The **CITY** agrees that **ETI** may retain one copy of the same information for its files;

d. **ETI** agrees that it may not use the **CITY**'s or the Project's name for any promotional purposes without written prior consent from the **CITY.**

15. Discrimination: ETI shall comply with all applicable requirements of the **CITY**'s Revised Non-Discrimination and Equal Employment / Affirmative Action Program Requirement Statement for Contracts and Agreements, attached hereto as EXHIBIT H.

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

17. Integration Clause: This Agreement, along with any exhibits, appendices, addendums, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. In the event of conflict between this addendum and the original contract, this addendum shall govern.

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

The City of Wichita:

Carl Brewer, Mayor

Approved as to Form:

for Gary E. Rebenstorf
Director of Law

11/24/10
Date

ATTEST:

Karen Sublett
City Clerk

Date

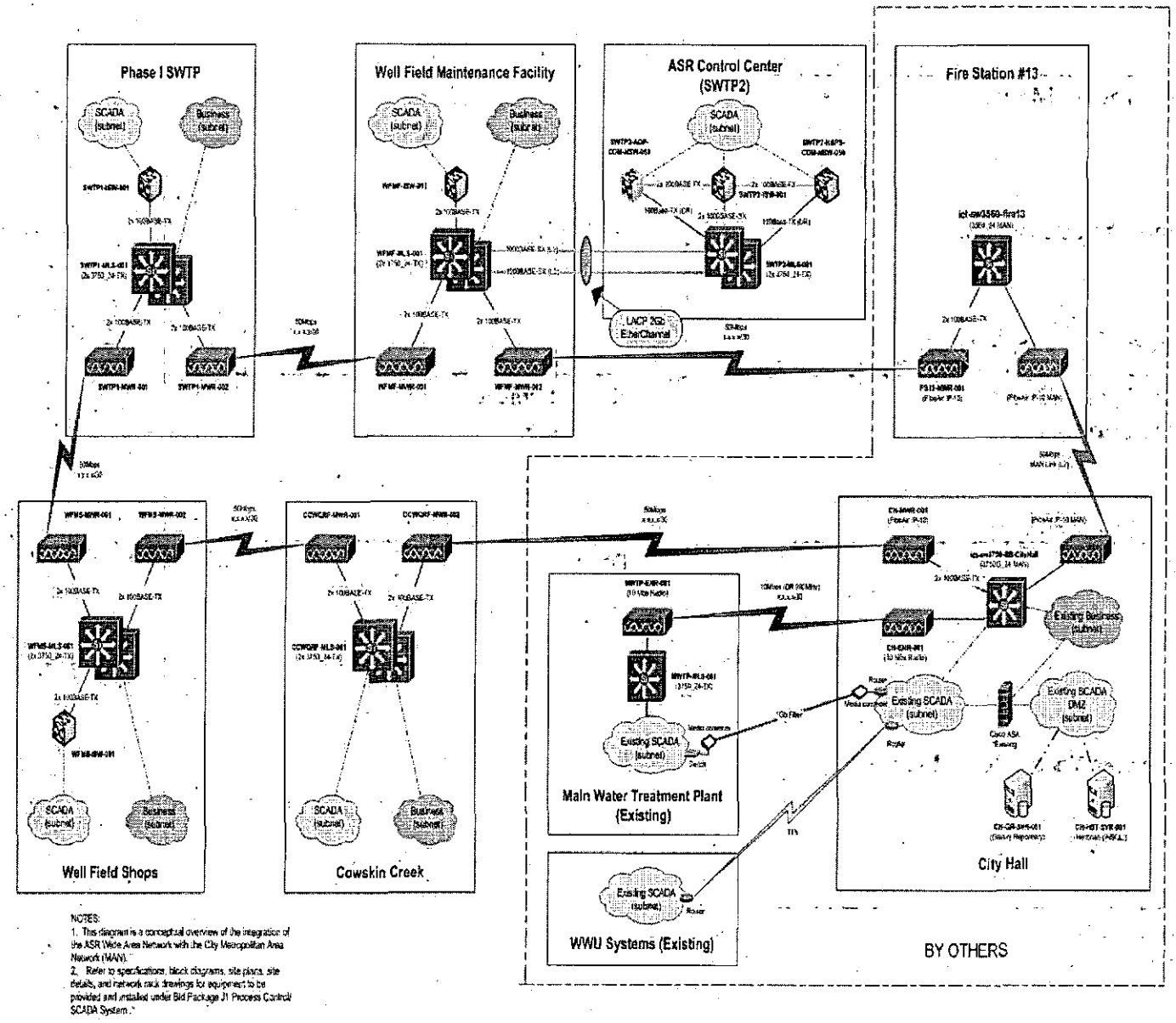
Electronic Technology, Inc.:

Barbara Carr
President

Date

EXHIBIT A

City of Wichita ASR Wide Area Network Basis of Design

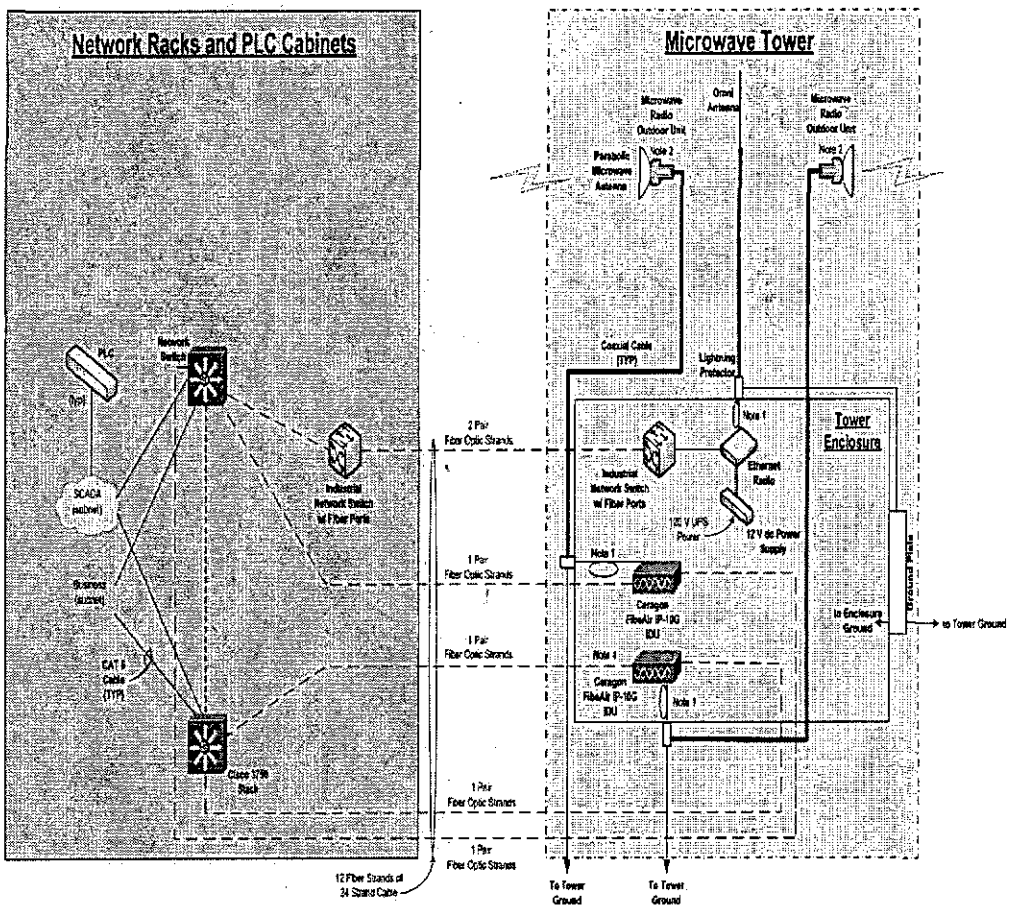


Notes:

1. This diagram is a conceptual overview of the integration of the ASR Wide Area Network with the CITY's WCN Project;
2. Refer to specifications, block diagrams, site plans, site details and network rack drawings for equipment to be provided and installed under Bid Package J1 Process Control SCADA System;
3. "BY OTHERS" shown in this figure represents work to be performed by ETI;
4. N-Tron switches shown, will be provided by ASR Bid Package J1;
5. Cisco switches will be supplied by the CITY and installed by ETI;

6. Equipment within the ASR Control Center, including an Ethernet channel to SWTP2, will be provided by ASR Bid Package J1;
7. Ceragon radios and equipment will be provided by ETI.

EXHIBIT B



NOTES:
1. Coaxial Flexible Jumper
2. Microwave ODU Mounted Back of Antenna
3. See Block Diagrams For Contract Responsibility
4. Multimode 1000 Base SX SFP Module W/LC Duplex Connector on Ceragon IP-10S

EXHIBIT C

Site Locations and ASR Microwave Communication Links

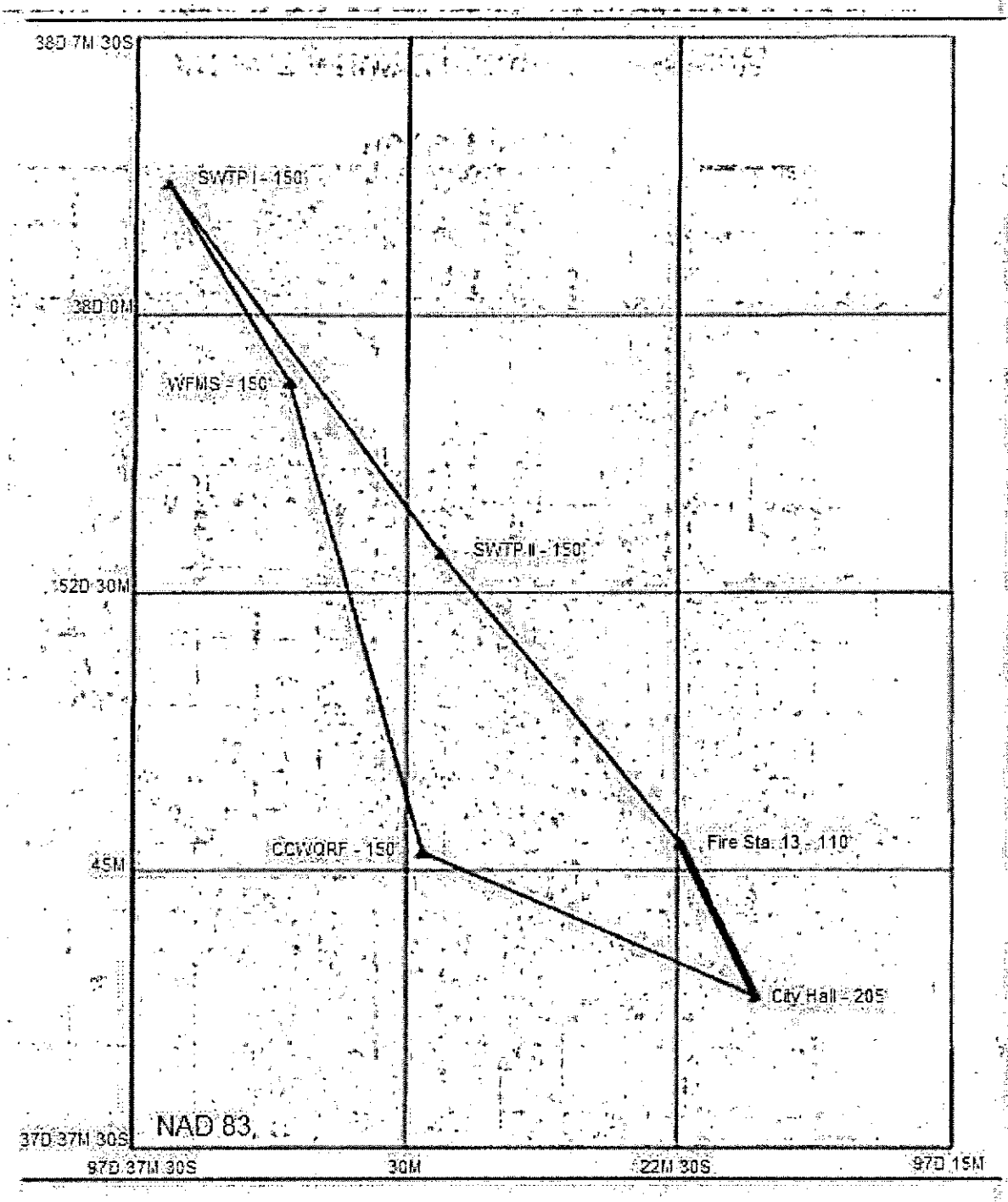


EXHIBIT D

CITY WCN

Wireless Communication Network

Backhaul Design

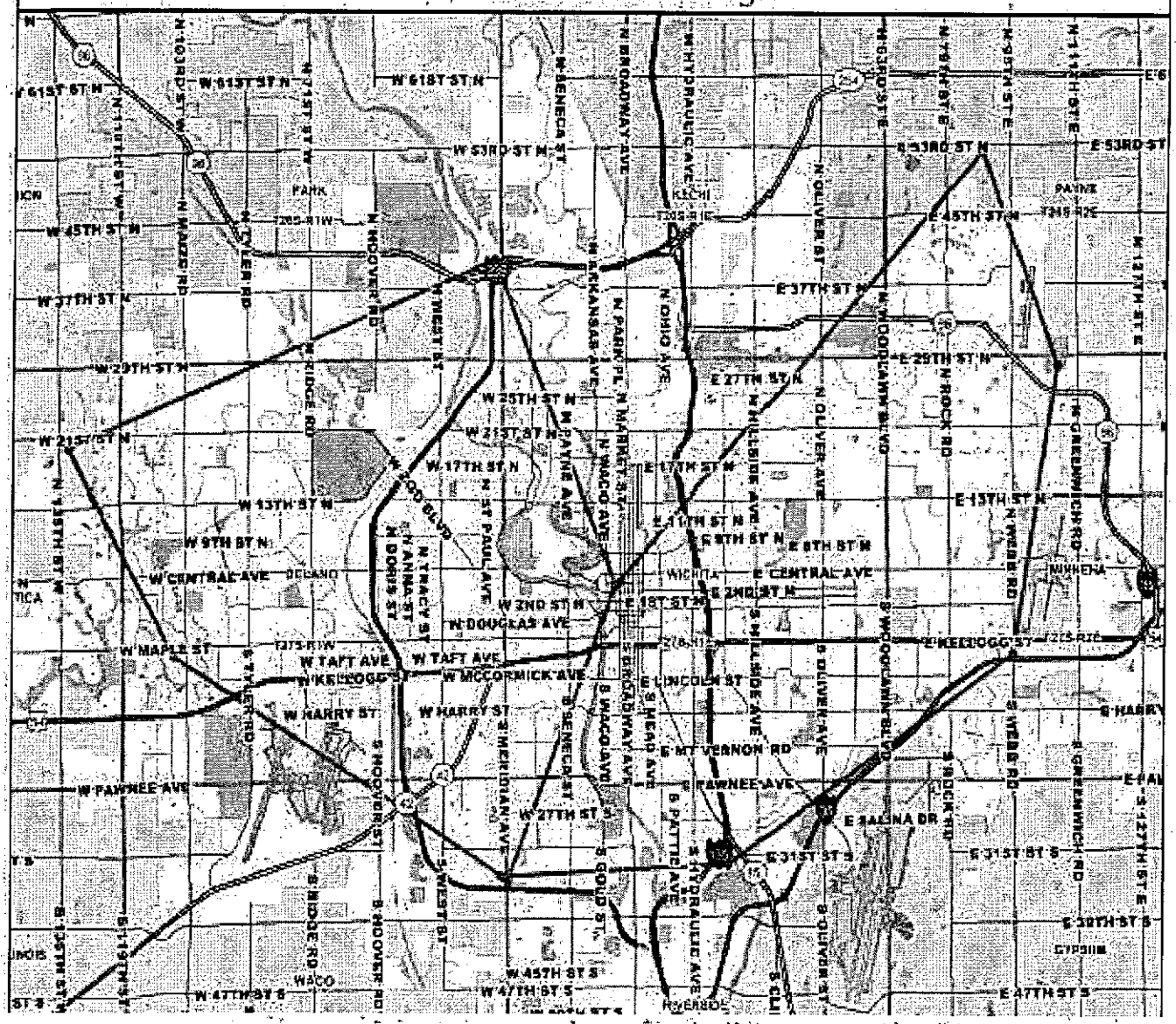


EXHIBIT E

Memo

To: Dennis McHugh

From: Brad Peterson

CC: Deb Ary, Dan Carr

Date: 10/18/2010

Re: **Sabre S3T-L VL 150' Self-Supporting Tower Installation and Pricing**

General Information Regarding Tower and Installation.
Sabre S3T-L VL self-supporting steel communication towers will be installed in the Wichita, Kansas area in support of the City's ASR project. The towers are 150' tall, 15' wide at the base, tapering up to a width of 5' at 100', and continuing at 5' wide up to the top. The tower was designed to support ASR's omni-directional antenna and associated cabling installed at 150', a 6' dish antenna at 147', a 6' or smaller dish antenna at 137', and to accommodate cell carriers at 127' and 117' as future tenants. Tower design was calculated using Wichita, Kansas wind speeds of 90 mph with 0" of radial ice and 40 mph with ¾" of radial ice, in accordance with ANSI/TIA-222-G, using Structure Class III, Exposure Category C and Topographic Category 1.

The Sabre S3T-L tower is a "pre-engineered" tower. Sabre furnishes "pre-engineered" foundation designs based on "normal" soil conditions. The "pre-engineered" foundation is a rebar reinforced 1.5' thick mat, approximately 22.5' square and approximately 3.5' below the surface with 3 each 48" piers to support the tower legs. The foundation will use approximately 31 cubic yards of concrete. Once permits and "DigSafe" clearances have been obtained, construction of foundation takes about three days. Concrete curing time is 5-6 days, during which time the tower can be assembled. Tower stacking takes about one day. For Planning purposes plan on at least 10 days from tower delivery to erection, weather permitting. In the event that site Geotechnical Evaluations indicate "other than normal" soil conditions at a given site, requiring a "custom engineered" foundation design, the "custom engineered" foundation design, materials and labor required will be quoted separate and additional.

For purposes of budgeting, a halo ground system with 3 driven ground rods and #2 tinned copper wire was included in unit pricing and will be provided. If soil resistivity requires a more sophisticated grounding system such as a chemical ground, this cost would be quoted separate and additional.

Exact tower location will be specified/confirmed by the customer with a marker stake in the ground for center of tower. This customer-marked location will be used when calling for "Dig-Safe" confirmation of no underground utilities, and to determine if tower is required to be registered with the FAA.

