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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. August 21, 2012

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 August 14, 2012

AWARDS AND PROCLAMATIONS

None

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. Janet Green - City's assistance in providing crossing guards for children to cross 21st at the intersection of Hillside, Grove, and Piatt.

II. CONSENT AGENDAS (ITEMS 1 THROUGH 27)

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

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

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

None

IV. NEW COUNCIL BUSINESS

1. Amendments to WaterWalk Developer Agreements. (Districts I and IV)

   RECOMMENDED ACTION: Approve the Fifth Amendment to the WaterWalk Development Agreement, the Amendment to the Parking District Agreement and the WaterWalk Apartments Ground Lease, and authorize the issuance of a Request for Proposals for the Amphitheater floating stage.

2. Cultural Funding allocation recommendations.

   RECOMMENDED ACTION: Approve the Fiscal Year (FY) 2013 funding allocations recommended for arts and cultural organizations by the Cultural Funding committee.

3. Tipping Fee Increase at Brooks Landfill.

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

4. An Ordinance Amending Section 24.02.135, Creating Section 24.04.215 and Repealing Section 24.04.210 of the Code of the City of Wichita, Kansas, Pertaining to Illegally Placed Temporary Signs on Public Right of Way.

   RECOMMENDED ACTION: Place the Ordinances on first reading and authorize the necessary signatures.

5. Amendments to Section 1.04.070 of the Code of the City of Wichita, Kansas, Pertaining to Costs and Witness Fees in Cases before the Municipal Court.

   RECOMMENDED ACTION: Place the Ordinance on first reading and authorize the necessary signatures.

6. Douglas Avenue Bus Facility Improvements in Downtown. (Districts I and VI)

   RECOMMENDED ACTION: Accept the grant award, authorize initiation of the project, approve the bonding resolution, and authorize the necessary signatures.

7. Golf Course Improvements. (Districts I, III, IV, V, and VI)

   RECOMMENDED ACTION: Approve the project, approve the Resolution and authorize all necessary signatures.

8. Repair or Removal of Dangerous and Unsafe Structure. ~~(District I~~) ***(District II***)

Property Address	Council District
a. 8000 East Tipperary	***II***

RECOMMENDED ACTION: Close the public hearing, adopt the resolution declaring the building to be a dangerous and unsafe structure, and accept the BCSA recommended action to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structure. Any extensions of time granted to repair any structure would be contingent on the following: (1) All taxes have been paid to date as of August 21, 2012; (2) the structure has been secured as of August 21, 2012, and will continue to be kept secured; and (3) the premise is mowed and free of debris as of August 21, 2012, and will be so maintained during renovation.

9. Ordinance providing for the Fluoridation of City's Drinking Water or Calling for Election regarding passage of proposed Fluoridation Ordinance.

RECOMMENDED ACTION: Approve the proposed ordinance or authorize an election to determine if the proposed ordinance should be adopted.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

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

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

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

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

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

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

VII. NON-CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

1. Approval of travel expenditures for Mayor Brewer to attend League of Kansas Municipalities Governing Body Meeting in Topeka, KS, September 6-7, 2012.

   RECOMMENDED ACTION: Approve the expenditures.

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 27)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated August 20, 2012.
   a. Board of Bids

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

2. Applications for Licenses:

Special Event	2012	(Consumption on Premises)
Black Top Nationals	August 24, 2012 12-11 pm; August 25 10am-11pm; August 26 10am-5pm	Kennedy Plaza
Farm and Air Market	September 1st and 2nd, 2012; 3 -10 pm	835 East 1st

   RECOMMENDED ACTION: Approve the licenses.

3. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2012	(Consumption off Premises)
Amir Etezazi	EEI CS2***	731 North Ridge Road
Lori Cottrell	Wal-Mart Market #5856***	601 North West

   ***Consumption/Retailer grocery stores, convenience stores etc.

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

4. Preliminary Estimates:
   a. List of Preliminary Estimates:

   RECOMMENDED ACTION: Receive and file.

5. Consideration of Street Closures/Uses.
   a. Community Events - 44th Annual Wichita Black Arts Festival. (District I)
   b. Community Events - Orpheum Theater 90th Anniversary Celebration. (District VI)

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

6. Agreements/Contracts:
   a. Hold Harmless Agreement, Easement Encroachment. (District II)
   b. Supplemental Agreement No. 3 for 13th Street North from 135th to 119th Street West. (District V)
   c. Design of Multi-Purpose Events Center at Botanica. (District VI)

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

7. Change Order:
   a. Purchase of New Buses – Production Change Order.

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

8. Property Acquisitions:
   a. Partial Acquisition of Land at the Southwest Corner of Central and 135th Street West for the Central: 119th to 135th Street Road Improvement Project. (District V)
   b. Partial Acquisition of 12224 West Central for the Central: 119th to 135th Street Road Improvement Project. (District V)
   c. Partial Acquisition of Land at 2011 South Seneca for the Meridian Drainage Outfall Project. (District IV)
   d. Partial Acquisition of 12316 West Central for the Central: 119th to 135th Street Road Improvement Project. (District V)
   e. Partial Acquisition of 12822 West Central for the Central: 119th to 135th Street Road Improvement Project. (District V)
   f. Partial Acquisition of Land in the Northeast Quadrant of Central and 135th Street West for the Central: 119th to 135th Street Road Improvement Project. (District V)

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

9. Minutes of Advisory Boards/Commissions

   Board of Electrical Appeals, May 8, 2012
   Wichita Board of Appeals of Plumbers and Gas Fitters, July 11, 2012
   Board of Code Standards and Appeals, July 2, 2012
   Wichita Airport Advisory Board, July 2, 2012
   Joint Investment Committee, June 25, 2012
   Joint Investment Committee, July 12, 2012
   Storm Water Advisory Board, July 30, 2012

   RECOMMENDED ACTION: Receive and file.

10. Issuance of General Obligation Local Sales Tax Bonds.

    RECOMMENDED ACTION: Adopt the resolution declaring it necessary to issue general obligation bonds and to pledge local sales tax revenues for the payment of such bonds and provide for the giving of notice as required by law.

11. Forgivable Loan Repayment, Burnham Composite Structures, Inc. (District IV)

    RECOMMENDED ACTION: Approve the letter agreement authorizing repayment of the forgivable loan for Burnham Composite Structures, Inc. in installments and authorize the necessary signatures.

12. Memorandum of Understanding (MOU) between Wichita Area Technical College (WATC) and Wichita Police Department (WPD).

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

13. Notice of Intent to Use Debt Financing Amendments - Air Capital Terminal 3 and Parking Facilities Program - Wichita Mid-Continent Airport.

    RECOMMENDED ACTION: Adopt the Amended Resolutions and authorize the necessary signatures.

14. Electrical Repair Service-Selection of Contractor.

    RECOMMENDED ACTION: Approve the selection of Shelley Electric, Inc. for the electrical repair services and authorize the necessary signatures.

15. Community Event with alcohol consumption, Resolution-Orpheum Theater 90th Anniversary Celebration. (District VI)

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

16. North Iva Avenue and 27th Street Storm Water Sewer Environment Protection Agency Grant Award and Acceptance. (District I)

    RECOMMENDED ACTION: Approve the grant award, approved the budget and authorize the necessary signatures.

17. Second Reading Ordinances: (First Read August 14, 2012)
    a. Second Reading Ordinances.

    RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

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

18. *ZON2007-14 – Extension of time to complete the platting requirement for a zone change request from GI General Industrial ("GI"), SF-5 Single-family Residential ("SF-5") and LC Limited Commercial ("LC") to LI Limited Industrial ("LI"); generally located north of 13th Street and west of Greenwich Road. (District II)

    RECOMMENDED ACTION: Approve an extension of the platting deadline to August 10, 2014.

19. *VAC2012-00019 - Request to vacate an easement dedicated by separate instrument; generally located south of 29th Street North on the east side of Greenwich Road. (District II)

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

20. *VAC2012-00021 - Request to vacate a portion of a platted easement, reserve floodway and plattor's text; generally located north of 13th Street North, south of Waterfront Parkway, on the east side of Webb Road. (District II)

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

21. *VAC2012-00023 - Request to vacate platted drainage and utility easement; generally located 1500 feet west of 143rd Street East, south of 21st Street North, on the southeast corner of Castle Rock Street and Castle Rock Court. (District II)

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

22. *A12-06 - Request by Midland Baptist Church to annex lands generally located north of K-96 Highway, approximately one-quarter mile east of Ridge Road. (District VI)

    RECOMMENDED ACTION: Approve the annexation request, place the ordinance on first reading, authorize the necessary signatures and instruct the City Clerk to publish the ordinance after approval on second reading.

II. CONSENT HOUSING AGENDA ITEMS

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

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

None

II. CONSENT AIRPORT AGENDA ITEMS

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

23. *EagleMed, LLC - Supplemental Agreement No. 1 for use of 1761 Airport Road, Suite 400 - Wichita Mid-Continent Airport.

    RECOMMENDED ACTION: Approve the Supplemental Agreement and authorize the necessary signatures.

24. *Purchase of Builder's Risk Insurance - Air Capital Terminal 3 (ACT 3) and Parking Facility Programs.

    RECOMMENDED ACTION: Ratify this negotiated contract and authorize the necessary signatures.

25. *Airfield Electrical System Replacement, Supplemental Agreement No. 1, Wichita Mid-Continent Airport.

    RECOMMENDED ACTION: Approve the supplemental agreement and authorize the necessary signatures.

26. *Landside Equipment Storage Facility - Approve Design-Build Criteria - Wichita Mid-Continent Airport.

    RECOMMENDED ACTION: Approve the design-build construction delivery methodology for this project, and use of the suggested evaluation and selection criteria.

27. Board of Bids Wichita Airport Authority (NONE)

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Amendments to WaterWalk Developer Agreements (Districts I and IV)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendations: Approve the amendments to the WaterWalk Development Agreement and WaterWalk Parking District Agreement and approve the WaterWalk Apartments Ground Lease and authorize the issuance of a Request for Proposals (RFP) for a floating stage.

Background: In September 2002, the City of Wichita entered into a development agreement with WaterWalk LLC to redevelop the East Bank Redevelopment District, located north of Kellogg, west of Main, south of Waterman and east of the Arkansas River in downtown Wichita. The WaterWalk Development Agreement was later amended in December 2003, October 2004, June 2006 and December 2008 to reflect changes to the scope, terms and conditions of the redevelopment project. Among the changes approved through amendments was the addition of approximately 4.4 acres of land on the West Bank of the Arkansas River, on West Maple Street adjacent to the Wichita Ice Center to provide additional public parking.

The WaterWalk Development Agreement describes the development project scope and identifies the area subject to redevelopment by means of a master site plan that shows where private improvements may be constructed and the location of public improvements. The WaterWalk Development Agreement further provides that specific private improvement projects can be started by means of a "Construction Phase Closing" in which a site-specific ground lease is delivered to the developer in exchange for evidence that the developer has everything in place to start construction.

WaterWalk LLC has informed the City of its desire to develop an apartment complex on the West Bank land previously designated for public parking. For this project to proceed, the City Council will need to amend the WaterWalk Development Agreement to designate this area for private improvements and approve the ground lease for this site.

Analysis: The proposed WaterWalk Apartments is an $8.5 to $9 million project with 134 one, two and three-bedroom apartments in two four-story buildings located on 4.4 acres at the southwest corner of Maple and McLean (411 W. Maple). The proposed building façade material is predominately brick veneer with the balance being fiber cement siding. Site improvements include a prominent pedestrian entrance from Maple, landscaping, lighting, perimeter fencing, storage units for residents, interior courtyard with picnic areas, and 253 parking stalls screened from the street by landscaping. Initial rental rates will range from $650 per month for one bedroom apartments up to $1,199 for three-bedroom apartments.

Since the most recent Master Plan in the WaterWalk Development Agreement shows the proposed site for the WaterWalk Apartments on the West Bank as a public parking area, the Development Agreement needs to be amended to include a new master plan which designates the West Bank site for private development, in particular for the proposed apartment complex. The new Master Plan (Exhibit 2 to the attached Fifth Amendment to the WaterWalk Development Agreement) shows the West Bank portion of the project area and the location of the proposed apartment buildings on the site. The Fifth Amendment also includes a new Scope of Project (Exhibit 1) that incorporates the apartment project, a revision to the legal description on the project area (Exhibit 3) and an updated Project Phasing Schedule (Exhibit 5) which requires completion of the apartment project within five years.

An amendment is also needed for the WaterWalk Parking District Agreement, which generally requires owners of private improvements within the area covered by the Parking District to pay parking fees based on off-street parking code requirements at the rate of $10 per required parking space. The current boundaries of the Parking District include the proposed site of the WaterWalk Apartments. However, this project will provide ample on-site parking spaces needed for the project at no cost to the City. Accordingly, the attached Amendment to the Parking District Agreement removes the WaterWalk Apartments site from the Parking District boundaries.

The attached WaterWalk Apartments Ground Lease provides for the lease of the 4.4-acre West Bank site to WaterWalk LLC or an affiliate for a term of 93 years at the rental rate of $1 per year, which the full amount will be pre-paid in full at the Construction Phase Closing for this project. The original WaterWalk Development Agreement called for the term of ground leases to be 99 years. Later action by the City Council in approving WaterWalk ground leases changed the terms of subsequent leases to match the remaining term of the first WaterWalk ground lease, that of Gander Mountain which began in 2005, so that all WaterWalk ground leases will expire at the same time. The terms of the WaterWalk Apartments Ground Lease conform to those contained in the Master Ground Lease that was approved as part of the original WaterWalk Development Agreement.

The WaterWalk Master Plan calls for the development by the City of an amphitheater to provide a venue for public entertainment within the project area. Prior amendments to the Master Plan moved the amphitheater from the west side of the WaterWalk Place condominiums to the riverbank area between Gander Mountain and the Kansas Sports Hall of Fame, designated as Site Area 3 in the current Master Plan. The City has received a $247,500 Economic Development Initiative (EDI) grant from the U.S. Department of Housing and Urban Development (HUD) to offset a portion of the cost to develop the amphitheater, which must be used by September 30, 2013. HUD has approved the use of the EDI grant to acquire a floating stage to serve as the future amphitheater. Staff requests authorization to issue an RFP to potential vendors for the floating stage.

Financial Considerations: The WaterWalk Development Agreement and the proposed WaterWalk Apartments Ground Lease stipulate the ground lease rental rate to be $1.00 per year. This reflects an "opportunity cost" to the City of approximately $479,000 (assuming the City could sell the land for its current Sedgwick County valuation). The actual cost of developing the WaterWalk Apartments complex will be borne entirely by WaterWalk LLC.

The overall budget for WaterWalk public improvements includes funding for the amphitheater improvements in Site Area 3, which will be constructed as additional nearby private development occurs. However, use of the HUD EDI funding designated for the amphitheater project will be withdrawn if not spent by September 30, 2013.

Goal Impact: Economic Vitality and Affordable Living, Quality of Life and Core Area and Neighborhood. Approving the WaterWalk amendments promotes downtown revitalization and quality of life amenities in the core area by increasing both residential housing and entertainment options downtown.

Legal Considerations: The Fifth Amendment to the WaterWalk Development Agreement, the Amendment to the Parking District Agreement, and the West Bank Apartments Ground Lease have been drafted and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council approve the Fifth Amendment to the WaterWalk Development Agreement, the Amendment to the Parking District Agreement and the WaterWalk Apartments Ground Lease, and authorize the issuance of a Request for Proposals for the amphitheater floating stage.

Attachments: Fifth Amendment to the WaterWalk Development Agreement
Amendment to the Parking District Agreement
WaterWalk Apartments Ground Lease

FIFTH AMENDMENT TO
DEVELOPMENT AGREEMENT REGARDING
DEVELOPMENT OF THE EAST BANK

This Fifth Amendment to Development Agreement Regarding Development of the East Bank ("Agreement"), is made and entered into at Wichita, Kansas, as of the _____ day of August, 2012, by and between the City of Wichita, Kansas, a Kansas Municipality ("City"), and WaterWalk LLC, a Kansas limited liability company ("Developer").

WHEREAS, Developer and City have executed a Development Agreement Regarding Development of the East Bank, dated September 10, 2002, as amended by that certain Amendment to Development Agreement Regarding Development of the East Bank dated December 2, 2003, that certain Second Amendment to Development Agreement Regarding Development of the East Bank dated October 12, 2004, that certain Third Amendment to Development Agreement Regarding Development of the East Bank dated June 20, 2006, that certain Fourth Amendment to Development Agreement Regarding Development of the East Bank dated December 16, 2008 and subsequent revisions to the master plan for the project, approved on September 1, 2009 and September 14, 2010 (collectively the "Development Agreement"); and,

WHEREAS, subsequent to September 14, 2010, the concept of the development has changed to include a plan for apartments on a site west of the Arkansas River, southwest of the intersection of McLean and Maple; and,

WHEREAS, the parties desire to further amend the Development Agreement to account for the intended revisions in the development;

NOW, THEREFORE, the parties agree to amend the Development Agreement as follows:

1. Exhibit 1 to the Development Agreement shall be replaced by the Exhibit 1 hereto.

2. Exhibit 2 hereto shall replace the master plan as revised on September 1, 2009 and September 14, 2010, as well as Exhibit A to the Fourth Amendment to Development Agreement Regarding Development of the East Bank dated December 16, 2008 and all prior versions of Exhibit 2 to the Development Agreement.

3. The first full paragraph of text in Exhibit 3 to the Development Agreement, providing a narrative description of the project area, is hereby amended to read as follows:

> The Project development will occur within the area, as shown on Exhibit 2, beginning at the corner of Main Street and Waterman, then along the north right of way line of Waterman to the east bank of the Arkansas River, then south along the east bank to the centerline of Kellogg Avenue, then east to Wichita Street, then south to the south line of Kellogg Avenue, then east to Main Street,

then north along Main Street to the point of beginning, except for Block 1, Lot 1 of WaterWalk Phase 3 Addition (the Wichita Boathouse); and including the area, except for the Cole Mower shop property, beginning at the southwest corner of McLean Boulevard and Maple, west to the east boundary of Ice Sports Wichita, then south to the north line of the Kellogg Avenue right-of-way, then east to McLean Boulevard, then north along McLean Boulevard to the point of beginning. The final project boundaries shall be subject to survey.

4. Exhibit 5 to the Development Agreement shall be replaced by Exhibit 5 hereto.

5. Revised Exhibits 1, 2, and 5 as referenced hereinabove are attached to this amendment and incorporated into the Development Agreement by reference.

6. All provisions of and exhibits to the Development Agreement not specifically amended, revised or replaced hereby shall remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Amendment to be signed by their duly authorized officers, as of the date first above written.

CITY:

THE CITY OF WICHITA, KANSAS

By: _____
Carl Brewer
Mayor

DEVELOPER:

WATERWALK, LLC

By:_____
Jack P. DeBoer
Manager

Attest: _____
Karen Sublett
City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
City Attorney

EXHIBIT 1
EAST BANK DEVELOPMENT PROJECT
SCOPE OF DEVELOPMENT

I. GENERAL

A. Project Goals

The project goal is to effectuate the development of a substantial portion of downtown Wichita located South of the central business district and along and near the East bank of the Arkansas River, as well as one parcel West of the Arkansas River and South of Maple Street in the city, as a mixed public and commercial project that acts as a catalyst for redevelopment and strengthening of the City's core area, as well as generally the City as a whole.

B. Site Design Criteria

The overall design of the Site is intended to create a mixed-use project for the citizens of Wichita.

C. The Project

The Project shall be developed within the boundaries of the Project parcels, which boundaries are generally: Kellogg Avenue on the South, Main Street on the East, Waterman Street on the North, and the East bank of the Arkansas River on the West, plus a parcel west of the Arkansas River and South of Maple Street. The project boundary is depicted on Exhibit 2 and generally described in Exhibit 3.

The Project shall be developed and improved in accordance with the provisions of this Agreement.

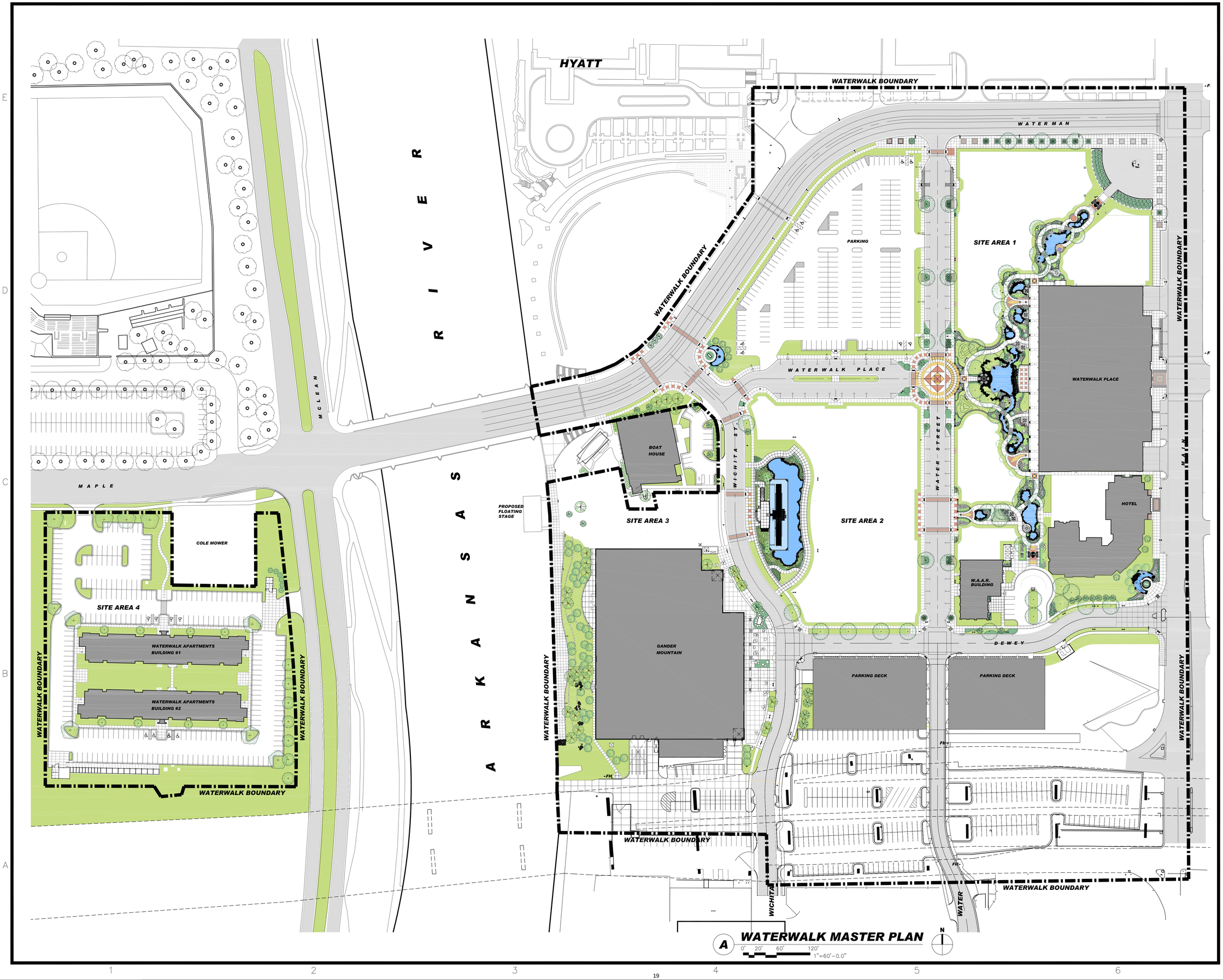
The Developer, its supervising architect, and all members of the Developer's project team shall work with the City Representative to coordinate the overall design, architecture and color of the improvements on the Project.

II. PROJECT COMPONENTS

The Private Improvements to be constructed by the Developer shall include an apartment project, with supporting parking, to be located on the parcel west of the Arkansas River and South of Maple Street, as depicted on Exhibit 2. The City's responsibility shall be limited to the specific public project elements listed in Exhibit 4, Development Budget.

III. PROJECT DESIGN

The Project improvements shall be of high architectural quality, shall be well landscaped, and shall be effectively and aesthetically designed. The exterior design and exterior finish of the buildings must be consistent (or better) with the quality of the Hyatt hotel, although the architectural style may vary.



A WATERWALK MASTER PLAN

0' 20' 60' 120'
1"=60'-0.0"

GLMV Architecture
1525 East Douglas, Wichita, KS 67211
Tel: (316) 265-9367
www.glmv.com

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GLMV Architecture, Inc.

WICHITA WATERWALK

EXHIBIT #2 WATERWALK MASTER PLAN
WICHITA, KANSAS

Mark	Date:	Description

EXHIBIT #2 WATERWALK MASTER PLAN

Job No.	1064.026	MP-100
Date	8/09/12	
Drawn	DCU	
Checked	DCU	Dwg. of -

"Revised 08-21-12"
EXHIBIT 5
Phasing Schedule

Step	Date	Action	Responsible Party
1	On or before 12/31/2003	Developer may deliver to City the Developers Notice of Commitment for Private improvements.	Developer
2	On or before 30 days after Step 1	City initiates procurement process for design and construction of Public Improvements.	City
2a	Anticipated to be same date as Step 2	Developer initiates process for design and construction of Private Improvements. Real estate tax guarantee to begin with first valuation and tax bill after completion.	Developer
3	On or before 12/31/2004 (2)	Construction Phase Closing	Developer and City
4	The later of 26 months from Step 3 or the completion of the Private Improvements (3)	City completes the Public Improvements related to streets, utilities and infrastrcuture	City
5	1/1/2009	Developer may order market study for additional development.	Developer
6	After Market Study in Step 5	Developer initiates construction of the lesser of $5,000,000 or the Market Study recommendation, less any previous construction scored against this requirement.	Developer
7	7/1/2011	Developer completes Private Improvements from Step 6.	Developer
8	12/31/2011	City completes Public Improvements in Site Area 1	City
9	1/1/2012	Repeat Steps 5 and 6 every three years until Completion.	Developer
10	11/1/2012	City completes Public Improvements in Site Area 2	City
11	8/21/2017	Developer will have completed apartment project on West Bank	Developer
12	26 months from the later of the completion of the West Bank apartments or of the 2015 out year improvements	City completes Public Improvements in Site Area 3	City

Notes:
(1) Developer and City recognize that certain existing improvements within the project site may have existing leases which conflict with this phasing schedule. The parties agree to coordinate the public and private improvements around such leases, however, such coordination shall not lengthen the time of public improvements by more than nine months of the above schedule. The parties also agree, within the terms of the development agreement, to construct the public improvements wherever possible around the parcels with such leases.

(2) The later of 270 days from Step 2 or upon the satisfaction of Paragraphs 5.1 and 5.2 of the Development Agreement for Private Improvements. On or before December 31, 2004 for the Destination Retailer Improvements.

(3) The later of 26 months from Step 3 or the completion of the Private Improvements that include the parking garage. To be coordinated between the City and the Developer.

AMENDMENT TO
WATERWALK PARKING DISTRICT AGREEMENT

This Amendment to WaterWalk Parking District Agreement ("Amendment"), is made and entered into at Wichita, Kansas, as of the _____ day of August, 2012, by and between the City of Wichita, Kansas, a Kansas Municipality ("City"), and WaterWalk LLC, a Kansas limited liability company ("Developer").

WHEREAS, Developer and City have executed a certain WaterWalk Parking District Agreement (the "Agreement"), dated June 20, 2006; and,

WHEREAS, a site west of the Arkansas River, southwest of the intersection of McLean and Maple was included in the narrative legal description of the parking district attached to and incorporated in the Agreement as part of its Attachment A, but was not included in the graphic depiction of the parking district, which was also attached to and incorporated in the Agreement as part of its Attachment A; and,

WHEREAS, the proposed development concept has now changed such that an apartment project with its own supporting parking is contemplated for the site west of the Arkansas River; and,

WHEREAS, the parties desire to amend the Agreement to conform the narrative description of the parking district to the graphic depiction of the parking district in Attachment A to the Agreement, so as to clarify that the site west of the Arkansas River is not part of the parking district;

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

1. The narrative legal description of the area within the parking district, as set forth in Attachment A to the Agreement is hereby replaced by the Attachment A Amended Narrative Description attached hereto, which is incorporated in this Amendment and in the Agreement by this reference.

2. All provisions of and exhibits to the Agreement not specifically amended, revised or replaced hereby shall remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Amendment to be signed by their duly authorized officers, as of the date first above written.

CITY:	**DEVELOPER:**
THE CITY OF WICHITA, KANSAS	WATERWALK, LLC
By: _____	By:_____
Carl Brewer Mayor	Jack P. DeBoer Manager

Attest: _____
Karen Sublett
City Clerk

ACKNOWLEDGEMENT

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of August, 2012, before me, the undersigned, a Notary Public in and for said county and state, came Carl Brewer and Karen Sublett, the Mayor and City Clerk, respectively, of the City of Wichita, Kansas, who are to me personally known to be the same persons who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of the City of Wichita.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

_____
Notary Public

My Commission Expires: _____

ACKNOWLEDGEMENT

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of August, 2012, before me, the undersigned, a Notary Public in and for said county and state, came Jack P. DeBoer, the _____, of WaterWalk, LLC, to me personally known as the same person who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of WaterWalk, LLC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

_____
Notary Public

My Commission Expires: _____

Approved as to Form:

_____
Gary E. Rebenstorf
City Attorney

ATTACHMENT A

Amended Narrative Description

The Parking District will include the area, as shown on graphic depiction attached to the original WaterWalk Parking District Agreement, beginning at the corner of Main Street and Waterman, west to Wichita Street, then southwest across Hyatt Park to the east bank of the Arkansas River, then south along the east bank to the centerline of Kellogg Avenue, then east to Wichita Street, then south to the south line of Kellogg Avenue, then east to Main Street, then north along Main Street to the point of beginning, except for Lot 78 to the River Addition (the Wichita Boathouse).

EXHIBIT 6

WATERWALK GROUND LEASE NO. __

THIS GROUND LEASE, made and entered into at Wichita, Kansas, as of the ____ day of _____, 200__ ("Commencement Date").

BY AND BETWEEN City of Wichita, Kansas,
a Kansas municipality,

"Landlord"

AND WaterWalk LLC,
a Kansas limited liability company,

"Tenant"

W I T N E S S E T H: That;

WHEREAS, Landlord is the owner of the Premises described herein; and

WHEREAS, Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord on the terms and conditions set forth in this Lease;

NOW, THEREFORE, in consideration of the Premises and the mutual covenants contained herein, the parties agree as follows:

ARTICLE I

Basic Terms and Definitions

The following basic terms and definitions shall be applicable to the various provisions of this Lease:

Expiration Date. Unless earlier terminated pursuant to the terms hereof, this Lease shall expire at the end of the Term (defined below).

Minimum Rent. The Minimum Rent is set forth in Section 5.01 hereof.

Notices. The addresses for any notices required or permitted hereunder shall be as follows:

a. If to Landlord: c/o City Clerk
455 N. Main, 13th Floor
Wichita, Kansas 67202

b. If to Tenant: _____
_____
_____

With copy to: _____
_____
_____

Premises. The land described on Exhibit A attached hereto and incorporated herein by reference.

Term. The Term of the Lease shall expire June 30, 2107.

ARTICLE II

Granting Clause

Section 2.01. Demise. In consideration of the obligation of Tenant to pay all forms of rent and other charges as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Premises for the Term, all upon the terms and conditions set forth in this Lease, including the restriction that no existing building, nor any building which is constructed or placed upon the Premises, either temporarily or permanently, shall be used for the purpose of housing the operation of any multi-game, casino-style gambling on the Premises.

Section 2.02. Possession of Premises. Landlord shall deliver, and Tenant shall accept, possession of the Premises in the condition required in Section 2.02 above on the Commencement Date. Landlord represents and warrants that Tenant's possession of the Premises shall be free of any claim of possessory rights by any person or entity except that of Landlord, Tenant or as created by any Approved Title Exception (defined below). Landlord shall have the right to access the property to maintain the adjacent Public Improvements after due notice to the Tenant, provided such maintenance shall not interfere with the conduct of Tenant's business and provided that Landlord shall fully restore Tenant's Premises.

ARTICLE III

Construction of Improvements

Tenant shall construct one or more buildings and related improvements on the Premises ("Tenant Improvements"). Tenant shall not construct on the Premises (i) any structures that are utilized as a "fast food" restaurant that includes a "drive-through" window, (ii) car lots for the sale and/or storage of new or used automobiles, (iii) massage parlors, (iv) escort services, (v) adult cinema, film, video, or toy stores, or (vi) any multi-game, casino-style gambling. Any such construction shall be at Tenant's sole cost and expense, and shall be in accordance with all applicable laws, ordinances, and regulations, including, without limitation, the terms and conditions of the zoning requirements. Tenant shall have the right to demolish, rebuild, remodel, or alter such

improvements at any time during the Term of this Lease in Tenant's sole discretion, or to build additional improvements on the Premises, as long as such activities are carried out in compliance with all applicable laws, ordinances, and regulations. Until this Lease shall terminate as provided herein, Tenant shall own in fee simple all such improvements so constructed by Tenant and shall be entitled to all benefits of such ownership, including, without limitation, depreciation under applicable tax laws. Upon termination of this Lease for any reason, fee simple title to all such permanent improvements and fixtures, but not to trade fixtures and personal property, shall immediately vest in Landlord, and Tenant shall execute such deeds or other instruments reasonably required by Landlord to evidence such ownership of record.

ARTICLE IV

Recordable Documents

Section 4.01. Short Form Lease. Upon request of either party, the other shall execute a short form lease or memorandum of lease in proper form for recording, setting forth the Commencement Date and the basic provisions of this Lease, except for the rental payable hereunder or other similar proprietary matters.

Section 4.02. Recordable Documents. Tenant shall have the right to execute and record against its interest in the Premises one or more documents containing covenants, conditions, restrictions, access agreements, use, maintenance, development or architectural control terms, terms related to any owners or occupants association, and any other document or agreement in Tenant's sole discretion, provided that any such document expires prior to or as of the Expiration Date hereof, and that any such document (hereafter each a "Recordable Document") cannot permit any property use or any discriminatory term that is prohibited by the Development Agreement Regarding Development Of The East Bank, originally between the City of Wichita, Kansas and Riverwalk LLC, as has been and may be amended from time-to-time (hereafter the "Development Agreement"). Landlord consents and agrees that Tenant may record any Recordable Document without obtaining Landlord's signature thereto, or other approval or consent, and hereby directs the Sedgwick County, Kansas, Register of Deeds to record any Recordable Document upon presentation to such office, provided such Recordable Document is otherwise in recordable form and the proper recording fee is submitted.

ARTICLE V

Rent

Section 5.01. Minimum Rent. Tenant shall pay Landlord a minimum fixed annual rent ("Minimum Rent") of One Dollar ($1) payable in advance on the Commencement Date in one (1) installment covering the Term of this Lease.

Section 5.02. Additional Rent. The Tenant will also pay, without notice, and without abatement, deduction, or setoff, except as otherwise specifically allowed herein, as additional rent, all sums, taxes, assessments, costs, expenses, and other payments which the Tenant in any of the provisions of this Lease assumes or agrees to pay, and, in the event of any nonpayment thereof, the

Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided herein or by law in the case of nonpayment of rent.

As Additional Annual Rent Tenant shall pay a sum equal to twenty-five percent (25%) of the Adjusted Net Cash Flow commencing with the first day the Tenant Improvements open for business. The Tenant shall calculate Adjusted Net Cash Flow for each Current Year within forty-five (45) days after the end of the Current Year (or portion thereof) and provide that calculation, and pay to the Landlord the Additional Annual Rent, within sixty (60) days after the end of the Current Year. Additional Annual Rent shall continue until this Lease expires. Adjusted Net Cash Flow is Gross Revenues less Total Expenses, less the total amount of capital expenses for furniture, fixtures, and equipment for the Tenant Improvements in excess of the aggregate amount expended from any reserve during such year.

The Tenant agrees to allow City Representative, after submission of the calculations of Additional Annual Rent for such year, to review and audit the Tenant's books and records for compliance with the Tenant's obligations hereunder. If an audit by the City reveals a material understatement of the amount due the City, then the Tenant shall pay all reasonable costs of such calculations required hereunder, the Tenant and City shall apply generally accepted accounting principles, consistently applied.

Section 5.03. Place of Payment. Minimum Rent, and all additional rent and other charges owed by Tenant to Landlord under the Lease, shall be payable by Tenant to Landlord at Landlord's Notice Address set forth in Article I above or to any other place designated by written notice delivered by Landlord to Tenant at least ten (10) days prior to the date such amount is due to Landlord.

ARTICLE VI

Property Taxes

Section 6.01. Taxes. Tenant shall pay as additional rent during the Term and any extensions thereof, all ad valorem taxes, and all other governmental taxes or charges that may be levied against the Premises allocable to the Term (collectively "Taxes"). If not billed directly to Tenant, Landlord shall, after receipt of any tax bill or other notice of Taxes, promptly furnish Tenant with a copy thereof. Tenant shall issue its check payable to the applicable taxing authority in the amount indicated and shall mail such check to the applicable taxing authority. If Landlord receives receipts from the taxing authority evidencing the payment thereof, Landlord will promptly mail copies of such receipts to Tenant. Taxes for the first and last years hereof shall be prorated. All personal property taxes shall be the responsibility of Tenant. Landlord shall not pass through to the Tenant or the Premises any cost for design and construction of the "Public Improvements" (as that term is defined in the Development Agreement).

Section 6.02. Payment by Landlord. If Tenant should fail to pay any Taxes required to be paid by Tenant hereunder, in addition to any other remedies provided herein, Landlord may, if it so elects, pay such Taxes. Any sums so paid by Landlord shall be deemed to be additional rent owing by Tenant to Landlord and shall be due and payable upon demand as additional rent. Landlord may only step in and pay such Taxes on Tenant's behalf after Landlord has provided Tenant with written

notice thereof and a reasonable time to pay such amounts. Provided, however, that if Tenant timely protests the imposition of any Taxes and diligently pursues the contest of any such assessment, then Landlord shall forebear any such payment until the protest is resolved or the taxing authority seeks to foreclose any tax lien.

ARTICLE VII

Condition of Premises, Mechanic's Liens, Liability Insurance

Section 7.01. Representations or Warranties. The Landlord warrants and represents to, and agrees with, the other Party as follows:

a. It is a municipality and political subdivision of the State of Kansas, duly incorporated and validly existing under the laws of the State of Kansas.

b. It has full power and authority to execute this Agreement and consummate the transactions contemplated hereby.

c. Neither the execution and delivery of this Agreement and the other documents contemplated herein will conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.

d. To the best of Landlord's knowledge, other than ground water pollution, there are no "Hazardous Materials" (such term shall include, without limitation, substances which are flammable, explosive, corrosive, radioactive, toxic, petroleum and petroleum products and any substances defined as hazardous substances, hazardous materials, toxic substances, or hazardous wastes in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, the Federal Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any similar state laws, all amendments to these laws and regulations adopted or publications promulgated pursuant to these laws) presently located in, on, or under the Premises including, without limitation, the subsurface soils and groundwater, or which have migrated to the Premises from another source, or have been installed, used, generated, manufactured, stored, released, or disposed of on, under, or about the Premises by Landlord or any third -person, nor has Landlord received any notice or communication regarding any alleged Hazardous Materials on or about the Premises nor any notice that the Premises are not in compliance with all federal, state, and local laws, ordinances, rules and regulations relating to any such Hazardous Materials. In the event any Hazardous Materials (excluding such as may have been introduced during the Term by Tenant and any subtenants) are found on the Premises during the Term or any extension of the Term hereof, Landlord shall bear all costs for the removal and remediation of the Hazardous Materials and shall restore the Premises to substantially the same condition as it was in immediately prior to such removal and remediation work. Landlord shall immediately notify Tenant in writing of any notice, complaint, warning, claim, report, or communication received by Landlord from any federal, state, or local governmental or

regulatory agency regarding Hazardous Materials on the Premises and provide Tenant with a copy of the same within ten (10) days of Landlord's receipt thereof. This does not waive the limitation under the Kansas Tort Claims Act.

Landlord agrees to indemnify and hold Tenant harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments imposed against Tenant, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, including reasonable attorneys' fees, to the extent the same arise out of, or in connection with, any Hazardous Materials located in, on or under the Premises as of the Commencement Date. Tenant agrees to indemnify and hold Landlord harmless from and against all claims, demands, losses, damages, clean-up costs, liabilities or judgments against Landlord, including all interest, penalties, fines and other sanctions, any costs or expenses in connection therewith, to the extent the same arise out of, or in connection with, any Hazardous Materials which are hereafter released in, on or under the Premises by Tenant or any subtenant thereof during the Term.

Section 7.02. Mechanics' Liens. If any mechanic's or materialman's lien is filed against the Premises as a result of any work or act of Tenant, Tenant shall discharge the lien within forty (40) days after the filing of the lien, provided, however, that for so long as Tenant posts a bond and continues to diligently contest the amounts claimed due, it shall not be obligated to discharge said lien.

Section 7.03. Insurance Covering Tenant's Work. Tenant shall not make any improvements, alterations, repairs or installations, or perform any other work to the Premises unless prior to the commencement of the work Tenant shall obtain or cause its contractors to obtain (and during the performance of the work keep in force) public liability and worker's compensation insurance to cover every contractor to be employed. The policies shall be non-cancelable without ten (10) days' prior written notice to Landlord, and such insurance shall be carried with companies reasonably satisfactory to Landlord. Prior to the commencement of the work, Tenant shall deliver duplicate originals or certificates of the insurance policies to Landlord.

ARTICLE VIII

Repairs, Compliance, Surrender

Section 8.01. Repairs and Maintenance by Tenant. Tenant shall make all repairs to the Premises which Tenant concludes are necessary or desirable to keep the Premises in good order and repair.

Section 8.02. Compliance with Laws. Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises, and otherwise comply with all applicable laws, ordinances and governmental regulations, and recorded restrictions and covenants. During the Term Landlord may not permit any additional restrictions, covenants or any other encumbrances to be placed on any portion of the Premises without Tenant's prior written consent, which consent may be granted or withheld by Tenant in Tenant's sole discretion. Tenant shall have no responsibility for the failure of any Sub-Tenant to comply with the provisions of this Section.

Section 8.03. Surrender of Premises. Upon the Expiration Date of this Lease, Tenant shall quit and surrender the Premises together with all alterations, fixtures, installations, additions and improvements which may have been made in or attached on or to the Premises. Upon surrender, Tenant may remove its personal property and trade fixtures.

ARTICLE IX

Services and Utilities

Tenant covenants and agrees to pay for all utility deposits as well as all utility charges, including but not limited to natural gas, electricity, water, trash, and garbage removal and sewer in a timely manner as they may come due during the Term.

ARTICLE X

Mortgages on Tenant's Interest; Nondisturbance Agreements; Estoppel Certificates

Section 10.01. Right to Encumber. Landlord hereby grants to Tenant the right to mortgage, grant a collateral assignment of and a security interest in, and otherwise encumber, Tenant's interest under this Lease, and Tenant's right, title and interest in and to the improvements constructed on the Premises (hereinafter in this Article X, each a "Leasehold Mortgage") without obtaining Landlord's consent. Landlord hereby agrees to subordinate its fee interest in the Premises to one or more mortgagees taking a Leasehold Mortgage (hereinafter in this Article X, a "Leasehold Mortgagee") provided that the proceeds of and loan secured by such Leasehold Mortgage are used for any costs associated with the development and construction of improvements by Tenant on the Premises, and further provided that such subordination of Landlord's fee interest shall only be for the Term and such Leasehold Mortgagee's rights in the fee interest upon any foreclosure shall expire at the end of the Term. For purposes of the foregoing sentence, the proceeds of a loan that is limited to refinancing the remaining balance of an existing loan will be deemed to have been "used for any costs associated with the development and construction of improvements by Tenant on the Premises" if the proceeds of the original loan were so used. Landlord agrees to sign the subordination agreement in the form attached hereto and incorporated by reference herein as Exhibit B. If during the Term a Leasehold Mortgagee forecloses on, or requires a deed in lieu of, its Leasehold Mortgage, Landlord, unless it shall timely exercise its right to cure defaults under the Leasehold Mortgage, agrees to execute and deliver upon request a deed in the form of Exhibit C attached hereto and incorporated by reference herein, the term of years actually recited in such deed to expire simultaneously with the Expiration Date of the Lease Term.

Landlord further acknowledges and agrees that Tenant may assign, sublet or otherwise convey all or a portion of Tenant's interest in the Premises and under this Lease (any such assignee, subtenant or conveyance grantee hereinafter in this Article X referred to as an "Assignee"), and that any Assignee may, without obtaining Landlord's consent, mortgage, grant a collateral assignment of and a security interest in, and otherwise encumber such Assignee's interest in this Lease, and such Assignee's interest in the Premises and any improvements thereto (hereinafter in this Article X each an "Assignee Mortgage," each mortgagee or secured party under an Assignee Mortgage hereinafter an "Assignee Mortgagee," each Leasehold Mortgage and Assignee Mortgage a "Mortgage," each Leasehold Mortgagee and Assignee Mortgagee a "Mortgagee," and each Assignee and Mortgagee a

"Lease Interest Holder"). Landlord agrees that any Mortgage or evidence thereof may be recorded against the Mortgagee's interest in the Premises in the Sedgwick County, Kansas, public real property records.

Section 10.02. Cure by Lease Interest Holder. Landlord shall give to any Lease Interest Holder who has notified Landlord of such Lease Interest Holder's interest in the Premises and provided Landlord with a notice address, simultaneously with service on Tenant, a duplicate of any and all notices or demands given by Landlord to Tenant and no such notice to Tenant shall be effective unless a copy is so served upon each such Lease Interest Holder. Each Lease Interest Holder shall have the right, but not the obligation, to cure any default by Tenant hereunder, by completing such cure at any time within sixty (60) days following the expiration of the cure period otherwise applicable to Tenant, or, if said default is of a nature that it may not reasonably be cured within the applicable cure period, then if a Lease Interest Holder commences to cure during the applicable cure period, provides Landlord with notice of such commencement, and proceeds with such cure diligently and with reasonable dispatch, and Landlord shall accept performance by or at the instance of such Lease Interest Holder as if the same had been made by Tenant.

Section 10.03. Foreclosure of Mortgage. A Leasehold Mortgagee may become the legal owner and holder of the interest of Tenant under this Lease, including, without limitation, the interest of Tenant in all improvements erected by Tenant on the Premises, by foreclosure or by an assignment of this Lease in lieu of foreclosure, without Landlord's consent. In such event, such Leasehold Mortgagee shall have the right thereafter to assign this Lease without the consent of Landlord, but otherwise subject to the terms and provisions of this Lease. Additionally, any Assignee Mortgagee may become the legal owner and holder of the interest of such Assignee in this Lease, and such Assignee's interest in the Premises and any improvements thereto, by foreclosure or by an assignment of such Assignee's interest in lieu of foreclosure, without Landlord's consent. In such event, such Assignee Mortgagee shall have the right thereafter to assign the interest of such Assignee in this Lease, and such Assignee's interest in the Premises and any improvements thereto, without the consent of Landlord, but otherwise subject to the terms and provisions of this Lease.

Section 10.04. Nondisturbance Agreement Regarding Ground Lease Mortgagee. In the event of any early termination by Landlord of this Lease due to a Tenant default prior to the ordinary expiration of the Term, Landlord shall (A) within five (5) days after such Expiration Date provide to any Leasehold Mortgagee notice of such early termination along with a statement of any and all sums that would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord, and (B) within twenty (20) days after such termination date provide notice of such early termination to any other Lease Interest Holder who has notified Landlord of such Lease Interest Holder's interest and provided Landlord with a notice address. Said Leasehold Mortgagee shall then have an option to obtain a new lease upon the same terms and conditions set forth in this Lease. This option must be exercised by written notice to Landlord given within thirty (30) days from the date said Leasehold Mortgagee receives the Landlord's notice and statement. The new lease shall require said Leasehold Mortgagee to cure all monetary defaults of Tenant under this Lease. Any non-monetary default of Tenant shall be waived by Landlord, provided the Leasehold Mortgagee proceeds with reasonable promptness to obtain possession, continues diligently to attempt to cure the default, and satisfies Tenant's other obligations under this Lease. Within twenty (20) days of entering into such a new lease, Landlord

shall provide written notice of such new lease to any Lease Interest Holder who has notified Landlord of such Lease Interest Holder's interest and provided Landlord with a notice address.

Section 10.05. Nondisturbance Agreement Regarding Assignee or Assignee Mortgagee. Conditional upon the terms of Section 10.06 below, Landlord grants the following nondisturbance rights to each Assignee and each Assignee Mortgagee. So long as neither an Assignee's possessory right in and to the Premises nor such lease, sublease, assignment or other instrument of conveyance (hereinafter in this Article X each an "Assignment") creating such Assignee's right has been terminated due to a breach or default of the Assignment by such Assignee, Landlord covenants to not diminish, disturb or interfere with those possessory rights or such other rights of such Assignee (and any Assignee Mortgagee or other successor-in-interest of such Assignee) pursuant to such Assignment, except as may be permitted under the terms of such Assignment.

Section 10.06. Conditions Precedent to Landlord Nondisturbance Obligation. Landlord's obligations and covenants pursuant to Section 10.05 above are expressly conditional and contingent upon the benefiting Assignee or Assignee Mortgagee accepting and agreeing to the following terms:

a. Attornment. Such Assignee/Assignee Mortgagee agrees that in the event of the termination, cancellation or expiration of its respective Assignment for any reason whatsoever, such Assignee's/Assignee Mortgagee's interest in and to the Premises shall be subject to this Lease, such Assignee/Assignee Mortgagee will attorn to Landlord for the unexpired term of the Assignment, subject to all of the terms and conditions of the Assignment, except as hereinafter provided, and such attornment shall be effective and self-operative without the execution of any further instrument on the part of Landlord or such Assignee/Assignee Mortgagee, and Landlord will accept such attornment. Upon request of either Landlord or such Assignee/Assignee Mortgagee, the other party shall execute and deliver a new assignment containing the same terms and conditions as contained in the Assignment (including all right of renewal and extension), for the remaining term thereof, except that Landlord shall be permitted to make any necessary modification to provide that any Landlord obligations arising thereafter shall be limited to the extent that adequate funds may be available for the performance thereof from rents received on the Premises. Landlord shall not be: (i) responsible or liable for any monetary damages as a result of, or obligated to cure, any defaults by the lessor, sublessor, assignor or other grantor to Assignee under Assignee's respective Assignment (hereinafter in this Article X each an "Assignor") under the Assignment provided that the foregoing shall not be deemed to relieve Landlord or any other party from the obligation to perform any obligation of the Assignor under the Assignment which remains unperformed at the time that Landlord or any other party succeeds to the interest of Assignor under the Assignment, to the extent adequate funds are available for the performance of such obligations from rents received on the Premises; (ii) subject to claims, defenses or offsets under the Assignment or against Assignor which arose or existed prior to the time Landlord obtains possession of Assignor's interest in the Premises provided that the foregoing shall not be deemed to (A) relieve Landlord or any other party from the obligation to perform any obligation of the Assignor under the Assignment which remains unperformed at the time that Landlord or any other party succeeds to the interest of Assignor under the Assignment, to the extent adequate funds are available for the performance of such obligations from rents received on the Premises, or (B) modify or waive any rights of self-help, set-off, abatement or termination expressly provided

in the Assignment; (iii) bound by any rent paid more than thirty (30) days in advance; (iv) liable for the return of any security deposit paid to any prior party, including Assignor, unless Landlord has actually received the same; or (v) bound by any amendment or modification of the Assignment made without its prior written consent (Landlord agrees not to unreasonably condition, withhold or delay its consent to any proposed amendment or modification which does not materially and adversely affect Landlord's interest). Nothing in this Section 10.06 shall be deemed a waiver of any rights or remedies that such Assignee/Assignee Mortgagee may possess or claim personally against Assignor for any defaults or acts of Assignor.

b. Right To Cure Landlord's Default. Notwithstanding any provisions of the Assignment to the contrary, no notice of cancellation of the Assignment by such Assignee/Assignee Mortgagee shall be effective unless Landlord shall have first received notice of the default giving rise to such cancellation and shall have failed, for a period of thirty (30) days after receipt thereof, to cure such default. Tenant will forward to Landlord, at Landlord's notice address set forth in this Lease, copies of any statement, notice, claim or demand given or made by such Assignee/Assignee Mortgagee to Assignor, in all cases by the same method as the statement, notice, claim or demand was given or made to Assignor.