Tower Unit Pricing Information.
Unit pricing information for tower equipment and installation is specified in Exhibit F of the ASR Addendum to the City Wireless Communication Network contract. **Provided Unit Pricing includes or excludes the following items as noted:**

LAND:

- Site prep work, clearing of land and weed control are not included.
- Foundation requires 23' x 23' excavation, included, customer will provide needed gate access.

PERMITS/DRAWINGS/FOUNDATION:

- Zoning allows construction, customer to obtain permits, permit fees excluded.
- Kansas PE stamped tower and foundation drawings required, included.
- Geotechnical Evaluation and Report required but priced separately, not included.
- Cost for dirt removal not included.

TOWER STEEL/DELIVERY:

- Safe Climb System and Step Bolts up one leg to the top are included.
- Climbing ladder and antenna mounts not included.
- No ice shields required, waveguide ladder required, included.
- Freight costs, rental equipment and offloading on delivery are included.
- Manufacturer quoting 4-6 weeks from order for tower delivery
- Customer agrees that tower steel can be stored on-site up to 30 days before assembly.

TOWER ERECTION:

- Technicians will use crane to erect tower steel, included.
- For planning purposes, allow 2 weeks after delivery to assemble and stack, included.

GROUNDING:

- Soil resistivity tested prior to construction, included.
- Motorola R56 grounding system with 3 driven ground rods, included.
- Soil Resistivity Report and Ground Test Results required, included.

ELECTRICAL POWER:

- Customer to provide electrical power, not included.

SECURITY FENCING:

- Anti-climb shields and site fencing not included.

DELIVERABLES:

- Manufacturer's Warranty, Soil Resistivity and Ground Test Results, tower pictures, included.

EXHIBIT F

ASR COMMUNICATION NETWORK ITEMS

	ITEM	DESCRIPTION	Cost for Equipment	Cost for Labor	Cost for 1 Yr Onsite Support
1.	Geotechnical Survey of Proposed Tower Location	Geotechnical Survey and Report for proposed tower location. Report will detail analysis of soil composition and existing soil load-bearing capacity in order to determine whether existing site soil conditions will permit utilization of a standard "pre-engineered" tower foundation, or if a "custom-engineered" foundation will be required.	$1,950.00	N/A	N/A
2.	150' Sabre S3T-Design, Tower Steel, Grounding Kit, Delivery and Offloading	150' Sabre S3T-VL Steel Communications Tower, including:	$29,041.00	$2,873.00	N/A
		Kansas PE-Stamped Tower Design	$714.00	N/A	
		Tower Steel	$24,827.00	N/A	
		Halo Ground System with 3 Driven Ground Rods	$857.00	N/A	
		Rental Equipment, Delivery and Offload	$2,643.00	$2,873.00	
3.	150' Sabre S3T-VL Foundation Materials and Construction	Tower Foundation Materials and Construction	$11,555.00	$12,027.00	N/A
4.	150' Sabre S3T-VL Crane Svcs and Tower Assembly and Stacking	150' Sabre S3T-VL Crane Services and Tower Assembly and Stacking	$3,676.00	$8,183.00	N/A
5.	Licensed PTP 6GHz Microwave Backbone Link Equipment	Licensed PTP 6GHz Microwave Backbone Link, consisting of:	$40,920.40	N/A	TBD
		2 Each P/N: IP10G-N-SYNC Chassis IP10G IDU Ethernet	$3,200.00	N/A	
		4 Each P/N: SFP-GE-LX SFP Optical Interface 1000Base-LX, LC	$600.00	N/A	
		2 Each P/N: IP10-SL-CAP-050 License: IP10-SL-CAP-050	$2,400.00	N/A	
		2 Each P/N: IP10-SL-ACM IP10 Enable Adaptive Coding and Modulation	$1,200.00	N/A	
		2 Each P/N: AM-6-6-RW, 6' Antenna, 6GHz, RFU-C Interface, Radiowaves	$13,800.00	N/A	
		2 Each P/N: Durcom Dual Power Supply, Rack Mount	$1,400.00	N/A	
		1 Each P/N: RFU-CX-6L-240A-1W3-TH RFU-C: IP10 6GHz Ch.1-4, TX High	$4,875.00	N/A	
		1 Each P/N: RFU-CX-6L-240A-1W3-TL RFU-C: IP10 6GHz Ch.1-4, TX Low	$4,875.00	N/A	
		1 Each 24 Hr Advanced Replacement/Extended Warranty (5 Years)	$5,768.00	N/A	
		4 Each P/N: XXXXX-XX Ceragon Lightning Suppression	$302.40	N/A	
		1 Each FCC License for the Link	$2,500.00	N/A	

6.	Licensed PTP 6GHz Microwave Install	Provide all labor and incidentals to install and test ASR Project 6GHz radio and 6' antenna on designated tower. This is to include mounting brackets, cabling, connectors, lightning protection and labor to install one side of link only. NOTE: MULTIPLY COST BY 2 FOR A COMPLETE LINK.	N/A	$9,500.00	TBD
7.	Omni Antenna and Mount Equipment	Kathrein SCALA Division Omnidirectional Antenna w/Type N Connector, P/N: OGB9-915N, Pipe-to-Pipe Mount, 200' of Andrew LDF6 1-1/4" Cabling, end connectors, 3 Ea 6' Cable Assy's and Lightning Protection	$3,251.04	N/A	TBD
8.	Omni Antenna and Mount Install	Provide all labor and incidentals to install Omni-directional Antenna, mount, cabling and lightning protection at a given tower location.	N/A	$4,000.00	TBD
9.	Licensed PTP 11GHz Microwave Backbone Link Equipment	Licensed PTP 11GHz Microwave Backbone Link, consisting of the following items:	$33,457.40	N/A	TBD
		2 Each P/N: IP10G-N-SYNC Chassis IP10G IDU Ethernet	$3,200.00	N/A	
		4 Each P/N: SFP-GE-LX SFP Optical Interface 1000Base-LX, LC	$600.00	N/A	
		2 Each P/N: IP10-SL-CAP-050 License: IP10-SL-CAP-050	$2,400.00	N/A	
		2 Each P/N: IP10-SL-ACM IP10 Enable Adaptive Coding and Modulation	$1,200.00	N/A	
		2 Each P/N: AM-4-11-RW, 4' Antenna 11GHz RFU-C IntFCC CatA Radiowaves	$6,337.00	N/A	
		2 Each P/N: Durcom Dual Power Supply, Rack Mount	$1,400.00	N/A	
		1 Each P/N: RFU-CX-11-L-TH RFU-C: IP10 11GHz Lower Band, TX High	$4,875.00	N/A	
		1 Each P/N: RFU-CX-11-L-TL RFU-C: IP10 11GHz Lower Band, TX Low	$4,875.00	N/A	
		1 Each 24 Hr Advanced Replacement/Extended Warranty (5 Years)	$5,768.00	N/A	
		4 Each P/N: XXXXX-XX Ceragon Lightning Suppression	$302.40	N/A	
		1 Each FCC License for the Link	$2,500.00	N/A	
10.	Licensed PTP 11GHz Microwave Install	Provide all labor and incidentals to install and test ASR Project 11GHz radio and 4' antenna on designated tower. This is to include mounting brackets, cabling, connectors, lightning protection and labor to install one side of link only. NOTE: MULTIPLY COST BY 2 FOR COMPLETE LINK.	N/A	$9,000.00	TBD
11.	Unlicensed PTP 5.4GHz Microwave Backbone Link B-28 Equipment	Unlicensed PTP 5.4GHz Microwave Backbone Link, CONSISTING OF 2 EACH OF THE FOLLOWING: BU/RB-B28.54 (P/N: 854255) 5.4GHz Base Unit/Remote Bridge that includes: Outdoor Unit (ODU) with integrated 21dBi 10.5 degree antenna, Indoor Unit (IDU) w/lightning protection, indoor to outdoor 20m baseband cable and 1.5m power cable.	$3,200.00	N/A	TBD
12.	Unlicensed PTP 5.4GHz Microwave Backbone Link B-28 Install	Provide all labor and incidentals to install and test ASR 5.4GHz B-28 radios and antennas at each end of the Main Water Treatment Facility to City Hall link. This includes mounting brackets, cabling, connectors, lightning protection and labor to install entire link, others to provide power.	N/A	$4,500.00	TBD

13.	Cisco Switchgear Configuration	Provide labor necessary to configure City purchased Cisco switch (per device, based on 13 switches to configure) to establish connectivity with and proper VLAN tagging and routing through the City network.	N/A	$700.00	TBD
14.	Solarwinds Network Management Integration	Provide labor necessary to integrate wireless or other network equipment into City's *Solarwinds* Network Management software to provide management with visibility of installed equipment (per hour).	N/A	$100.00	TBD
15	Obtain Necessary Tower Building Permits	Labor necessary to prepare Building Permits and associated permit fees (per location).	N/A	$1,800.00	TBD

EXHIBIT G

Preliminary Milestone and Target Substantial and Final Completion Schedule

Milestone Description	Date
1. ETI Notice to Proceed	December 20, 2010
2. ETI Obtain FCC License	January 21, 2011
3. ETI Complete Tower Foundations	January 21, 2011
4. ETI Complete Tower Erections	March 25, 2011
5. ETI Verify Radio Links	April 22, 2011
6. ETI Configure Microwave Network and Test	April 29, 2011

EXHIBIT H

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising,

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

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

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

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

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

D. Exempted from these requirements are:

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

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

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: 2011 Insurance Program

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Receive, file and ratify the report.

Background: Annually, the City places a number of insurance policies to provide coverage for risks to the City of Wichita, its assets and employees. These policies include property, data processing, boiler/machinery, burglary/theft, employee dishonesty, excess workers compensation, excess general liability, airport general liability, underground fuel storage, helicopter hull and helicopter general liability, fine arts, travel insurance, foreign travel and Wichita Public Building Commission (PBC). In addition, to administer the Risk Management program, various services are contracted including outside appraisal services, software support, medical bill review for worker's compensation, vehicle rental services for private claimants, and several medical service providers for workers compensation.

Analysis: To protect City assets, reduce the risk exposure and administer the Risk Management program, the City has placed the following insurance coverage and maintains the following contracts:

Purchased Insurance

Property Insurance - All City owned buildings (approximately 250) and contents are covered against named perils. The total insurance value is in excess of $758 million and is placed with Travelers Indemnity Insurance Company. The premium is $758,714 annually with a $2 million dollar deductible per occurrence for wind and hail only. All other policy deductibles are $100,000 or less. As a condition of renewal, wind and hail losses to Century II's roof will be adjusted at actual cash value until the current roofing system is replaced. At such time, wind and hail losses will be adjusted at replace cost value. The Travelers Property and Casualty Company of America quote is the lowest quote for this coverage and represents no rate increase from 2010. The increase in overall premium is due to the addition of insurable assets reflected in the City's 2011 Statement of Values.

The City maintains a separate policy for property, liability and boiler insurance on behalf of the Public Building Commission on the State Office Building. Property coverage limits are $34.5 million, with an additional $4.2 million in business interruption insurance. In addition, the Public Building Commission policy also includes general liability coverage of $2 million. Coverage is placed with Travelers Insurance Company with premiums totaling $48,336, a slight reduction in premium cost for 2011.

Worker's Compensation Excess Insurance - The City self-insures exposure to Worker's Compensation costs, as permitted under KSA 44-505(f). However, the City does purchase excess worker's compensation coverage (as required for self-insured's by KAR 51-14-4) with retention of $750,000 per occurrence. The 2011 premium of $163,718 is based on the second year of a two year rate guarantee. This insurance is placed with Safety National Casualty Insurance Company.

Crime (Burglary/Theft) Policy - This policy covers losses due to employee theft, credit card theft, other theft or robbery, forgery of documents, computer fraud (fraudulent transfers of funds) and acceptance of counterfeit currency or money orders. Depending on the type of loss, policy limits range from $50,000 to $1 million. Rates decreased by 2.2% for 2011, resulting in an annual premium cost of $10,437. This policy is placed with Hartford Fire Insurance Company.

Travel Accident Insurance - This policy provides insurance against the loss of life or limb of City employees and elected officials while traveling outside of the City, but within the United States. Class I employees (City Manager and City Council) are covered for travel anywhere in the world. Class II employees (all other City employees) are covered for bona fide business travel anywhere in the world while on official City business. The aggregate policy limit is $500,000, with the loss per individual limited to $100,000. If more than 5 individuals were subject to the aggregate limit, the policy limit would be split proportionately among the claimants. The premium cost is $1,700 annually, the same as 2010. The policy is placed with Zurich American Insurance Company.

International Package - This policy, written through ACE American Insurance Company, provides for coverage to include $1 million general and automobile liability limits, $1 million for repatriation, $250,000 limits for accidental death and dismemberment, $5,000 limits for employee dishonesty and money & securities, and an aggregate of $1,000,000 for kidnap and extortion. The 2011 premium for this policy is $4,941, the same as 2010.

Helicopter Liability - The City maintains liability and hull insurance on the MD 500E helicopter operated by the Police Department. The policy for 2011 written through Phoenix-Old Republic Insurance contains limits of $1.2 million for damage to the hull and $1 million for liability. Premiums for 2011 total $27,175, representing an 8.8% decrease over 2010.

Art Collection - The Wichita Art Museum maintains coverage on the fine arts collections. This policy provides $100 million in coverage for art within the museum, as well as $37,500 million for art in transit or at other locations. The coverage amount is less than the total estimated $175.3 million appraised value of the collection. However, the insurance coverage is based on a “Probable Maximum Loss” study performed by Huntington Block Insurance for fire and tornadoes that may affect the Wichita Art Museum. The study is based on the fact that not more than 2/3 of the art collection (or less) is actually displayed at any given time. The rest of the art collection is stored in a hardened vault and is protected from loss. Huntington Block’s review indicates that $100 million dollars in coverage is adequate and appropriate. Though the collection’s premium rate remained flat, premium costs increased $10,000 to a total of $40,000. This change was due to an increase in collection values and consolidating insuring expenses for traveling exhibitions. The policy is placed with 50% - 50% with ACE American Insurance Company and AXA Art Insurance Corporation.

Airport General Liability - The Airport maintains $100 million in general liability insurance coverage with a $1,000 deductible per occurrence. The policy is written through Chartis (AIG) Aviation with an annual premium of $39,602, an 11.1% reduction over 2010.

Airport Underground Storage Tanks - The Airport maintains environmental liability insurance on 24 underground storage tanks at the airport. Public Works & Utilities maintain one unit at the Hess Pump Station. Liability limits are $1 million per incident. The annual premium is $3,861 and placed through Great American Alliance Insurance company. This insurance protects against environmental loss only. In the event of an accidental property loss, coverage would be afforded through the City’s Property and Casualty insurance policy. This coverage experienced a 1.3% rate decrease from that of 2010.

Federal Excess Liability - The City purchased a Federal Excess Liability insurance policy in June of 2007. This coverage does not cover the misuse of federal funds. The coverage applies to federal

litigation and out of state lawsuits where the Kansas Tort Claims Act would not protect the City of Wichita. This coverage is often maintained in cities similar in size to Wichita to serve as a backstop for significantly high cost liability exposures. Some of these exposures include, but are not limited to: civil rights violations, discrimination, other federal actions and liability coverage for City vehicles when traveling outside the State of Kansas. For 2011, Transit Operations will be added for an additional cost of $2,700. Coverage consists of a $10 million limit with $2 million retention. Premiums for this policy written through AIG will total $221,010 and reflect an 11.4% decrease from 2010.

Self Insured Risks

The City self-insures for general liability using a Tort Fund administered by the Department of Law. Funding for the Tort Fund is provided through the General Fund and water and sewer funds. Automobile liability is self-insured by the City, as is workers compensation (other than the excess coverage noted above).

Contracts

Corvel Corp. services are used for worker's compensation claims that require nurse case management and to re-price billings when utilization is through the provider's network. The nurse management contract is based on an hourly rate basis. For re-pricing Worker's Compensation medical bills, the City pays Corvel 25% of the savings plus $1.25 per line fee.

Heartland MRI is used for all imaging services required for diagnosis of work related injuries. The negotiated fee for these services is from $436 to $530 per MRI, including the read. This reflects an approximate 50% savings over the State of Kansas mandated fee schedule for these services. Other MRI vendors may be used, but only if dictated by medical necessity. All required physical therapy for work related injuries is provided by TheraCare on a negotiated fee structure of 75% of the state mandated fee schedule. Competitive Request for Proposals (RFP) was issued for these services in 2008 for services to be provided in 2011.

Auto Damage Appraisers of Kansas provides damage estimates on private claimant's cars and vehicles and salvage valuations on all total losses. The City has also negotiated a rate of $26 per day with Enterprise Rent-A-Car when the City is required to provide substitute transportation while a private claimant's vehicle is being repaired.

The self-insured worker's compensation and automobile physical damage programs utilize Risk Master World software to log claims, initiate payments and prepare reports. The annual support software fee to CSC Financial Services Group is $18,920. An actuarial review of the Self Insurance Fund reserves is conducted annually. The current provider is Pinnacle Actuarial Resources, Inc, at an annual amount of $7,000.

On January 12, 2010, the City Council approved a contract for insurance placement services for property and casualty insurance with Lockton Companies, LLC. Lockton's contract fee for placement of all applicable 2011 insurance policies is $39,000.

Financial Considerations: The premiums for the insurance policies and related programs and services are included in the adopted budget. Several premium costs are re-allocated to departments through the establishment of auto liability, building and contents, and worker's compensation insurance rates. Coverage for the Police helicopter is budgeted and expended in the Police General Fund budget. Airport specific coverages are budgeted and expended in the Airport Fund. The Art Museum coverage is budgeted for insurance in its 2011 operating budget. Funding for the travel accident insurance and the crime policy is absorbed within the Self Insurance Fund. Overall, total premium rates decreased by 2.7%. The total cost of premiums increased by 2.8%. The majority of this increase can be attributed to additional insured assets and increased values.

Goal Impact: The City places a number of insurance policies and contracts to provide coverage for risk to the City of Wichita and its employees as a part of the Internal Perspective goal. These policies include property, data processing, boiler/machinery, burglary/theft, employee dishonesty, excess worker's compensation liability, airport general liability, underground fuel storage, helicopter hull, helicopter general liability and federal excess liability. The insurance policies and contracts protect City assets and reduce/avoid costs.

Legal Considerations: The City's liability on tort claims is limited under KSA 75-6105 to $500,000 per claim. The City is allowed to self-insure workers compensation based on KSA 44-505(f), although excess workers compensation coverage is required under KAR 51-14-4. City Code 2.64.020 (h) authorizes the Purchasing Manager to negotiate the purchase of insurance coverage.

Recommendation/Action: It is recommended the City Council receive, file and ratify the 2011 Insurance Program, subject to minor modifications and verification of coverage details.

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: HOME Program; Housing Development Loan Program Funding (District I)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve the funding allocations, and authorize the necessary signatures.