Landlord may request an Assignee or Assignee Mortgagee to execute a separate agreement specifically accepting or rejecting the terms of this Section 10.06.a. and 10.06.b., and if such Assignee or Assignee Mortgagee does not execute and return such agreement accepting such terms to Landlord within thirty (30) days of delivery to such Assignee/Assignee Mortgagee, such failure shall be deemed conclusive evidence that Landlord's obligations and covenants pursuant to Section 10.05 above shall not run to the benefit of such Assignee/Assignee Mortgagee.

Section 10.07. Estoppel Certificates. Landlord agrees that the City Representative shall execute and deliver to Tenant, any Assignee and any Mortgagee an estoppel certificate in the form attached hereto as Exhibit D. If Tenant, any Assignee or any Mortgagee delivers such a certificate to the City Representative for execution and the City Representative fails to complete (modified as necessary to make it true and correct), execute and return such certificate within twenty (20) days of the City Representative's receipt of the same, the statements made in the certificate provided to the City Representative shall be deemed true and Landlord agrees that such statements may be relied upon by such requesting party and that party's respective successors, assigns, lenders and title insurers. Additionally, Landlord agrees that in response to an open records request from Tenant, any Assignee or any Mortgagee for information related to this Lease, Landlord will respond as required under all applicable laws at such time, and in the event that the open records laws are repealed, Landlord agrees to provide such requested information anyway as would have been required by the Kansas Open Records Act as in effect on August 21, 2012.

ARTICLE XI

Destruction and Insurance

Section 11.01. Insurance. Tenant agrees, at Tenant's cost and expense, to obtain and keep in force and effect during the Term of this Lease and any extensions thereof, in the names of Landlord and Tenant, general liability insurance against any and all claims for personal injury or property

damage occurring in or upon the Premises during the Term of this Lease. Such insurance shall be maintained with limits of liability of not less than Five Hundred Thousand Dollars ($500,000) for injuries to any number of persons in any one accident or occurrence; and, Five Hundred Thousand Dollars ($500,000) for damage to property in any one accident or occurrence. Tenant shall furnish to Landlord at Landlord's written request reasonable evidence of Tenant's compliance with the provisions of this paragraph, such as certificates of insurance. Tenant further agrees that Tenant shall be solely responsible for procuring and maintaining casualty insurance on the improvements constructed by Tenant on the Premises.

Section 11.02. Waiver of Subrogation. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all right of recovery, claim, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur to the Premises, improvements to the Premises, or personal property within the Premises, by reason of fire or the elements, regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers and employees to the extent such loss is covered by a policy of insurance. Landlord and Tenant agree immediately to give their respective insurance companies written notice of terms of the mutual waivers contained in this Section, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers, in amounts and to the extent Tenant deems reasonable and necessary.

ARTICLE XII

Condemnation

Section 12.01. Termination of Lease. If Landlord's fee simple title to the Premises shall be taken for any public or any quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof (herein the "Taking"), then this Lease shall terminate automatically as of the date possession is given to the condemning authority. If there is a Taking of any material part of the Premises as to render the remainder thereof substantially unusable for the purposes for which the Premises were leased, then Tenant shall have the right to terminate this Lease on thirty (30) days' notice to the other given within ninety (90) days before the estimated date of possession being given to the condemning authority. In the event of a partial taking and the remainder of the Premises are usable, rent shall be reduced in proportion to the amount of square footage condemned.

Section 12.02. Compensation. All compensation awarded or paid upon a total or partial Taking of the Premises shall be distributed pro rata to Landlord for the value of the real estate and to Tenant for the Tenant Improvements.

Section 12.03. Taking for Temporary Use. If there is a Taking of the Premises for temporary use, this Lease shall continue in full force and effect, and Tenant shall continue to comply with Tenant's obligations under this Lease, except to the extent compliance shall be rendered impossible or impracticable by reason of the Taking.

ARTICLE XIII

Indemnity and Liability

Section 13.01. Indemnity.

a. As used in Article XIII, "Claims" means any claims, suits, proceedings, actions, causes of action, mechanics or materialman's liens, responsibility, liability, demands, judgments, and executions.

b. Tenant hereby indemnifies and agrees to save harmless Landlord from and against all Claims, which (i) arise from any work performed by Tenant on the Premises; (ii) arise from or are in connection with Tenant's possession, use, occupation, management, repair, maintenance or control of the Premises or any portion thereof; (iii) arise from or are in connection with any act or omission of Tenant or Tenant's Agents; (iv) result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Tenant; or (v) result from injury to person or property or loss of life sustained in or about the Premises during the Term except to the extent arising out of any negligence or willful misconduct of Landlord.

c. Landlord hereby indemnifies and agrees to save Tenant harmless from and against all claims which (i) arise from or are in connection with any act or omission of Landlord; (ii) result from any default, breach, violation or nonperformance of this Lease or any provision of this Lease by Landlord; or (iii) result from injury to person or property or loss of life sustained in or about the Premises to the extent arising out of any negligence or willful misconduct of Landlord. Provided, however, that in any case where the claims are of a nature such that the Landlord's liability would be limited by limitations or immunities under the Kansas Tort Claims Act if the claims were brought directly against Landlord, Landlord's liability under this subsection c. shall be subject to the same limitations and immunities.

d. Indemnitor shall defend any Claims against Indemnitee with respect to the foregoing at Indemnitor's sole cost and with counsel reasonably satisfactory to Indemnitee. Indemnitor shall pay, satisfy and discharge any judgments, orders and decrees which may be recovered against Indemnitee in connection with any Claims.

e. This Section 13.01 shall expressly survive the termination or expiration of this Lease.

Section 13.02. Liability Insurance.

a. Tenant shall provide and maintain a comprehensive policy of liability insurance with respect to the Premises as set forth in Section 11.01 hereof. Landlord, and any designee of Landlord shall be named as additional insureds. The liability insurance policy shall protect Landlord, Tenant and any designee of Landlord against any liability which arises from any occurrence on or about the Premises or any appurtenance of the Premises as required in Section 11.01, or which arises from any of the Claims described in Section 13.01 against which Tenant is required to indemnify Landlord.

b. The policy shall be written by an insurance company reasonably satisfactory to Landlord with coverage limits reasonably satisfactory to Landlord.

Section 13.03. Inability to Perform.

a. If Landlord fails to perform any of its obligations under this Lease as a result of Acts of God; strikes, lockouts, or labor difficulty; explosion, sabotage, accident, riot, or civil commotion; act or war; fire or other casualty; delays caused by Tenant; and causes beyond the reasonable control of Landlord (a "Force Majeure"), Landlord shall not be liable for loss or damage for the failure, and Tenant shall not be released from any of its obligations under this Lease.

b. If Landlord is delayed or prevented from performing any of its obligations as a result of a Force Majeure, the period of delay or prevention shall be added to the time herein provided for the performance of any such obligation.

ARTICLE XIV

Covenant of Quiet Enjoyment

Landlord covenants, represents and warrants that it has good and marketable fee simple title to the Premises free and clear of all liens, assessments, leases, taxes and other encumbrances except those title exceptions specifically approved by Tenant in writing ("Approved Title Exceptions"). Landlord covenants that Landlord has the authority to lease the Premises to Tenant, and if Tenant pays the rent and all other charges provided for in this Lease, performs all of its obligations provided for under this Lease, and observes all of the other provisions of this Lease, Tenant shall peaceably and quietly enjoy the Premises in accordance with the terms of this Lease without any interruption or disturbance from Landlord.

ARTICLE XV

Default

Section 15.01. Events of Default. Each of the following events shall be a default hereunder by Tenant and a breach of this Lease:

a. If Tenant shall be dissolved, or shall make an assignment for the benefit of creditors;

b. If involuntary proceedings under any such bankruptcy law, or insolvency act, or for the dissolution of a corporation shall be instituted against Tenant, or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant, and such proceedings shall not be dismissed, or such receivership or trusteeship vacated within one hundred (100) days after such institution or appointment;

c. If Tenant shall fail to pay Landlord any Minimum Rent or additional rent within thirty (30) days after receipt of written notice from Landlord that the same are due and payable; or

d. If Tenant shall breach or fail to perform any of the agreements, terms, covenants, or conditions hereof on Tenant's part to be performed other than the payment of Minimum Rent or additional rent, and such nonperformance shall continue for a period of thirty (30) days after receipt of written notice thereof by Landlord to Tenant (provided, however, that Tenant shall not be in default hereunder if Tenant shall, within such thirty (30) day cure period, commence and at all times thereafter diligently pursue all practicable efforts to cure the default).

If any such default shall occur and shall not be cured within the applicable cure period, if any, Landlord shall have the right to cancel and terminate this Lease, as well as all of the right, title, and interest of Tenant hereunder, by giving to Tenant written notice of such cancellation and termination, and upon such notice, this Lease and the Term hereof, as well as all of the right, title, and interest of Tenant hereunder, shall expire in the same manner and with the same force and effect, as if the expiration of the time fixed in such notice of cancellation and termination were the end of the Term. Upon the Expiration Date the Lease shall be deemed null, void and of no force and effect, and both parties shall be relieved of any further obligation to the other under the terms of the Lease. There will not be a default until any Mortgagee has received written notice of a failure of Tenant to perform and the Mortgagee's cure period has expired.

Section 15.02. Landlord's Right to Cure. Upon any uncured default, Landlord at its option may, but shall not be obligated to, make any payment required of Tenant herein, or comply with any agreement, term, covenant, or condition required hereby to be performed by Tenant and the amount so paid, together with interest thereon at the rate of ten percent (10%) per annum from the date of such payment by Landlord shall be deemed to be additional rent hereunder payable by Tenant and collectible as such by Landlord with the next succeeding monthly installment of rent. Landlord shall have the right to enter the Premises for the purpose of correcting or remedying any such default and to remain therein until the same shall have been corrected or remedied, but neither any such expenditure, nor any such performance, by Landlord shall be deemed to waive or release Tenant's default or the right of Landlord to take such action as may be otherwise permissible hereunder in the case of such default. There will not be a default until any Mortgagee has received written notice of a failure of Tenant to perform and the Mortgagee's cure period has expired.

Section 15.03. Landlord Default; Tenant Remedies. If Landlord fails to pay any amount due under the Lease, or shall breach or fail to perform any other agreement, term, covenant or condition of the Lease, and such failure shall continue for a period of thirty (30) days after Landlord's receipt of written notice from Tenant of such failure, Landlord shall be in default and in breach of this Lease. In the event of a Landlord default, Tenant shall have the right, but not the obligation, to cancel and terminate this Lease immediately by providing Landlord with written notice of such termination, and upon such Expiration Date, the Lease shall be deemed null, void and of no force and effect, and that both parties shall be relieved of performing any further obligation under the terms of the Lease, but shall not be relieved of liability for any additional remedy available to Tenant. In the event of a Landlord default, Tenant shall also have the right, but not the obligation, to pursue any other remedy available to Tenant at law or in equity, including but not limited to specific

performance, offset, deduction and abatement. Tenant's remedies under this Section 15.03 shall be cumulative and not mutually exclusive.

ARTICLE XVI

Interpretation, Notices, Miscellaneous

Section 16.01. Interpretation.

a. If any provision of this Lease or the application of any provision of this Lease to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby; and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

b. The captions and headings used throughout this Lease are for convenience of reference only and shall not affect the interpretation of this Lease.

c. This Lease may be executed in several counterparts; but the counterparts shall constitute but one and the same instrument.

d. This agreement shall be interpreted in accordance with the internal laws of the State of Kansas without giving effect to conflict of laws principles.

e. This Lease shall not be construed more or less favorably with respect to either party as a consequence of the Lease or various provisions hereof having been drafted by one of the parties hereto.

Section 16.02. No Oral Changes. This Lease contains the entire agreement of the parties with respect to the subject matter hereof, and may not be changed or terminated orally.

Section 16.03. Communications. No notice, request, consent, approval, waiver or other communication under this Lease shall be effective unless the same is in writing and is mailed by registered or certified mail, postage prepaid, addressed as follows:

a. If intended for Landlord, a written communication shall be effective if mailed to the address designated as Landlord's Notice Address in Article I or to such other address as Landlord designates by giving notice to Tenant; and

b. If intended for Tenant, a written communication shall be effective if mailed to the address designated as Tenant's Notice Address in Article I or to such other address as Tenant shall designate by giving notice thereof to Landlord.

Section 16.04. Successors and Assigns. Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs and assigns.

Section 16.05. Time of the Essence. The time of the performance of all of the covenants, conditions and agreements of this Lease is of the essence of this Lease.

Section 16.06. Assignment; Sublease. Tenant may freely assign or sublease all or any portion of the Premises without Landlord's consent. To the extent Tenant assigns any portion of the Premises or its interest in this Lease, Tenant may request Landlord's consent that as of the date of such assignment, the assignor shall be relieved of all its obligations pursuant to this Lease arising on and after the date of such assignment, and such assignment shall act as a novation of such obligations of the assignor, and Landlord agrees to not unreasonably withhold, condition or delay such consent. Landlord shall be obligated to provide such consent if both: (1) the proposed assignee expressly assumes and agrees to perform all of the obligations of Tenant under this Lease arising as of the date of such assignment, and (2) Tenant furnishes the City with evidence in the form of financial statements, accompanied by the certificate of an independent certified public accountant, or other evidence satisfactory to the City, establishing that the net worth of such proposed assignee immediately following such assignment will be at least equal to the net worth of Tenant as shown by the most recent financial statement of Tenant.

Section 16.07. Authority. The undersigned both represent and warrant they have authority to bind the respective parties to all of the terms of the Lease.

Section 16.08. Other Definitions. For purposes of this Lease, the following definitions shall be applicable to the various provisions of this Lease:

"Gross Revenues" means all revenues, business interruption insurance proceeds, receipts and income of any kind derived directly or indirectly by the Tenant from or in connection with the Tenant Improvements (including rentals or other payments from tenants, lessees, licensees or concessionaires but not including their gross receipts), whether on a cash basis or credit, paid or collected, determined in accordance with sound accounting principles, excluding, however: (i) funds furnished by the Tenant, (ii) federal, state and municipal excise, sales and use taxes collected directly from patrons and guests or as gross receipts, admissions, cabaret or similar or equivalent taxes and paid over to federal, state or municipal governments, (iii) gratuities, (iv) proceeds of insurance and condemnation (except as stated above or expressly provided elsewhere), and (v) sale or disposition proceeds of the Tenant or the Tenant Improvements. Nothing herein shall be construed to include in this definition of "Gross Revenues" any revenues, receipts, or income of any kind from the operation of any business conducted by any person or entity other than Tenant in or on the Tenant Improvements.

"Total Expenses" means all expenses reasonably incurred by the Tenant or Manager in the operation and maintenance of the Tenant Improvements as determined in accordance with sound accounting principles, including but not limited to.

- salaries and employee expense and taxes (including reasonable salaries, wages, bonuses and other compensation of all employees of the Tenant and their social benefits which shall include, but not be limited to, life, medical and disability insurance and retirement benefits);

- expenditures for ordinary and non-structural repairs and maintenance necessary to maintain the Tenant Improvements in good operating condition;
- expenditures for operational supplies, utilities, insurance, governmental fees and assessments;
- the cost of inventories and fixed asset supplies, and license fees;
- franchise fees and other fees, expenses, and charges under a franchise agreement, if any;
- expenditures for advertising and marketing;
- federal, state and municipal excise, sales and use taxes, except those collected directly from guests and patrons or as part of the sales price of any goods, services or displays, such as gross receipts, admissions, cabaret or similar or equivalent taxes and paid over to federal, state or municipal governments;
- amounts paid into any capital, furniture, fixture, equipment or other reserve, excluding, however, insurance proceeds and condemnation awards;
- fees paid to the Manager;
- ad valorem taxes and personal property taxes and special assessments to be paid by the Tenant;
- the cost of insurance to be provided by the Tenant;
- amounts paid for operating and capital leases for furniture and equipment;
- payments of debt service to the Leasehold Mortgage or other creditors and other loans to the Tenant;
- Tenant Development Cost Return, defined as, on an annual basis, twenty percent (20%) of the total Construction Costs for all Tenant Improvements paid by Tenant, Developer, or permitted assignees and sublessees. As further clarification, the amount determined to be twenty percent (20%) of the total Construction Costs for all Tenant Improvements may be included in the calculation of the Total Expenses each year during the Term of this Lease.

Excluding, however: (i) capital expenditures by the Tenant, (ii) amortization expense, (iii) depreciation expense.

No part of Manager's central office overhead or general or administrative expense (as compared to that of the Tenant Improvements) shall be deemed to be a part of Total Expenses. Out-of-pocket expenses of Manager incurred for the account of or in connection with the Tenant Improvements operations, including reasonable travel expenses of employees, officers and other representatives and consultants of Manager and its affiliates, shall be deemed to be a part of Total Expenses and such persons shall be afforded reasonable accommodations, food, beverages, laundry, valet and other such services.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this WaterWalk Ground Lease No. _____ instrument the date first above written.

CITY OF WICHITA, KANSAS

By:_____
Printed Name:_____
Title:_____

"Landlord"

Attest:

_____
Printed Name:_____
Title: City Clerk

Approved As To Form:

_____
Printed Name: _____
Title: City Attorney

WATERWALK LLC

By:_____
Printed Name:_____
Title:_____

"Tenant"

Exhibit “A” to Exhibit 6

PREMISES

[insert legal yet]

Exhibit "B" to Exhibit 6

Form of
SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT ("Subordination Agreement") made as of the _____ day of _____, 2_____, by and among [insert name and address of applicable Leasehold Mortgagee] ("Lender"), [insert name and address of Tenant] ("Tenant"), and [insert name and address of Landlord] ("Landlord").

W I T N E S S E T H:

WHEREAS, pursuant to that certain WaterWalk Ground Lease dated as of _____, 20___ (together with all addendums, amendments, modifications and supplements thereto is collectively hereinafter the "Lease"), with respect to the real property legally described in the Lease (the "Demised Premises"), Tenant leases the Demised Premises;

WHEREAS, Lender has made, or may agree to make, a loan to Tenant (the "Loan") conditioned on, among other conditions, the full execution of this Subordination Agreement;

WHEREAS, the Loan will or may be secured by, among other things, a mortgage, assignment of the Lease and rents, and/or a security agreement (collectively the "Mortgage") made by Tenant to or for the benefit of Lender covering, among other things, Tenant's interest under this Lease, and Tenant's right, title and interest in and to the improvements constructed on the Demised Premises;

WHEREAS, the parties hereto desire to make the Landlord's fee interest in the Demised Premises subject and subordinate to the Mortgage, pursuant to the terms hereof.

NOW, THEREFORE, the parties hereto, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Provided that the Loan proceeds are used for any costs associated with the development and construction of improvements by Tenant on the Demised Premises, the Landlord's fee interest in the Demised Premises, and any right, title and interest of Landlord in and to the improvements thereon, are and shall be subject and subordinate to the Mortgage and the lien thereof, to all the terms, conditions and provisions of the Mortgage and to each and every advance made or hereafter made under the Mortgage, and to all renewals, modifications, consolidations, replacements, substitutions and extensions of the Mortgage, but only until the "Expiration Date" of the "Term" of the Lease (as those terms are defined under the Lease); provided, however, and Lender agrees, that in the event of any act, omission or default by Tenant that would give Lender the right, either immediately or after the lapse of a period of time, to declare a default or breach under the Mortgage and elect one or more remedies, including but not limited to foreclosure of the Mortgage, Lender

will not exercise any such right until it has given written notice of such act, omission or default to Landlord and provided Landlord the right to cure for any applicable cure period set forth in the Mortgage. For purposes of the foregoing sentence, the proceeds of a loan that is limited to refinancing the remaining balance of an existing loan will be deemed to have been "used for any costs associated with the development and construction of improvements by Tenant on the Premises" if the proceeds of the original loan were so used.

2. The terms and provisions of Article X of the Lease are incorporated by reference herein for the purpose of the parties confirming to each other that each shall have the rights and obligations set forth in said Article X of Landlord as "Landlord" thereunder, Tenant as "Tenant" thereunder, and Lender as "Leasehold Mortgagee" thereunder, as if Lender was an actual party to the Lease.

3. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Subordination Agreement, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to notice may by notice to the other party specify):

To Lender: [insert notice address]

with a copy concurrently to: [insert notice address]

To Tenant: [insert notice address]

with a copy concurrently to: [insert notice address]

To Landlord: [insert notice address]

with a copy concurrently to: [insert notice address]

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the day such notice is sent, or (iii) if sent by certified mail, three (3) days after such notice has been sent.

4. This Subordination Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Kansas.

5. A fully-executed original of this Subordination Agreement may be recorded with the Sedgwick County, Kansas, Register of Deeds against the Demised Premises by either party hereto or their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this Subordination Agreement as of the day and year first above written.

"Lender"

_____

By:_____
Name:_____
Title:_____

"Tenant"

_____

By:_____
Name:_____
Title:_____

"Landlord"

_____

By:_____
Name:_____
Title:_____

Acknowledgments

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2_____, by _____, as _____ of _____.

_____
Notary Public

My Appointment Expires: _____

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2_____, by _____, as _____ of _____.

_____
Notary Public

My Appointment Expires: _____

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2_____, by _____, as _____ of _____.

_____
Notary Public

My Appointment Expires: _____

Exhibit "C" to Exhibit 6

GENERAL WARRANTY DEED

THIS INDENTURE is made this _____ day of _____, 20__, by and between The City of Wichita, a corporate body politic and political subdivision of the State of Kansas ("Grantor"), and _____, whose respective interest is identified below ("Grantee").

W I T N E S S E T H: That;

Grantor, in consideration of the sum of One Dollar ($1) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby distribute, grant, sell and convey all the following described real estate, situated in the County of Sedgwick and State of Kansas:

[INSERT LEGAL DESCRIPTION]

to Grantee for a term of _____ years, expiring _____. Grantee, subject to easements and other restrictions and reservations of record, shall have all right, title and interest, including the right to control the use of such real estate, the right to all rents, issues and profits therefrom, and the full power and authority to execute lease agreements for the lease or rental of such real estate, for such terms and upon such conditions as Grantee, in its uncontrolled and absolute discretion, shall determine to be in the best interests of the term-of-years estate, without the necessity of the Grantor, as the remainder person, joining therein. At and upon the expiration of the term-of-years estate, the real estate shall revert outright back to the Grantor and its assigns forever.

TO HAVE AND TO HOLD THE SAME, together with all and singular the tenements, hereditaments, and appurtenances hereunto belonging or in anywise appertaining forever.

And Grantor for itself and for its successors and assigns does hereby covenant, promise, and agree to and with Grantee, that at the delivery of these presents it is lawfully seized, of an absolute and indefeasible state of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of whatsoever nature and kind, except as stated above, and that Grantor will warrant and forever defend the same unto Grantee, its successors or assigns, against Grantor, its successors and assigns, and all and every person or persons whomsoever lawfully claiming or to claim the same.

The City of Wichita

By: _____
Name: _____
Its: _____

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____, on behalf of the City of Wichita for the uses and purposes contained therein.

_____
Notary Public

My Appointment Expires:

_____

Exhibit "D" to Exhibit 6

Form of
LESSOR ESTOPPEL CERTIFICATE

The City of Wichita, Kansas, a Kansas municipality ("Ground Lessor"), and WaterWalk LLC, a Kansas limited liability company ("Ground Lessee"), executed that certain WaterWalk Ground Lease dated as of _____, 20___ (such Lease together with all addendums, amendments, modifications and supplements thereto is collectively hereinafter the "Ground Lease"), with respect to the real property legally described in the Ground Lease (the "Land").

[insert paragraph describing who is requesting the estoppel certificate and why]

Ground Lessor hereby certifies, acknowledges and agrees as follows [to the extent any of the following statements are not true, Ground Lessor will revise such statement, providing specific information as to why the statement is not true]:

1. The Ground Lease is in full force and effect and is valid and enforceable against Ground Lessor, and in any event, Ground Lessor acknowledges and agrees that it will not assert that either (a) a Ground Lessee default under the Ground Lease has occurred prior to the Effective Date, or (b) prior to the Effective Date an event occurred or condition existed which, with the giving of notice or the lapse of time or both, would constitute a default of Ground Lessee under the Ground Lease.

2. Ground Lessor agrees to send to _____ all notices to which _____ is entitled pursuant to Article X of the Ground Lease, at the following address: _____.

3. Ground Lessor acknowledges that it is executing and delivering this Certificate for the benefit of _____, any persons or entities acquiring all or any portion of _____'s interest in the _____, and each of their respective lenders, and any title insurance company providing title insurance to any of such persons, entities, or lenders, together with each of their respective successors and assigns, knowing that each of such persons and entities will rely upon the contents hereof.

Dated as of _____, _____.

CITY OF WICHITA, KANSAS

_____
By: _____
Printed Name: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF KANSAS)
) SS.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for said county and state, came _____, the _____ of the City of Wichita, a Kansas municipality, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same on behalf of the City of Wichita.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

_____
Notary Public

My Commission Expires: _____

Agenda Item No. IV-2.

City of Wichita
City Council Meeting
August 21, 2012

TO:	Mayor and City Council
SUBJECT:	Cultural Funding Allocation Recommendations (All Districts)
INITIATED BY:	Division of Arts & Cultural Services
AGENDA:	New Business

- -

Recommendation: Approve the Fiscal Year (FY) 2013 funding allocations recommended for arts and cultural organizations by the Cultural Funding Committee.

Background: In 2005, the City Council approved the formation of the Cultural Funding Committee consisting of 11 members. Members of the City Council appointed seven (7) members. The Arts Council appointed four (4) members. The committee consists of representatives from government, education, business, philanthropy, arts organizations and the public at large. The committee was assigned the responsibility to make recommendations to the City Manager and members of the City Council on the allocation of additional funding through operational grants for arts and cultural organizations.

In addition to reviewing and making recommendations for Cultural Funding, the Cultural Funding Committee is tasked with reviewing the Annual Operational Agreement Reports for the Group One organizations and making recommendations on the funding level identified in the agreement for FY 2013.

Analysis: The projected equivalent of one (1) mill for FY2013 is $3,150,909. Anticipating a deficit in the City budget, the Cultural Funding Committee reduced the amount available to allocate by 4% resulting in a reduction equal to $126,036.36. This left $3,024,872.64 to allocate to the various arts organizations which applied for funding. The Cultural Funding Committee reviewed the Operational Agreements for Group One organizations first and then determined the Cultural Funding allocation amounts for 21 organizations with the remaining funds.

Group One Operating Agreements

Group One City of Wichita organizations are defined by the Cultural Arts Plan as organizations that have City owned property or facilities, City employees, or collections which are owned by the City. These organizations include Botanica, Wichita Art Museum, Wichita Historical Museum, Old Cowtown Museum and Mid-America All-Indian Center. In 2010, the City of Wichita entered into Operating Agreements with four (4) Group One organizations. Old Cowtown Museum does not have an operating agreement with the City because the facility is currently under the management of the Division of Arts and Cultural Services. However, Old Cowtown Museum is held to the same criteria and reporting standards as the other Group One organizations.

The purpose of the Operating Agreement is to define the City's expectations for Group One organizations and to indentify anticipated funding amounts for five (5) years which will allow the organizations the ability to create long-term strategic plans.

As identified by the Cultural Arts Plan, which was adopted by the Mayor and City Council in 2008, the Cultural Funding committee reviewed the operational agreement funding for Group One organizations. To assist in making well informed decisions regarding the Group One operational funding, the organizations were requested to submit an Annual Operating Agreement Report. Information in the annual report included, but was not limited to, the following criteria:

- Demonstration of financial growth over a three-year time period.
- Assurance of financial security by maintaining a three (3) to six (6) month operating reserve.
- Development of Improvement Plans for organizations who do not meet excellence criteria established as a result of the annual review of these agreements.
- Accountability of funding expenditures to the City.
- Inclusion of City representation on all boards.

After reviewing the Annual Operational Agreement Reports and listening to presentations from the Group One organizations, the committee recommends funding the organizations at the level identified in its Operating Agreements for FY2013. The amount listed in the Operational Agreement for 2013 reflects a 3% increase over the FY2012 amount.

Organization Name	**2012 Amount Approved**	**2013 Amount Recommended**
Group 1 with Operating Agreement		
Historical Museum	$142,181.00	$146,446.64
The Wichita Art Museum, Inc.	$1,604,393.00	$1,652,524.30
Mid-America All-Indian Center	$165,077.00	$170,028.85
Botanica, The Wichita Gardens	$301,336.00	$310,376.00
Cowtown	245,475.00	$252,839.25
Total Group One Operating Amount	**$2,458,462.00**	**$2,532,215.04**

Cultural Funding

Once the committee had identified the amount to be allocated for the Group One organizations' Operating Agreements, the members determined that $492,657.60 remained for allocation to organizations which applied for Cultural Funding. All five Group One organizations also applied for Cultural Funding in addition to the amounts recommended in the Operating Agreements. Committee members agreed they would honor the funding amounts identified in the Operating Agreements for FY2013 and would make any reductions for the Group One organizations through the Group One's Cultural Funding requests.

Since the committee had determined it would reward excellence and established evaluation criteria to determine excellence and the move toward it, they established a baseline using averages of the scores given by the 11 members to the applications. Applications with average scores below this baseline were not considered for funding. While the average scores were important in the determination of a corresponding funding amount, it was not the only factor used. Economic impact, history of performance, financial stability and community impact were all taken into consideration. As a result of this competitive grant process, 21 organizations met the baseline score and were recommended for funding.

Cultural Funding Recommendations

Organization Name	FY2012 Amount Approved	Final Score FY2013	FY2013 Amount Recommended
Arts Partners	$41,792.00	90	$42,500.00
WSU Foundation (Ulrich Museum)	$34,417.00	89	$38,226.60
Music Theatre of Wichita	$78,667.00	89	$75,000.00
Chamber Music at the Barn	$9,833.00	88	$10,000.00
Exploration Place	$41,792.00	88	$37,000.00
Tallgrass Film Festival	$22,125.00	87	$20,000.00
Historical Museum	**$7,866.00**	**86**	**$7,000.00**
Sedgwick County Zoological Society	$57,033.00	85	$43,000.00
Wichita Public Library Foundation	$63,917.00	83	$40,000.00
Wichita Symphony	$98,333.00	83	$54,000.00
Wichita Children's Theatre	$27,961.73	83	$26,000.00
Mid-America All-Indian Museum	**$17,700.00**	**82**	**$6,000.00**
Wichita Art Museum	**$0.00**	**82**	**$6,000.00**
Kansas Aviation Museum	$41,792.00	82	$25,000.00
Orpheum Performing Arts Center, Ltd	$29,500.00	82	$25,000.00
Old Cowtown Museum	**$24,583.00**	**79**	**$3,000.00**
Botanica	**$24,583.00**	**78**	**$3,000.00**
Museum of World Treasures	$34,417.00	78	$15,000.00
Wichita Grand Opera	$9,833.00	76	$5,000.00
Lyric Opera (Formerly Opera Kansas)	$0.00	76	$3,000.00
Wichita Wind Ensemble	Did not apply	75	$2,500.00
Historic Wichita Cowtown Inc.	Did not apply	72	$0.00
Music Theatre for Young People	$9,833.00	65	$0.00
Heart of America Men's Chorus Inc.	$0.00	62	$0.00
Griot's Storytelling Institute	$0.00	61	$0.00
Arts Council**	$6,431.00		$6,431.00
Total supplemental recommended for all organizations (26 organizations)	**682,408.73**		**$492,657.60**
Total Amount to Allocate after reduction	**$3,140,8710.73**		**$3,024,872.64**

With an increase in the allocation for Group One Operational agreements and a lack of growth in the estimated mill levy, the amount available to allocate to 21 arts and cultural organizations was significantly less than the amount available in FY2012. Only one organization, the Ulrich Museum, had a small increase in the amount of funding allocated over their FY2012 amount.

Financial Consideration: The projected equivalent of one (1) mill levy for FY2013 is $3,150,909.00. The amount identified and recommended for Group One organizations by the Cultural Funding Committee for FY2013 is $2,532,215.04. The remaining $492,657.60 was allocated to 21 organizations via a competitive grant review process.

Goal Impact: To work toward funding arts and cultural organizations which demonstrate excellence or continued improvement in the operation of its organization and to enhance the Quality of Life for the citizens of Wichita.

Legal Consideration: The Law Department drafted the currently effective five-year operating agreements for Group 1 organizations. Upon designation by Council of the additional selected funding recipients and the amounts to be allocated, the Law Department will modify or create as needed the Cultural Funding Contracts for these remaining recipients.

Recommendations/Action: It is recommended that the City Council approve the FY2013 funding allocations recommended for arts and cultural organizations by the Cultural Funding Committee.

Attachment: Cultural Funding Committee Notes

FY2013 Cultural Funding Deliberation Notes

April 17, 24, 2012
May 3, 2012
Century II
Room 101B
1:00 p.m.

Committee members present 04/17/2012: Donnah Taylor, Jeremy Alessi, Jane McHugh, Sharon Mallory, Joe Miller, Steve Peters, Maaskaleh Thomas, Mary Eves (arrived at 2:30)

Committee members present 04/24/2012: Donnah Taylor, Jane McHugh, Sharon Mallory, Joe Miller, Steve Peters, Maaskaleh Thomas, Mary Eves, Ken Ciboski

Committee members present 05/03/2012: Donnah Taylor, Jane McHugh, Sharon Mallory, Joe Miller, Steve Peters, Mary Eves, Ken Ciboski

Committee members absent 04/17/2012: Chris D'Acosta, Gwynne Birzer, Ken Ciboski
Committee members absent 04/24/2012: Chris D'Acosta, Gwynne Birzer, Jeremy Alessi
Committee members absent 05/03/2012: Chris D'Acosta, Gwynne Birzer, Jeremy Alessi, Maaskelah Thomas

Staff present: John D'Angelo, Bernadette Bradshaw

Chair Steve Peters opened the meeting by introducing Mark Manning, City of Wichita, Budget Officer, to give members an overview of the estimated mill equivalent. Mr. Manning explained to members that the mill has not grown as hoped and the prediction for 2013 was that the mill would remain flat. The estimated equivalent of one mill for 2013 is $3,150,909. Due to anticipated budget reductions for 2013, staff recommended a three (3) to five (5) percent reduction in the estimated mill. The committee members agreed to reduce the estimated mill to be allocated by five percent (5%). After a first round of allocations, committee member **Jeremy Alessi moved to change the percentage of the reduction from 5% to 4%. Jane McHugh seconded. Motion passed.**

The first order of business was the discussion of the Operating Agreement reports and the funding amounts identified in the five Group One Operating Agreements. The Group One organizations include Wichita Art Museum, Botanica, Wichita Sedgwick County Historical Museum, Mid-America All-Indian Center and Old Cowtown Museum. While the City does not have an Operating Agreement with Old Cowtown Museum due to the direct management of the facility by the City, the museum was held to the same performance criteria and expectations as the other four organizations. Discussion among the committee members resulted in consensus that the organizations had met their overall performance criteria and the funding amounts identified in their Operating Agreements for 2013 should be honored. This funding amount included a 3% increase from 2012 to 2013. **Maaskelah Thomas moved to fund all the Group One organizations including Wichita Art Museum, Botanica, Wichita Sedgwick County Historical Museum, Mid-America All-Indian Center and Old Cowtown Museum at the**

amount identified for FY2013 in their Operating Agreements. Jane McHugh seconded. Motion passed.

Discussion then turned to the identification of a base line score. This year, 26 organizations applied for Cultural Funding. The Cultural Funding Committee determined the Arts Council as the parent board to the CFC would receive a flat funding and would not have to fill out an application. Historically the Arts Council has received $6,540. Committee members agreed the Arts Council should receive the same amount of funding as 2012 which amounted to $6,431.00.

After review of the scores only, **Joe Miller moved to fund any organization who scored 75 points or higher. Jeremy Alessi seconded. Motion passed.** As a result of the baseline score, four organizations did not meet the baseline score and were not funded. They included Heart of America's Men's Chorus, Music Theatre for Young People, Griot's Storytelling Institute and Historic Wichita Cowtown, Inc.

Griot's Storytelling Institute - $0 Score 61

- The SMART goals were aggressive and not attainable in the timeline; goals need to be more clearly explained.
- The organization fills a unique niche but they need to be more descriptive in the outcome of the numerous collaborations they have with other organizations.
- Budget was weak; organization lacks plan for increasing revenue.
- Long-range strategic plan was not measurable and vague.
- Committee recommends the organization consider membership in the Kansas Professional Grant Writer's Association who can be of assistance in preparing future grant applications.

Heart Of America's Men's Chorus - $0 Score 62.

- Paid admissions down 30% which is identified as a major source of their revenue.
- Income fund raising plan is weak.
- SMART goals were not achievable.
- Committee recommends the organization consider membership in the Kansas Professional Grant Writer's Association who can be of assistance in preparing future grant applications.

Music Theatre for Young People - $0 Score 65

- Concern regarding the financial sustainability of the organization.
- SMART Goals were weak
- Concern over continuous staff turnover.
- No plan for audience development.
- Organization is running a deficit budget.
- Committee recommends the organization consider membership in the Kansas Professional Grant Writer's Association who can be of assistance in preparing future grant applications.

Wichita Historic Cowtown Inc. - $0 Score 72

- Organization needs to work cooperatively with the museum.
- Timing of the SMART Goals and usage of funding showed a completion date of 2014; timing was not clear.
- No plan to generate the needed revenue from membership development for continuation of collection management which was identified as the organization's most important function.
- Committee recommends the organization consider membership in the Kansas Professional Grant Writer's Association who can be of assistance in preparing future grant applications.

Committee members then reviewed individual organizations and identified funding amounts for each organization that exceeded a score of 75 points or higher.

Arts Partners – $42,500 Score 90

- Grant was well written.
- Presentation was well prepared.
- Organization has numerous collaborations with positive, measurable outcomes.
- Serves a very diverse youth population.
- Serves a demographic where 74% qualify for free school lunches.

Donnah Taylor moved to fund Arts Partners for $40,000. Joe Miller seconded. Motion passed 7 to 0. During the second round of review **Mary Eves moved to increase the funding amount to $47,500. Donnah Taylor seconded. Motion failed.** On second review, **Donnah Taylor moved to fund Arts Partners for $42,500. Jane McHugh seconded. Motion passed 7 to 1.**

Ulrich Museum – $38,226.60 Score 89

- Maintains a good budget.
- Organization is fiscally responsible.
- The museum is one of the few organizations who fund bussing for children's visits.

Donnah Taylor moved to fund the Ulrich Museum for $40,000. Joe Miller seconded. Motion failed. Jeremy Alessi moved to fund the Ulrich Museum for $38,717.51. Maaskelah Thomas seconded. Motion passed 5 to 1. 1 abstention (Jane McHugh). On second review, **Donnah Taylor moved to fund the Ulrich Museum at $40,000. Maaskelah Thomas seconded. Motion failed.** On third review, **Donnah Taylor moved to leave the funding amount at $38,717.51. Joe Miller seconded. Ken Ciboski made a substitute motion to leave the funding amount the same as FY2012 which was $34,417.00. Mary Eves seconded. Motion failed 2 to 5; 1 abstention (Jane McHugh). Original motion passed 5 to 2; 1 abstention (Jane McHugh).** Upon final review, **Joe Miller moved to accept the funding recommendations as they stand with $490.91 removed from the allocation for the Ulrich Museum to balance. Sharon Mallory seconded. Motion passed 6 to 0. 1 abstention (Jane McHugh).**

Music Theatre of Wichita – $75,000 Score 89

- Organization has third largest attendance in the City.
- Organization has a significant economic impact on the local economy.
- SMART Goals were weak.
- Strategic Plan was weak.
- While organization collaborated with numerous organizations, outcomes from collaborations were not identified.

Sharon Mallory moved to fund Music Theatre of Wichita for $60,000. Joe Miller seconded. Motion failed. Jeremy Alessi moved to fund Music Theatre of Wichita for $78,000. Joe Miller seconded. Motion passed 5 to 2. On second review, **Sharon Mallory moved to leave the funding for Music Theatre of Wichita at $78,000. Joe Miller seconded. Motion passed 5 to 3.** On third review, **Jane McHugh moved to reduce Music Theatre of Wichita's allocation by $3,000, Wichita Children's Theatre by $1,000 and increase the Wichita Symphony Orchestra allocation by $4,000. Motion passed 5 to 3.**

Chamber Music at the Barn – $10,000 Score 88

- They have a significant impact on the community.
- Serve a diverse demographic of students.
- Commended on the organization's continuous long-range planning.

Joe Miller moved to fund Chamber Music at the Barn for $8,000. Donnah Taylor seconded. Motion passed 7 to 0. On second review, **Sharon Mallory Moved to fund Chamber Music at the Barn for $12,000. Maaskelah Thomas seconded. Motion failed. Maaskelah Thomas moved to fund Chamber Music at the Barn for $10,000. Sharon Mallory seconded. Motion passed 5 to 3.**

Exploration Place – $37,000 Score 88

- Goals were very well written and specific.
- Organization has second highest attendance in the City.
- Cash flow projection looks strong for 2013.
- Concern over spending $110,000 on humidity controls for upcoming Star Wars exhibit but the committee acknowledges this is an investment, which will be used for all future exhibits.

Jane McHugh moved to fund Exploration Place at $40,000. Jeremy Alessi seconded. Motion failed. Donnah Taylor moved to fund Exploration Place for $35,000. Maaskelah Thomas seconded. Motion passed 6 to 1. On second review, **Mary Eves moved to fund Exploration Place at $45,000. Jeremy Alessi seconded. Motion failed.** On third review, **Sharon Mallory moved to reduce Wichita Grand Opera allocation by $5,000 and raise the allocation to Exploration Place to $40,000. Ken Ciboski seconded. Motion tied.**
On final review, **Sharon Mallory moved to reduce Wichita Grand Opera by $2,000 and raise the allocation to Exploration Place to $37,000. Mary Eves seconded. Motion passed 4 to 3.**

Tallgrass Film Festival – $20,000 Score 87

- SMART Goals were written for the wrong year.
- Organization made a strong case for how the funds have helped the organization to grow.
- Fills a unique niche in our city.
- Has shown consistent growth in attendance.
- Needs to develop a more objective method of evaluation for measuring outcomes than just attendance.

Jane McHugh moved to fund Tallgrass Film Festival for $20,000. Joe Miller seconded. Motion passed 6 to 1. On second review, **Donnah Taylor moved to fund Tallgrass Film Festival for $30,000. Maaskelah Thomas seconded. Motion failed.**

NOTE: At this time, the committee discussed the allocation of Cultural Funding to the Group One organizations who applied for additional funding over the amount allocated to them through the Operating Agreements. **Joe Miller moved to fund the Group One organizations at $0 on a preliminary basis. Jane McHugh seconded. Motion Passed. 7 to 0.** On second review, funding was allocated in the amount of $5,000 to Wichita Art Museum, Botanica, Wichita Sedgwick County Historical Museum and Mid-America All-Indian Center. Old Cowtown Museum was funded for $4,509.09. On third review, **Maaskelah Thomas moved to fund the Group One organizations at $0. Joe Miller seconded. Motion failed 2 to 6.**

Wichita Sedgwick County Historical Museum - $7,000 Score 86

- Organization has made improvements as outlined in an Improvement Plan.
- Commend the organization on the energized board support and fund raising plan by the board.
- SMART goals were status quo.

On second review, **Joe Miller moved to fund the Wichita Sedgwick County Historical Museum for $5,000. Donnah Taylor seconded. Motion passed 6 to 2.** Upon final review of the Group One supplemental requests **Sharon Mallory moved to fund Wichita Sedgwick County Historical Museum at $7,000. Ken Ciboski seconded. Motion passed 4 to 3.**

Sedgwick County Zoo - $43,000 Score 85

- Organization has the highest attendance in the City.
- Organization has been fiscally responsible and never had to touch their endowment.
- Organization has made significant efforts for conservation.
- Requested funds will be spent assisting Title One schools with discounted admissions.

Donnah Taylor moved to fund Sedgwick County Zoo for $30,000. Maaskelah Thomas seconded. Motion failed. Sharon Mallory moved to fund Sedgwick County Zoo for $40,000. Donnah Taylor seconded. Motion passed 6 to 0. 1 abstention (Steve Peters). On second review, **Sharon Mallory moved to leave the allocation amount at $40,000. Joe Miller seconded. Motion passed 5 to 2. 1 abstention (Steve Peters).** On third review, **Sharon Mallory moved to reduce Wichita Grand Opera allocation to $7,000 and give $3,000 to Sedgwick County Zoo. Motion passed 6 to 1; 1 abstention (Steve Peters).**

Wichita Public Library Foundation - $40,000 Score 83

- Concern over the future regarding libraries and the lack of plan to address this issue.
- Concern over SMART Goals that seemed to be status quo over last year.
- SMART Goals did not seem to match the narrative; nothing in the narrative to explain how they might achieve their goals or why those goals were important to the overall narrative.

Joe Miller moved to fund the Wichita Public Library Foundation for $40,000. Donnah Taylor seconded. Motion passed 4 to 3. On second review, **Donnah Taylor moved to leave the funding allocation for the Wichita Public Library Foundation for $40,000. Joe Miller seconded. Motion passed 6 to 0. 1 abstention (Mary Eves)**

Wichita Symphony Orchestra - $54,000 Score 83

- Concern regarding the SMART Goals; goals were vague and need more explanation for clarity.
- Concern over audience development.
- Commend the organization for addressing fiscal responsibility by working with the musicians to reduce their costs.
- Concern regarding the decline of projected revenue.

Mary Eves moved to fund Wichita Symphony Orchestra for $50,000. Donnah Taylor seconded. Motion passed 7 to 1. On second review, **Jane McHugh moved to fund the Wichita Symphony Orchestra for $70,000. Sharon Mallory seconded. Motion failed 2 to 5. 1 abstention (Jeremy Alessi).**

Wichita Children's Theater and Dance - $26,000 Score 8

- Concern over business model and its sustainability for the future.
- SMART goals had benchmarks to be completed early in 2013 but nothing identified for the rest of the year.
- SMART goal number three (3) was not measurable.
- Concern regarding declining attendance.
- Long-range plan is weak; vague.

Donnah Taylor moved to fund Wichita Children's Theatre and Dance for $30,000. Joe Miller seconded. Motion passed 4 to 3. 1 abstention (Jeremy Alessi). On second review, **Sharon Mallory moved to fund Wichita Children's Theatre and Dance for $27,000. Jane McHugh seconded. Motion passed 5 to 3.**

Mid-America All-Indian Center - $6,000 Score 82

- Organization's budget was fiscally responsible.
- Organization needs to do more marketing.
- Organization was commended on converting free memberships to paid memberships.
- Organization was commended for development of new festival and rotation of exhibits.

On second review, **Joe Miller moved to fund Mid-America All-Indian Center for $5,000. Donnah Taylor seconded. Motion passed 7 to 1.** Upon final review of the Group One supplemental requests **Sharon Mallory moved to fund Mid-America All-Indian Center at $6,000. Ken Ciboski seconded. Motion passed 7 to 0.**

Wichita Art Museum - $6,000 Score 82

- Purpose of the requested funds was unclear; committee believes the board of directors is responsible for conservation of the collection and therefore funds should have already been allocated for the collection's care and maintenance.
- Strategic plan appears unwieldy with so many lengthy actions.
- Concern over how the museum is reaching and serving underserved populations.
- Commend the museum for efforts to increase attendance.

On second review, **Joe Miller moved to fund Wichita Art Museum for $5,000. Donnah Taylor seconded. Motion passed 4 to 2. 2 abstentions (Mary Eves and Jeremy Alessi).** Upon final review of the Group One supplemental requests **Sharon Mallory moved to fund Wichita Art Museum at $6,000. Ken Ciboski seconded. Motion passed 4 to 2. 1 abstention (Mary Eves).**

Kansas Aviation Museum – $25,000 Score 82

- SMART Goals need more explanation.
- Concern over lack of consistency in fundraising efforts over time.

Donnah Taylor moved to fund the Kansas Aviation Museum for $25,000. Maaskelah Thomas seconded. Motion passed 8 to 0. On second review, **Joe Miller moved to leave the funding amount for Kansas Aviation Museum for $25,000. Donnah Taylor seconded. Motion passed 8 to 0.**

Orpheum Performing Arts Centre - $25,000 Score 82

- Concern over the facility being shut down during capital improvements and the impact on operational funds.
- SMART Goals graded as weak; need more explanation.
- Evaluation method was graded as weak.
- Commend the organization for significant increase in attendance.

Jane McHugh moved to fund the Orpheum Performing Arts Centre for $25,000. Donnah Taylor seconded. Motion passed 6 to 1. 1 abstention (Mary Eves) On second review, **Jane McHugh moved to leave the Orpheum Performing Arts Centre funding at $25,000. Donnah Taylor seconded. Motion passed 7 to 0. 1 abstention (Mary Eves)**

Old Cowtown Museum - $3,000 Score 79

- Need to improve methods of measuring/surveying achievements.
- Concern over reducing the City subsidy to 50%; committee felt this was not achievable or too aggressive for one year.
- Commend the organization on increasing attendance and development of new programming.
- Organization needs to work cooperatively with the Historic Wichita Cowtown board.

On second review, **Maaskelah Thomas moved to fund Old Cowtown Museum for $4,509.09. Donnah Taylor seconded. Motion passed 7 to 1.** Upon final review of the Group One supplemental requests **Sharon Mallory moved to fund Old Cowtown Museum at $3,000. Ken Ciboski seconded. Motion passed 6 to 1.**

Botanica, Inc. $3,000 Score 78

- Did not fill out the budget form properly.
- Concern regarding the maintenance of new gardens; commend the organization for having additional capital funds to cover maintenance for two years but concern over what will happen after two years with the significant growth in expenses for the new garden.
- Need to better market programs that are core to their mission.

Jane McHugh moved to fund Botanica Inc for $5,000. Donnah Taylor seconded. Motion passed 5 to 2. 1 abstention (Joe Miller) Upon final review of the Group One supplemental requests **Ken Ciboski moved to fund Botanica at $3,000. Mary Eves seconded. Motion passed 4 to 2. 1 abstention (Joe Miller)**

Museum of World Treasures - $15,000 Score 78

- Committee scored financial stability low.
- SMART Goals graded as weak and no explanation in narrative as to how they might be achieved.
- Concern over historic use of reserves to fund year-to-year operations.
- Concern over weak development plan of other funding sources.

Joe Miller moved to fund the Museum of World Treasures for $15,000. Sharon Mallory seconded. Motion passed 6 to 2.