Background: On May 4, 2010, the City Council approved final allocations under the 2010-2011 second program year action plan funding process, which included a total of $400,000 in HOME Investment Partnerships Program (HOME) funding for the Housing Development Loan Program (HDLP). The HDLP is designed to provide subsidies for infill housing projects, to support the development of real estate that is idle or underutilized, and to provide needed housing for underserved populations. Funding may be provided to non-profit or for-profit organizations. The loan structure is dependent upon the type of project to be financed. The program funding must be utilized within the boundaries of the City's Redevelopment Incentives Area (RIA), Neighborhood Revitalization Area (NRA) and Local Investment Areas (LIA), as described within Neighborhood Revitalization Plan adopted by the City Council. Requests for funding under the program are received on an open application basis. The maximum funding amount available to any one applicant, as established by the Housing and Community Services Department, is $175,000.

Analysis: Mennonite Housing Rehabilitation Services (MHRS) submitted a HDLP application for financing of construction of new homes on sites the organization owns in the McAdams neighborhood, within the Northeast Local Investment Area. Power CDC (Power) submitted a HDLP application for financing of construction of new homes on sites the organization owns in its Millair Creek subdivision, near 26th and Minnesota.

Housing and Community Services has determined the applications meet the criteria of the HDLP and that the proposed projects will assist the City in achieving its neighborhood revitalization and consolidated plan goals.

Staff recommends funding the MHRS application, in the amount of $152,000, in order to subsidize the construction of four homes in the McAdams neighborhood. MHRS is a City-designated Community Housing Development Organization (CHDO), which acts as a general contractor. It sub-contracts the various trades required to construct houses and utilizes its staff to market and sell them. MHRS also works with potential buyers to obtain permanent mortgage financing. Due to requirements imposed as part of the environmental reviews required under the HOME Program, newly constructed homes in the McAdams neighborhood must have front porches with garages at the rear of the structure, in most cases. These requirements add to the cost of construction, and when combined with predominant values in the neighborhood, increase the subsidy required to develop new single-family housing. Homes will feature basements and two-car garages.

Staff also recommends funding the Power CDC application in the amount of $140,000 in order to subsidize the construction of four new homes in the Millair Creek subdivision. Power CDC is also a City-designated CHDO. The organization develops housing on a turn-key basis, utilizing a local building contractor to construct single-family homes. A licensed real estate agent assists with marketing the

homes and works with potential buyers to obtain permanent mortgage financing. Homes will be constructed within the Millair Creek subdivision, located near 26th Street North and Minnesota. The City Council donated the site to Power CDC in 2001, with the condition that single-family homes be developed on platted lots. Infrastructure for the development was financed utilizing the City's special assessment program. Power CDC's per-unit subsidy is generally less, because there are no design requirements imposed as part of the environmental review process. Further, homes can be sold at slightly higher prices, due to values established within Power CDC's previous housing development projects. Homes will feature basements and two-car garages.

HOME funds provided for the construction of single-family homes within the City's targeted areas are generally provided as development subsidy in order to offset acquisition, construction and site improvement expenses, as well as selling expenses and developer fees. The total of these costs cannot be entirely recovered from sale proceeds due to market constraints and the need to keep the homes affordable for low-income families. Typically, the development subsidy for homes constructed with HOME program funding is between $25,000 and $40,000, depending on acquisition costs and the cost of building materials and construction. Currently, the maximum selling price for a home constructed with HOME Program funding is $95,550. However, due to the predominant values in existing neighborhoods, not all homes can be sold at this price level.

All homes constructed with HOME funding provided through the HDLP must be sold to owner-occupant, income-eligible home buyers who will receive down payment/closing cost assistance loans through the City's HOMEownership 80 Program.

Financial Considerations: HOME funding for the proposed HDLP projects will be provided in the form of zero-interest, forgivable participation construction loans. Local banks provide construction loans equivalent to 75% of the appraised value of a home to be constructed under the HDLP.

Goal Impact: Projects to be funded under the subject HOME funding agreements will contribute to the goal of Economic Vitality and Affordable Living.

Legal Considerations: The Law Department has reviewed and approved the funding agreements as to form.

Recommendations/Actions: It is recommended that the City Council approve the funding allocations, and authorize the necessary signatures.

Attachments: Funding agreements.

GRANT AGREEMENT
Between

THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT
A
PARTICIPATING JURISDICTION
And

Mennonite Housing Rehabilitation Services, Inc.,

A Community Housing Development Organization/Non-Profit Housing Developer

HOME Investment Partnerships
Program

2010 Housing Development Loan Program Funding

Housing and Community Services Department
City of Wichita
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3700
Fax (316) 462-3719

No._____

AGREEMENT

THIS CONTRACT, dated to be effective December 14, 2010, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Mennonite Housing Rehabilitation Services, Inc. (MENNONITE HOUSING, a Community Housing Development Organization/Non-profit Developer, hereinafter referred to individually as the Developer).

WITNESSETH THAT:

WHEREAS, the City is entitled to receive a HOME Investment Partnerships Program Grant (hereinafter referred to as HOME), from the U.S. Department of Housing and Urban Development (hereinafter referred to as the "Department").

WHEREAS, the Developer is desirous of participating in activities eligible under HOME, and further agrees that the beneficiaries of its activities under the program and this agreement are, or will be, individuals or families who meet the income eligibility guidelines of Title 24 CFR Part 92.216/217 as applicable; and

WHEREAS, the City deems the activities to be provided by the Developer as consistent with, and supportive of the HOME Investment Partnership Program, and that the Developer requires the financial assistance of the City to initiate its activities; and

WHEREAS, the cooperation of the City and the Developer is essential for the successful implementation of an Affordable Housing Program;

WHEREAS, the Developer shall be the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of this agreement;

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

SECTION 1. SCOPE OF SERVICES. The Developer must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than $10,000 shall require a written contract amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 2. TIME OF PERFORMANCE. The services of the Developer are to begin as soon as possible, on the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract. The construction phase of this contract shall be complete by December 14, 2012, with all expenses incurred on or before that date. This contract shall otherwise remain in force through the period of affordability, which will end on a date up to 15 years following the date of completion of the final unit, as defined in 24 CFR 92.2, depending on the amount of HOME funds invested in each unit of construction. Deed restrictions filed in connection with each unit will specify the applicable affordability period for the unit.

SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Developer shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Developer shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Developer, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Developer shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Developer or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Developer or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or Developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Developer receiving funds pursuant to this contract.

B. The Developer further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Developer will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Developer has fifteen or more employees, the Developer is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Developer's office.

SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

B. Assurance of Compliance.

1. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to

the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3. The Developer agrees to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Developer agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Developer will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Developer which involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event the Developer sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Developer shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or redeveloper to assume the same obligations as the Developer for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or redeveloper shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS. Except with respect to the rehabilitation or construction of residential property containing less than twelve units, the Developer and all contractors and subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874, and 40 U.S.C. 276c) as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto, and the Fair Labor Standards Act of 1938, As Amended (29 U.S.C. 201, et seq.). **The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of more than 11 units, and is exempt from Davis-Bacon Act wage requirements.**

The Developer shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,
contracting or subcontracting, promotion, demotion,
transfer, layoff, termination, rates of pay or other
forms of compensation, and selection for training
including apprenticeship.

The Developer shall incorporate the foregoing requirements of this paragraph in all of its contracts, except those exempt by law, and will require all of its contractors to incorporate such requirements in all subcontracts.

SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Developer and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is $2,500 or more, including, but not limited, to the following:

a) The Developer will not discriminate against any employee or applicant for employment because of disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Developer agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their disability in all employment practices, including, but not limited to, the following:

Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

c) The Developer agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Developer's compliance with The Rehabilitation Act. Such notices shall state the Developer's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Developer shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract, shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

SECTION 12. PAYMENTS.

A. Compensation and Method of Payment. Compensation and method of payment to the Developer, relative to conducting the operations of the project activities and services as herein described, will be carried out as specified in Exhibit B attached hereto, and will be administered under the established accounting and fiscal policies of the City of Wichita.

B. Total Payments. Total Payment to the Developer will not exceed $152,000.00 as referenced in Exhibit B. Contract payments above $152,000 are contingent upon the sale of completed projects and extended grant authority as a result of program income generated by the project.

C. Restriction on Disbursements. No Entitlement Funds shall be disbursed to the Developer or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this contract.

D. Unearned Payments. Under this contract unearned payments may be suspended or terminated if the entitlement funds to the City of Wichita under the HOME Investment Partnerships Program (24 CFR Part 92) are suspended or terminated.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Developer, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 29, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Developer agrees to re-pay any HOME funds advanced under this agreement.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Developer mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than $10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of $100,000, the Developer agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), As Amended.

SECTION 16. FEDERAL ENVIRONMENTAL REVIEW AND APPROVAL PROVISIONS.

A. In accordance with 24 C.F.R. Part 58.22, the developer agrees to refrain from undertaking any physical activities or choice limiting actions until the City has approved the project's environmental review. Choice limiting activities include acquisition of real property, leasing, repair, rehabilitation, demolition, conversion, or new construction. This limitation applies to all parties in the development process, including public or private nonprofit or for-profit entities, or any of their contractors.

B. This agreement does not constitute an unconditional commitment of funds or site approval. The commitment of funds to the project may occur only upon satisfactory completion of the project's environmental review in accordance with 24 CFR Part 58 and related environmental authorities. Provision of funding is further conditioned on the City's determination to proceed with, modify, or cancel the project based on the results of the environmental review.

C. The Developer agrees to abide by the special conditions, mitigation measures or requirements identified in the City's environmental approval and shall ensure that project contracts and other relevant documents will include such special conditions, mitigation measures or requirements.

D. Until the City has approved the environmental review for the project, neither the Developer nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance to the project or activity.

E. The Developer agrees to provide the City with all available environmental information about the project and any information which the City may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the City's opinion is needed to fulfill its obligations under HUD environmental requirements.

F. The Developer agrees to advise the City of any proposed change in the scope of the project or any change in environmental conditions, including substantial changes in the nature, magnitude, extent or location of the project; the addition of new activities not anticipated in the original scope of the project; the selection of an alternative not in the original application or environmental review; or new circumstances or environmental conditions which may affect the project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity.

SECTION 17. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (3.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (3.) as amended, and Section 504 of the Rehabilitation Act of 1973.

The Section 504 implementing regulations (24 CFR Part 8) apply to this project. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant's disability so requires. Should a prospective buyer request a modification to make a unit accessible, the owner/developer must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Developer shall be permitted to depart from the standard in order to have the buyer/occupant's needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 18. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Developer, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all right, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Developer pursuant to this contract.

SECTION 19. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Developer shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

(a) Developer is required to relate financial data to performance data and develop unit cost information whenever practical.

(b) Developer's financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the developer shall not be required to establish an accrual accounting system. The Developer may

develop such accrual data for reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. The Developer shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the developer from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Developer. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the City guarantees or insures the repayment of money borrowed by the Developer, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.

(d) The City may require adequate fidelity bond coverage where the Developer lacks sufficient coverage to protect the City's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

SECTION 20. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 21. LEAD-BASED PAINT POISONING PREVENTION. Should HOME funding be utilized for rehabilitation of existing structures, the Developer will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Community Development Act of 1992. Compliance will include all activities required by these regulations. The Developer also agrees to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Developer will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The project will comply with section 92.355 of the HOME rule. The Developer will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Developer will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the regulations found at 24 CFR part 35.

SECTION 22. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Developer. If the contract is terminated by the City as provided herein, the Developer will be paid an amount which bears the same ratio to the total compensations the services actually performed bear to the total services of the Developer covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Developer shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Developer during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. If this contract is terminated due to the fault of the Developer, Section 13 herein relative to termination shall apply.

SECTION 23. REFUND OF INCOME. All income earned by the project as a result of entitlement funds (program income) shall be accounted for and refunded to the City as it is received, unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 24. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Developer agrees to transfer ownership of any real property purchased with HOME funds under this agreement or any prior written agreement, to the City, upon written notification. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 25. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 26. AFFORDABILITY. Housing assisted with HOME funds must meet the affordability requirements specified at 92.254 of the HOME Regulation (24 C.F.R. Part 92). HOME funds must be re-paid to the City if the housing does not meet the affordability requirements for the specified time period. The City will file a mortgage on each property upon purchase for redevelopment, and will hold said mortgage until such time as the property is re-sold to an owner-occupant homebuyer receiving a down payment and closing costs assistance loan through the City's HOMEownership 80 Program. The City will hold the long-term deed restriction placed on the property following the sale of the home as described within this paragraph.

SECTION 27. DISBURSEMENT OF HOME FUNDS. The Developer may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing and Community Services Department, payments to the Developer will be provided on a reimbursement basis, up to two times per month. The amount of each request will be limited to the amount needed. Developer must provide detailed records to substantiate the amount of HOME funds requested under this agreement, and must retain records, such as invoices, to substantiate said amounts.

SECTION 28. PROPERTY AND HOUSING STANDARDS. Housing that is constructed or rehabilitated with HOME funds must meet all applicable codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. Newly

constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials, (24 CFR 92.251) or achieve Energy Star standards, with a maximum HERS score of 85, as evidenced by a qualifying Energy Star certificate.

SECTION 29. RELIGIOUS ORGANIZATIONS. Religious organizations may not require a beneficiary to participate in inherently religious activities, such as worship, religious instruction, or proselytizing.

Faith-based organizations may retain independence from Federal, state, and local governments to carry out their missions, including the definition, practice, and expression of its religious beliefs, provided that HOME funds do not financially support inherently religious activities. The organization's Board of Directors may not be selected based on religious practice. Religious references in the organization's mission statement and other governing documents are acceptable. 24 CFR 92.257(c).

Religious organizations must serve all eligible program beneficiaries without regard to religion, and may not restrict HOME-assisted housing to people of a particular religion or religious denomination. The eligibility of an applicant cannot be reliant on the applicant's participation in religious activities or programs supported by the organization, even if funded with other non-Federal sources.

SECTION 30. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

Mennonite Housing Rehabilitation Services, Inc.

_____
Signature

_____
Title of Mennonite Housing Officer

_____
Date

CITY OF WICHITA, KANSAS
at the Direction of the City Council

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

_____
Date

Approved as to Form:

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

Exhibit A

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

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

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

Exhibit B

PERFORMANCE CRITERIA
AND
CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and Mennonite Housing Rehabilitation Services, Inc., hereinafter referred to as the "City" and "Developer" (or MENNONITE HOUSING) respectively, that execution of this contract obligates the Developer to the following performance requirements.

In return for the $140,000 remuneration stated herein, the Developer agrees to undertake an affordable housing program, which will result in the acquisition of vacant lots located within the boundaries of the City of Wichita's Northeast Local Investment Area. Vacant lots must be re-developed with a new single family home on each site. Under this agreement, single-family homes may be developed on sites owned by the developer. A minimum of four new single-family homes are to be constructed/developed and sold to owner-occupant homebuyers.

Housing constructed under this agreement must be re-sold to HOME-compliant owner-occupant buyers, with down payment and closing costs assistance provided through the City's HOMEownership 80 program. The City will hold the deed restrictions for this HOME assistance. (24 CFR 92.254, Qualification as Affordable Housing, Homeownership.) The Developer represents and agrees that its purchase of the properties and its other undertakings pursuant to this Agreement are, and will be, for the purpose of redevelopment of such property and not for speculation.

The Developer represents and agrees that it will remain the owner of the properties until it reaches agreement with a prospective buyer(s) of the properties and, by mutual agreement, the Developer will transfer title to the prospective buyer. All HOME assistance will be repaid to the City; except in cases where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of assistance. Net proceeds will be considered funds available following adjustment for approved additional costs incurred by the Developer to prepare the property for ownership that were not collectable through sale of property. Funds that are not recoverable will be considered a development grant subsidy to the Developer.

I. Project Requirements

A. Project must conform to regulations under 24 CFR Part 92. The HOME Investment Partnerships Program regulation. Specific references can be found as follows:

24 CFR 92.250, Maximum Per Unit Subsidy: The amount of HOME funds invested per unit may not exceed the per-unit dollar limits established under section 221 (d)(3)(ii)of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the City of Wichita.

24 CFR 92.251, Property Standards: Housing constructed with HOME funds must meet all applicable local codes, ordinances and zoning ordinances at the time of project completion, and must comply with the current version of the CABO Model Energy Code, or achieve Energy Star Status, as evidenced by a qualifying certificate. Housing must be inspected upon completion and throughout construction to verify compliance.

24 CFR 92.254(a)(2)(iii), Maximum Property Value: Housing created or acquired and rehabilitated with HOME funds must be modest in nature and affordable to a low-income buyer. The maximum purchase price or value cannot exceed 95 percent of median purchase price for the area, as determined by HUD.

B. Prior to executing any contracts for sale of the assisted properties the Developer must confirm that the City has certified that the applicant household meets the HOME Program income requirements and that the household's eligibility has been verified through a review of source documentation in accordance with 24 CFR 92.203.

II. Program Content

A. The use of HOME funds provided under this contract will be limited to the subsidy of actual costs involved in the acquisition of property, construction of homes, purchase and re-habilitation of existing homes, demolition, and the developer fees earned in connection with completion of each unit.

Funding under this agreement will be provided in the form of 0% loans to complete projects as approved on a case-by-case basis by the Department of Housing and Community Services.

Developer shall obtain construction loans or secure other sources of funding in order to leverage HOME funds construction investment, in an amount equivalent to 50% or more of the appraised value of the home to be constructed.

III. Administration

The MENNONITE HOUSING President/C.E.O. will supervise operations and administration on a day-to-day basis. The Mennonite Housing Board of Directors is ultimately responsible for program administration.

A. Funding: It is mutually agreed by and between the City and the Developer that the total HOME funds available to the Developer for this project will be $152,000.00, in the form of a forgivable development subsidy loan, to be used as set forth in the sections entitled Budget and Method of Payment.

B. Budget: The City shall pay the Developer as hereinafter set out; the maximum of $152,000.00 for the program described in this contract. A developer fee in an amount not to exceed 10% of the total development cost will be paid to the Developer in connection with each completed project. The developer fee will be pre-determined at the onset of the construction of each home, and will be paid upon the closing of the sale of each individual home. Proceeds from the sale of homes, less applicable eligible costs will be returned to the City, in the form of a payoff of development subsidy loans provided under this agreement. Contract payments over and above the original budgeted amount are contingent upon the sale of completed homes/projects, and extended grant authority as a result of repayments generated by the sale of completed homes. Extended grant authority may be utilized to develop additional housing units under the terms of this agreement. Funding under this agreement shall be originally budgeted as follows:

Contractual Expenses: (Acquisition, Demolition, Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, Developer Fee not exceeding 10%)

	$152,000
TOTAL	$152,000

C. Method of Payment: The Developer agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME.

1. The City and the Developer also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $10,000, other than those within the scope of this agreement must be approved by the City Council.