Wichita Grand Opera - $5,000 Score 76

- Concern over conflicting information in IRS Form 990.\
- Concern over unrelated taxable business income not shown on IRS 990.
- SMART goals were weak.
- No formal method of evaluation besides attendance.
- No strategic plan.
- Commend the organization for fund and donor development; found a funding source not identified by other organizations.

Joe Miller moved to fund Wichita Grand Opera for $10,000. Donnah Taylor seconded. Motion passed 6 to 2. On second review, **Joe Miller moved to reduce the funding allocation for Wichita Grand Opera to $7,000. Donnah Taylor seconded. Motion passed 7 to 1.** Upon final review, **Sharon Mallory moved to reduce Wichita Grand Opera by $2,000 and raise the allocation to Exploration Place to $37,000. Mary Eves seconded. Motion passed 4 to 3.**

Lyric Opera - $3,000 Score 76

- Committee commends the organization for having a reserve.
- Topics chosen for presentation in schools rated very high.
- Programming is filling different niche from Wichita Grand Opera.

Mary Eves moved to fund Lyric Opera for $5,000. Jeremy Alessi seconded. Motion passed 6 to 2. On second review, **Sharon Mallory moved to fund Lyric Opera at $3,000. Joe Miller seconded. Motion passed 5 to 3.** On third review, **Joe Miller moved to leave Lyric Opera funded at $3,000. Maaskelah Thomas seconded. Motion passed 7 to 1.**

Wichita Wind Ensemble - $2,500 Score 75

- Need to reach a broader audience.
- Need to improve/develop better measurement standards.
- Difficulty determining if the organization is serving underserved populations and how; need to better market their organization and programs.
- Development of youth wind ensemble is very positive.

Mary Eves moved to fund Wichita Wind Ensemble for $2,500. Donnah Taylor seconded. Motion passed 7 to 0. 1 abstention (Jeremy Alessi). On second review, **Jane McHugh moved to leave the allocation for Wichita Wind Ensemble at $2,500. Donnah Taylor seconded. Motion passed 7 to 0. 1 abstention (Jeremy Alessi).**

Final Recommendations from Cultural Funding Committee Meeting - May 3, 2012

Steve Peters then moved to accept the recommendations as they stand. Donnah Taylor seconded. Motion passed 7 to 0.

Discussion then occurred regarding funds that could be over or under the amount estimated as the mill equivalent or the budget reduction estimated for 2013. **Sharon Mallory moved to spread any positive or negative changes in supplemental funding across the board based on a percentage basis. Donnah Taylor seconded. Motion passed 6 to 0. 1 abstention (Ken Ciboski).**

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Tipping Fee Increase at Brooks Landfill (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendations: Approve the resolution.

Background: The City of Wichita owns the Brooks C&D (construction and demolition) Landfill located at 4100 North West Street, with Herzog Environmental being the contract operator since 2001. The landfill is permitted by the Kansas Department of Health and Environment (KDHE) to receive friable asbestos and C&D waste. Costs are fully funded with the tipping fees paid by landfill users to dump their waste. The current tipping fee is $29 per ton, with $14 retained by Herzog, $14 retained by the City, and $1 paid to the State of Kansas.

The City Council authorized a contract extension with Herzog Environmental on May 8, 2012 to continue operations through December 28, 2012. The contract included a $2 per ton increase in the tipping fee revenue received by the contractor. As the overall tipping fee was not increased, the contract effectively reduced the City share by $2 per ton. It was requested that staff bring a resolution to the City Council to boost the tipping fee to $31 per ton in order to move the City's share back to the $16 per ton it received prior to the contract extension.

Analysis: The increased tipping fee brings the City's share of the landfill revenue back to the level it received before the most recent contract extension was approved. This revenue is used to fund neighborhood and alley cleanups, as well as other budgeted items. With the $2 per ton increase, Brooks Landfill would cost $1 per ton less than the other C&D landfill in the area.

Financial Considerations: There will be no additional costs to the City by increasing the tipping fee. Because the increase restores the City's share of the tipping fee back to previous levels, there would not be any additional revenue compared to what was received in 2011.

Goal Impact: This project supports the Efficient Infrastructure goal by maintaining and optimizing public facilities and assets.

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

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

Attachment: Resolution

RESOLUTION NO. 12-198

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING INCREASING TIPPING FEES FOR CONSTRUCTION & DEMOLITION WASTE DISPOSED AT BROOKS LANDFILL IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF INCREASING TIPPING FEES AT BROOKS LANDFILL IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to increase tipping fees for construction and demolition waste transported for disposal at brooks Landfill.

SECTION 2. That the cost of said tipping fees provided for in Section 1 hereof shall be increased from Twenty-Nine Dollars ($29) per ton to Thirty-One Dollars ($31) per ton, with 100 percent of the Two dollar ($2) increase payable to the City of Wichita. Said cost as above set forth is hereby increased as of September 1, 2012, exclusive of all other conditions and requirements.

SECTION 3. That all costs of said tipping fees, when ascertained, shall be assessed against the owner/operator of the privately owned hauled waste transporter that is transporting waste with the intention of disposing of said waste herewith at the Brooks Landfill facility.

SECTION 4. That the method of apportioning all tipping fees of said construction and demolition waste shall be distributed as follows:

Sixteen Dollars ($16) per ton allocated to the City of Wichita

Fourteen Dollars ($14) per ton allocated to the Landfill Operations Contractor – Herzog Environmental

One Dollar ($1) per ton allocated to the State of Kansas as required by State Permit Conditions.

SECTION 5. That all other conditions stipulated in the Contractual Amendment between the City and Herzog Environmental, signed and dated on May 8, 2012, shall apply.

SECTION 6. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 7. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of August, 2012.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: An Ordinance Amending Section 24.02.135, Creating Section 24.04.215 and Repealing Section 24.04.210 of the Code of the City of Wichita, Kansas, Pertaining to Illegally Placed Temporary Signs on Public Right of Way

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendation: Approve first reading of ordinance amending Section 24.02.135, creating Section 24.04.215 and repealing Section 24.04.210 of the Code of the City of Wichita, Kansas, pertaining to Illegally Placed Temporary Signs on Public Right of Way

Background: The Office of Central Inspection is tasked with enforcing ordinances related to illegal sign placement. In an effort to address the negative impact of sign blight, OCI employees dedicate hours each week to removing signs illegally placed in the right of way. Despite OCI's best efforts, sign blight remains a problem throughout the City. The current approach is inefficient, labor intensive, and achieves mixed results. Additionally, enforcement through court proceedings is problematic given the requirement that the criminal act (illegal placement of the sign) be witnessed.

In response to concerns expressed by citizens, a committee was formed to address issues related to illegally placed signage. The committee consisted of representatives from Neighborhood Services, Public Works, City Communications, Law, and OCI. The group reviewed current enforcement efforts and developed a program aimed at making an impact through partnerships and enforcement. The proposed ordinance revisions will enable staff to be more responsive in addressing sign blight through a volunteer sign removal program and prosecution where appropriate.

Analysis: The ordinance amendments prohibit placement of signs in the right of way or on public property and declare an unauthorized temporary sign placed in the right of way to be a nuisance. The existence of a temporary sign in the right of way or on public property directing attention to a business, product or service is considered evidence that the owner or agent of the owner caused the illegal placement. Penalties are authorized for violators that have illegally placed or caused placement of temporary signage in the right of way.

Additionally, the proposed ordinance amendments authorize citizen enforcement to assist in the removal of illegal signage. A volunteer program administered by Neighborhood Services and OCI will recruit, train, and assist neighborhood, business, and civic groups, interested in addressing the negative impact of illegal signage in their communities.

Financial Considerations: The ordinance amendments will reduce the number of staff hours spent removing signage illegally placed in the right of way. The volunteer program will cost an estimated $500 annually.

Goal Impact: The ordinance amendments will impact the Safe & Secure Community, Quality of Life, and Core Area & Neighborhood goals by providing staff with tools necessary to address sign blight throughout the city.

Legal Considerations: The Law Department approved the amended Ordinances as to form.

Recommendation/Action: It is recommended that the City Council place the Ordinances on first reading and authorize the necessary signatures.

Attachments: Ordinances

First Published in The Wichita Eagle on August 31, 2012

ORDINANCE NO.49-335

AN ORDINANCE AMENDING SECTION 24.02.135, CREATING SECTION 24.04.215 AND REPEALING SECTION 24.04.210 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ILLEGALLY PLACED TEMPORARY SIGNS ON PUBLIC RIGHT OF WAY.

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

SECTION 1. Sec. 24.04.135 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

"**Appeals**. Any person may appeal the determination of the superintendent of the office of central inspection as set forth in Section 24.04.130 by filing a notice of appeal.

(a) All appeals, except those in subsection (b), shall be referred by the superintendent of central inspection to the board of code standards and appeals for hearing on the matter in dispute.

(b) All appeals on matters arising under Sections 24.04.190, 24.04.191, 24.04.192, 24.04.193, 24.04.194, 24.04.195, 24.04.196, 24.04.197, 24.04.198, 24.04.215, 24.04.221, and 24.04.222 shall be filed with the board of zoning appeals for hearing. The board of zoning appeals is hereby granted jurisdiction to hear such matters in the same manner as all other appeals to such body."

SECTION 2. Section 24.04.215 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Signs in the right of way or on public property.

(a) An unauthorized temporary sign in the right of way or on public property is hereby declared to be a nuisance.

(b) The following acts are prohibited:

(1) No person shall place or cause the placement of a temporary sign in the right of way or on public property, including but not limited to any street, sidewalk, park, tree or utility poles. The act of placement will be deemed to continue until such sign is removed.

(2) Any temporary sign placed or installed in the right-of-way will be deemed an unlawful sign and an abandoned sign and will be subject to immediate removal by the City of Wichita, or as authorized in Section (e)(3) herein.

(3) The existence of a temporary sign in the right of way or on public property directing attention to a person is prima facie evidence that such person has caused the placement of such sign in the right of way or on public property.

(4) The existence of a temporary sign in the right of way or on public property directing attention to a business, product or service is prima facie evidence that the owner or the agent for the owner of that business, product or service caused the placement of such sign in the right of way or on public property.

(5) The existence of a temporary sign in the right of way or on public property directing attention to an event is prima facie evidence that the promoter of that event or the agent for the promoter caused the placement of such sign in the right of way or on public property.

(c) Exception. Temporary signs installed by any of the following and directly related to the use of the right-of-way or public property, including the control and direction of traffic shall be exempted from the provisions of subsections (a) and (b) :

(1) City, county or state government entities;

(2) Any road construction work;

(3) Any public utility with a franchise or other agreement with the City of Wichita; or

(4) Any other government entity or person expressly authorized by local, state or federal law or contract to install a sign in the right-of-way.

(d) Definitions.

(1) Public property. Any land owned by the city, county, state or federal government.

(2) Right of way. The area on, below or above the present and future city streets, alleys, bridges, bikeways, parkways and sidewalks that is owned or controlled by the city, county, state or federal government.

(e) Enforcement.

(1) Penalties. Any violation of this section may be prosecuted as a misdemeanor in municipal court. The penalty for the first violation of this section shall be fifty ($50.00) dollars. The penalty for the second or subsequent violation of this section shall be a fine of not less than fifty ($50.00) dollars but not more than one thousand ($1,000.00) dollars for each sign.

(2) Other Remedies and Enforcement Powers.

a. The city, or its authorized representative as described herein, may remove any unauthorized sign in the right of way at any time.

b. The City may notify the presumed owner of the sign through the contact information on the sign (or through any other available information) that the owner has seventy-two (72) hours (or three (3) business days) to remove the sign before a citation may be issued. This seventy-two (72) hour (or three (3) business days) enforcement delay will not be offered to any person or business that has previously been notified regarding the sign at issue or any other sign.

c. Any temporary sign removed pursuant to which is six square feet or larger and composed entirely of metal or wood shall be kept by the City or other department designated to remove such sign for a period of twenty (20) days, after which it may be disposed of in any manner deemed appropriate by the city. All other signs removed pursuant to subsection (b) may be disposed of in any manner deemed appropriate by the city.

d. Any such metal or wooden sign removed pursuant to subsection (b) may be recovered by the owner within twenty (20) days upon payment of a service charge of twenty-five ($25.00) dollars per sign.

The city may seek such other remedies and use such other enforcement powers as allowed by law.

(3) Citizen enforcement.

a. For any temporary sign posted in violation of this section, any individual authorized by the supervisor of the office of central inspection, after appropriate training provided by the City of Wichita, may:

(i) remove the sign; and

(ii) either:

(A) discard the sign in an appropriate manner; or

(B) submit the sign to the supervisor of the office of central inspection for further enforcement proceedings.

b. A submission to the supervisor of the office of central inspection for further enforcement proceedings must be accompanied by an affidavit, in the form and tenor required by the department, that describes the circumstances of the violation and removal."

SECTION 3. The originals of Sections 24.04.135 and 24.04.210 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 28th day of August, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED July ___, 2012

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTION 24.02.135, CREATING SECTION 24.04.215 AND REPEALING SECTION 24.04.210 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ILLEGALLY PLACED TEMPORARY SIGNS ON PUBLIC RIGHT OF WAY.

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

SECTION 1. Sec. 24.04.135 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

"**Appeals**. Any person may appeal the determination of the superintendent of the office of central inspection as set forth in Section 24.04.130 by filing a notice of appeal.

(a) All appeals, except those in subsection (b), shall be referred by the superintendent of central inspection to the board of code standards and appeals for hearing on the matter in dispute.

(b) All appeals on matters arising under Sections 24.04.190, 24.04.191, 24.04.192, 24.04.193, 24.04.194, 24.04.195, 24.04.196, 24.04.197, 24.04.198, 24.04.215, 24.04.221, and 24.04.222 shall be filed with the board of zoning appeals for hearing. The board of zoning appeals is hereby granted jurisdiction to hear such matters in the same manner as all other appeals to such body."

SECTION 2. Section 24.04.215 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Signs in the right of way or on public property.

(a) An unauthorized temporary sign in the right of way or on public property is hereby declared to be a nuisance.

(b) The following acts are prohibited:

(1) No person shall place or cause the placement of a temporary sign in the right of way or on public property, including but not limited to any street, sidewalk, park, tree or utility poles. The act of placement will be deemed to continue until such sign is removed.

(2) Any temporary sign placed or installed in the right-of-way will be deemed an unlawful sign and an abandoned sign and will be subject to immediate removal by the City of Wichita, or as authorized in Section (e)(3) herein.

(3) The existence of a temporary sign in the right of way or on public property directing attention to a person is prima facie evidence that such person has caused the placement of such sign in the right of way or on public property.

(4) The existence of a temporary sign in the right of way or on public property directing attention to a business, product or service is prima facie evidence that the owner or the agent for the owner of that business, product or service caused the placement of such sign in the right of way or on public property.

(5) The existence of a temporary sign in the right of way or on public property directing attention to an event is prima facie evidence that the promoter of that event or the agent for the promoter caused the placement of such sign in the right of way or on public property.

(c) Exception. Temporary signs installed by any of the following and directly related to the use of the right-of-way or public property, including the control and direction of traffic shall be exempted from the provisions of subsections (a) and (b) :

(1) City, county or state government entities;

(2) Any road construction work;

(3) Any public utility with a franchise or other agreement with the City of Wichita; or

(4) Any other government entity or person expressly authorized by local, state or federal law or contract to install a sign in the right-of-way.

(d) Definitions.

(1) Public property. Any land owned by the city, county, state or federal government.

(2) Right of way. The area on, below or above the present and future city streets, alleys, bridges, bikeways, parkways and sidewalks that is owned or controlled by the city, county, state or federal government.

(e) Enforcement.

(1) Penalties. Any violation of this section may be prosecuted as a misdemeanor in municipal court. The penalty for the first violation of this section shall be fifty ($50.00) dollars. The penalty for the second or subsequent violation of this section shall be a fine of not less than fifty ($50.00) dollars but not more than one thousand ($1,000.00) dollars for each sign.

(2) Other Remedies and Enforcement Powers.

a. The city, or its authorized representative as described herein, may remove any unauthorized sign in the right of way at any time.

b. The City may notify the presumed owner of the sign through the contact information on the sign (or through any other available information) that the owner has seventy-two (72) hours (or three (3) business days) to remove the sign before a citation may be issued. This seventy-two (72) hour (or three (3) business days) enforcement delay will not be offered to any person or business that has previously been notified regarding the sign at issue or any other sign.

c. Any temporary sign removed pursuant to which is six square feet or larger and composed entirely of metal or wood shall be kept by the City or other department designated to remove such sign for a period of twenty (20) days, after which it may be disposed of in any manner deemed appropriate by the city. All other signs removed pursuant to subsection (b) may be disposed of in any manner deemed appropriate by the city.

d. Any such metal or wooden sign removed pursuant to subsection (b) may be recovered by the owner within twenty (20) days upon payment of a service charge of twenty-five ($25.00) dollars per sign.

The city may seek such other remedies and use such other enforcement powers as allowed by law.

(3) Citizen enforcement.

a. For any temporary sign posted in violation of this section, any individual authorized by the supervisor of the office of central inspection, after appropriate training provided by the City of Wichita, may:

(i) remove the sign; and

(ii) either:

(A) discard the sign in an appropriate manner; or

(B) submit the sign to the supervisor of the office of central inspection for further enforcement proceedings.

b. A submission to the supervisor of the office of central inspection for further enforcement proceedings must be accompanied by an affidavit, in the form and tenor required by the department, that describes the circumstances of the violation and removal."

SECTION 3. The originals of Sections 24.04.135 and 24.04.210 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 _____, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Amendments to Section 1.04.070 of the Code of the City of Wichita, Kansas, Pertaining to Costs and Witness Fees in Cases before the Municipal Court

INITIATED BY: Municipal Court

AGENDA: New Business

Recommendation: Approve first reading of the amendments to Section 1.04.070 of the Code of the City of Wichita, Kansas, pertaining to costs and witness fees in cases before the Municipal Court.

Background: In 2007, the City ordinances regarding court costs were amended to include a technology fee to provide funding for technology enhancements for Municipal Court. In 2011, an hourly jail fee was added to help offset fees charged by Sedgwick County for the incarceration of offenders convicted of violation of municipal ordinances. This fee is currently $2 per hour. Sedgwick County recently increased the hourly rate charged to the City for the incarceration of prisoners to $2.37 per hour.

Lastly, in 2011, the Kansas State Legislature removed previously assessed Alcohol Drug Safety Action Program funds from fees which could be utilized by the municipal court for staff charged with the prosecution of DUI offenses, and providing treatment and supervision of DUI offenders. Per state law, DUI offenders are required to have an alcohol assessment completed by a certified and licensed provider. Additionally, the court orders pre-sentence investigation reports for many offenders to provide criminal, treatment and employment history to provide the necessary information to sentence the offender appropriately.

Analysis: In efforts to minimize the impact of increasing jail fees, the court has analyzed the use of technology offered by monitoring programs available to the court, in lieu of jail sanctions. Many offenders cannot afford the up-front costs assessed by house arrest or electronic monitoring programs. The proposed amendments would allow the court to utilize a portion of the technology fund to pay for these alternative programs. Any payments made by the court to technology providers on behalf of offenders would be assessed against the defendant and reimbursement sought through a payment plan with the offender. The cost per day of these programs is approximately $15 to $20 per day compared to the daily incarceration fee of $56.88.

The ordinances also raise the hourly rate assessed to offenders to equal the amount assessed by Sedgwick County for the housing of municipal court defendants.

Lastly, the ordinances allow the assessment of a fee of $200 for the preparation of pre-sentence reports by probation staff.

Financial Considerations: The amendments will reduce the number of offenders sentenced to jail, thereby decreasing jail fees owed to the county. For defendants who are incarcerated, the amendments will allow the assessment of a fee equal to that charged the City for incarceration of its prisoners.

Goal Impact: Promote Safe and Secure Neighborhoods by providing presentence evaluations and enhanced sentencing options to Municipal Court Judges.

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

Recommendation/Action: It is recommended that the City Council place the Ordinance on first reading and authorize the necessary signatures.

Attachments: Ordinances

First Published in The Wichita Eagle on August 31, 2012

05/29/2012

ORDINANCE NO. 49-336

AN ORDINANCE AMENDING SECTION 1.04.070 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO COSTS AND WITNESS FEES IN CASES BEFORE THE MUNICIPAL COURT AND REPEALING THE ORIGINAL OF SAID SECTION.

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

SECTION 1. Section 1.04.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

" Costs and witness fees in cases before the Municipal Court.

(a) The sum of $63.00 shall be assessed as court costs against each person charged with a violation of any of the ordinances of this city, unless found not guilty. The $63.00 in court costs shall include all costs required by state statute, as well as a $5.00 domestic violence program fee and a $6.00 public defender fee. However, this subsection shall not apply to persons who make payment to avoid prosecution of a charge that involves either a parking violation as provided in Section 11.92.040 of this Code or failure to use seat belts or child safety restraints.

(b) The sum of $2.00 shall be assessed as a court technology fee against each person charged with such a violation of any of the ordinances of this city, unless found not guilty. The court technology fee is to be used by the court to

help offset the cost to maintain, utilize and/or purchase technology enhancements and systems, including but not limited to computer systems, computer networks, computer hardware, computer software, imaging systems, electronic kiosks, electronic ticket writers, electronic monitoring systems, and docket management systems for the City of Wichita Municipal Court System. However, this subsection shall not apply to persons who make payment to avoid prosecution of a charge that involves either a parking violation as provided in Section 11.92.040 of this Code or failure to use seat belts or child safety restraint belts.

(c) For each person who is charged with a violation of any of the ordinances of this city and such matter is set for appearance, a charge of ten dollars will be assessed, unless found not guilty.

(d) For each continuance of any pre-trial appearance, trial, sentencing, disposition, or pre-sentence investigation granted at the request of the accused person, a cost of $10.00 shall be assessed against such accused person unless found not guilty.

(e) A cost of $10.00 shall be assessed for each extension of time to pay any fine, penalty or costs granted by the clerk of the municipal court at the request of an accused person.

(f) For each trial date attributable to the accused person for which subpoenas have been issued, and in addition to other costs provided for in this section, the sum of $25.00 shall be assessed as court costs against such accused person, unless found not guilty by the court.

(g) In addition to other costs provided for in this section, the sum of $10.00 shall be assessed as court costs against each accused person who is found guilty and files a notice of appeal in district court.

(h) In addition to other court costs assessed pursuant to this section, fees and mileage for subpoenaed witnesses shall be assessed at the rate of $10.00 per day and $0.40 per mile actually driven in excess of twenty miles.

(i) A cost of $50.00 shall be assessed against each person for whom a municipal court bench warrant or show cause/probation violation warrant is ordered by the court for either failure to appear or failure to comply.

(j) A cost of $50.00 shall be assessed against each person for whom a warrant is issued for failure to pay any fine, penalty or costs as provided in subsection (a) of this section.

(k) In addition to other court costs assessed pursuant to this section, the sum of $20.00 shall be assessed as court costs against each accused person who fails to comply with a traffic citation, as set forth in Section 11.42.040(a) of this Code. This assessment shall be in addition to the reinstatement fee collected by the court pursuant to K.S.A. 8-2110(c) as amended, and as set forth in Section 11.42.040(c) of this Code, and shall be retained by the municipal court to be used to reimburse the court for expenses incurred in complying with the procedures required by state law. Such sum shall be assessed for each charge on which the person fails to make satisfaction, regardless of the disposition of the charge for which the citation was originally issued.

(l) In addition to any other court costs assessed pursuant to this section, the sum of $5.00 shall be assessed as court costs against each accused person who fails to comply with a traffic citation as set forth in Section 11.42.040(a) of this Code. This assessment shall be in addition to the reinstatement fee collected by the court pursuant to K.S.A. 8-2110(c) and amendments thereto, and as set forth in Section 11.42.040(c) of this Code. This fee shall be retained by the municipal court to be used to reimburse expenses for mailing notice as mandated by Section 11.42.040(b) of this Code, and K.S.A. 8-2110(b), and amendments thereto.

(m) A fee equal to the hourly rate billed to the City of Wichita by Sedgwick County for each hour incarcerated shall be assessed against a defendant in each case in which the defendant is incarcerated pursuant to an order of a municipal court judge.

(n) A processing fee in the amount of $10.00 will be assessed against a defendant in each case in which the defendant is booked into the Sedgwick County Adult Detention Facility pursuant to an arrest for a violation of any ordinances of the City of Wichita or pursuant to an order of a municipal court judge.

(o) Each person placed under supervision of a probation officer shall pay a probation fee of $150.00 for each probation, re-instatement or extension of probation for each case supervised, except that in any case in which there is a determination of indigency, the fee specified may be reduced or waived by the judge.

(p) For those misdemeanor offenses as set out in K.S.A. 21-2501 that require the individual be fingerprinted before final disposition of the case, a $20.00 fingerprint fee will be assessed as costs.

(q) Should the court order urinalysis testing, a fee of $20.00 per test shall be assessed to the defendant as costs.

(r) Should the court order house arrest, or electronic monitoring, in lieu of a period of incarceration or as a condition of probation or bond, and order that the fees for such electronic monitoring be paid by the city directly to the vendor of such technology on behalf of the defendant, the fees paid by the city for such monitoring shall be assessed against the defendant as a court cost owed to the City of Wichita for payment of the technology costs by the City.

(s) Should the court order a presentence or diversion investigation, a fee of $200.00 shall be assessed to the defendant as costs.

(t) The assessment and imposition of the court costs pursuant to this section shall be mandatory and the court shall not waive, remit, suspend, parole, or otherwise excuse the payment thereof.

(u) All court costs assessed and imposed by this section shall be paid no later than 60 days following imposition; provided that the court may extend the time for such payment to 120 days for good cause shown. In no case shall the court order the time for payment of court costs assessed pursuant to this section extended beyond 120 days from the date of initial imposition.

(v) All court costs collected pursuant to this section shall be accounted for by the clerk of the municipal court and deposited to the general fund of the

city and special trust fund with the exception of the $2.00 court technology fee, which shall be deposited into the Court Technology Project Account.

(w) All costs and fees shall be assessed as part of the judgment and shall be collected by the court clerk or court administrator of the Municipal Court.

(x) The costs and fees assessed pursuant to this section shall be in addition to the fine imposed.

SECTION 2. The original of Section 1.04.070 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 28th day of August, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED 05/29/2012

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTION 1.04.070 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO COSTS AND WITNESS FEES IN CASES BEFORE THE MUNICIPAL COURT AND REPEALING THE ORIGINAL OF SAID SECTION.

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

SECTION 1. Section 1.04.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

" Costs and witness fees in cases before the Municipal Court.

(a) The sum of $63.00 shall be assessed as court costs against each person charged with a violation of any of the ordinances of this city, unless found not guilty. The $63.00 in court costs shall include all costs required by state statute, as well as a $5.00 domestic violence program fee and a $6.00 public defender fee. However, this subsection shall not apply to persons who make payment to avoid prosecution of a charge that involves either a parking violation as provided in Section 11.92.040 of this Code or failure to use seat belts or child safety restraints.

(b) The sum of $2.00 shall be assessed as a court technology fee against each person charged with such a violation of any of the ordinances of this city, unless found not guilty. The court technology fee is to be used by the court to

help offset the cost to maintain, utilize and/or purchase technology enhancements and systems, including but not limited to computer systems, computer networks, computer hardware, computer software, imaging systems, electronic kiosks, electronic ticket writers, electronic monitoring systems, and docket management systems for the City of Wichita Municipal Court System. However, this subsection shall not apply to persons who make payment to avoid prosecution of a charge that involves either a parking violation as provided in Section 11.92.040 of this Code or failure to use seat belts or child safety restraint belts.

(c) For each person who is charged with a violation of any of the ordinances of this city and such matter is set for appearance, a charge of ten dollars will be assessed, unless found not guilty.

(d) For each continuance of any pre-trial appearance, trial, sentencing, disposition, or pre-sentence investigation granted at the request of the accused person, a cost of $10.00 shall be assessed against such accused person unless found not guilty.

(e) A cost of $10.00 shall be assessed for each extension of time to pay any fine, penalty or costs granted by the clerk of the municipal court at the request of an accused person.

(f) For each trial date attributable to the accused person for which subpoenas have been issued, and in addition to other costs provided for in this section, the sum of $25.00 shall be assessed as court costs against such accused person, unless found not guilty by the court.

(g) In addition to other costs provided for in this section, the sum of $10.00 shall be assessed as court costs against each accused person who is found guilty and files a notice of appeal in district court.

(h) In addition to other court costs assessed pursuant to this section, fees and mileage for subpoenaed witnesses shall be assessed at the rate of $10.00 per day and $0.40 per mile actually driven in excess of twenty miles.

(i) A cost of $50.00 shall be assessed against each person for whom a municipal court bench warrant or show cause/probation violation warrant is ordered by the court for either failure to appear or failure to comply.

(j) A cost of $50.00 shall be assessed against each person for whom a warrant is issued for failure to pay any fine, penalty or costs as provided in subsection (a) of this section.

(k) In addition to other court costs assessed pursuant to this section, the sum of $20.00 shall be assessed as court costs against each accused person who fails to comply with a traffic citation, as set forth in Section 11.42.040(a) of this Code. This assessment shall be in addition to the reinstatement fee collected by the court pursuant to K.S.A. 8-2110(c) as amended, and as set forth in Section 11.42.040(c) of this Code, and shall be retained by the municipal court to be used to reimburse the court for expenses incurred in complying with the procedures required by state law. Such sum shall be assessed for each charge on which the person fails to make satisfaction, regardless of the disposition of the charge for which the citation was originally issued.

(l) In addition to any other court costs assessed pursuant to this section, the sum of $5.00 shall be assessed as court costs against each accused person who fails to comply with a traffic citation as set forth in Section 11.42.040(a) of this Code. This assessment shall be in addition to the reinstatement fee collected by the court pursuant to K.S.A. 8-2110(c) and amendments thereto, and as set forth in Section 11.42.040(c) of this Code. This fee shall be retained by the municipal court to be used to reimburse expenses for mailing notice as mandated by Section 11.42.040(b) of this Code, and K.S.A. 8-2110(b), and amendments thereto.

(m) A fee ~~in the amount of $2.00 per hour~~ equal to the hourly rate billed to the City of Wichita by Sedgwick County for each hour incarcerated shall be assessed against a defendant in each case in which the defendant is incarcerated pursuant to an order of a municipal court judge.

(n) A processing fee in the amount of $10.00 will be assessed against a defendant in each case in which the defendant is booked into the Sedgwick County Adult Detention Facility pursuant to an arrest for a violation of any ordinances of the City of Wichita or pursuant to an order of a municipal court judge.

(o) Each person placed under supervision of a probation officer shall pay a probation fee of $150.00 for each probation, re-instatement or extension of probation for each case supervised, except that in any case in which there is a determination of indigency, the fee specified may be reduced or waived by the judge.

(p) For those misdemeanor offenses as set out in K.S.A. 21-2501 that require the individual be fingerprinted before final disposition of the case, a $20.00 fingerprint fee will be assessed as costs.

(q) Should the court order urinalysis testing, a fee of $20.00 per test shall be assessed to the defendant as costs.

(r) Should the court order house arrest, or electronic monitoring, in lieu of a period of incarceration or as a condition of probation or bond, and order that the fees for such electronic monitoring be paid by the city directly to the vendor of such technology on behalf of the defendant, the fees paid by the city for such monitoring shall be assessed against the defendant as a court cost owed to the City of Wichita for payment of the technology costs by the City.

(s) Should the court order a presentence or diversion investigation, a fee of $200.00 shall be assessed to the defendant as costs.

~~(r)~~ (t) The assessment and imposition of the court costs pursuant to this section shall be mandatory and the court shall not waive, remit, suspend, parole, or otherwise excuse the payment thereof.

~~(s)~~ (u) All court costs assessed and imposed by this section shall be paid no later than 60 days following imposition; provided that the court may extend the time for such payment to 120 days for good cause shown. In no case shall the court order the time for payment of court costs assessed pursuant to this section extended beyond 120 days from the date of initial imposition.

~~(t)~~ (v) All court costs collected pursuant to this section shall be accounted for by the clerk of the municipal court and deposited to the general fund of the

city and special trust fund with the exception of the $2.00 court technology fee, which shall be deposited into the Court Technology Project Account.

~~(u)~~ (w) All costs and fees shall be assessed as part of the judgment and shall be collected by the court clerk or court administrator of the Municipal Court.

~~(v)~~ (x) The costs and fees assessed pursuant to this section shall be in addition to the fine imposed.

SECTION 2. The original of Section 1.04.070 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 _____, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Douglas Avenue Bus Facility Improvements in Downtown (Districts I and VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: New Business

Recommendation: Accept the grant and approve the project.

Background: On March 20, 2012, the City Council approved the attached grant application to the Federal Transit Administration (FTA) Bus Livability Initiative to fund 80 percent of the cost of designing and constructing bus facility improvements along Douglas Avenue from Main Street to Washington Avenue. The FTA has awarded the City a grant in the amount of $1,080,000 to fund the bus facility improvements listed in the table below. The grant requires a 20 percent local match. The $270,000 required local match is budgeted in 2011-2020 Capital Improvement Program.

Project Budget
FTA Bus Livability Initiative

Description	Grant Amount	Local Match	Total
Eight bus shelters, approximately every two blocks	$348,000	$87,000	$435,000
Electronic information signage at bus shelters	$128,000	$32,000	$160,000
Benches, trash cans, landscaping, and streetscaping	$52,000	$13,000	$65,000
Relocate angled parking from Douglas to Emporia	$68,000	$17,000	$85,000
Sidewalk extensions (bulb-outs) at intersections	$297,000	$74,250	$371,250
ADA-accessible ramps at each street intersection	$21,800	$5,450	$27,250
ADA-accessible on-street parking	$25,600	$6,400	$32,000
Bicycle parking for 175 bicycles	$39,600	$9,900	$49,500
Signalized pedestrian crosswalk	$60,000	$15,000	$75,000
Pedestrian wayfinding signage	$40,000	$10,000	$50,000
Total	$1,080,000	$270,000	$1,350,000

Analysis: Project Downtown: The Master Plan for Wichita identifies the Douglas Avenue corridor as Wichita's "postcard avenue" that is primed for reinvestment and activity that will bring its remaining empty and underutilized sites to life. Project Downtown identifies two strategies as critical to realizing this reinvestment potential along Douglas: 1) make Douglas a distinctive walking corridor and 2) make Douglas Wichita's premiere transit street. To that end, the Douglas Avenue Corridor Transit Oriented Development Study developed design concepts and guidelines for future transit and streetscaping improvements to support economic development along the corridor. The top investment priorities of the Douglas TOD Study are bus shelters and transit-related improvements. The City Council endorsed the recommendations of the Douglas TOD Study on February 7, 2012.

Constructing the first phase of improvements has local, regional, and state-wide support. Letters of support for the project were received from Kansas Senate President Stephen R. Morris, Kansas House Speaker Michael R. O'Neal, Senator Carolyn McGinn, Representative Jo Ann Pottorff, and Representative Jim Ward. The project also is supported by the Kansas Department of Transportation, Wichita Area Metropolitan Planning Organization, Regional Economic Area Partnership, Wichita Transit Advisory Board, Wichita Downtown Development Corporation, Visioneering, Go Wichita, Kansas

Health Foundation, Kansas Leadership Center, and Westar Energy. Property owners and developers along Douglas Avenue also have provided letters of support for the project.

The project implementation schedule is outlined in the table below.

Project Schedule **FTA Bus Livability Initiative**	
Description	Estimated Completion Date
Grant award, acceptance, and project set-up	October 1, 2012
RFP for final design, consultant selection, and contract approval	January 1, 2013
Final design and construction drawing development	April 1, 2013
Construction bidding and contract letting	June 1, 2013
Fabrication, installation, and construction of bus facility improvements	November 1, 2013
Final punch list and project close-out	December 31, 2013

Financial Considerations: The Downtown Parking project in the 2011-20 Capital Improvement Program has $3.85 million in General Obligation Bonds budgeted in 2013. When the City Council approved the grant application, the required $270,000 local match for the $1,080,000 FTA grant award was identified to be funded from this source. Using a portion of the funding allocated for downtown parking to fund bus facilities will provide multimodal connections that support the "park-once" strategy for downtown as well as foster transit-oriented development by connecting existing and proposed parking facilities to downtown destinations via the Q-Line and other Wichita Transit routes.

Goal Impact: The Douglas Avenue bus facility improvements in downtown will help achieve the goals of Promoting Economic Vitality, Creating Vibrant Neighborhoods, and Ensuring Efficient Infrastructure.

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

Recommendation/Actions: It is recommended that the City Council accept the grant award, authorize initiation of the project, approve the bonding resolution, and authorize the necessary signatures.

Attachments: Grant Application
CIP Sheet
Bonding Resolution

OCA 150004 BID#37529-009 CID#76383

FIRST PUBLISHED IN THE WICHITA EAGLE ON AUGUST 24, 2012

RESOLUTION NO. 12-199

A RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE TO DESIGN AND CONSTRUCT DOUGLAS AVENUE BUS FACILITY IMPROVEMENTS IN DOWNTOWN.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That the City of Wichita finds it necessary to make certain related improvements as follows:

> Labor, material, and equipment necessary for design, construction, and related improvements for bus shelters, electronic information signage, benches, trash cans, landscaping, streetscaping improvements, pavement removal/replacement, traffic control signage, striping, sidewalks, curb, gutter, storm water improvements, wheelchair ramps, bicycle parking, traffic signalization, wayfinding signage, and other improvements as needed to supplement grants, awards, or donations.

SECTION 2: That 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 not to exceed $270,000, exclusive of the costs of interest on borrowed money.

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 21st day of August, 2012.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

Applicant and Proposal Profile

Bus and Bus Facilities Program: Livability Initiative

Section I. Applicant Information

Is this a resubmission due to an invalid/error message from FTA? ○ Yes ◉ No

Organization Legal Name: City of Wichita

FTA Recipient ID Number: 1824

Applicant Eligibility:
- ○ State
- ○ Indian Tribe
- ◉ Direct recipient of 5307 Urbanized Area Formula Program

Population served:
- ☒ Urbanized over 200,000
- ☐ Urbanized 50,000 - 200,000
- ☐ Rural

Description of services provided:

Wichita Transit operates 17 fixed routes that run 5:45 am - 7 pm and a demand-response paratransit service that runs 5:30 am - 6:15 pm. Of the 17 fixed routes, 2 run 30 minute service all day, 3 run 60 minute service all day, and the rest run 30 minute service during morning and afternoon peak and 60 minute service at midday. The Q-Line is operated as a downtown shuttle that is a fixed route running 6-10 pm Mon-Thur, 6pm-midnight Fri, and noon-midnight Sat. The Q-Line runs 10 minute service.

Description of areas served:

Wichita Transit's service area for the 17 fixed routes is in the City limits of Wichita. Wichita Transit operates a hub and spoke system out of a downtown Transit Center, so service in the core of the City is abundant and is less available on the edges of the City. Service is available to most areas in the City limits within a mile except on the far east and west edges of the City which are mainly newly developed areas. Paratransit service is curb to curb service anywhere within the City limits. The Q-line operates downtown and covers several blocks in a 20 minute loop. All of downtown is within a quarter of a mile of the Q-line and most is closer. All buses except three pass through the downtown area during the day making downtown the highest served area. Downtown also has a lower average income than the City as a whole as do a lot of the areas with more concentrated service. Coverage of the City is high over all but service is more abundant and frequent in areas where need warrants. The project are is .65 miles long. The project improvements are part of a larger project to revitalize Downtown Wichita into a more sustainable and accessible center city environment that fosters a better quality of life for residents through more mixed use development that will bring about more round-the-clock activity. In 2011, $60 million in development activity was completed in Downtown. There are currently $94 million worth of projects under construction in Downtown with an additional $25 million in new projects announced so far in 2012. Projects along the Douglas Avenue Transit Oriented Development Corridor include the Ambassador and Drury/Broadview Hotels, Kansas Health Foundation Leadership Center, renovation of the former Henry's department store as offices, and the Exchange Place, Zelman, Piano Bar, and Victoria Park residential projects. Wichita Transit has partnered with Sedgwick County, the Wichita Downtown Development Center and Go Wichita Convention & Visitors' Bureau to operate the downtown Q-line circulator and to provide passenger information including maps, window clings and a real time mobile application for smart phones. The Q-line is becoming increasingly important for those with an interest in Downtown Wichita and the region. The Q-line circulator is vital to the "Park Once" strategy in the downtown area and key improvements are necessary to keep the Q-line moving forward. Development of this first phase of the Douglas Avenue Transit Oriented Development Corridor project is a prime opportunity to build upon the momentum of these successes and mold Wichita's Downtown development for

current and future projects. It cannot be done without transit improvements, and Wichita cannot do these improvements without Federal Transit Administration funding.

Section II. Evaluation Criteria (This section repeats. per project)

Eligibility Information

Project Title:
(Include project title with one sentence descriptive subtitle of project)

Douglas Avenue Transit Oriented Development Corridor – bus facility, pedestrian, bicycle, accessibility, streetscaping, parking, and safety improvements along Douglas Avenue in Downtown Wichita

Project Executive Summary:

The objective of the Douglas Avenue Transit Oriented Development Corridor project is to make the corridor the city's premier transit street: a vibrant and distinctive corridor that supports surrounding land uses and helps tie different parts of Downtown together. The project enhances bus facilities for the Q-Line Downtown Circulator, which along with urban design and land use strategies will promote transit-oriented development along the corridor.

The City of Wichita has partnered with Sedgwick County, Wichita Downtown Development Corporation and Go Wichita Convention & Visitors' Bureau to operate the Q-Line, which is becoming increasingly important to the success of Downtown and the region. The Q-Line is vital to the "Park Once" strategy in Downtown and key improvements are necessary to keep the Q-Line moving forward.

Funding from the Bus Livability Initiative is sought for bus facility improvements along a 0.67 mile stretch of Douglas from Main to Washington. Improvements proposed for grant funding are:

- Eight bus shelters spaced approximately every two blocks along the corridor.
- Electronic information signage at each bus shelter to provide real-time bus arrival and departure information for both regular bus routes and the Q-Line downtown circulator route.
- Benches, trash cans, landscaping, and other streetscaping amenities at each bus shelter.
- Removal of angled-parking along Douglas between Emporia and St. Francis to improve traffic flow and on-time bus service and the construction of additional angled-parking along Emporia one block north and south of Douglas to replace the lost spaces.
- Sidewalk extensions (bulb-outs) at each street intersection along the corridor to provide an expanded sidewalk area for the installation of bus shelters and to shorten the pedestrian crossing distance for Douglas Avenue and the side streets to improve safety.
- New ADA-accessible wheelchair ramps at each street intersection along the corridor.
- An ADA-accessible, on-street parking space located at each bus shelter.
- Bicycle parking for 175 bicycles along the corridor.
- Signalized pedestrian crosswalk between Mead and Rock Island.
- Pedestrian wayfinding signage along the corridor.

These improvements are part of Project Downtown, a master plan to revitalize Downtown as more sustainable and accessible city center that fosters a better quality of life for the region. In 2011, $60 million in development activity was completed in Downtown. There are currently $94 million in projects under construction with an additional $25 million in projects announced so far in 2012. Mixed-use projects along the Douglas corridor include the hotels, apartments, retail, office, and a state-wide leadership center, most occurring as historic renovation and adaptive reuse of vacant buildings. Project Downtown identifies another $300+ million in mixed-use projects that will be supported by the proposed bus facility improvements for the Q-Line.

Project Type:

- ☐ Purchase of replacement or rehabilitation of buses and vans
- ☐ Construction, replacement or the modernization of bus maintenance, service, or administrative facilities
- ☐ Purchases of vehicles for service expansion
- ☒ Bus related equipment (including ITS, fare equipment, communication devices)
- ☐ Development and implementation of transit asset management system
- ☐ Construction, replacement, or the modernization of intermodal facility
- ☒ Pedestrian access improvements
- ☒ Bicycle infrastructure
- ☒ Transportation corridor improvements
- ☐ Other

If Other, Specify:

Linkage To Livability Principles

Linkage To Livability Principles:
*** Note : Refer to the Livability Principles in the Project Evaluation Criteria section of the Notice of Funding Availability (NOFA). Applicant should address all elements listed as part of the evaluation criteria in the Notice Of Funding Availability (NOFA).

The Douglas Avenue Transit Oriented Development Corridor project is integral to a more sustainable and accessible city center that fosters a better quality of life for the region. The project provides multimodal connectivity among key regional attractions such as Old Town, an award-winning mixed-use neighborhood; Union Station, a key redevelopment site; Commerce Street Arts District, Intrust Bank Arena; Century II Performing Arts and Convention Center; WaterWalk, a mixed-used redevelopment district; Museums on the River District; Government Center; the office core of Downtown; and emerging areas of growth and revitalization. Douglas provides important east-west connectivity across central Wichita and serves as the primary transit route for the Q-Line and other bus lines that converge on the Wichita Transit Center.

1. User Mobility: User mobility will be significantly enhanced through the creation of more convenient transportation options for travelers by integrating a system of bus shelters equipped with electronic signage that provide primary route and intersecting route information, wayfinding signage to area facilities and attractions, and bike racks to assist with bicycle/transit connectivity.

2. Connectivity: The bus lines along Douglas connect many residential areas to Downtown businesses, government services, and civic and cultural attractions. Connections are provided to the Wichita Transit Center, which serves local bus lines; provides access to taxi-service and connections to Wichita Mid-Continent Airport; and soon will provide inter-city bus service. As Wichita Transit expands its service, Douglas will be an integral route on a grid system that will provide greater cross-city access and increased service frequency.

3. Transportation Choices: Traffic congestion in Downtown will improve as busses become a more attractive and easier to use transportation alternative. This project will make it easier and safer for pedestrians, bicyclists, and bus riders to travel in and through Downtown, while still providing needed travel options by automobile. This project will enhance the "Park Once" initiative to reduce intra-downtown automobile trips.

4. Accessibility: This project will create better transportation alternatives, especially for economically disadvantaged populations, non-drivers, senior citizens, and persons with disabilities, including providing ADA accessible pedestrian facilities and ADA parking next to bus shelters. Those living near the corridor are four times more likely to use public transit compared to Wichita as a whole, with nearly a quarter of the households having no access to an automobile. Their median household income is only 58% of the median household income for Wichita, and they have double the likelihood of being

below poverty level.

5. Community Participation: Civic leaders and a wide range of stakeholders worked over a two-year period to create Project Downtown, a master plan for the revitalization of Downtown. Project Downtown identifies Douglas as Wichita's premiere transit street that accommodates a variety of modes of travel.

An initiative of Project Downtown, the Douglas Avenue Corridor Transit Oriented Development Study undertook a comprehensive, transparent outreach effort to design bus facility improvements along Douglas. Community organizations, elected officials, residents, property and business owners, and the general public provided input into the design. The Wichita City Council, Metropolitan Area Planning Commission, Wichita Transit Advisory Board, Historic Preservation Board, Wichita Downtown Development Corporation and Wichita Design Council all endorsed the design.

The greater Wichita region holds HUD Preferred Sustainability Status through the Regional Economic Area Partnership of South Central Kansas, as indicated in a letter of support attached to this application.

Environmental Sustainability

Environmental Sustainability:
*** Note : Applicant should address all elements listed as part of the evaluation criteria in the Notice Of Funding Availability (NOFA).

The City of Wichita has a long and successful track record regarding innovative approaches to environmental sustainability, especially in Downtown. The Gilbert-Mosley groundwater pollution site, a potential Superfund Site affecting more than 8,000 properties in and around Downtown, originated from a long history of industrial uses in the area. The City of Wichita took financial responsibility for the cleanup and initiated an environmental program that uses tax increment financing (TIF) to pay the costs. At the time, this had never been done in the United States before, and this creative use of TIF has since become a model for other communities nationwide to use—both a notable first and a trend-setter. The Gilbert-Mosley clean-up efforts have won 17 local, state and national awards including the 1992 Innovations in American Governments Award by the Government Innovators Network at the Harvard University Kennedy School of Government.

The first result of this innovative approach to environmental sustainability was the redevelopment of a warehouse district with a significantly declining tax base and more than 70% vacancies as the Old Town District. The Old Town District is a mixed-use neighborhood with residential, office, retail, restaurant and entertainment developed primarily through historic renovation that uses a shared-use parking district and is served by the Q-Line Downtown Circulator. The success of the Old Town District and the manner in which it was developed garnered it both the National Award for Smart Growth Achievement by the Environmental Protection Agency in 2006 and the Great Places in America Award by the American Planning Association in 2008.

The City of Wichita is looking to build upon these successes by developing a transit-oriented development corridor along Douglas Avenue in Downtown. In addition to reducing reliance on automobile travel and improving access to public transportation and the bicycle and pedestrian modes of travel, development of the Douglas Avenue Transit Oriented Development Corridor project will foster redevelopment of several brownfield sites. Four of these sites are immediately adjacent to the corridor, and four more brownfield sites are within two blocks of the corridor. Most of the brownfield sites are also key catalyst sites of Project Downtown, which are publicly-owned properties in prime locations with major opportunities for spurring further redevelopment in Downtown.

Transit-oriented development along Douglas is integral to achieving full economic use of these brownfield sites. It will create greater connectivity among the various districts and attractions in Downtown through a recognizable and easy to use public transportation corridor that enhances safety and accessibility, thus contributing to a vibrant and more sustainable Downtown and region. The corridor will continue to develop with the region's most dense employment and housing developments with public transportation as the key to user mobility, thus reducing the region's reliance on the personal automobile and providing corresponding greenhouse gas reductions.

Lighting of bus shelters will be accomplished through the use of solar panels, and electronic signage options will be investigated for solar power options. Large street trees will protect pedestrians and transit users from sun, wind and other weather elements. Larger tree wells will be utilized for landscaping and to reduce storm water runoff and enhance storm water quality within the corridor.

Leveraging Public and Private Investments

Leveraging Public and Private Investments:
*** Note : Applicant should address all elements listed as part of the evaluation criteria in the Notice Of Funding Availability (NOFA).

The Douglas Avenue Transit Oriented Development Corridor project is an initiative of Project Downtown, a master plan to revitalize Downtown as more sustainable and accessible city center that fosters a better quality of life for the region. A link to the Project Downtown master plan, a $500,000 plan funded by the City of Wichita, Wichita Downtown Development Corporation, and private-sector businesses, is provided in an attachment to this application.

In 2011, $60 million in development activity was completed in Downtown. There are currently $94 million in projects under construction with an additional $25 million in projects announced so far in 2012. These current investments indicate a strong level of commitment by both the public and private sectors to the revitalization of Downtown. The proposed bus facility improvements to create a transit-oriented development district along Douglas will support and foster an additional $300+ million in mixed-use projects identified in the Project Downtown master plan.

The objective of the project is to make the corridor the city's premier transit street: a vibrant and distinctive corridor that supports surrounding land uses and helps tie different parts of Downtown together. The proposed project enhances bus facilities for the Q-Line Downtown Circulator. The City of Wichita has partnered with Sedgwick County, Wichita Downtown Development Corporation and Go Wichita Convention & Visitors' Bureau to operate the Q-Line, which is becoming increasingly important to the success of Downtown and the region. The Q-Line is vital to the "Park Once" strategy in Downtown and key improvements are necessary to keep the Q-Line moving forward. To that end, the City of Wichita will participate in the project with a twenty percent local match using funds allocated for the construction of new parking facilities to instead create more multi-modal connections and reduce the overall need for parking in Downtown. A link to the Downtown Parking and Mobility Management Plan, a $75,000 plan funded jointly by the City of Wichita and Sedgwick County that outlines the "Park Once" and other transportation demand management strategies, is provided in an attachment to this application.