2. The Developer will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this agreement will be retained in the Developer's files for five (5) years after the final audit of expenditures made under this contract and throughout the applicable period of affordability.

3. Construction costs to be reimbursed based on direct costs and percentage completion, as determined by the City, of each project. Fully documented draw requests will be processed on Friday of the week submitted. Payment will be available for receipt by the Developer within three weeks of the Friday on which the draw request was received.

4. Final expenses for each individual home constructed under this agreement must be submitted for payment by no later than 60 days following the date of closing, unless otherwise approved by the City of Wichita's Housing and Community Services Department. Any billings submitted beyond the 60 day time frame must be directly related to installation of lawns or installation of fences.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.

2. **The Developer will provide, for the year ending June 30 of each year, beginning June 30, 2011, an annual report of the HOME funded portion of the program**. It shall indicate yearly expenditures, cumulative expenditures since program inception and balance remaining. Yearly expenditures will be identified by category of expenditure (acquisition, rehabilitation, developer fee, accounting & legal, architects). The report shall also indicate, by race and sex, the number of households/persons served during the year with HOME funds. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority-and women-owned businesses. The City reserves the right to change the due dates and contents of reports to be submitted under this clause.

   The financial reports will be provided until such time as there are no expenditures. The owner shall continue to provide a report that indicates, by race and sex, the number of households/persons served during the year with HOME funds, when applicable. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority- and women-owned businesses. Said report shall be due to the City of Wichita **July 10** of each applicable year.

3. Additionally, a narrative or other description of progress may be provided.

4. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports.

IV. Conditions Precedent to Construction

The following items (matters) must be provided (completed) prior to beginning construction on the project and related improvements:

A. The Developer agrees to execute a document placing deed restrictions and covenants against properties on which projects are constructed, in order to comply

with 24 CFR 92.254. Said restrictions and covenants will be in force until such time as a property/home is re-sold, as specified in this agreement.

B. Provide a detailed overall project/unit budget, including but not limited to a Sources and Uses of Funds Statement.

C. Provide Certificates regarding Debarment and Suspension, and/or lists of contractors/subcontractors to be utilized and other file documentation as requested by the City in order to comply with HOME regulations.

D. Submit final construction plans, specifications and a budget for each home to be constructed for approval by the Housing and Community Services Department, City of Wichita. (Not in connection with plan review or obtaining applicable permits.) Individual home construction may not begin until a Notice to Proceed has been issued by the Housing and Community Services Department.

E. Provide evidence that ownership interest in the property vests in Mennonite Housing Rehabilitation Services, Inc. (Copy of Deed, and/or Title Insurance Binder/Policy)

F. The Developer will notify the City of any properties it contracts to purchase, or intends to develop with funding provided under this agreement, in order for the City to complete the environmental reviews required under **24 CFR 92.352**, prior to closing of the purchase. Developer agrees to comply with all requirements imposed on a particular project/site as a result of the environmental review process.

G. The Developer will obtain any and all permits required by the City prior to undertaking construction.

H. The Developer will provide construction financing, and/or obtain construction loans from private sector financial institutions, or secure other funding sources for the project in an amount equivalent to a minimum of 50% of the appraised value of each home to be developed/constructed on each project site.

I. The Developer will obtain the approval of the City of Wichita Housing and Community Services Department for any changes to the previously submitted project plan. This includes changes in costs, as well as changes in the project scope or plans.

J. The Developer shall obtain Builder's Risk Insurance for the home to be constructed, in an amount sufficient to repay the amount of the face amount of the first mortgage construction loan, plus anticipated interest expense, and the total anticipated HOME funds investment in the project. The developer is required to maintain hazard insurance on each individual home constructed under this agreement, until such

time as the home is sold. The Developer is also responsible for workers compensation insurance and general liability insurance.

K. The Developer shall not undertake construction, reconstruction or rehabilitation on a site contaminated by hazardous materials without undertaking a Phase I environmental assessment of the site in a form, scope and substance satisfactory to the City. The Developer shall consult with Wichita/Sedgwick County Department of Environmental Health regarding the necessity and scope of the environmental assessment. The Developer shall remediate or cause to be remediated all contaminants and hazardous materials as required or recommended by the Wichita/Sedgwick County Department of Environmental Health. Such remediation shall be accomplished in accordance with the requirements of applicable environmental laws of the Kansas Department of Health and Environment, the federal Environmental Protection Agency and the U.S. Department of Housing and Urban Development. During the process of redevelopment and/or construction, should the Developer discover any soil staining or odors emanating from soil at the project site, the Developer must cease work immediately, and notify the City.

L. The Developer shall submit any subdivision plats, street designs, variance requests, lot split requests, or any other documentation regarding zoning adjustments required to carry out construction of a home or a group of homes to the Housing and Community Services Department for review and approval, prior to submission to the Wichita/Sedgwick County Metropolitan Area Planning Department, or the Wichita/Sedgwick County Metropolitan Area Planning Commission.

V. Other Program Requirements

A. The Developer agrees to adopt affirmative marketing procedures and requirements and submit a written Affirmative Marketing Plan for this project. The Affirmative Marketing Plan must be available for public inspection in the Developer's office. The plan must contain specific steps and actions that the Developer will take to provide information and otherwise attract eligible persons for all racial, ethnic, and gender groups in the housing market area to the available housing. Specific activities that must be included in the Developer's Affirmative Marketing Plan include:

1. Display the Equal Housing Opportunity logo, slogan or statement in all advertising material related to this project.

2. Display the HUD Equal Housing Opportunity logo, slogan or statement at the construction site, from the start of construction, and properly maintained throughout the construction and rental period.

3. No later than 90 days prior to engaging in marketing activities, the Developer should notify the City of Wichita Housing and Community Services Department, either in writing or by telephone of the dates on which the Developer plans to: (1) begin initial marketing activities; (2) accept purchase contracts; and (3) start initial sales.

4. The Developer must begin marketing activities 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

5. The Developer must market/advertise the housing opportunity utilizing publications, such as community newspapers, in an effort to attract income-qualified homebuyers.

B. The City and agents designated by the City shall, at all reasonable times during the development of the project and construction or rehabilitation, have the right of entry and free access to the project and all parts thereof, and the right to inspect all work done, labor performed and materials furnished in or about the project and all records relative to all payments made in connection with the project.

The Developer shall have the responsibility of maintaining the property until such time as the development project is complete and the newly constructed home has been sold to a HOME-eligible buyer.

C. Site Improvements: The City may require a Developer to undertake site improvements upon completion of construction. Site improvements include, but are not limited to, seeding or sodding of front yards, and 4' chain-link fencing. Said site improvements must be undertaken when seasonally appropriate. The City reserves the right to make an exception on a case-by-case basis.

D. Warranty: The Developer must provide a one-year construction warranty for all homes constructed or rehabilitated under this contract.

E. Developer is required to obtain insurance coverage for all perils, including vandalism, in an amount equivalent to the amount of the first mortgage construction loan balance plus interest, and the total HOME funds investment, in the event that a home constructed under this agreement has not sold, as of the day of completion, and the Builder's Risk Insurance Policy will no longer provide adequate coverage.

F. Developer is responsible for retaining all records in connection with projects undertaken with HOME funding provided under this contract, including but not limited to, real estate purchase contracts, invoices, property development documentation, infrastructure development, and other records as further specified in this agreement.

G. Developer shall apply for City incentives, as available, for projects undertaken with funding provided under this agreement, including property tax rebates and permit fee waivers.

VI. Program Evaluation

The City shall evaluate this project based on the objectives stated in this Exhibit. Failure by the Developer to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Developer on a pro rata basis with level of service. The Developer's records are subject to review by the City to ensure the accuracy and validity of information reported in monthly progress reports.

Exhibit C

BUDGET

Contractual Expenses: (Acquisition, Demolition, Rehabilitation or Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, Developer Fee not exceeding 10%.)	
	$152,000
TOTAL	$152,000

GRANT AGREEMENT
Between

THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT
A
PARTICIPATING JURISDICTION
And

Power Community Development Corporation,

A Community Housing Development Organization/Non-Profit Housing Developer

HOME Investment Partnerships
Program

2010 Housing Development Loan Program Funding

Housing and Community Services Department
City of Wichita
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3700
Fax (316) 462-3719

No._____

AGREEMENT

THIS CONTRACT, dated to be effective December 14, 2010, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Power Community Development Corporation (POWER CDC, a Community Housing Development Organization/Non-profit Developer, hereinafter referred to individually as the Developer).

WITNESSETH THAT:

WHEREAS, the City is entitled to receive a HOME Investment Partnerships Program Grant (hereinafter referred to as HOME), from the U.S. Department of Housing and Urban Development (hereinafter referred to as the "Department").

WHEREAS, the Developer is desirous of participating in activities eligible under HOME, and further agrees that the beneficiaries of its activities under the program and this agreement are, or will be, individuals or families who meet the income eligibility guidelines of Title 24 CFR Part 92.216/217 as applicable; and

WHEREAS, the City deems the activities to be provided by the Developer as consistent with, and supportive of the HOME Investment Partnership Program, and that the Developer requires the financial assistance of the City to initiate its activities; and

WHEREAS, the cooperation of the City and the Developer is essential for the successful implementation of an Affordable Housing Program;

WHEREAS, the Developer shall be the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of this agreement;

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

SECTION 1. SCOPE OF SERVICES. The Developer must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than $10,000 shall require a written contract amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 2. TIME OF PERFORMANCE. The services of the Developer are to begin as soon as possible, on the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract. The construction phase of this contract shall be complete by December 14, 2012, with all expenses incurred on or before that date. This contract shall otherwise remain in force through the period of affordability, which will end on a date up to 15 years following the date of completion of the final unit, as defined in 24 CFR 92.2, depending on the amount of HOME funds invested in each unit of construction. Deed restrictions filed in connection with each unit will specify the applicable affordability period for the unit.

SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Developer shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Developer shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Developer, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Developer shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Developer or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Developer or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or Developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Developer receiving funds pursuant to this contract.

B. The Developer further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Developer will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Developer has fifteen or more employees, the Developer is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Developer's office.

SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

B. Assurance of Compliance.

1. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to

the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3. The Developer agrees to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Developer agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Developer will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Developer which involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event the Developer sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Developer shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or redeveloper to assume the same obligations as the Developer for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or redeveloper shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS. Except with respect to the rehabilitation or construction of residential property containing less than twelve units, the Developer and all contractors and subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874, and 40 U.S.C. 276c) as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto, and the Fair Labor Standards Act of 1938, As Amended (29 U.S.C. 201, et seq.). **The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of more than 11 units, and is exempt from Davis-Bacon Act wage requirements.**

The Developer shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,
contracting or subcontracting, promotion, demotion,
transfer, layoff, termination, rates of pay or other
forms of compensation, and selection for training
including apprenticeship.

The Developer shall incorporate the foregoing requirements of this paragraph in all of its contracts, except those exempt by law, and will require all of its contractors to incorporate such requirements in all subcontracts.

SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Developer and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is $2,500 or more, including, but not limited, to the following:

a) The Developer will not discriminate against any employee or applicant for employment because of disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Developer agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their disability in all employment practices, including, but not limited to, the following:

Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

c) The Developer agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Developer's compliance with The Rehabilitation Act. Such notices shall state the Developer's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Developer shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract, shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

SECTION 12. PAYMENTS.

A. Compensation and Method of Payment. Compensation and method of payment to the Developer, relative to conducting the operations of the project activities and services as herein described, will be carried out as specified in Exhibit B attached hereto, and will be administered under the established accounting and fiscal policies of the City of Wichita.

B. Total Payments. Total Payment to the Developer will not exceed $140,000.00 as referenced in Exhibit B. Contract payments above $140,000 are contingent upon the sale of completed projects and extended grant authority as a result of program income generated by the project.

C. Restriction on Disbursements. No Entitlement Funds shall be disbursed to the Developer or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this contract.

D. Unearned Payments. Under this contract unearned payments may be suspended or terminated if the entitlement funds to the City of Wichita under the HOME Investment Partnerships Program (24 CFR Part 92) are suspended or terminated.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Developer, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 29, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Developer agrees to re-pay any HOME funds advanced under this agreement.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Developer mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than $10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of $100,000, the Developer agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), As Amended.

SECTION 16. FEDERAL ENVIRONMENTAL REVIEW AND APPROVAL PROVISIONS.

A. In accordance with 24 C.F.R. Part 58.22, the developer agrees to refrain from undertaking any physical activities or choice limiting actions until the City has approved the project's environmental review. Choice limiting activities include acquisition of real property, leasing, repair, rehabilitation, demolition, conversion, or new construction. This limitation applies to all parties in the development process, including public or private nonprofit or for-profit entities, or any of their contractors.

B. This agreement does not constitute an unconditional commitment of funds or site approval. The commitment of funds to the project may occur only upon satisfactory completion of the project's environmental review in accordance with 24 CFR Part 58 and related environmental authorities. Provision of funding is further conditioned on the City's determination to proceed with, modify, or cancel the project based on the results of the environmental review.

C. The Developer agrees to abide by the special conditions, mitigation measures or requirements identified in the City's environmental approval and shall ensure that project contracts and other relevant documents will include such special conditions, mitigation measures or requirements.

D. Until the City has approved the environmental review for the project, neither the Developer nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance to the project or activity.

E. The Developer agrees to provide the City with all available environmental information about the project and any information which the City may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the City's opinion is needed to fulfill its obligations under HUD environmental requirements.

F. The Developer agrees to advise the City of any proposed change in the scope of the project or any change in environmental conditions, including substantial changes in the nature, magnitude, extent or location of the project; the addition of new activities not anticipated in the original scope of the project; the selection of an alternative not in the original application or environmental review; or new circumstances or environmental conditions which may affect the project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity.

SECTION 17. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (3.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (3.) as amended, and Section 504 of the Rehabilitation Act of 1973.

The Section 504 implementing regulations (24 CFR Part 8) apply to this project. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant's disability so requires. Should a prospective buyer request a modification to make a unit accessible, the owner/developer must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Developer shall be permitted to depart from the standard in order to have the buyer/occupant's needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 18. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Developer, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all right, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Developer pursuant to this contract.

SECTION 19. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Developer shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

(a) Developer is required to relate financial data to performance data and develop unit cost information whenever practical.

(b) Developer's financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the developer shall not be required to establish an accrual accounting system. The Developer may

develop such accrual data for reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. The Developer shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the developer from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Developer. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the City guarantees or insures the repayment of money borrowed by the Developer, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.

(d) The City may require adequate fidelity bond coverage where the Developer lacks sufficient coverage to protect the City's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

SECTION 20. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 21. LEAD-BASED PAINT POISONING PREVENTION. Should HOME funding be utilized for rehabilitation of existing structures, the Developer will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Community Development Act of 1992. Compliance will include all activities required by these regulations. The Developer also agrees to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Developer will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The project will comply with section 92.355 of the HOME rule. The Developer will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Developer will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the regulations found at 24 CFR part 35.

SECTION 22. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Developer. If the contract is terminated by the City as provided herein, the Developer will be paid an amount which bears the same ratio to the total compensations the services actually performed bear to the total services of the Developer covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Developer shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Developer during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. If this contract is terminated due to the fault of the Developer, Section 13 herein relative to termination shall apply.

SECTION 23. REFUND OF INCOME. All income earned by the project as a result of entitlement funds (program income) shall be accounted for and refunded to the City as it is received, unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 24. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Developer agrees to transfer ownership of any real property purchased with HOME funds under this agreement or any prior written agreement, to the City, upon written notification. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 25. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 26. AFFORDABILITY. Housing assisted with HOME funds must meet the affordability requirements specified at 92.254 of the HOME Regulation (24 C.F.R. Part 92). HOME funds must be re-paid to the City if the housing does not meet the affordability requirements for the specified time period. The City will file a mortgage on each property upon purchase for redevelopment, and will hold said mortgage until such time as the property is re-sold to an owner-occupant homebuyer receiving a down payment and closing costs assistance loan through the City's HOMEownership 80 Program. The City will hold the long-term deed restriction placed on the property following the sale of the home as described within this paragraph.

SECTION 27. DISBURSEMENT OF HOME FUNDS. The Developer may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing and Community Services Department, payments to the Developer will be provided on a reimbursement basis, up to two times per month. The amount of each request will be limited to the amount needed. Developer must provide detailed records to substantiate the amount of HOME funds requested under this agreement, and must retain records, such as invoices, to substantiate said amounts.

SECTION 28. PROPERTY AND HOUSING STANDARDS. Housing that is constructed or rehabilitated with HOME funds must meet all applicable codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. Newly

constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials, (24 CFR 92.251) or achieve Energy Star standards, with a maximum HERS score of 85, as evidenced by a qualifying Energy Star certificate.

SECTION 29. RELIGIOUS ORGANIZATIONS. Religious organizations may not require a beneficiary to participate in inherently religious activities, such as worship, religious instruction, or proselytizing.

Faith-based organizations may retain independence from Federal, state, and local governments to carry out their missions, including the definition, practice, and expression of its religious beliefs, provided that HOME funds do not financially support inherently religious activities. The organization's Board of Directors may not be selected based on religious practice. Religious references in the organization's mission statement and other governing documents are acceptable. 24 CFR 92.257(c).

Religious organizations must serve all eligible program beneficiaries without regard to religion, and may not restrict HOME-assisted housing to people of a particular religion or religious denomination. The eligibility of an applicant cannot be reliant on the applicant's participation in religious activities or programs supported by the organization, even if funded with other non-Federal sources.

SECTION 30. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

Power Community Development Corporation

_____
Signature

_____
Title of Power CDC Officer

_____
Date

CITY OF WICHITA, KANSAS
at the Direction of the City Council

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

_____
Date

Approved as to Form:

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

Exhibit A

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

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

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

Exhibit B

PERFORMANCE CRITERIA
AND
CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and Power Community Development Corporation, hereinafter referred to as the "City" and "Developer" (or Power CDC) respectively, that execution of this contract obligates the Developer to the following performance requirements.

In return for the $140,000 remuneration stated herein, the Developer agrees to undertake an affordable housing program, which will result in the acquisition of vacant lots located within the boundaries of the City of Wichita's Northeast Local Investment Area. Vacant lots must be re-developed with a new single family home on each site. Under this agreement, single-family homes may be developed on sites owned by the developer. A minimum of four new single-family homes are to be constructed/developed and sold to owner-occupant homebuyers.

Housing constructed under this agreement must be re-sold to HOME-compliant owner-occupant buyers, with down payment and closing costs assistance provided through the City's HOMEownership 80 program. The City will hold the deed restrictions for this HOME assistance. (24 CFR 92.254, Qualification as Affordable Housing, Homeownership.) The Developer represents and agrees that its purchase of the properties and its other undertakings pursuant to this Agreement are, and will be, for the purpose of redevelopment of such property and not for speculation.

The Developer represents and agrees that it will remain the owner of the properties until it reaches agreement with a prospective buyer(s) of the properties and, by mutual agreement, the Developer will transfer title to the prospective buyer. All HOME assistance will be repaid to the City; except in cases where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of assistance. Net proceeds will be considered funds available following adjustment for approved additional costs incurred by the Developer to prepare the property for ownership that were not collectable through sale of property. Funds that are not recoverable will be considered a development grant subsidy to the Developer.

I. Project Requirements

A. Project must conform to regulations under 24 CFR Part 92. The HOME Investment Partnerships Program regulation. Specific references can be found as follows:

24 CFR 92.250, Maximum Per Unit Subsidy: The amount of HOME funds invested per unit may not exceed the per-unit dollar limits established under section 221 (d)(3)(ii)of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the City of Wichita.

24 CFR 92.251, Property Standards: Housing constructed with HOME funds must meet all applicable local codes, ordinances and zoning ordinances at the time of project completion, and must comply with the current version of the CABO Model Energy Code, or achieve Energy Star Status, as evidenced by a qualifying certificate. Housing must be inspected upon completion and throughout construction to verify compliance.

24 CFR 92.254(a)(2)(iii), Maximum Property Value: Housing created or acquired and rehabilitated with HOME funds must be modest in nature and affordable to a low-income buyer. The maximum purchase price or value cannot exceed 95 percent of median purchase price for the area, as determined by HUD.

B. Prior to executing any contracts for sale of the assisted properties the Developer must confirm that the City has certified that the applicant household meets the HOME Program income requirements and that the household's eligibility has been verified through a review of source documentation in accordance with 24 CFR 92.203.

II. Program Content

A. The use of HOME funds provided under this contract will be limited to the subsidy of actual costs involved in the acquisition of property, construction of homes, purchase and re-habilitation of existing homes, demolition, and the developer fees earned in connection with completion of each unit.

Funding under this agreement will be provided in the form of 0% loans to complete projects as approved on a case-by-case basis by the Department of Housing and Community Services.

Developer shall obtain construction loans or secure other sources of funding in order to leverage HOME funds construction investment, in an amount equivalent to 50% or more of the appraised value of the home to be constructed.

III. Administration

The POWER CDC President/C.E.O. will supervise operations and administration on a day-to-day basis. The Power CDC Board of Directors is ultimately responsible for program administration.

A. Funding: It is mutually agreed by and between the City and the Developer that the total HOME funds available to the Developer for this project will be $140,000.00, in the form of a forgivable development subsidy loan, to be used as set forth in the sections entitled Budget and Method of Payment.

B. Budget: The City shall pay the Developer as hereinafter set out; the maximum of $140,000.00 for the program described in this contract. A developer fee in an amount not to exceed 10% of the total development cost will be paid to the Developer in connection with each completed project. The developer fee will be pre-determined at the onset of the construction of each home, and will be paid upon the closing of the sale of each individual home. Proceeds from the sale of homes, less applicable eligible costs will be returned to the City, in the form of a payoff of development subsidy loans provided under this agreement. Contract payments over and above the original budgeted amount are contingent upon the sale of completed homes/projects, and extended grant authority as a result of repayments generated by the sale of completed homes. Extended grant authority may be utilized to develop additional housing units under the terms of this agreement. Funding under this agreement shall be originally budgeted as follows:

Contractual Expenses: (Acquisition, Demolition, Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, Developer Fee not exceeding 10%)

	$140,000
TOTAL	$140,000

C. Method of Payment: The Developer agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME.

1. The City and the Developer also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $10,000, other than those within the scope of this agreement must be approved by the City Council.

2. The Developer will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this agreement will be retained in the Developer's files for five (5) years after the final audit of expenditures made under this contract and throughout the applicable period of affordability.

3. Construction costs to be reimbursed based on direct costs and percentage completion, as determined by the City, of each project. Fully documented draw requests will be processed on Friday of the week submitted. Payment will be available for receipt by the Developer within three weeks of the Friday on which the draw request was received.

4. Final expenses for each individual home constructed under this agreement must be submitted for payment by no later than 60 days following the date of closing, unless otherwise approved by the City of Wichita's Housing and Community Services Department. Any billings submitted beyond the 60 day time frame must be directly related to installation of lawns or installation of fences.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.

2. **The Developer will provide, for the year ending June 30 of each year, beginning June 30, 2011, an annual report of the HOME funded portion of the program**. It shall indicate yearly expenditures, cumulative expenditures since program inception and balance remaining. Yearly expenditures will be identified by category of expenditure (acquisition, rehabilitation, developer fee, accounting & legal, architects). The report shall also indicate, by race and sex, the number of households/persons served during the year with HOME funds. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority-and women-owned businesses. The City reserves the right to change the due dates and contents of reports to be submitted under this clause.

   The financial reports will be provided until such time as there are no expenditures. The owner shall continue to provide a report that indicates, by race and sex, the number of households/persons served during the year with HOME funds, when applicable. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority- and women-owned businesses. Said report shall be due to the City of Wichita **July 10** of each applicable year.

3. Additionally, a narrative or other description of progress may be provided.

4. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports.

IV. Conditions Precedent to Construction

The following items (matters) must be provided (completed) prior to beginning construction on the project and related improvements:

A. The Developer agrees to execute a document placing deed restrictions and covenants against properties on which projects are constructed, in order to comply

with 24 CFR 92.254. Said restrictions and covenants will be in force until such time as a property/home is re-sold, as specified in this agreement.

B. Provide a detailed overall project/unit budget, including but not limited to a Sources and Uses of Funds Statement.

C. Provide Certificates regarding Debarment and Suspension, and/or lists of contractors/subcontractors to be utilized and other file documentation as requested by the City in order to comply with HOME regulations.

D. Submit final construction plans, specifications and a budget for each home to be constructed for approval by the Housing and Community Services Department, City of Wichita. (Not in connection with plan review or obtaining applicable permits.) Individual home construction may not begin until a Notice to Proceed has been issued by the Housing and Community Services Department.

E. Provide evidence that ownership interest in the property vests in Power CDC. (Copy of Deed, and/or Title Insurance Binder/Policy)

F. The Developer will notify the City of any properties it contracts to purchase, or intends to develop with funding provided under this agreement, in order for the City to complete the environmental reviews required under **24 CFR 92.352**, prior to closing of the purchase. Developer agrees to comply with all requirements imposed on a particular project/site as a result of the environmental review process.

G. The Developer will obtain any and all permits required by the City prior to undertaking construction.

H. The Developer will provide construction financing, and/or obtain construction loans from private sector financial institutions, or secure other funding sources for the project in an amount equivalent to a minimum of 50% of the appraised value of each home to be developed/constructed on each project site.

I. The Developer will obtain the approval of the City of Wichita Housing and Community Services Department for any changes to the previously submitted project plan. This includes changes in costs, as well as changes in the project scope or plans.

J. The Developer shall obtain Builder's Risk Insurance for the home to be constructed, in an amount sufficient to repay the amount of the face amount of the first mortgage construction loan, plus anticipated interest expense, and the total anticipated HOME funds investment in the project. The developer is required to maintain hazard insurance on each individual home constructed under this agreement, until such

time as the home is sold. The Developer is also responsible for workers compensation insurance and general liability insurance.

K. The Developer shall not undertake construction, reconstruction or rehabilitation on a site contaminated by hazardous materials without undertaking a Phase I environmental assessment of the site in a form, scope and substance satisfactory to the City. The Developer shall consult with Wichita/Sedgwick County Department of Environmental Health regarding the necessity and scope of the environmental assessment. The Developer shall remediate or cause to be remediated all contaminants and hazardous materials as required or recommended by the Wichita/Sedgwick County Department of Environmental Health. Such remediation shall be accomplished in accordance with the requirements of applicable environmental laws of the Kansas Department of Health and Environment, the federal Environmental Protection Agency and the U.S. Department of Housing and Urban Development. During the process of redevelopment and/or construction, should the Developer discover any soil staining or odors emanating from soil at the project site, the Developer must cease work immediately, and notify the City.

L. The Developer shall submit any subdivision plats, street designs, variance requests, lot split requests, or any other documentation regarding zoning adjustments required to carry out construction of a home or a group of homes to the Housing and Community Services Department for review and approval, prior to submission to the Wichita/Sedgwick County Metropolitan Area Planning Department, or the Wichita/Sedgwick County Metropolitan Area Planning Commission.

V. Other Program Requirements

A. The Developer agrees to adopt affirmative marketing procedures and requirements and submit a written Affirmative Marketing Plan for this project. The Affirmative Marketing Plan must be available for public inspection in the Developer's office. The plan must contain specific steps and actions that the Developer will take to provide information and otherwise attract eligible persons for all racial, ethnic, and gender groups in the housing market area to the available housing. Specific activities that must be included in the Developer's Affirmative Marketing Plan include:

1. Display the Equal Housing Opportunity logo, slogan or statement in all advertising material related to this project.

2. Display the HUD Equal Housing Opportunity logo, slogan or statement at the construction site, from the start of construction, and properly maintained throughout the construction and rental period.

3. No later than 90 days prior to engaging in marketing activities, the Developer should notify the City of Wichita Housing and Community Services Department, either in writing or by telephone of the dates on which the Developer plans to: (1) begin initial marketing activities; (2) accept purchase contracts; and (3) start initial sales.

4. The Developer must begin marketing activities 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

5. The Developer must market/advertise the housing opportunity utilizing publications, such as community newspapers, in an effort to attract income-qualified homebuyers.

B. The City and agents designated by the City shall, at all reasonable times during the development of the project and construction or rehabilitation, have the right of entry and free access to the project and all parts thereof, and the right to inspect all work done, labor performed and materials furnished in or about the project and all records relative to all payments made in connection with the project.

The Developer shall have the responsibility of maintaining the property until such time as the development project is complete and the newly constructed home has been sold to a HOME-eligible buyer.

C. Site Improvements: The City may require a Developer to undertake site improvements upon completion of construction. Site improvements include, but are not limited to, seeding or sodding of front yards, and 4' chain-link fencing. Said site improvements must be undertaken when seasonally appropriate. The City reserves the right to make an exception on a case-by-case basis.

D. Warranty: The Developer must provide a one-year construction warranty for all homes constructed or rehabilitated under this contract.

E. Developer is required to obtain insurance coverage for all perils, including vandalism, in an amount equivalent to the amount of the first mortgage construction loan balance plus interest, and the total HOME funds investment, in the event that a home constructed under this agreement has not sold, as of the day of completion, and the Builder's Risk Insurance Policy will no longer provide adequate coverage.

F. Developer is responsible for retaining all records in connection with projects undertaken with HOME funding provided under this contract, including but not limited to, real estate purchase contracts, invoices, property development documentation, infrastructure development, and other records as further specified in this agreement.

G. Developer shall apply for City incentives, as available, for projects undertaken with funding provided under this agreement, including property tax rebates and permit fee waivers.

VI. Program Evaluation

The City shall evaluate this project based on the objectives stated in this Exhibit. Failure by the Developer to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Developer on a pro rata basis with level of service. The Developer's records are subject to review by the City to ensure the accuracy and validity of information reported in monthly progress reports.

Exhibit C

BUDGET

Contractual Expenses: (Acquisition, Demolition, Rehabilitation or Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, Developer Fee not exceeding 10%.)	
	$140,000
TOTAL	$140,000

Agenda Item No. XII-13

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Removal of Delinquent Sewer Assessment (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve removal of one City delinquent sewer assessment previously approved for special assessment by the City Council.

Background: Properties not having active metered water or metered sewer services with the Wichita Public Works & Utilities are billed twice per year, at six month intervals based on a flat fee provided in the Sewer Rate Ordinance and Storm Water Resolution. These flat fee accounts are often left unpaid. The only option to collect these delinquent balances is to place them on the property tax roll.

Analysis: In June 2009, the City Council approved special assessments of unpaid City storm and sewer billings on multiple properties. Subsequent to City Council approval, it was discovered that one of the properties had made payment to the Utilities for the delinquency. The delinquency placed on the tax roll in error is as follows:

Ordinance No.48-349
Tax Key: D-24639, 141 S Robin Rd
Amount: $1,158.43

It has been determined by the Law Department that the special assessment on the above assessed properties should be removed, with approval by the City Council.

Financial Considerations: Transferring the delinquency from the tax roll back onto the customer's account will satisfy a current credit to the account.

Goal Impact: The utilization of Sedgwick County to collect Storm Water Tax Assessments, addresses the Internal Perspective Financial Goals by attaining needed funds for continuing services for public use. Collection of these funds, reduce the future costs to other citizens.

Legal Considerations: The Law Department has reviewed this matter and recommends that the special assessments on the property be removed, with approval by the City Council.

Recommendation/Action: It is recommended that the City Council approve removal of the special assessment on the property.

Attachment: November 22, 2010 Delinquent Sewer/Storm Assessment Correction Memorandum

MEMO

To: Kelly Arnold, Sedgwick County Clerk
From: Kristi Irick, Customer Service Manager, Public Works & Utilities
Subject: Changes to 2009 Tax Roll
Date: December 09, 2010

Please make the following changes to the tax roll for the years specified:

Tax Roll Year 2009

Tax Key	Certified Amount	Change to	County's Column	Certificate	Code	Reason	
D-24639	1,158.43	0.00		48349		6730	Error

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Sanitary Sewer Mains for Future Development (CIP S-5)
(All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the project expenditure for future sewer mains.

Background: This project is included in the ten-year Capital Improvement Program as sanitary sewer extensions to serve future developments, newly annexed areas and existing areas without sewer service. These funds are used to plan, design, construct and/or relocate sanitary sewers for future growth.

Analysis: The Sewer Master Plan projects future needs to expand the sanitary sewer service area. This account is primarily for growth outside of, or in addition to, the growth area of the city that was anticipated at the time of the master plan preparation. This is a reactive account to development needs and specific locations are not identified in advance. This project is in support of the City of Wichita Sewer Master Plan.

Financial Considerations: Capital Improvement Program, Mains for Future Development (CIP S-5) has a budget of $1,500,000 in 2011 and will be funded from future revenue bonds and/or Sewer Utility cash reserves. The Utility pays for 100% of the sewer main extension and property owners pay their share, on a cost per square foot basis, either by petition or by lump sum when they connect to the sewer system.

Goal Impact: This project addresses the Ensure Efficient Infrastructure goal by providing reliable sewer service to the Sewer Utility customers.

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

Recommendations/Actions: It is recommended that the City Council approve the project, adopt the resolution and authorize the necessary signatures.

Attachments: CIP sheet, resolution and Notice of Intent.

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE

To Initiate Project: X

To Revise Project:

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

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location
Public Works & Utilities	Water System Planning	11/22/2010	Sanitary Sewer Mains for Future Development (various locations)

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

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

12. Project Cost Estimate

ITEM	GO	SA	Water Utility	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Dam				
Drainage				
Sanitary Sewer				
Sidewalk				
Water			$1,500,000	$1,500,000
Traffic Signals & Turn Lanes				
Totals			$1,500,000	$1,500,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

13. Recommendation:

Approve the project and adopt the resolution

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

RESOLUTION NO. 10-322

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, AND TO ISSUE REVENUE BONDS IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $1.500,000 EXCLUSIVE OF THE COST OF INTEREST ON BORROWED MONEY, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), has heretofore by Ordinance No. 39-888, adopted May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility"; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 et seq., (the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

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

SECTION 1. Pursuant to the laws of the State of Kansas, including K.S.A. 10-1201, *et. seq,*, as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Mains for Future Development (S-5) (the "Project"). The total costs of the Project are estimated to be one million five hundred thousand dollars ($1,500,000) in 2011 exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.

SECTION 2. It is hereby found and determined that the construction of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed one million five hundred thousand dollars ($1,500,000) in 2011, exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

SECTION 4. It is hereby found and determined to be necessary, before such revenue bonds can be issued, to publish one time in the City's official newspaper a Notice of the Governing Body's intention to initiate and complete the Project and to issue such revenue bonds, such Notice to be in the form which is attached hereto and made a part hereof by reference as though fully set forth herein. If, within Fifteen (15) days from and after the date of the publication of the Notice, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If a

sufficient protest to the Project and the issuance of the revenue bonds is not filed within said Fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the sale and issuance of the revenue bonds.

SECTION 5. This Resolution shall be in force and take effect from and after its adoption and approval.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, not less than two-thirds of the members voting in favor thereof, on December 14, 2010.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

OCA:

Published in the Wichita Eagle on December 17, 2010

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $1,500,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 10-322, duly adopted December 14, 2010, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Mains for Future Development (S-5) (called the "Project"). The total costs of the Project are estimated to be one million five hundred thousand dollars ($1,500,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $1,500,000 under the authority of K.S.A. 10-1201 et seq., as amended and supplemented including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within said fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the issuance of the revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on December 14, 2010

/s/ CARL BREWER, Mayor

ATTEST:
/s/ Karen Sublett, City Clerk

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Water Distribution Mains for Future Development (CIP W-65)
(All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the expenditure for future water mains.

Background: This project is included in the ten-year Capital Improvement Program to serve future developments, newly annexed areas and existing areas without water service. These mains serve as the backbone of the system and establish the current service area of the water distribution system.

Analysis: The Water Master Plan indicates the need to extend the water distribution system where future growth and development is occuring. This account is primarily for growth outside of, or in addition to, the growth area of the city that was anticipated at the time of the master plan preparation. This is a reactive account in response to development needs and specific locations are not identified in advance.

Financial Considerations: Unidentified Water Mains (CIP W-65) has a budget of $1,500,000 in 2011. It will be funded from future revenue bonds and/or Water Utility cash reserves. The Utility pays for 100% of the water main extension and property owners pay their share, on a cost per square foot basis, either by petition or by lump sum when they connect to the water system.

Goal Impact: This project addresses the Ensure Efficient Infrastructure goal by providing reliable water service to the Water Utility customers.

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

Recommendations/Actions: It is recommended that the City Council approve the project, adopt the Resolution and authorize the necessary signatures.

Attachments: CIP sheet, resolution and Notice of Intent.