The conceptual design for the proposed bus facilities along with transit-oriented development land use strategies for the corridor was recently developed in the Douglas Avenue Corridor Transit Oriented Development Study. A link to the $125,000 Douglas TOD Study is provided in an attachment to this application. FTA planning funds from section 5307 were used to pay for the Douglas TOD Study. WAMPO, the regional Metropolitan Planning Organization, paid for the 20% matching portion to the FTA funds. WAMPO's Policy Body endorsed the study and recommendations within the study, and has endorsed this application. This project will help achieve the goals of the Metropolitan Transportation Plan 2035 of a safe, efficient, accessible, and affordable transportation system.

An attachment to this application includes 20 letters of support for the grant proposal. In addition to the project sponsors described above, letters of support have been received from State of Kansas elected officials (Senate President Morris, House Speaker O'Neal Senator McGinn, and Representatives Pottorff and Ward), Kansas Department of Transportation, Wichita Transit Advisory Board, Regional Economic Area Partnership, Visioneering Wichita, Kansas Health Foundation, Kansas Leadership Center, and six businesses along the corridor.

The Wichita Downtown Development Corporation is planning to sponsor a demonstration project to raise awareness in the community, demonstrate the importance of multi-modal connections, and validate or better qualify the conceptual designs and help guide the final design.

Demonstration of Need

Description of asset to be replaced or rehabilitated in age or mileage (if applicable):

NA

Demonstration of Need:
*** Note : Applicant should address all elements listed as part of the evaluation criteria in the Notice Of Funding Availability (NOFA).

Wichita Transit currently has no bus shelters downtown along Douglas Avenue and very few amenities for a Q-Line service (downtown shuttle) that is expected to grow with the recent and continuing development in downtown Wichita. Wichita

Transit is unable to implement any capital projects with formula apportionments other than bus purchases and rebuilds. With an aging fleet, all available formula funds will go towards rebuilding buses and the purchase of new buses. This project represents a one-time capital need for designated transit stops along the busiest transit corridor in the City. Transit will maintain the improvements in partnership with other City Departments and Downtown organizations, all using local funds. Transit stops along Douglas Avenue will increase performance of service delivery by designating safe stops and coordinating with other modes of transportation. Currently riders can flag down a bus at any corner. In downtown, a more orderly system of boarding and de-boarding buses is needed because stop lights occur at every corner, on-street parking is much more common as well as use of other modes (biking, walking). The bulb out sidewalks will provide efficiency by bringing the sidewalk the rider uses to the bus and not having the barrier of parked cars which could result in missed passengers just because the chance of them not being seen by the driver is higher due to the barrier. The designation of stops also stands to increase performance by limiting the number of stops buses will have to make compared to the current flag and stop system. Designated stops are not only preferable to drivers but help passengers feel a sense of reliability as they will be seen better by the drivers. The stops will also help passengers understand the system because of the planned informational signage which will be of a higher quality and quantity than what is available now. The stops along Douglas Avenue can offer a model for how information should be displayed at all stops in the system. Coordinating with other modes is very important for transit in Wichita. Many passengers begin their trip by walking or biking to bus stops. Amenities such at bike racks and necessities such as ADA compliant ramps and sidewalks are vital in downtown for transit riders. The bulb-outs not only provide transit with designated stops but allow for a shorter crossing distance when crossing the street.

Planning and Local / Region Prioritization

Is this project in STIP or TIP? ○ Yes ◉ No

Planning and Local Prioritization Justification:

*** Note : Applicant should address all elements listed as part of the evaluation criteria in the Notice Of Funding Availability (NOFA).

1. Consistency with Transit Priorities in the Long-Range Plan: The project is consistent with the transit priorities identified in the Metropolitan Transportation Plan 2035 developed by the Wichita Area Metropolitan Planning Organization. The region's long range transportation plan, the Metropolitan Transportation Plan (MTP) 2035, sets forth four goals for the transportation system. These goals are safety, efficiency, affordability, and accessibility. The proposed project will help to achieve all four of the goals of the MTP 2035. The project will improve safety for pedestrians and bicyclists by reducing crossing distances at intersection and providing a new signalized crossing. The project will maintain efficiency along Douglas by providing sufficient travel lanes for personal automobiles and buses. Transit efficiency will likely increase due to improved loading and unloading areas. The project will achieve a more affordable system by making transit, bicycle, and pedestrian travel more viable and convenient. The project will improve accessibility by providing better intermodal connections and improved ADA facilities.

The MTP 2035 also sets forth short-term and long-term objectives for the transportation system. The project will aid in achieving most of the four short-term and seven long-term objectives. Maintaining air quality attainment status, increasing multimodal options and access, and decreasing transportation related crashes are three of the four short-term objectives. The project will help the region to achieve these objectives by reducing on-road mobile source emissions by decreasing personal automobile trips along the corridor and the greater downtown area; improving alternative transportation options and access by providing a true transit corridor and improving amenities for transit, bicycles, and pedestrians; and improving pedestrian safety.

Included in the MTP 2035 are projects and strategies to achieve the goals and objectives. The transit projects included in the MTP 2035 are to provide downtown bus circulation and provide for a regional grid system using Douglas as a major east/west transit corridor. Strategies in the MTP 2035 related to the project include such ideas as moving to the grid system, supporting land use policies that support TODs and complete streets, and promoting efficient transit and non-motorized connections.

The long-term transit priorities of the MTP 2035 are to move to a regional grid system, with Douglas serving as a major east/west transit corridor for regional and intercity travel. Connecting population centers to employment centers is key to providing an efficient transportation system. The project directly serves downtown Wichita, the region's major employment center that has a growing population base. Douglas serves as a major route for the region's population to access downtown Wichita via automobiles as well as transit.

2. MPO Endorsement: WAMPO, the regional Metropolitan Planning Organization, endorsed the project on March 13, 2012, as indicated by a letter attached to this application.

3. Local Support: The Wichita City Council endorsed the project and agreed to provide a local match of $270,000 on March 20, 2012.

4. Consistency with Service Needs: Shelters have been installed from Washington to Hillside just east of the project and several other improvements are in the process of implementation for the Douglas Design District just east of the project area. Also, bicycle and parking improvements have been implemented in Delano just west of the project. The project will tie these amenities together and allow easy bicycle access to routes from Seneca to Hillside. Also, the project will have transit connection to the Wichita Transit Center which will have intermodal service with over the road inter-city bus service in the coming twelve months.

Readiness Justification

Project Can Be Implemented Within:

○ 3 Months ○ 6 Months ◉ 12 Months ○ 18 Months

Project Can Be Obligated Within:

○ 3 Months ◉ 6 Months ○ 12 Months ○ 18 Months

Project Readiness Justification:

*** Note : Applicant should address all elements listed as part of the evaluation criteria in the Notice Of Funding Availability (NOFA).

1. Initiating Environmental Work: Projects involving installation of small passenger shelters, and traffic signals, where no substantial land acquisition or traffic disruption will occur, as well as construction of bicycle and pedestrian facilities and alterations to facilities in order to make them accessible for elderly and handicapped persons are generally considered a "categorical exclusion" by Federal departments and agencies. It is the opinion of the City of Wichita that the actions involved with the development of the project do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement will be required for the development of the project. Additionally, the project is likely to be a Categorical Exclusion as no new right-of-way is being acquired.

Additionally, it is the opinion of the City of Wichita that the proposed grant funding for the project likely will be considered an "undertaking" as defined the National Historic Preservation Act, thus triggering a Section 106 Review. However, the entire project area has already had historical surveys and all historic and potentially historic resources within the project area are known and have already been documented, thus significantly reducing the time typically required for a Section 106 Review and not delaying the project. Additionally, it is the opinion of the City of Wichita that a Section 106 Review will find that the development of project will not impact the existing or potentially historic resources within the project area.

2. Implementation Plan Readiness: Initial design of the project has been completed with the Douglas Avenue Corridor Transit Oriented Development Study. A link to the Douglas TOD Study is provided in an attachment to this application. Final design can be completed quickly and construction can begin within months of final grant award.

3. TIP/STIP Amendment: If the grant is awarded in July, the TIP can be amended in August and the STIP can be amended in August or September. The TIP can be amended upon request. WAMPO, the regional Metropolitan Planning Organization, endorsed the project on March 13, 2012, as indicated by a letter attached to this application.

4. Local Share: The local share is available as part of the City of Wichita Capital Improvement Program allocation for the construction of Downtown parking facilities. The Wichita City Council endorsed the project and agreed to provide a local match of $270,000 on March 20, 2012.

5. Project Obligation and Implementation: As shown by the timeline, the project can be obligated and implemented within a quick time frame.

- 0-90 days (3 months) – Grant award, acceptance, and project set-up
- 90-180 days (3 months) – RFP for final design and consultant selection and contract approval
- 180-270 days (3 months) – Final design and construction drawings

• 270-330 days (2 months) – Construction bidding and letting
• 330-480 days (5 months) – Fabrication, installation, and construction of bus facility improvements
• 480-540 days (2 months) – Final punch list and project close-out

6. Ability to Carry Out the Project: Wichita and Wichita Transit have carried out similar projects in the past including the Downtown Transit Center, Nomar with its transit and pedestrian amenities, the bus shelter and bike rack program and many street projects of similar and much larger scale.

7. Coordination of Transportation Modes and Partners: Wichita and Wichita Transit routinely coordinate activities with WAMPO, KDOT, FHWA and FTA.

Technical, Legal and Financial Capacity

Description of Technical Capacity to Implement Project:
*** Note : Applicant should address all elements listed as part of the evaluation criteria in the Notice Of Funding Availability (NOFA).

Wichita Transit will administer the grant through TEAM and has the capacity to meet grants requirements such as reporting through the TEAM process. There are no outstanding technical issues with the grantee that would make this a high-risk project. The grantee is in a fundable status.

Description of Legal Capacity to Implement Project:
*** Note : Applicant should address all elements listed as part of the evaluation criteria in the Notice Of Funding Availability (NOFA).

There are no outstanding legal issues with the grantee. Certifications and Assurances have been signed and submitted.

Description of Financial Capacity to Implement Project:
*** Note : Applicant should address all elements listed as part of the evaluation criteria in the Notice Of Funding Availability (NOFA).

There are no financial issues that would make this a high-risk project. As a department of the City of Wichita, Wichita Transit uses the City's Finance Department to administer finances. The City of Wichita will provide the local match. Finance Department officials have ECHO accounts in order to administer drawdowns of the grant.

Are there any outstanding Technical, Legal, or Financial issues with respect to FTA Funding?

○ Yes ◉ No

If Yes, explain:

Project Budget

Description	QTY	Federal Amount	Local Match	Total Cost
Bus Shelters in Extended Sidewalk Areas	8	43,500	10,875	435,000
Electronic Information Signage at Shelters	8	16,000	4,000	160,000
Benches, Trash Cans, Landscaping at Shelters	8	6,500	1,625	65,000
Relocation of Angled Parking	1	68,000	17,000	85,000
Sidewalk Extensions (bulbouts) at Intersections	22	13,500	3,375	371,250
ADA Accessible Wheelchair Ramps	30	726.67	181.67	27,250.2
ADA Accessible On-Street Parking	8	3,200	800	32,000
Bicycle Racks	88	450	112.5	49,500
Signalized Pedestrian Crosswalk	1	60,000	15,000	75,000
Pedestrian Wayfinding Signage	1	40,000	10,000	50,000
		1,080,000.1	270,000.1	1,350,000.2

Project Scalability

Is the Project Scalable?

(•) Yes ( ) No

If Yes, specify minimum funds necessary: 940,400

Provide explanation of scalability with specific references to the budget line items above:

The following components of the project could be scaled back while still accomplishing the majority of the benefits of the project:

Bicycle Racks - $39,600 Federal Share + $9,900 Local Share = $49,500
Signalized Pedestrian Crosswalk - $60,000 Federal Share + $15,000 Local Share = $75,000
Pedestrian Wayfinding Signage - $40,000 Federal Share + $10,000 Local Share = $50,000

Matching Funds Information

Matching Funds Amount: 270,000.1

Source of Matching Funds:

City of Wichita Capital Improvement Program allocation for the construction of Downtown parking facilities

Supporting Documentation of Local Match:

On March 20, 2012, the Wichita City Council voted unanimously to provide a local match of $270,000. The budget above shows a matching funds requirement of $270,000.10 due to rounding limitations of the application form in the ADA Accessible Wheelchair Ramps line item, for which a total of $27,250 is requested.

Previous Discretionary Funds

Did the project receive prior year funding from FTA Discretionary Programs?

○ Yes ◉ No

Submission to other funding opportunities

Has this project been submitted to other Fiscal Year 2012 Discretionary Programs?

○ Yes

- ☐ State of Good Repair
- ☐ Clean Fuels

◉ No

Project Timeline

Timeline Item Description	Timeline Item Date
Grant award, acceptance, and project set-up	10/1/2012
RFP for final design and consultant selection and contract approval	1/1/2013
Final design and construction drawings	4/1/2013
Construction bidding and letting	6/1/2013
Fabrication, installation, and construction of bus facility improvements	11/1/2013
Final punch list and project close-out	12/31/2013

Congressional Districts (Place of Performance)

Congressional District	Congressional Representative
KS-004	Pompeo, Mike

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	Engineering	08/06/12	Douglas Avenue Bus Facility Improvements in Downtown

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
		2013	8/21/2012

9. Estimated Start Date	10. Estimated Completion Date	11. Project Revised
8/21/2012	12/31/2012	

12. Project Cost Estimate

ITEM	GO	SA	OTHER	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Culverts				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
Other	$270,000		$1,080,000	$1,350,000
Totals	$270,000		$1,080,000	$1,350,000
Total CIP Amount Budgeted	$270,000		$1,080,000	$1,350,000
Total Prelim. Estimate	$270,000		$1,080,000	$1,350,000

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

Agenda Item No. IV-7.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council Members

SUBJECT: Golf Course Improvements (Districts I, III, IV, V, VI)

INITIATED BY: Department of Park and Recreation

AGENDA: New Business

Recommendations: Approve the project.

Background: The City currently operates five municipal golf courses. In July 2011, the Proposed Budget identified the Golf Fund as being in a constrained financial condition due to excess of capacity. The Board of Park Commissioners was tasked with reviewing the issue and developing a plan to create a sustainable golf enterprise fund. The Board of Park Commissioners presented recommendations to the City Council in a workshop on December 13, 2011. At the request of the City Council, the Park Board has presented its recommendations to the six District Advisory Boards.

At the February 14, 2012 City Council meeting, the Board of Park Commissioners recommended five steps designed to reduce Golf debt, fund proposed capital improvements, and enhance the future sustainability of the Golf Fund. One of the Park Board recommendations was to reduce the Golf Capital Improvement Plan (CIP) from $6.2 million to $1.1 million, and use General Obligation (GO) at-large bonds to fund the improvements. These GO at-large bonds were offset by the recommended decrease of $1.3 million in the 2018 Planeview Park Improvement project. This plan was approved by the City Council on March 20, 2012.

Analysis: Based on March 20, 2012 City Council action, the Park and Recreation Department is requesting initiation of CIP funding. Planned capital improvements include roof and siding replacement at LW Clapp Golf Course club house, Americans with Disability Act (ADA) improvements and clubhouse upgrades to restrooms and patio/cart staging areas at Tex Consolver Golf Course, parking lot resurfacing and striping at all five golf courses, ADA improvements at LW Clapp Golf Course and MacDonald Golf Course, cart bridge maintenance at LW Clapp, MacDonald, and Auburn Hills, and clubhouse restoration work at Sim and Auburn Hills.

Financial Considerations: The Golf Capital Improvement Plan of $1.1 million will be funded with GO at large debt. The impact of this additional at-large GO project is offset by reducing $1.3 million from the $2.6 million budgeted in the Adopted CIP for Planeview Park improvements in 2018-2019.

Goal Impact: This project addresses the Quality of Life goal by improving infrastructure and access.

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

Recommendation/Actions: It is recommended that the City Council approve the project, approve the Resolution and authorize all necessary signatures.

Attachments: Bonding Resolution

First Published in the Wichita Eagle on August 24, 2012

RESOLUTION NO. 12-200

A RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE FOR IMPROVEMENTS AND UPGRADES AT ALL FIVE MUNICIPAL GOLF COURSES.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That the City of Wichita finds it necessary to make certain related improvements as follows:

Labor, Material, and Equipment necessary for improvements and upgrades at the five Municipal Golf Courses that include roof and siding replacement at L.W. Clapp Golf Course, ADA improvements and clubhouse upgrades to restrooms and patio/cart staging areas at Tex Consolver Golf Course, parking lot resurfacing and striping at all five golf courses, ADA improvements at L.W. Clapp Golf Course and MacDonald Golf Course, cart bridge maintenance at L.W. Clapp, MacDonald and Auburn Hills and clubhouse restoration work at Sim and Auburn Hills Golf Course.

SECTION 2: That 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 not to exceed $1,100,000 exclusive of the costs of interest on borrowed money.

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 21st day of August, 2012.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Repair or Removal of Dangerous & Unsafe Structure
~~(District I)~~ ***(District II)***

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendations: Adopt the resolution.

Background: On July 10, 2012, a report was submitted with respect to the dangerous and unsafe conditions on the property below. The Council adopted a resolution providing for a public hearing to be held on the condemnation action at 9:30 a.m. or soon thereafter, on August 21, 2012.

Analysis: On June 4, 2012, the Board of Code Standards and Appeals (BCSA) held a hearing on the residential property listed below

Property Address	Council District
a. 8000 E. Tipperary	II

Detailed information/analysis concerning this property is included in the attachments.

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

Goal Impact: This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods. Dangerous building condemnation actions, including demolitions, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: The resolution and notice of hearing was reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the resolution declaring the building to be a dangerous and unsafe structure, and accept the BCSA recommended action to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structure. Any extensions of time granted to repair any structure would be contingent on the following: (1) All taxes have been paid to date as of August 21, 2012; (2) the structure has been secured as of August 21, 2012, and will continue to be kept secured; and (3) the premise is mowed and free of debris as of August 21, 2012, and will be so maintained during renovation.

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

Attachments: Memorandums to Council, case summary, and resolution.

August 21, 2012
City Council Hearing
Removal of Dangerous Structures Case Summary

Address	Cncl. Dist.	Hsng. Case Age	Cndm. Init. Date	BCSA Hearing Date & Recommendation	Owner/ Rep. At BCSA ?	Open or Secure	Premise Cond. Status	Property Tax Status	Special Assessments	Pending Incurred Cost
8000 E. Tipperary	I	1 yr	03/12/12	05/07/12 - Deferr 30 days 06/04/12 - 10/10	No No	Unsecure with broken windows	Bulky waste and fire debris	Current	None	None

DATE: August 7, 2012

CDM SUMMARY

COUNCIL DISTRICT # II

ADDRESS: 8000 E TIPPERARY

LEGAL DESCRIPTION: LOT 10, BLOCK 1, FIRST ADDITION TO VICKRIDGE, SEDGWICK COUNTY, KANSAS, EXCEPT BEGINNING AT THE SOUTHEAST CORNER OF LOT, THENCE WEST 15.5 FEET; THENCE NORTH 150 FEET TO A POINT ON THE REAR LINE OF SAID LOT; THENCE EAST 5.5 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH TO THE PLACE OF BEGINNING

DESCRIPTION OF STRUCTURE: A two-story frame dwelling about 54 x 74 feet in size. Vacant and open, this structure has been damaged by fire. It has fire-damaged brick veneer; fire-damaged and missing wood shingles; and fire-damaged structural members.

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

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: August 7, 2012

BCSA GROUP # 1

ADDRESS: 8000 E TIPPERARY

ACTIVE FIELD FILE STARTED: August 9, 2011

NOTICE(S) ISSUED: Since August 9, 2011, a notice of violation has been issued. In September 2011, an emergency board-up case was initiated resulting in owner compliance. In May 2012, a tall grass and weeds case was initiated resulting in owner compliance. No violations have been cleared.

PRE-CONDEMNATION LETTER: January 13, 2012

TAX INFORMATION: Current

COST ASSESSMENTS/DATES: None

PREMISE CONDITIONS: Bulky waste and fire debris.

VACANT NEGLECTED BUILDING REPORT: None

NUISANCE ABATEMENT REPORT: None

POLICE REPORT: In the past five years there have been two reported police incidents at this location including found adult male and occupational accident fall.

FORMAL CONDEMNATION ACTION INITIATED: March 20, 2012

RECENT DEVELOPMENTS: No repairs have been made and the structure is unsecure with broken windows. Work is in progress removing fire debris. It should be noted that a building permit was issued on June 29, 2012.

HISTORIC PRESERVATION REPORT: No impact

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the May 7, 2012, BCSA hearing there was no party attending the meeting on behalf of this property.

Board Member Wilhite made a motion to submit the property to the City Council for condemnation, with ten days to initiate the wrecking of the structure and ten days to complete the removal. Board Member Willenberg seconded the motion.

Board Member Crotts asked whether Central Inspection had made contact with the property owner. Ms. Legge replied that all notices were returned to Central Inspection as "unclaimed." Board Member Crotts said he felt that the potential rehabilitation of the property warranted another attempt at making contact with the owner. He requested that the Board consider deferring any action for another thirty days. Board Member Wilhite withdrew his original motion for condemnation. Board Member Crotts made a motion to allow until the June meeting for the owner to be contacted. Board Member Wilhite seconded the motion. The motion passed.

At the June 4, 2012, BCSA hearing there was no party attending the meeting on behalf of this property.

Approximately 54 x 74 feet in size, this two-story frame dwelling is vacant and open. This structure has been damaged by fire. It has fire-damaged brick veneer; fire-damaged and missing wood shingles; and the attached garage has been fire damaged.

At the May 7, 2012, hearing, this property was presented to the board for the first time. At that hearing, the Board deferred action on the property to allow interested parties to attempt to make contact with the owner in hopes of contracting to buy the property and rehabilitate it.

The taxes are current, and there are no special assessments against the property. There is bulky waste and fire debris on the premise. There have been no repairs, and the structure is not secured. There has been no contact from the owner or potential buyer.

Board Member Harder made a motion to refer the property to the City Council for formal condemnation, with ten days to begin demolition and ten days to complete the removal of the structure. Board Member Webb seconded the motion. The motion passed.

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

Agenda Item No. IV-9.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Ordinance providing for the Fluoridation of City's Drinking Water or Calling for Election regarding passage of proposed Fluoridation Ordinance

INITIATED BY: City Clerk

AGENDA: New Business

Recommendation: Council approve the proposed ordinance requiring fluoridation of the City's water supply or call for an election regarding the passage of the proposed ordinance.

Background: K.S.A. 12-3013 provides that a proposed ordinance may be submitted to the governing body of a municipality by a petition signed by twenty five percent of the electors who voted in the last city election. The total ballots cast in the April 2011 City General Election were 25,273. Twenty five percent of the total votes cast is 6,319 votes.

A petition calling for the passage of a proposed ordinance fluoridating the city's water supply was filed with the City Clerk on August 3, 2012. The Sedgwick County Election Office has verified that the petition contains the necessary signatures of twenty five percent of the qualified electors to require the City Council to consider the proposed ordinance. (Exhibit A)

Analysis: Based on the provisions of K.S.A. 12-3013 and the petition received, the City Council has two options. The City Council may approve the ordinance as written, or it may pass an ordinance calling for the election and fixing the date of the election. Per the state statute, the election must take place within ninety days of the City Council calling for the election. The deadline for an issue to be placed on the general election ballot in November, is September 11, 2012.

Financial Considerations: The City will incur publication costs associated with required notifications of an election. If passed, annual costs to fluoridate the city's water supply would be incurred by the City. Cost estimates obtained by the City in March of 2012 that there would be capital costs of $2,346,000 to construct the necessary building improvements and equipment at the water treatment plant to add fluoride. In addition, operations and maintenance costs would total $570,600 per year, which would pay for the chemicals, energy, personnel and other expenses necessary to fluoridate the water.

Goal Impact: The election will allow this health issue to be decided by the citizens of Wichita.

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

Recommendations/Actions: Approve the proposed ordinance or authorize an election to determine if the proposed ordinance should be adopted.

Attachments: Certification of Election Commissioner, Proposed Fluoridation Ordinance and Proposed

Election Ordinance.

ORDINANCE NO. _____

AN ORDINANCE, PURSUANT TO K.S.A. 12-3013, SUBMITTING THE QUESTION OF PASSAGE OF SECTION 17.12.340 OF THE CODE OF THE CITY OF WICHITA TO THE VOTERS OF THE CITY OF WICHITA, ESTABLISHING THE BALLOT QUESTION AND CALLING FOR A NON-PARTISAN SPECIAL ELECTION.

WHEREAS, on August 3, 2012, a petition, pursuant to K.S.A. 12-3013 was submitted to the City Clerk proposing an ordinance creating Section 17.12.340 of the Code of the City of Wichita which would require the fluoridation of the City's public drinking water;

WHEREAS, on August 16, 2012, the Sedgwick County Elections Office verified that a sufficient number of signatures were contained on the petition filed with the City Clerk to require the City Council to consider the proposed ordinance.

WHEREAS, the City Council has heard public comment regarding the proposed ordinance and finds that the issue should be submitted to a vote of the public.

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

SECTION 1. Pursuant to K.S.A. 12-3013, after careful and thoughtful consideration of the proposed ordinance, weighing the health benefits of fluoridation and citizens' rights to choose what chemicals or substances they ingest, the City Council determines that it is in the public's interest to submit this question to a vote of the citizens of the City of Wichita.

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

Ballot Question:

SHALL SECTION 17.12.340 OF THE CODE OF THE CITY OF WICHITA BE ADOPTED WHICH PROVIDES:

(1) The City of Wichita's Director of Public Works & Utilities is authorized and directed to fluoridate the City of Wichita's public drinking water supply to the optimal levels beneficial to reduce tooth decay and promote good oral health as recommended by the Kansas Department of Health and Environment and is thereafter responsible for the fluoridation of that public drinking water supply.