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE

To Initiate Project	X
To Revise Project	

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

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location
Public Works & Utilities	Water System Planning	11/22/2010	Water Distribution Main for Future Development (various locations)

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
W-65		2011	

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

12. Project Cost Estimate

ITEM	GO	SA	Water Utility	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Dam				
Drainage				
Sanitary Sewer				
Sidewalk				
Water			$1,500,000	$1,500,000
Traffic Signals & Turn Lanes				
Totals			$1,500,000	$1,500,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

13. Recommendation:

Approve the project and adopt the resolution

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

RESOLUTION NO. 10-323

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, AND TO ISSUE REVENUE BONDS IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $1.500,000 EXCLUSIVE OF THE COST OF INTEREST ON BORROWED MONEY, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), has heretofore by Ordinance No. 39-888, adopted May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility"; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 et seq., (the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

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

SECTION 1. Pursuant to the laws of the State of Kansas, including K.S.A. 10-1201, *et. seq,*, as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Unidentified Water Mains (W-65) (the "Project"). The total costs of the Project are estimated to be one million five hundred thousand dollars ($1,500,000) in 2011 exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.

SECTION 2. It is hereby found and determined that the construction of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed one million five hundred thousand dollars ($1,500,000) in 2011, exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

SECTION 4. It is hereby found and determined to be necessary, before such revenue bonds can be issued, to publish one time in the City's official newspaper a Notice of the Governing Body's intention to initiate and complete the Project and to issue such revenue bonds, such Notice to be in the form which is attached hereto and made a part hereof by reference as though fully set forth herein. If, within Fifteen (15) days from and after the date of the publication of the Notice, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If a

sufficient protest to the Project and the issuance of the revenue bonds is not filed within said Fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the sale and issuance of the revenue bonds.

SECTION 5. This Resolution shall be in force and take effect from and after its adoption and approval.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, not less than two-thirds of the members voting in favor thereof, on December 14, 2010.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

OCA:

Published in the Wichita Eagle on December 17, 2010

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $1,500,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 10-323, duly adopted December 14, 2010, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Unidentified Water Mains (W-65) (called the "Project"). The total costs of the Project are estimated to be one million five hundred thousand dollars ($1,500,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $1,500,000 under the authority of K.S.A. 10-1201 et seq., as amended and supplemented including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within said fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the issuance of the revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on December 14, 2010.

/s/ CARL BREWER, Mayor

ATTEST:
/s/ Karen Sublett, City Clerk

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Water Distribution Main Replacement (CIP W-67)
(All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the project expenditure for water main replacements.

Background: This project is included in the ten-year Capital Improvement Program. It provides funding for the replacement of water lines that either leak frequently, or need to be replaced because they are too small to meet current demands. Specific lines to be replaced are identified on an ongoing basis by staff and the list is constantly re-evaluated and the money allocated to the area most in need of repair. The water lines that are in the poorest condition are scheduled for reconstruction. Funds are also used to design and relocate water mains related to large paving improvement projects.

Analysis: Distribution main replacement is essential for maintaining the water system infrastructure, decreasing the number of water main breaks, reducing water system maintenance costs, and improving customer service.

Financial Considerations: Distribution Main Replacement Program (CIP W-67) has a budget of $1,500,000 in 2011. It will be funded from future revenue bonds and/or Water Utility cash reserves.

Goal Impact: This project addresses the Ensure Efficient Infrastructure goal by providing reliable water service to the Public Works and Utilities customers.

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

Recommendations/Actions: It is recommended that the City Council approve the project, adopt the resolution and authorize the necessary signatures.

Attachments: CIP sheet, Resolution and Notice of Intent.

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE

To Initiate Project	X
To Revise Project	

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

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location
Public Works & Utilities	Water System Planning	11/22/2010	Water Distribution Main Replacement (various locations)

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
S-4		2011	

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

12. Project Cost Estimate

ITEM	GO	SA	Water Utility	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Dam				
Drainage				
Sanitary Sewer				
Sidewalk				
Water			$1,500,000	$1,500,000
Traffic Signals & Turn Lanes				
Totals			$1,500,000	$1,500,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

13. Recommendation:

Approve the project and adopt the resolution

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

RESOLUTION NO. 10-324

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, AND TO ISSUE REVENUE BONDS IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $1.500,000 EXCLUSIVE OF THE COST OF INTEREST ON BORROWED MONEY, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), has heretofore by Ordinance No. 39-888, adopted May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility"; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 et seq., (the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

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

SECTION 1. Pursuant to the laws of the State of Kansas, including K.S.A. 10-1201, *et. seq,*, as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Distribution Main Replacement Program (W-67) (the "Project"). The total costs of the Project are estimated to be one million five hundred thousand dollars ($1,500,000) in 2011 exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.

SECTION 2. It is hereby found and determined that the construction of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed one million five hundred thousand dollars ($1,500,000) in 2011, exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

SECTION 4. It is hereby found and determined to be necessary, before such revenue bonds can be issued, to publish one time in the City's official newspaper a Notice of the Governing Body's intention to initiate and complete the Project and to issue such revenue bonds, such Notice to be in the form which is attached hereto and made a part hereof by reference as though fully set forth herein. If, within Fifteen (15) days from and after the date of the publication of the Notice, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If a

sufficient protest to the Project and the issuance of the revenue bonds is not filed within said Fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the sale and issuance of the revenue bonds.

SECTION 5. This Resolution shall be in force and take effect from and after its adoption and approval.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, not less than two-thirds of the members voting in favor thereof, on December 14, 2010.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

OCA:

Published in the Wichita Eagle on December 17, 2010

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $1,500,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 10-324, duly adopted December 14, 2010, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Distribution Main Replacement Program (W-67) (called the "Project"). The total costs of the Project are estimated to be one million five hundred thousand dollars ($1,500,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $1,500,000 under the authority of K.S.A. 10-1201 et seq., as amended and supplemented including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within said fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the issuance of the revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on December 14, 2010.

/s/ CARL BREWER, Mayor

ATTEST:
/s/ Karen Sublett, City Clerk

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Reconstruction and/or Rehabilitation of Sanitary Sewers (CIP S-4) (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the project expenditure for Reconstruction and/or Rehabilitation of Sanitary Sewers.

Background: The Sewer Maintenance Division of the Public Works & Utilities Department maintains the sanitary sewer system. Preventive maintenance includes the use of closed circuit cameras in evaluating the old sewer lines. As the Division discovers problem areas throughout the year, the list is constantly re-evaluated and the money allocated to the area most in need of repair. The sewer lines that are in the poorest condition are scheduled for reconstruction or rehabilitation.

Analysis: The reconstruction and rehabilitation of sanitary sewers helps to eliminate stoppages, backups, and failures. These projects also help to reduce inflow and infiltration into the system. Maintenance costs are thereby reduced, as well as inconvenience to customers.

Financial Considerations: Capital Improvement Program, Reconstruction of old Sanitary Sewers (CIP S-4) has a budget of $1,500,000 in 2011 and will be funded from future revenue bonds and/or Sewer Utility cash reserves.

Goal Impact: This project addresses the Ensure Efficient Infrastructure goal by providing reliable sewer service to the Public Works & Utilities customers.

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

Recommendations/Actions: It is recommended that the City Council approve the project, adopt the Resolution authorize the necessary signatures.

Attachments: CIP sheet, resolution and Notice of Intent.

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE

To Initiate Project	X
To Revise Project	

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

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location
Public Works & Utilities	Water System Planning	11/22/2010	Reconstruction and/or Rehabilitation of Sanitary Sewer (various locations)

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
S-4		2011	

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

12. Project Cost Estimate

ITEM	GO	SA	Water Utility	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Dam				
Drainage				
Sanitary Sewer				
Sidewalk				
Water			$1,500,000	$1,500,000
Traffic Signals & Turn Lanes				
Totals			$1,500,000	$1,500,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

13. Recommendation:

Approve the project and adopt the resolution

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

RESOLUTION NO. 10-325

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, AND TO ISSUE REVENUE BONDS IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $1.500,000 EXCLUSIVE OF THE COST OF INTEREST ON BORROWED MONEY, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), has heretofore by Ordinance No. 39-888, adopted May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility"; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 et seq., (the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

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

SECTION 1. Pursuant to the laws of the State of Kansas, including K.S.A. 10-1201, *et. seq,*, as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Reconstruction of Old Sanitary Sewers (S-4) (the "Project"). The total costs of the Project are estimated to be one million five hundred thousand dollars ($1,500,000) in 2011 exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.

SECTION 2. It is hereby found and determined that the construction of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed one million five hundred thousand dollars ($1,500,000) in 2011, exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

SECTION 4. It is hereby found and determined to be necessary, before such revenue bonds can be issued, to publish one time in the City's official newspaper a Notice of the Governing Body's intention to initiate and complete the Project and to issue such revenue bonds, such Notice to be in the form which is attached hereto and made a part hereof by reference as though fully set forth herein. If, within Fifteen (15) days from and after the date of the publication of the Notice, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If a

sufficient protest to the Project and the issuance of the revenue bonds is not filed within said Fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the sale and issuance of the revenue bonds.

SECTION 5. This Resolution shall be in force and take effect from and after its adoption and approval.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, not less than two-thirds of the members voting in favor thereof, on December 14, 2010.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

OCA:

Published in the Wichita Eagle on December 17, 2010

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $1,500,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 10-325, duly adopted December 14, 2010, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Reconstruction of old Sanitary Sewers (S-4) (called the "Project"). The total costs of the Project are estimated to be one million five hundred thousand dollars ($1,500,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $1,500,000 under the authority of K.S.A. 10-1201 et seq., as amended and supplemented, including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within said fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the issuance of the revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on December 14, 2010.

/s/ CARL BREWER, Mayor

ATTEST:
/s/ Karen Sublett, City Clerk

CONTRACTS & AGREEMENTS
BLANKET PURCHASE ORDERS RENEWAL OPTIONS
NOVEMBER 2010

COMMODITY TITLE	EXPIRATION DATE	VENDOR NAME	DEPARTMENT	ORIGINAL CONTRACT DATES	RENEWAL OPTIONS REMAINING
Drug Treatment for Drug Court (Out-Patient Only)	11/30/2011	Comcare Sedgwick County aka Comprehensive Community Care of Sedgwick County	Municipal Court	10/7/2008 - 11/30/2009	2 - 1 year options
Portable Toilets	11/30/2011	Waste Connections of Kansas, Inc.	Various	12/1/2009 - 11/30/2010	1 - 1 year option
Solid Deicer for Runways	11/30/2011	Old World Industries, Inc.	Airport	12/1/2009 - 11/30/2010	1 - 1 year option
Uniform Shirt Rental	11/30/2011	Unifirst Corporation	Public Works & Water Utilities	12/1/2010 - 11/30/2011	1 - 1 year option

PROFESSIONAL CONTRACTS UNDER $25,000
NOVEMBER 2010

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT
Murano Studios	PO030906	Design and Art Consultant Services	2,700.00
Baughman Co.	PO030933	Engineering Consulting	24,100.00
Ruggles & Bohm PA	PO030932	Engineering Consulting	2,000.00

ANNUAL MAINTENANCE CONTRACTS OVER $25,000
DIRECT PURCHASE ORDERS FOR NOVEMBER 2010

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT
Accero Inc.	DP031378	Software Maintenance/Support	$148,224.00

City of Wichita
City Council Meeting
December 14th, 2010

TO: Mayor and City Council

SUBJECT: Park Facilities Renovation. (District VI)

INITIATED BY: Department of Park and Recreation

AGENDA: Consent

Recommendation: Amend the bonding resolution.

Background: On April 20, 2010, the City Council approved the bonding resolution to broaden the list of improvements at North Woodland Park to include the construction of an open picnic shelter. In May 2010, discussions ensued between the City, AT&T Pioneers and the El Pueblo Neighborhood association. At that time the opportunity was provided to receive a possible grant donation to the City from the local chapter of the AT&T Pioneer group. The local chapter requested the grant to supplement existing CIP funds so that a larger shelter could be provided. This fall the City received notification that the grant donation was awarded and that additional funds would be available in January 2011.

Analysis: An amended bonding resolution is required as the project list was broadened to include the construction of an open picnic shelter. There is no change in the total CIP dollar amount; however a new budget amount will reflect the change in the budget for the shelter project.

Financial Considerations: The 2007 Park CIP includes $190,000 for funding for improvements to North Woodland Park. There is a balance of $64,000 as a result of the City and neighborhood partnership and very competitive bidding on contracted work. An additional $42,000 donation will be provided by the AT&T Pioneers, allowing a total of $232,000 for the improvements. The funding source is general obligation bonds. The ongoing maintenance expenses are included in the operating budget.

Goal Impact: The park improvements and renovation will enhance Quality of Life for the community and support a Vibrant Neighborhood.

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

Recommendation/Action: It is recommended that the City Council approve the bonding resolution and authorize all necessary signatures.

Attachment: Amended bonding resolution.

First Published in the Wichita Eagle on December 17, 2010

RESOLUTION NO. 10-326

A RESOLUTION AMENDING RESOLUTION NO. 10-115, AND AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE FOR THE IMPROVEMENT AND RENOVATION OF AMENITIES IN NORTH WOODLAND PARK.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That the description of public improvements identified in Section 1 of Resolution NO. 10-115, adopted April 20, 2010 is hereby amended to read as follows:

Labor, material, and equipment for the demolition, development and purchase of new and/or existing park amenities such as drinking fountains, benches, picnic tables and pads, pedestrian path, ADA ramp conversions, basketball and horseshoe court, volleyball standards, lighting and playground rubber resurfacing enhancements and labor and material for the construction of a small open picnic shelter in North Woodland Park.

SECTION 2: That Section 2 of Resolution No. NO. 10-115 is hereby amended to provide the cost of said public improvements shall be paid by the issuance and sale of general obligation bonds by the City of Wichita at large, in the manner provided by law and under the authority of City of Wichita Charter Ordinance No. 156. The total cost is estimated at $232,000, exclusive of the costs on borrowed money with $42,000 expected to be paid from private donated funds from AT&T Pioneer group and $190,000 paid by the City. Said City share, when ascertained, shall be borne by the City of Wichita at large by the issuance of General Obligation Bonds.

SECTION 3: That the advisability of said improvements is established as authorized by City of Wichita Charter Ordinance No. 156.

SECTION 4: That this resolution shall take effect and be in force from and after its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this 14th day of December, 2010.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

CITY OF WICHITA
City Council Meeting
December 14, 2010

TO: Mayor and City Council Members

SUBJECT: Victim Advocate Contract with Kansas Legal Services, Inc.

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Approve the contract with Kansas Legal Services, Inc., and authorize the Mayor to sign.

Background: The domestic violence victim advocate is located within the Department of Law, Prosecutor's Office. The advocate provides services to victims of domestic violence, including but not limited to notification of court appearances, information pertaining to services offered to victims of domestic violence related crimes, and assistance of victims throughout the court process. This position has been an integral part of the City of Wichita's Domestic Violence Program since its inception in 1990. Kansas Legal Services, Inc. has provided these services since 1999.

Analysis: The contract provisions remain relatively unchanged from the contract approved and executed for 2010. The contract amount for 2011 remains the same as that in the 2010 contract.

Financial Considerations: The contract amount shall not exceed $38,000 for fiscal year 2011.

Goal Impact: Safe and Secure Community; Prosecution and Diversion Services.

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

Recommendations/Actions: It is recommended that the Council approve the contract, and authorize the Mayor to sign.

Attachment: Contract

AGREEMENT

THIS CONTRACT dated as of the ____ day of December, 2010, by and between the City of Wichita, Kansas (hereinafter called the City) and KANSAS LEGAL SERVICES, INC., (hereinafter called the Contractor).

WITNESSETH THAT:

WHEREAS, the City wishes to engage the Contractor to provide victim advocacy services in connection with the City's Domestic Violence Program and Contractor is qualified to provide such services; and

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

SECTION 1. SCOPE OF SERVICES. The Contractor shall perform services in a satisfactory and proper manner as determined by the City and as outlined per Exhibit B.

SECTION 2. TIME OF PERFORMANCE. The services of the Contractor are to be governed by the terms of this contract from January 1, 2011, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract through a period of 12 months from January 1, 2011, ending no later than December 31, 2012.

SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Contractor shall establish and maintain records as prescribed by the City, with respect to all matters covered by this contract. Except as otherwise authorized by the City, the Contractor shall retain such records for a period of three years after receipt of the final payment under this contract or termination of this contract.

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Contractor, at such times and in such forms as the City may require, shall furnish to the City or the City's designated agent or agency, such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract. All reports, information,

data and other related materials, prepared or assembled by the Contractor under this contract, are confidential and shall not be made available to anyone other than the City or its designated agents or agencies without the prior written approval of the City.

D. Audits and Inspections. The Contractor shall at any time and as often as the City may deem necessary make available to the City for examination all its records and data for the purpose of making audits, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No member, officer or employee of the Contractor or its designees or agent or public official exercising any functions or responsibilities with respect to the program outlined in this contract shall have any personal financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. The Contractor shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purposes of this section.

SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, physical handicap, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Contractor receiving funds pursuant to this contract.

B. Compliance with EEO Policy Statement. The Contractor further agrees to implement and comply with the "Revised Non- Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

SECTION 6. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 7. ASSIGNABILITY. The Contractor shall not assign any interest in this contract without prior written consent of the City.

SECTION 8. COPYRIGHTS. If this contract results in a book or other material which may be copyrighted, the author is free to copyright the work. The City reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use all such copyrighted material and all material which can be copyrighted.

SECTION 9. PATENTS. Any discovery or invention arising out of or developed in the course of work aided by this contract shall promptly and fully be reported to the City for determination by the City as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under the patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for partisan political activity. The Contractor agrees that no funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas, or any other governmental unit.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. USE AND DISPOSITION OF PROPERTY.

A. Disposition of Expendable/Non-Expendable Personal Property. All office equipment, supplies, materials and other personal property purchased in whole or in part with funds pursuant to this contract and used for the administration of this contract or in the administration of a program operated by the City shall be the sole and exclusive property of the City unless otherwise specified in Exhibit B.

B. Real Property. All real property purchased or otherwise acquired under the terms of this contract shall be under title of the City unless otherwise specified in Exhibit B.

SECTION 12. PAYMENTS.

A. Compensation and Method of Payment. Compensation and method of payment to the Contractor relative to conducting the operations of the project activities and services as herein described will be carried out as specified in Exhibit B attached hereto, and will be administered under the established accounting and fiscal policies of the City of Wichita.

B. Total Payments. Total Payment to the Contractor will not exceed $38,000.00 (reduced by the cost of any voicemail account provided for the Contractor by direct application of funds in the Law Department budget), and it will be the responsibility of the Contractor to budget consistent with such limitation so that it is able to provide the services required hereunder for the entire 12-month period of this contract. If the $38,000.00 (reduced by the cost of the voicemail account) is exhausted prior to the end of the 12-month contract period, Contractor shall bear the costs of performing services as required hereunder for the remainder of said period.

C. Unearned Payments. Under this contract unearned payments may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by the City at any time; or if the docket fees or other fees or funding mechanisms used by the City of Wichita to provide funding for domestic violence advocacy services are for any reason suspended or invalidated.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Contractor, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 18, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this contract shall, at the option of the City, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

SECTION 14. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Contractor.

SECTION 15. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Contractor mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget over $10,000 shall require a written contract amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 16. PERSONNEL AND SERVICES. All services required herein will be performed by the Contractor under the direction of its Regional Director. Any services which the Contractor deems necessary to assign to a subcontractor must first have written approval from the City unless otherwise specified in Exhibit B.

SECTION 17. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 18. APPENDICES. All exhibits referenced in this contract and all amendments of mutually agreed upon modification made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A	Non-Discrimination & Equal Employment Opportunity Statement
Exhibit B	Performance Criteria
Exhibit C	Certification Regarding Drug-Free Workplace
Exhibit D	Confidentiality Statement

IN WITNESS WHEREOF, the parties have set their hands this _____ day of December, 2010.

CITY OF WICHITA

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf,
Director of Law

KANSAS LEGAL SERVICES, INC.

_____
Marilyn Harp, Executive Director

Exhibit A

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

C. Exempted from these requirements are: (State of Kansas)

1. Any contractor, subcontractor, vendor or supplier who has already complied with the provisions set forth in sections pertaining to the State of Kansas by reason of holding a contract with the Federal government, or a contract involving Federal funds.

2. Contracts entered into by a contractor, subcontractor, vendor or supplier who employs fewer than four (4) employees during the term of this contract.

3. Contracts with the City of Wichita with a cumulative total of five thousand dollars ($5,000) or less during the fiscal year of the City.

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

1. The vendor, supplier, contractor or subcontractor shall observe the provisions of the Code of the City of Wichita against discrimination (Section 2.12.900, et seq. of the Code of the City of Wichita, Kansas) and shall not discriminate against any employee or applicant for employment in the performance of work under the present contract, purchase order or agreement because of race, religion, color, sex, "disability, Vietnam Era Veteran or Special Disabled Veteran and age except where age is a bona fide occupational qualification", national origin, ancestry or marital status. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program when required to the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or in behalf of the vendor, supplier, con tractor or subcontractor, state that all qualified applicants will receive consideration for employment with out regard to race, religion, color, sex, "disability, Vietnam Era Veteran or Special Disabled Veteran and age except

where age is a bona fide occupational qualification", national origin, ancestry or marital status. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase that is deemed acceptable by the City of Wichita.

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the rules, regulations, and will permit access to books, records and procedures concerning employment relations by the for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City of Wichita in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be initiated against such vendor supplier, contractor or subcontractor;

4. If the vendor, supplier, contractor or subcontractor is found guilty of a violation of any provision of the Code of the City of Wichita pertaining to and regulating Non-Discrimination -- Equal Employment Opportunity under a decision or order of the City of Wichita, Kansas, which has become final, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement, and it may be canceled, terminated or suspended in whole or in part by the City of Wichita, and such other sanctions and remedies may be imposed as provided by law;

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

E. Exempted from these requirements are: (City of Wichita)

1. Any contractor or subcontractor, vendor or supplier of the City of Wichita, or any of its agencies, who wishes to enter into a contract, purchase order or agreement shall prior to entering into such contract, purchase order or agreement, submit to the City of Wichita, Kansas, a preliminary report on forms, provided by the Board, concerning Non-Discrimination -- Equal Employment/Affirmative Action for review and evaluation. Upon review of the preliminary form submitted:

   a. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumu

latively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Oppor tunity or Affirmative Action Program submittal.

b. These provisions shall not apply to vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reasons of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) days period from the Federal agency involved.

c. Those contractors, subcontractors, vendors or suppliers not exempted herein whose preliminary report reveals deficiencies shall be required to submit goals and timetables for correction of such deficiencies in accordance with instructions included with the preliminary report for review, evaluation and acceptance prior to a contract, purchase order or agreement award.

F. Failure of any contractor, subcontractor, vendor or supplier to report to the "Kansas Human Rights Commission" as required by K.S.A. 44-1031, as amended, or has been found guilty of a violation of the City's Ordinances, State Statutes, or Federal Statutes, or regulations pertaining to unlawful discrimination, which finding, decision or order has become final, shall be deemed a breech of this contract and said contract may be canceled, terminated or suspended in whole or in part by the City or its contracting agency.

Exhibit B

SCOPE OF SERVICES

Provide one full-time victim advocate to assist community funded advocates with services for victims of domestic violence cases which are prosecuted in the City of Wichita Municipal Court. The Advocate will provide resources directed toward stopping violence in domestic relationships and will assure the victim is not revictimized by the judicial process by assisting the representatives of community organizations and volunteers in providing the following services:

1. VOLUNTEER PROGRAM
   Coordinate a volunteer program to ensure availability of volunteer advocates to work with victims.

2. VICTIM'S FIRST APPEARANCE IN MUNICIPAL COURT
   Advocate to attend in person the Municipal Court domestic violence daily docket calls at 10:30 a.m. and 1:30 p.m., Monday through Friday, for the purposes of making contact with the victims. The following should occur during the initial contact:

   a. Assessment of the victim's needs and referral of the victim to appropriate agencies and treatment;

   b. Consult with the victim concerning recommendations to be made to the Court on restrictions to be placed on offender's appearance bond;

   c. Provide the victim an explanation of the Court process and possible disposition of the case, including that charges are filed by the City and the victim therefore cannot have the charges dropped;

   d. Explain treatment alternatives for the offender;

   e. Advise the victim if a no-contact provision is set on the appearance bond, and of the procedure to use if the offender attempts to contact the victim, or otherwise violates such restrictions;

   f. Provide the victim with an information pamphlet and ensure that the victim understands that the advocacy system is in place to assist during the Court proceedings and thereafter, and make sure the victim understands that the goal of the program is to stop violence;

   g. Assign a volunteer or make other arrangements to ensure continuing contact will occur with the victim throughout the Court proceedings.

3. VICTIMS THAT DO NOT APPEAR FOR FIRST APPEARANCE

a. If the victim does not appear at the first court appearance, make personal contact for the purpose of attempting to persuade the victim to participate in the case and to otherwise advise the victim of services available through the Victim Advocacy Program; provide documentation of such contacts made and attempted, and the reason for non-appearance; and

b. Make arrangements for Police Department to take evidentiary photographs of the victim the day after an incident has occurred when the victim has not been subpoenaed to appear in Court the next day following the incident. This requirement does not apply to Saturday or Sunday.

4. ASSISTANCE DURING COURT PROCEEDINGS

a. Maintain, at a minimum, monthly contact with the victim while the case is pending to ensure that the victim is apprised of the progress of the case;

b. Continue to assess the victim's needs as to types of assistance which will help ensure the victim's ability to continue to work with the Court process;

c. Provide recommendations to the prosecutor, for presentation to the Court for purposes of establishing conditions of probation/deferred judgment (i.e., no-contact restrictions); and

d. Provide recommendations to the prosecutor regarding the victim's availability for Court proceedings.

5. ASSISTANCE AFTER COURT PROCEEDINGS

Maintain, at a minimum, monthly contact with the victim during the period of time that the offender is on probation/deferred judgment or in jail in order to:

a. Assure that the offender is meeting the conditions of probation/deferred judgment, including any court-ordered restriction on contacting the victim or others;

b. Assess, on a continuing basis, the victim and the victim's family needs and make appropriate referrals to outside agencies;

c. Report to the prosecutor, probation or deferred judgment coordinator any violations of probation/deferred judgment conditions that are committed by the offender; and

8. EDUCATION PROGRAM

Coordinate with the community funded victim advocates a workshop to educate victims about domestic violence, wherein sessions will be scheduled at the request of a victim or victims.

PROGRAM ADMINISTRATION

Operations and administration on a day-to-day basis will be supervised by a staff attorney of Contractor. Ultimate responsibility for policies, personnel and fiscal accountability lies with Kansas Legal Services, Inc.

1. Funding

It is mutually agreed by and between the City and the Contractor that the total funds available for payment to the Contractor under this program will be $38,000.00 (reduced by the cost of any voicemail account provided for the Contractor directly from funds in the Law Department budget), which will be used as set forth in the sections entitled Budget and Method of Payment. In addition, however, Data Center charges for one Public Safety and one Outlook access, and any charges required for the City PC made available to the Contractor will be provided for by direct payment to Data Center from funds in the Law Department budget.

2. The City shall pay the Contractor as hereinafter set out, the maximum of $38,000.00 (reduced by the cost of the above-referenced voicemail account), for the program described in this contract. Said funds shall be used as follows:

Salaries and benefits Of Paralegal and Office Supplies	$38,000.00 (reduced by the cost of the above-referenced voicemail account, which is budgeted at $90)

3. Method of Payment

The Contractor agrees payments under this contract shall be in accordance with established budgeting, purchasing and accounting procedures of the City of Wichita.

a) The City agrees to reimburse the Contractor monthly upon submittal of a cost control statement with supportive documentation as stipulated below.

b) The City and Contractor mutually understand and agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Adjustments can be made administratively unless it involves a significant change in categories of expenditures or a budget change over $10,000 which have to be approved as a contract amendment by the City Council.

c) Reimbursement of salaries shall be on the basis of time sheets signed by the employee and the employer. A salary schedule showing the employees and salaries to be reimbursed shall be submitted in writing at the beginning of the contract period and at such times as adjustments are made. A copy of the paycheck shall be provided as shall written acknowledgment by the employee of receipt of the check with the date of receipt.

d) Employee benefits are to be reimbursed as follows:

1) Social Security/Medicare shall be reimbursed at the applicable rate of the employer's share; documentation need not be submitted with each monthly reimbursement but shall be available for review by the City, and shall be submitted upon request.

2) Benefits for health insurance will be paid on the basis of an insurance company billing and a copy of the canceled check paying the invoice.

3) Benefits for retirement will be paid as a percentage of salary. The percentage to be paid will be set at the start of the contract period and shall be paid on the basis of a copy of the canceled check to the retirement fund and a copy of the statement or billing. The percentage to be reimbursed may be modified upon written notice.

e) The Contractor will ensure all costs are eligible according to the approved budget. The original documentation supporting all reimbursed expenditures will be retained by the Contractor for three (3) years after the final payment of expenditures made under this contract.

OTHER PROGRAM REQUIREMENTS

1. The Contractor understands and agrees that the services under this contract will be provided without any religious purpose and will in no way promote any religious interest. No religious instruction, religious counseling, or religious proselytizing will be permitted in connection with the services under this contract.

2. Contractor shall procure and maintain a liability insurance policy which will protect the Contractor from errors, omissions and negligent acts of the Contractor, its agents, officers and employees in the performance of the services rendered under this contract. Such policy of insurance shall be in an amount of not less than $500,000.00 per occurrence and shall name the City as an additional insured. Satisfactory certificates of insurance on all insurance shall be filed with the City by Contractor.

3. Contractor agrees to hold the City harmless from any and all claims, suits, actions or judgments, brought or entered against the City arising out of Contractor's performance under the terms and conditions of this agreement, including attorney's fees; provided, however, nothing herein shall impose on Contractor any obligation to hold the City harmless from City's own negligence.

4. Contractor agrees to comply with any applicable drug-free workplace requirements found at 24 CFR 24 Subpart F and to execute the certification attached hereto as Exhibit C.

5. All employees and volunteers of Contractor who work in the Victim Advocate Program shall be required to sign the Confidentiality Statement attached hereto as Exhibit D and failure to abide by the terms of the statement shall be reason to exclude them from further participation in Victim Advocate activities.

Exhibit C

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Contractor certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of the prohibition.

(b) Establishing a drug-free awareness program to inform employees about -

(1) The dangers of drug abuse in the workplace;

(2) The Contractor's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(c) Making it a requirement that each employee to be engaged in the performance of this contract be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the agreement, the employee will -

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

(e) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee so convicted -

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

(f) The site for the performance of work done in connection with this contract is:

455 N. Main, Wichita, Kansas 67202

Executed this _____ day of _____, 200_.

By:_____
(signature)

_____
(typed or printed name)

_____
(title)

Exhibit D

CONFIDENTIALITY STATEMENT

I, _____, understand that I will have access to confidential information in police officers' reports as part of my duties as a victim advocate.

As a condition of my appointment as a victim advocate, I agree not to disseminate any particulars of any case to anyone outside Kansas Legal Services, unless (1) such person has also signed a Confidentiality Statement or (2) I am ordered to do so by a court of competent jurisdiction. This includes but is not limited to, name, address, and phone number of the victim, defendant, or witnesses. All information used and gathered as part of this program shall be used exclusively for this program, excluding statistical information.

I further understand that this need for confidentiality does not end at the completion of my appointment as a victim advocate. Therefore, once my appointment has finished, I will still maintain confidentiality on all cases within my knowledge.

Dated this _____ day of _____, 200_.

_____
Victim Advocate

Agenda Item No. XII-21

City of Wichita
City Council Meeting
December 14, 2010

TO: Mayor and City Council

SUBJECT: Federal Payments Payment Processing Agreement

INITIATED BY: IT/IS

AGENDA: Consent

Recommendation: Approve the contract.

Background: The Interactive Voice Response (IVR) system for Public Works Water Utilities required replacement before year-end 2010 for two reasons: 1) The payment processor used by the IVR system is not Payment Card Industry (PCI) compliant, risking fines levied by Visa or MasterCard; and 2) The current IVR solution will not be supported after 2010.

Analysis: In 2009 after learning that the existing IVR solution would no longer be supported by the vendor, the IT Department sought proposals for an IVR system that complies with PCI standards and provides an extensible system.

A staff screening and selection committee chose Selectron Technologies Inc. to provide the replacement IVR system. A subcontractor, Federal Payments, provides PCI compliant payment processing for transactions initiated within the new IVR. Federal Payments' software can provide extended capabilities such as web interfaces and transaction fees, should the decision to impose those fees be made.

The arrangement with Federal Payments will not change the City's merchant agreement or its banking relationships; Federal Payments will only provide credit card, debit card and Automated Clearing House (electronic check) processing services.

Financial Consideration: There is no initial cost to implement Federal Payments; it assesses a fee of $0.10 per transaction. Based on 2009 transaction volumes, Federal Payments' fees will total approximately $5,200 annually.

Goal Impact: The project addresses the Efficient Infrastructure goal by providing greater convenience and flexibility to Public Works Water Utility customers. It also addresses the Internal Perspective goal by providing increased productivity through automation.

Legal Consideration: The contract has been approved as to form by the Law department.

Recommendations/Actions: Approve the contract.

Attachment: City of Wichita-Federal Payments Processing Agreement

PAYMENT PROCESSING AGREEMENT

This Payment Processing Agreement ("Agreement"), including all exhibits and addendums hereto, is made by and between ACH Direct, Inc. dba Federal Payments ("FEDPAY"), a California corporation and The City of Wichita, Kansas("Agency").

FEDPAY and its affiliates provide payment processing services including Credit Card, Debit Card and Automated Clearing House ("ACH") processing services (the "Services") to Agency who provides services to, or otherwise has a business relationship with, individuals and other entities ("Constituents").

1. **Definitions.**
   Account: Bank Account or Card Account.
   Account Holder: The owner of the Card or Bank Account to which a Transaction may apply.
   Business Day: Any day other than Saturday, Sunday or Federal Holidays.
   Card: Credit Card or Debit Card.
   Chargeback: The procedure by which an Account Holder attempts to reverse the funding of a Transaction by contacting the Account Issuer to which the Transaction was performed.
   Issuer: The bank or financial institution which issued the Account to the Constituent.
   Downgrade: Any transaction that fails to qualify for the best level of Interchange qualification.
   Payment Associations: MasterCard, Visa, Discover, American Express, NACHA and any applicable debit card networks.
   Payment Processor: An entity which processes electronic financial transactions, including but not limited to ACH, Credit Card, Debit Card, into the appropriate network for each type of payment, on behalf of merchants.
   Rule: Operating Rules which are established by the applicable Payment Associations.
   Regulation: Any applicable Local, State and Federal Law.
   Settlement Account: A checking or savings account at a financial institution designated by Agency as the account to be debited and credited by FEDPAY or Processor for any amounts owed as a result of any applicable Transactions.
   Transaction: Electronic request submitted to FEDPAY to affect a Constituent's Account.
   Validation Code: The 3 or 4 digit security code printed on the signature panel of most Cards or on the top right of American Express Cards.

2. **Use License.**
   Subject to the terms and conditions of this Agreement, FEDPAY hereby grants to Agency a non-exclusive and non-transferable license to access and use FEDPAY's products and services contracted for and Agency hereby accepts such license and agrees to utilize and access the Services in accordance with the practices and procedures established by FEDPAY. Agency may use the Services (a) for its own internal business purposes and operations, and/or (b) as a service provided to its Constituents, unless otherwise notified by FEDPAY. No license or right to use, reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of any of FEDPAY's Proprietary Property, as defined in Section 2 below, in whole or in part, is granted except as expressly provided by this Agreement. Neither Agency nor any of its affiliates shall reverse engineer, decompile or disassemble the Proprietary Property. Additionally, nothing in this Agreement shall be construed to provide Agency with a license of any third-party proprietary information or property.

3. **Ownership.**
All computer programs, trademarks, service marks, patents, copyrights, trade secrets, know-how, and other proprietary rights in or related to FEDPAY's products and services (the "Proprietary Property"), are and will remain the sole and exclusive property of FEDPAY, whether or not specifically recognized or perfected under applicable law. FEDPAY shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the existing FEDPAY products or services and/or any new programs, upgrades, modifications or enhancements developed by FEDPAY in connection with rendering any services to Agency (or any of its affiliates), even when refinements and improvements result from Agency's request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in FEDPAY by virtue of this Agreement or otherwise, Agency hereby expressly transfers and assigns (and, if applicable, shall cause its affiliates to transfer and assign) to FEDPAY all rights, title, and interest which Agency or any of its affiliates may have in and to such refinements and improvements.

4. **Confidentiality.**
Agency acknowledges that the products, services and information relating to FEDPAY's products and services, except such information as is part of the basis of the agreement itself, contain confidential and proprietary information developed by, acquired by, or licensed to FEDPAY (the "Confidential Information"). Agency will take (and will cause its affiliates to take) all reasonable precautions necessary to safeguard the confidentiality of the Confidential Information. Neither Agency nor any of its affiliates will make any unauthorized use of the Confidential Information or disclose, in whole or in part, the Confidential Information to any individual or entity, except to those of Agency's employees or affiliates who require access for Agency's authorized use of the products or services and agree to comply with the use and nondisclosure restrictions applicable to the Confidential Information. This Section will not apply to Confidential Information that (i) was already available to the public at the time of disclosure, (ii) becomes generally known to the public after disclosure to the other party, through no fault of the other party, or (iii) is disclosed under force of law, governmental regulation or court order. Agency acknowledges that any unauthorized use or disclosure by it or any of its affiliates of the Confidential Information may cause irreparable damage to FEDPAY. As such, if FEDPAY becomes aware of Agency's breach or threatened breach of this Section, FEDPAY may suspend any and all rights granted to Agency under these Terms and Conditions and shall be entitled to injunctive relief, without the need of posting a bond, in addition to all legal or equitable relief that may be available to FEDPAY.

5. **Term and Termination**
   5.1 **Term.** This Agreement shall become effective upon the date this Agreement is executed by both parties and shall have an initial term of three (3) years, subject, under the Kansas Cash Basis and Budget Laws, to the availability and sufficiency of funds properly budgeted and appropriated to pay the costs thereof in each such year. Thereafter, this Agreement will automatically renew for additional one (1) year terms if they are approved by the Agency's governing body, unless FEDPAY provides written notice of its intent to terminate the Agreement no later than 90 days prior to the end of any term.
   5.2 **Termination.** In the event of a material breach of this Agreement by one party and failure to cure within thirty (30) days of receipt of written notice of the breach, the other party may

terminate by providing written notice of termination. Additionally, FEDPAY may immediately terminate this Agreement without prior notice in the event that (i) there is a material adverse change to Agency or its financial condition; or (ii) Agency experiences excessive chargebacks; or (iii) Agency experiences an actual or suspected data security breach; or (iv) Agency violates any applicable Law, Rule or Regulation; or (v) termination is deemed necessary by FEDPAY to comply with any applicable Law, Rule or Regulation.

6. **Transaction Processing**

6.1 **Accepting Transactions.** FEDPAY shall process Credit Card, Debit Card and ACH Transactions on the Agency's behalf on a 24-hour basis. Transactions which are received before the daily designated cut-off time will be originated for settlement through the corresponding Payment Network. Transactions which are received after the designated cut-off time will be included in the next business day's settlement processing.

6.1.1 **Sale Transactions.** All Transactions sent to FEDPAY utilizing the "Sale" method will automatically be captured for settlement in time for the next designated cut-off time.

6.1.2 **Auth/Capture Transactions.** If Agency opts to utilize an "Authorize" method rather than a "Sale" method for a Transaction, then it will be the responsibility of Agency to submit a corresponding "Capture" Transaction within 48 hours of the authorization in order to complete the Transaction process for settlement. Transactions which are not captured within 48 hours of Authorization are untimely and may be rejected by FEDPAY.

6.2 **Transaction Format.** FEDPAY is responsible only for processing Transactions which are received and approved by FEDPAY in the proper format, as established by FEDPAY.

6.2.1 **Card Not Present Transactions.** For card-based transactions in which the card is not present, Agency must obtain and include as part of the authorization request the 3 or 4 digit Validation Code and cardholder's billing address information.

6.3 **Merchant Account.** In order to provide transaction processing services, FEDPAY may need to establish one or more Merchant Accounts on Agency's behalf or require Agency to establish a Merchant Account with a provider pre-approved by FEDPAY.

6.4 **Modifying Transactions.** Agency shall regularly and promptly review all Transactions and shall immediately notify FEDPAY upon discovery of any and all discrepancies between Agency's records, FEDPAY and Agency's bank, or with respect to any Transaction that Agency believes was made erroneously or without proper authorization. At Agency's request, FEDPAY will make reasonable efforts to reverse, modify, void or delete a Transaction after it has been submitted for settlement. All requests must be made in writing (electronic mail will be deemed as "in writing" for these purposes), signed or sent by an individual pre-authorized by Agency to make such requests and delivered to FEDPAY. Agency agrees that FEDPAY will not be held responsible for any losses, directly or indirectly, incurred by Agency or other third parties as a result of FEDPAY's failure to accomplish the request before the Transaction has been processed through the applicable Payment Network.

6.5 **Delay or Rejection of Transactions.** FEDPAY may delay or reject any Transaction without prior notification to Agency which is improperly formatted, is untimely, is missing information which may cause it to downgrade or if FEDPAY has reason to believe such Transaction is fraudulent or improperly authorized or for any reason permitted or required

under the Rules or Regulations. FEDPAY shall have no liability to Agency by reason of the rejection of any such Transaction.

6.6 **Returned Items.** FEDPAY shall make available to Agency details related to the receipt of any Transaction that is returned unpaid or Transaction which is charged back and shall credit or charge such returned item to Agency's Settlement Account.

6.7 **Chargebacks.** Agency acknowledges and agrees that it is bound by the Rules and Regulations of the Payment Associations with respect to any Chargeback. Agency understands that obtaining an authorization for any sale shall not constitute a guarantee of payment, and such sales can be returned or charged back to Agency like any other item hereunder. In the event a Transaction is charged back for any reason, the amount of such Transaction will be deducted from Agency's designated settlement account or any payment due to Agency.

6.8 **Excessive Chargebacks.** Using limits established by Associations as a standard for review, FEDPAY reserves the right to suspend and/or terminate Agency's access to the Services should Agency's chargeback ratio exceed allowable limits in any given period. FEDPAY will make reasonable efforts to provide Agency with notice and a time to cure its excessive chargebacks prior to suspending or terminating Agency's access to the Services. Agency acknowledges and expressly authorizes FEDPAY, in compliance with Payment Association Rules and Regulations, to provide to the Payment Associations and applicable regulatory bodies, Agency's name and contact information as well as transaction details should Agency's chargeback ratio exceed the allowable limits in any given period.

6.9 **Resubmitting Transactions.** Agency shall not re-submit any Transaction unless it is returned as (i) Insufficient funds (R01); or (ii) Uncollected funds (R09); or (iii) unless a new authorization is obtained from Constituent.

6.10 **Settlement.** Settlement of Agency's funds for Transactions, less any Chargebacks or Returns, to Agency's designated settlement account will occur within 72 hours of Origination excluding weekends and US federal banking holidays. Settlement of Transactions will occur via electronic funds transfer over the ACH Network.

6.11 **Reporting.** FEDPAY will make daily Origination and Deposit reports available to Agency on a 24/7 basis through the FEDPAY Internet-based Payments Gateway platform.

7. Transaction Authorization

7.1 **Constituent Authorization.** Agency shall obtain authorization from Constituent prior to requesting a Transaction to Constituent's account.

7.2 **Retention.** Agency shall retain proof of Constituent's authorization for a period of not less than two (2) years for standard transactions and for a period of five (5) years for health-related transactions from the authorization date or revocation of authorization date and shall provide such proof of authorization to FEDPAY upon request within five (5) business days of the request.

7.3 **Revoked Authorization.** Agency shall cease initiating Transactions to a Constituent's account immediately upon receipt of any actual or constructive notice of that Constituent's termination or revocation of authority. Agency may re-initiate Transactions to a Constituent's account only upon receiving new authorization from Constituent.

8. **ACH Settlement Authorization.** Agency authorizes FEDPAY to electronically debit and credit Agency's designated bank account(s) for any amounts owed to or by Agency in accordance to the terms of this Agreement.

9. **Constituent Disputes.**
All disputes between Agency and its Constituent (s) relating to any Transaction processed under this Agreement will be settled by and between Agency and Constituent. Agency agrees that FEDPAY bears no responsibility or involvement in any such dispute.

10. **Compliance with Laws, Rules and Regulations.**
In performing its duties under this Agreement, each party agrees to comply with all applicable Rules, Regulations and Laws. Agency agrees to cooperate and provide information requested by FEDPAY to facilitate FEDPAY's compliance with any applicable Law, Rule or Regulation. Additionally, Agency shall reimburse FEDPAY for any fines or loss of funds imposed on FEDPAY for any violation of the Rules, Regulations or Laws by Agency.

11. **Pricing and Payment.**
    11.1 FEDPAY will provide the Services in accordance with the pricing fee schedule(s) attached hereto as Appendix A. Pricing schedules which utilize an Absorbed Fee Model will be billed to the Agency monthly in arrears and will automatically be debited from Agency's designated account via ACH Debit. Pricing schedules which utilize a Service Fee Model will result in a processing fee being charged to the Constituent in the form of a non-refundable service fee which is either (i) added to; or (ii) charged as a separate transaction to the Constituent at the time of payment.
    11.2 Pricing schedules which utilize a flat service fee model are calculated based on historical or estimated transactional amount activity by Agency. In the event that experiential transaction activity varies significantly from the historical or estimated amounts, FEDPAY shall have the right to adjust the service fee in accordance to the experiential transaction activity.
    11.3 FEDPAY's pricing is subject to the underlying fees established by the Payment Associations and its service providers. As such, in the event FEDPAY experiences an increase in cost for any processing services utilized by Agency during any term of this Agreement, FEDPAY will pass through the increases with no additional markup to Agency. FEDPAY will provide Agency a minimum of thirty (30) days notice of any change or adjustment in fees.

12. **Limits of Liability.**
    12.1 Neither party shall be liable to the other party or to any third party for any special, consequential, incidental or punitive damages of any kind or nature incurred in relation to this Agreement.
    12.2 FEDPAY shall not be held responsible for errors, acts or failures to act of others, including, and among other entities, banks, other processors, communications carriers or clearing houses through which Transactions may be originated or through which FEDPAY may receive or transmit information, and no such entity shall be deemed an agent of FEDPAY.

13. **Representations and Warranties.**

13.1 **FEDPAY's Representations and Warranties.**

13.1.1 FEDPAY represents and warrants to Agency that FEDPAY's agreement to provide its products and services to Agency and to perform the Services hereunder does not violate any agreement or obligation between FEDPAY and any third party.

13.1.2 To the best of FEDPAY's knowledge and belief, no performance of its obligations hereunder will infringe on any copyright, patent, trade secret or other proprietary right held by any third party.

13.1.3 To the best of FEDPAY's knowledge and belief, when executed and delivered by FEDPAY, the agreement with Agency will constitute the legal, valid, and binding obligation of FEDPAY, enforceable in accordance with its terms.

13.1.4 FEDPAY agrees to comply with the Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements attached hereto as Appendix B.

13.2 **Agency's Representations and Warranties.**

13.2.1 Agency's agreement to license FEDPAY's products and services and to engage FEDPAY to perform the Services hereunder does not violate any agreement or obligation between Agency and any third party.

13.2.2 To the best of Agency's knowledge and belief, neither any information delivered by Agency to FEDPAY in support of this Agreement nor Agency's performance of its obligations hereunder will infringe on any copyright, patent, trade secret or other proprietary right held by any third party.

13.2.3 To the best of Agency's knowledge and belief, none of the activities for which Agency has engaged the services of FEDPAY shall violate any international, federal, state, or local law or regulation, including but not limited to laws relating to consumer non-public financial information.

13.2.4 To the best of Agency's knowledge and belief, when executed and delivered by Agency, the agreement with FEDPAY will constitute the legal, valid, and binding obligation of Agency, enforceable in accordance with its terms.

14. Service Policy.

Except as otherwise specifically provided herein, FEDPAY's products and services are provided hereunder "As Is" without warranty of any kind. Agency acknowledges and understands that FEDPAY does not warrant that the Services will be uninterrupted or error free and that FEDPAY may occasionally experience delays or outages due to disruptions that are not within FEDPAY's control. Any such interruption shall not be considered a breach of this Agreement by FEDPAY. FEDPAY shall use its best efforts to remedy any such interruption in service as quickly as possible.

15. Force Majeure.

Neither party shall be liable for, or be considered in breach of or default under the Agreement on account of any delay or failure to perform its obligations hereunder as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party shall give prompt written notice to the other party and shall use all commercially reasonable efforts to minimize the impact of the event.

16. Assignment.

The rights granted under this Agreement shall not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld.

17. Choice of Law and Venue.

17.1 This Agreement shall be governed by and construed in accordance with the internal laws of the state of Kansas.

17.2 The exclusive venue for any actions or claims arising from or related to this Agreement shall be in the appropriate state or federal court located in Wichita, Kansas.

18. Amendment.

Except as otherwise provided for herein, the terms and conditions of this Agreement shall not be modified or amended except in writing, signed by the parties hereto and specifically referring to this Agreement.

19. Publicity.

Neither party shall use the other party's name, logo or service marks in conjunction with a press release or advertisement without first obtaining written approval.

20. Notice.

Any notice required to be given by either party hereunder, shall be in writing and delivered personally to the other designated party, or sent by any commercially reasonable means of receipted delivery, addressed, to that party at the address most recently provided in writing. Either party may change the address to which notice is to be sent by written notice to the other under any provision of this paragraph.

Notices to FEDPAY:	**Notices to Agency:**
Federal Payments	_____
500 W. Bethany	_____
Suite #200	_____
Allen, TX 75013	_____
Attn: General Counsel	_____

21. Headings.

The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning of any provision of this Agreement.

22. Severability.

Should any term, clause or provision herein be found invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be construed to most closely reflect the original intent of the parties.

23. Entire Agreement; Waiver; Counterparts.

This Agreement constitute the entire understanding of the parties, and revoke and supersede all prior agreements between the parties and are intended as a final expression of their agreement. Either party's waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach of same or other provision. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

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

ATTEST:

Karen Sublett
City Clerk

CITY OF WICHITA, KANSAS

Carl G. Brewer
Mayor

APPROVED AS TO FORM:

Gary E. Rebenstorf, [illegible]

Gary E Rebenstorf
Director of Law

ACH Direct, Inc. dba Federal Payments

Signature

Jeffrey J. Thorness
Print Name

President & CEO
Title (President or Corporate Officer)

Exhibit B

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

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

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

Appendix A

Convenience Fee Model Pricing Option-includes Mastercard, Visa, Discover and American Express

- Flat fee pricing is driven by the average ticket range of a payment type. Federal Payments will work with the department to establish the correct fee. The average ticket will be reviewed periodically for accuracy. The fee could be adjusted if the average ticket deviates significantly.

Average Payment Amount	Fee Charged to the Citizen
$0.00-$30.00	$1.50
$30.01-$99.99	$2.75
$100.00-$124.99	$3.50
$125.00-$149.99	$4.25
$150.00-$174.99	$5.00
$175.00-$224.99	$6.25
$225.00-$249.99	$7.25
$250.00-$300.00	$8.25

Electronic Checks $1.50 Flat fee charged to the citizen

Absorbed Model Pricing Option-includes Mastercard, Visa and Discover cards

- The City may choose to absorb the fees for processing credit cards and electronic checks. The following fees would be applicable:

Items	Fees	Frequency
Visa, Mastercard, Discover	Direct interchange, dues and assessments and all other fees from the card associations + .40% and $0.15	Each transaction
Electronic Checks	w/o ATM Verify-$0.25	Each transaction
Electronic Checks	with ATM Verify-$0.50	Each transaction
Other Check Fees	Returned Item fee $2.00	Each transaction
Paper Merchant Statement	$5.00	Per month
Retrieval Request	$7.50	Per request
Chargeback Fee	$15.00	Per chargeback

Other Costs:

Setup Fees	$0.00
Integration Costs	$0.00
Online Reporting Tool	$0.00

Gateway Only Fees:

If any Agency chooses to continue to utilize their own credit card processor, FedPay will charge the following fee to provide the Secure Gateway Services to process transactions.

$0.10 per transaction

Second Reading Ordinances for December 14, 2010 (first read on December 7, 2010)

Public Hearing and Issuance of Industrial Revenue Bonds, Bombardier Learjet. (Districts IV and V

ORDINANCE NO. 48-911

An ordinance authorizing the City of Wichita, Kansas, to issue its taxable Industrial Revenue Bonds in the original aggregate principal amount not to exceed $892,983.01 for the purpose of providing funds to finance the installation of improvements to certain existing aviation manufacturing and flight testing facilities as well as to finance the acquisition of certain machinery and equipment for such facilities located in the City of Wichita, Kansas; prescribing the form and authorizing execution of an eighteenth supplemental trust indenture by and between the City and the Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri (the "trustee"), as trustee with respect to the bonds; prescribing the form and authorizing the execution of an eighteenth supplemental lease by and between Learjet inc. and the City; approving the form of a guaranty agreement; and authorizing the execution of a bond purchase agreement by and between the City and Learjet inc., as purchaser of the bonds.

Public Hearing and Issuance of Industrial Revenue Bonds, Cessna Aircraft Company. (Districts III and IV)

ORDINANCE NO. 48-912

An Ordinance authorizing the city of Wichita, Kansas, to issue its taxable Industrial Revenue Bonds, Series VII, 2010 (Cessna Aircraft Company), in the original aggregate principal amount of not to exceed $8,000,000 for the purpose of purchasing, acquiring, renovating, equipping, constructing and/or installing an industrial and commercial facility; authorizing execution of a twentieth supplemental trust indenture by and between the city and the Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, as trustee with respect to the Series VII, 2010 bonds; authorizing the city to lease said project to Cessna Aircraft Company; authorizing the execution of a twentieth supplemental lease by and between the City and Cessna Aircraft Company; authorizing the execution of a bond purchase agreement by and between the City and Cessna Aircraft Company, as purchaser of the bonds; and authorizing execution of a bill of sale, termination and release of tenth supplemental lease and cancellation, discharge and release of tenth supplemental trust indenture.

Public Hearing and Issuance of Industrial Revenue Bonds, The Coleman Company. (District I)

ORDINANCE NO. 48-913

An ordinance authorizing the City of Wichita, Kansas, to issue its taxable Industrial Revenue Bonds, Series V, 2010 (The Coleman Company, Inc.), in the aggregate principal amount of not to exceed $6,200,000 for the purpose of providing funds to acquire, construct and equip improvements to existing facilities located in the city of Wichita, Kansas; prescribing the form and authorizing execution of a sixteenth supplemental trust indenture by and between the City and the Bank of New York Mellon Trust Company, N.A., as trustee, with respect to the bonds; prescribing the form and authorizing execution of a sixteenth supplemental lease agreement by and between the City and The Coleman Company, Inc.; approving the form of a guaranty agreement; authorizing the execution of a bond purchase agreement by and between the City and the Coleman Company, Inc., as purchaser of the bonds; and authorizing execution of a bill of sale.

Public Hearing to Consider Request for De-annexation of Land.

ORDINANCE NO. 48-914

An ordinance excluding certain parcels, pieces and tracts of land from the limits and boundaries of the City of Wichita.

An Ordinance Amending Sections 5.37.033, and 5.37.035 of the Code of the City of Wichita, Kansas, Pertaining to Graffiti and Repealing the Original of Sections 5.37.033 and 5.37.035.

ORDINANCE NO. 48-915

An ordinance amending section 5.37.010 and creating sections 5.37.033, 5.37.035, 5.37.038 and 5.37.150 of the Code of the City of Wichita, Kansas, pertaining to graffiti and repealing the original of Section 5.37.010 and 5.37.030 of the code of the city of Wichita, Kansas.