(2) Upon the direction of the Director of Public Works & Utilities, the Wichita Water Department is authorized and directed to install, operate, and maintain the equipment necessary to introduce fluoride compound sufficient to raise the fluoride concentration in the public drinking water supply to the optimal levels as set forth in the previous paragraph.

YES ____ NO ____

SECTION 3. Notice and Call of Election.

A. Pursuant to K.S.A. 12-3013, the Wichita City Council hereby gives notice of and calls for a non partisan special election to be held in the City of Wichita, Kansas on November 6, 2012 to submit to the qualified voters of the City the question of whether Section 17.12.340 of the Code of the City of Wichita should be adopted.

B. Such election shall be conducted by the Sedgwick County Election Commissioner and held in the manner and in accordance with the laws of the State of Kansas, including but not limited to K.S.A. 25- 2601 et seq.

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

SECTION 4. Publication The City Clerk is hereby directed to give notice of the election as provided by law by publishing a Notice of Special Question Election in substantially the form attached hereto as Exhibit A, once each week for two (2) consecutive weeks in a newspaper of general circulation in the City, the first publication to be not more than twenty (20) days prior to the election and the last publication being not less than five days prior to the date of the election.

SECTION 5. This ordinance shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body on this 21st day of August, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf
City Attorney

ORDINANCE NO._____

AN ORDINANCE CREATING SECTION 17.12.340. OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WATER FLUORIDATION.

WHEREAS, Oral health is important to overall health, wellness, and quality of life; and

WHEREAS, the benefits of fluoridation of the public drinking water system in the prevention of dental disease have been scientifically substantiated with over 65 years of experience; and

WHEREAS, fluoride has been shown to reduce tooth decay in both children and adults by 25%; and

WHEREAS, fluoridation benefits older adults by helping to prevent decay on the exposed root surfaces of teeth, which affects many seniors; and

WHEREAS, fluoridation is the most cost-effective public health measure to prevent dental disease; and

WHEREAS, the most respected health and medical organizations in the United States, including the U.S. Centers for Disease Control & Prevention, the American Dental Association, the American Academy of Family Physicians, the Institute of Medicine, The American Public Health Association, and the American Academy of Pediatrics, endorse fluoridation of the public water system, and

WHEREAS, over 500 physicians, dentists, and other medical professionals in Sedgwick County have signed a public letter endorsing fluoridation of the City of Wichita's public drinking water; and

WHEREAS, more than 11,000 citizens in the City of Wichita have signed petitions requesting that the Wichita City Council fluoridate the public drinking water system; and

WHEREAS, the governing body of the City of Derby, as one of Wichita's largest water customers, has requested that the City of Wichita fluoridate its public water system; and

WHEREAS, the governing body of the City of Eastborough has requested that the City of Wichita, Kansas fluoridate its public water system;

WHEREAS, local private organizations have committed to raising substantial non-public funds toward the initial capital costs to fluoridate the City of Wichita's public water supply

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

SECTION 1. Section 17.12.340 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

(a) AUTHORIZATION

(1) The City of Wichita's Director of Public Works & Utilities is authorized and directed to fluoridate the City of Wichita's public drinking water supply to the optimal levels beneficial to reduce tooth decay and promote good oral health as recommended by the Kansas Department of Health and Environment and is thereafter responsible for the fluoridation of that public drinking water supply.

(2) Upon the direction of the Director of Public Works & Utilities, the Wichita Water Department is authorized and directed to install, operate, and maintain the equipment necessary to introduce fluoride compound sufficient to raise the fluoride concentration in the public drinking water supply to the optimal levels as set forth in the previous paragraph.

SECTION 2. 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 _____, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Sedgwick County, Kansas
Election Office
Tabitha M. Lehman, Election Commissioner
Historic Courthouse • 510 North Main, Suite 101 • Wichita, Kansas 67203
Telephone (316) 660-7100 • Fax (316) 660-7125 • www.sedgwickcounty.org/elections

Certificate of Commissioner of Elections

I, Tabitha Lehman, Commissioner of Elections of Sedgwick County, Kansas, do hereby certify that my staff and I have reviewed the petition signature pages received by me on August 8th, 2012 and have found the following:

- The petition pages contain the signatures of 6,518 qualified electors of the City of Wichita.
- The petition may contain the signatures of more qualified electors of the City, but determination of the same cannot be made from the information contained in the petition of the signatures reviewed to date.

Witness my hand and official seal this 16th day of August, 2012

Tabitha Lehman
Commissioner of Elections
Sedgwick County, Kansas

Exhibit A

(Published in the Wichita Eagle on October 23, 2012 and October 30, 2012)

NOTICE OF SPECIAL QUESTION ELECTION
CITY OF WICHITA, KANSAS

Notice is hereby given to the qualified electors of the City of Wichita that a special question election has been called and will be held in conjunction with the general election on November 6, 2012 for the purpose of submitting to the qualified electors of the City the following proposition:

SHALL SECTION 17.12.340 OF THE CODE OF THE CITY OF WICHITA BE ADOPTED WHICH PROVIDES:

(1) The City of Wichita's Director of Public Works & Utilities is authorized and directed to fluoridate the City of Wichita's public drinking water supply to the optimal levels beneficial to reduce tooth decay and promote good oral health as recommended by the Kansas Department of Health and Environment and is thereafter responsible for the fluoridation of that public drinking water supply.

(2) Upon the direction of the Director of Public Works & Utilities, the Wichita Water Department is authorized and directed to install, operate, and maintain the equipment necessary to introduce fluoride compound sufficient to raise the fluoride concentration in the public drinking water supply to the optimal levels as set forth in the previous paragraph.

YES ____ NO ____

Such election shall be conducted by the Sedgwick County Election Commissioner and held in the manner and in accordance with the laws of the State of Kansas, including but not limited to K.S.A. 25- 2601 et seq.

Wichita, Kansas
August 20, 2012
10:00 a.m., Monday
Conference Room, 12th Floor

MINUTES - BOARD OF BIDS AND CONTRACTS*

The Board of Bids and Contracts met with Martha Strayer, Administrative Assistant, Public Works Engineering in the Chair; Fanny Chan, Senior Accountant, Finance, representing the Director of Finance, Elizabeth Goltry Wadle, Budget Analyst, Budget Office, Melinda Walker, Purchasing Manager, representing Purchasing, Jason Earl, Management Fellow, representing the City Manager's Office, and Janis Edwards, Deputy City Clerk, present.

Minutes of the regular meeting dated, August 13, 2012, were read and on motion approved.

Bids were opened on August 17, 2012, pursuant to advertisements published on:

Harry & Broadway Intersection Improvements (Harry & Broadway Intersection) (87N-0493-01/472-84880/707013/636232/620575/210478/770620/661691) See Special Provisions. (District I, III)

Deferred three weeks

The Purchasing Manager recommended that the contracts be deferred as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

On motion the Board recommended that the contracts be deferred as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

PARKS AND RECREATION DEPARTMENT: Tennis Court and ADA Ramp Improvements.

Danco Enterprises Inc. - $197,000.00 Base Bid
$8,700.00 Alternate 1
$12,900.00 Alternate 2
$8,910.00 Alternate 3

The Purchasing Division recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

On motion the Board recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

On motion the Board of Bids adjourned.

_____
Martha Strayer, Administrative Assistant,
Department of Public Works

_____
Janis Edwards, CMC
Deputy City Clerk

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL AUGUST 21, 2011

a. 2012 Condemned Sidewalk and Wheelchair Ramps (north of 63rd Street South, east of 151st Street West) (472-85030/132100/) Traffic to be maintained during construction using flagpersons and barricades. (District I,II,III,IV,V&VI) - $163,360.00

b. 3rd Street Water Main Replacement, Wabash to I-135 (south of Central, east of Washington) (448-90217/635808/752030) Traffic to be maintained using flagpersons and barricades. (District I) - $1,620,000.00

c. 2012 CIP Arterial Repair: Grove, Lincoln to Douglas (472-85055/707036/620570/) Traffic to be maintained using flagpersons and barricades. (District I) - $355,012.00

d. Storm Water Improvements to serve Old Lawrence Road and 31st Street South (468-84798/133117/636264/) Traffic to be maintained using flagpersons and barricades. (District III) - $72,885.00

e. Water Distribution System to serve Sierra Hills 2nd Addition (north of Pawnee, west of 143rd Street East) (448-90550/735474/470147) Traffic to be maintained using flagpersons and barricades. (District II) - $72,000.00

Agenda Item No. II-5a.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Community Events – 44th Annual Wichita Black Arts Festival (District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure the event promoter Elaine Guillory, Wichita Black Arts Festival is coordinating the 44th Annual Wichita Black Arts Festival with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

44th Wichita Black Arts Festival September 1, 2012 7:00 am – September 3, 2012 10:00 pm

- 15th Street North, Ohio Street to Interstate 135 underpass

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with special events.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

Agenda Item No. II-5b.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Community Events – Orpheum Theater 90th Anniversary Celebration (District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure the event promoter Adam Hartke, Orpheum Theater, Inc. is coordinating the Orpheum Theater 90th Anniversary Celebration with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Orpheum Theater 90th Anniversary Celebration August 25, 2012 7:00 am – August 26, 2012 1:00 am

- First Street, Broadway Avenue to Topeka Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with special events.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Hold Harmless Agreement **(**Easement Encroachment) (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the hold harmless agreement.

Background: Property owners of Lot 19, Block 12, Lincoln Heights Addition, own a detached two car garage that is situated over a public sanitary sewer main, with a sanitary sewer manhole located inside the garage.

The house was built in 1929; two years after the neighborhood's sewer lines were constructed. The earliest record of the garage dates back to 1945 when it was re-roofed. The structure was likely built over the manhole in the 1920s or 1930s. The garage has set on top of the sewer manhole for approximately 80 years because there was no permitting done at the time of construction.

Analysis: The agreement allows the City to be held harmless from any and all claims resulting from leaking, cave-in or failure of the public sanitary sewer force main within the easement, and from claims resulting from replacement or upgrade of lines, manholes, and/or other City property in the easement. The property owners waive all rights of action in law arising out of the encroachments into the easement.

Financial Considerations: The agreement ensures that the City will not incur a financial liability arising from its allowance of improvements to encroach on sanitary sewer right of way.

Goal Impact: The hold harmless agreement addresses the Ensure Efficient Infrastructure goal by maintaining and protecting the sanitary sewer system.

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

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachment: Hold harmless agreement.

HOLD HARMLESS AGREEMENT

THIS HOLD HARMLESS AGREEMENT (the "Agreement") is made this ___day of _____, 2012, by and between THE CITY OF WICHITA, KANSAS (hereinafter called "CITY") and DONALD J. AND NANCY M. GLENN, husband and wife, and as joint tenants with rights of survivorship ownership in the Lot (hereinafter defined) (hereinafter collectively called "OWNER").

WHEREAS, the public has been granted a Utility Easement 5 feet in width (the "Easement"), being the easterly 5 feet of LOT 19, BLOCK 12, LINCOLN HEIGHTS ADDITION (the "Lot") pursuant to that certain Plat of LINCOLN HEIGHTS AN ADDITION TO WICHITA KANSAS recorded in the transfer records of the Sedgwick County Register of Deeds office on February 26, 1927 (the "Plat");

WHEREAS, it is believed that in 1929 the owner of the Lot commonly referred to as 400 S. Pershing, Wichita, KS, constructed a single family home on the Lot encroaching into the setback area established by the Plat;

WHEREAS, it is further believed that owner of the Lot constructed on the Lot a detached two (2) car garage (the "Garage"), which encroaches into the area comprising the Easement (the "Easement Encroachment");

WHEREAS, OWNER currently occupies the Easement Encroachment still existing on the Lot, to wit: a garage over a public sanitary sewer main, with a sanitary sewer manhole located inside the Garage, herein referred to as "Tract A" (see attached Exhibit showing easement encroachment and location); and

WHEREAS, the parties desire to memorialize their agreement with respect to Tract A, including but not limited to access rights, liability, and occupation and use of the existing Garage in its current location.

NOW THEREFORE, in consideration of the premises and the several mutual and reciprocal promises of the parties, it is agreed as follows:

1. Owner's Continued Right to Occupy. In accordance with the specific terms, covenants and conditions set forth in this Agreement, the CITY hereby agrees to permit OWNER to occupy and otherwise use the existing Garage, on, over and across the utility easement, and specifically waives any and all rights of action in law or equity against OWNER arising out of OWNER's occupancy and encroachment on and over said easement. Provided the terms, covenants and conditions set forth herein remain satisfied, OWNER shall have the right to apply for a variance to rebuild the Garage in its current size, location, style and materials in the event of destruction or other casualty.

2. Notice. The CITY shall provide OWNER reasonable advance notice, written if practicable, of not less than forty-eight (48) hours of the CITY's need to access the Garage and immediately surrounding area to repair and/or perform maintenance to the sanitary sewer line or other public structure within the Easement. Notwithstanding the same, if providing the required prior notice is not feasible due to an emergency or other situation requiring the immediate repair and/or maintenance of the sanitary sewer line or other public structure within the Easement, the CITY, its employees, agents or contractors may access the Garage and immediately surrounding area to perform such repair or maintenance. In such event, the CITY shall provide notice to OWNER as soon after gaining access as reasonably possible.

3. Damage to Owner's Property. In the event of an emergency or situation in which extensive notice is not feasible, that requires a repair and/or maintenance of the sanitary sewer line or other public structure within the Easement, and the same repair and/or maintenance is determined by the CITY to be impossible or impractical due to the presence of the Easement Encroachment, the CITY may remove or damage any structure on the Easement, with the OWNER being responsible to pay the costs to repair and/or replace any structure so damaged. In any other event that a sanitary sewer line or other public structure within the Easement requires repair and/or maintenance and the same repair and/or maintenance is determined by the CITY to be impossible or impractical due to the presence of the Easement Encroachment, the OWNER shall be obligated to either (a) allow the CITY, to the extent reasonably necessary, to remove or damage any structure located within the Easement with the OWNER being responsible to pay the costs to repair and/or replace that portion of any structure so damaged; (b) remove the said encroachment and clear the Easement; or (c) pay the costs of tunneling under the encroachment to permit repair and/or maintenance of the public structure. Notwithstanding any other provision of this Agreement,

After being notified by the CITY of the planned repair, maintenance or construction, the OWNER shall have thirty (30) days to notify the CITY of its election, and, if removal of the structure was selected, to complete the removal within thirty (30) days thereafter. If the OWNER fails to remove the structure or agree to pay the costs of tunneling under the encroachment within the time frame provided above, the CITY may remove or damage any structure located within the Easement, with the OWNER being responsible to pay the costs to repair or replace that portion of the structure so damaged or removed. The time to select the election or to remove the structure may be extended by the CITY in writing, which granting of extension shall not be unreasonably withheld or conditioned.

The Owner hereby releases the City from any and all claims that it may have for property damage caused by work performed by the City, its employees, agents or contractors in connection with the inspection, construction, maintenance and/or repair of structures within the Easement; provided, however, that such actors may be subject to liability to the extent permissible by law or statute for property damage caused by negligent conduct.

4. Indemnification. The OWNER agrees to protect, indemnify and hold harmless the CITY from any and all claims for personal injury and/or property damage resulting from the leaking, cave-in or failure of any CITY structures located within the Easement Encroachment to the extent such injury or damage is caused by the presence of the Easement Encroachment. The OWNER agrees to protect and indemnify the CITY and adjacent property owners against any increased cost that may accrue to them due to the necessity of construction of greater distance to avoid connecting beneath any improvements existing or to be built on, over and across Tract A. In the event the OWNER fails to provide such indemnification, the OWNER agrees that the CITY may assess any cost incurred by it against the Lot, which is currently owned by Donald J. Glenn and Nancy M. Glenn. Such assessment shall be in the manner described in K.S.A 12-6a17, as amended from time to time.

5. Termination. This Agreement may be terminated by the CITY upon the failure of the OWNER to materially comply with all of the terms of this Agreement. Prior to terminating this Agreement, the CITY shall provide the OWNER sixty (60) days' prior written notice identifying in particularity the reason for termination. If, prior to the expiration of such sixty (60) day period, OWNER cures such reason for termination, this Agreement shall continue in full force and effect uninterrupted.

6. Covenants Running with the Land. The provisions contained herein are to be construed as covenants running with the land and may be enforced against any titleholder of the Lot, so long as any easement encroachment is in existence upon the Lot.

7. Real Property Interest. This document creates a temporary non-exclusive interest in real property and is not a construction contract governed by K.S.A. 16-121 as amended.

8. Amendments. No amendments or additions to this Agreement shall be binding unless in writing and signed by the parties hereto, their successors or assigns.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original document, all of which together will constitute a single Agreement. Further, this Agreement may be executed by the parties by facsimile signature or by electronic mail signature, such that execution of this Agreement by facsimile signature or by electronic mail signature shall be deemed effective for all purposes as though this Agreement was executed as a "blue ink" original. Each party shall become bound by this Agreement immediately upon affixing its signature hereto, and independently of the signature of any other party.

10. Severability. If for any reason any provision of this Agreement shall be determined by a court of competent jurisdiction to be legally invalid or unenforceable, the validity and unenforceability of the remainder of the Agreement shall not be affected, and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

11. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

12. Entirety of Agreement. This instrument incorporates all of the obligations, agreements and understandings of the parties hereto regarding the Easement Encroachment and supersedes all prior oral or written agreements or undertakings between them with respect to the matters provided for herein, without otherwise affecting the legal rights and/or interests accruing to the dominant and servient easement estates.

13. Governing Law. This Agreement shall be interpreted, construed and governed according to the laws of the State of Kansas without regard to conflicts of law.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement, individually or by signature of their duly authorized representative, to be effective as of the Effective Date.

CITY OF WICHITA, KANSAS

Donald J. Glenn

By: _____
Carl Brewer, Mayor

Nancy M. Glenn

ATTEST:

_____
_____, City Clerk

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this 26th day of July, 2012, before me, a Notary Public, in and fore said county and state, came Donald J. and Nancy M. Glenn, to me personally known to be the same persons who executed the within and foregoing instrument and duly acknowledged the execution of the same as the authorized act and deed of the Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

Notary Public
My Commission Expires: 6/2/15

MICHELE T. GREENWOOD
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 6/2/15

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this _____ day of _____, 2012, before me, a Notary Public, in and for said county and state, came Carl Brewer, Mayor of the City of Wichita, Kansas, to me personally known to be the same person who executed the within and foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

_____

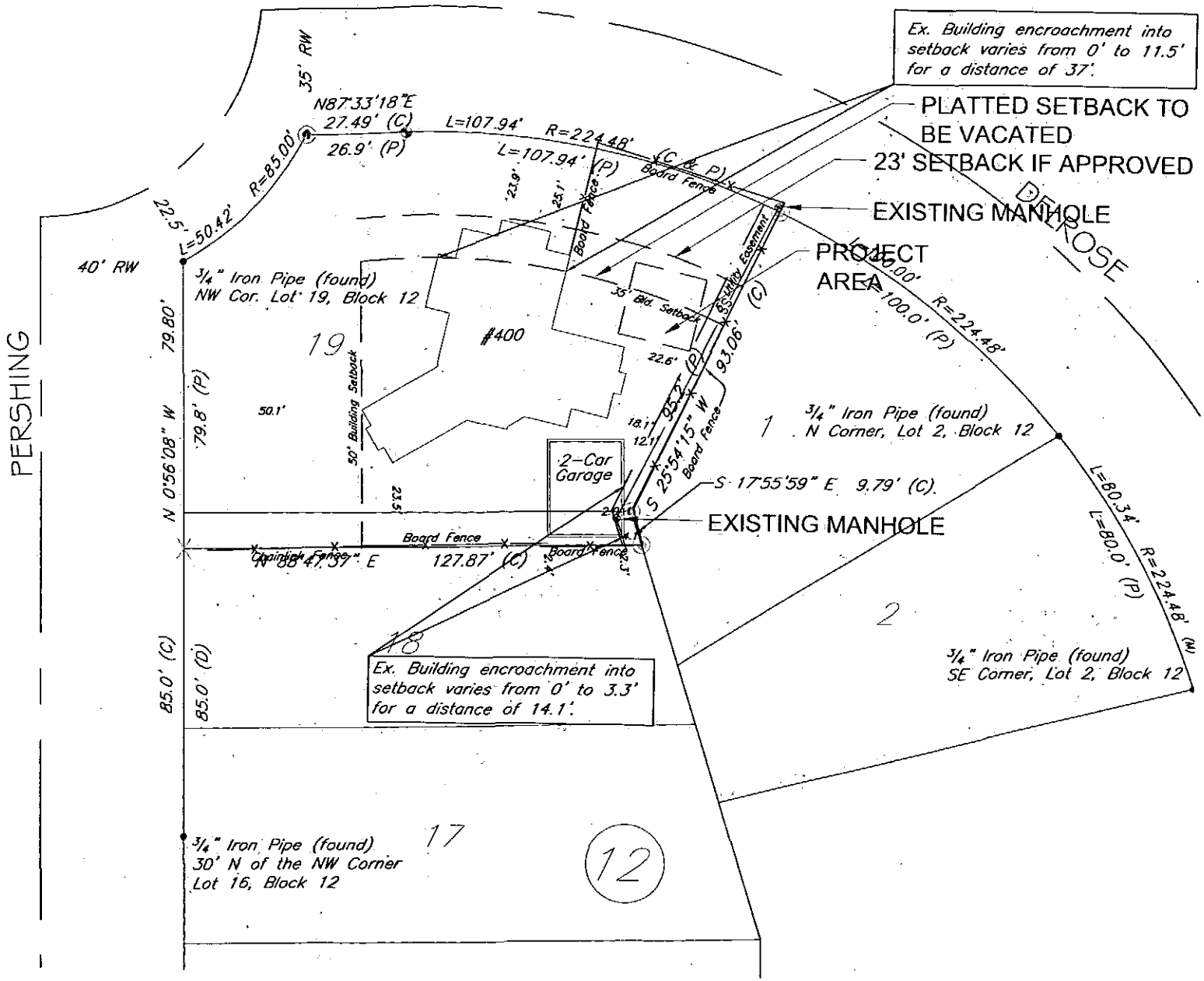
Notary Public
My Commission Expires: _____

Approved as to Form

_____
Director of Law

1179354-7

TRACT A



Skinner Design Studios
Landscape Architecture Urban Design Environmental Art
P: 316.260.9950 C: 316.304.2865 E: kskinner@skinnerdesignstudios.com

Site Plan - Vacation Exhibit

Scale: 1"=40'-0"

copyright 2012

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Supplemental Agreement No. 3 for 13th Street North from 135th to 119th Street West (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve Supplemental Agreement No. 3.

Background: On May 4, 2004, the City entered into an Agreement with Schwab Eaton for designing 13th Street North from 135th to 119th Street West for a fee of $117,800. On September 13, 2005, the City Council approved Supplemental Agreement No. 1, which requested Schwab Eaton to provide separate set of plans detailing both relocation of existing and construction of new water lines in the area of 135th Street West and 13th. The fee was $9,500. On June 20, 2006, the City Council approved Supplemental Agreement No. 2, which requested Schwab Eaton to revise the plans to connect an existing 12" water line along 13th Street to the proposed Main No. 4 and adjust elevations due to a bridge construction east of the project. The fee was $2,750.

Analysis: Schwab-Eaton is requested to supply a separate set of signalization plans for the intersection of 13th and 119th Street West. The revisions are necessary due to delays in moving the project forward to construction and increases in traffic at this intersection. The proposed Supplemental Agreement No. 3 provides for the additional design services.

Financial Considerations: Payment to Schwab-Eaton will be on a lump sum basis of $2,950. Funding is available within the existing project budget.

Goal Impact: This Supplemental Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed to provide a viable transportation system for the community. It also addresses the Economic and Affordable Living goal by providing a public improvement critical for the private sector's development of the surrounding area.

Legal Considerations: Supplemental Agreement No. 3 has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve Supplemental Agreement No. 3 and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 3.

SUPPLEMENTAL AGREEMENT NO. 3

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED MAY 4, 2004

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

SCHWAB EATON

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated May 4, 2004) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to **13TH STREET NORTH, 135TH TO 119TH STREET WEST** (Project No.472-84010).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

Prepare a separate set of signalization plans for the intersection of 13th St. North and 119th St. West (see Attached for details)

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the lump sum fee amount of **$2,950.**

C. COMPLETION

The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY by _____;

EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions of inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

D. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2012.

CITY OF WICHITA

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary Rebenstorf, Director of Law

SCHWAB EATON

_____

(Name and Title)

ATTEST:

_____

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Design of Multi-Purpose Events Center at Botanica (District VI)

INITIATED BY: Department of Parks and Recreation
Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the contract with LawKingdon Architecture.

Background: The Wichita Area Garden Council formed a partnership with the City of Wichita in 1982 to establish a center which would provide area residents with a horticultural education and enjoyment in a landscaped garden setting. In 1985, ground was broken. On May 31, 1987, Botanica celebrated its grand opening with four gardens and a horticultural library. Botanica now includes 26 themed gardens and offers a variety of educational programs for children and adults. Botanica welcomes thousands of visitors each month.

As requests for multipurpose spaces grew, more demands were made on the existing Botanica facilities, and it became clear that an additional multipurpose space was needed. In 2012, Botanica joined with the City of Wichita to partner on a building expansion that includes a new special events center. This new addition will provide a modern, efficient space for education programs, weddings, conferences and other rentals. The new space will provide additional rental income for Botanica, and it will also enable the original multipurpose room to be more available for community flower shows and other garden-related activities in keeping with Botanica's original mission.

Analysis: Request for Proposal (FP240039) was mailed on June 1, 2012. Seven firms responded to the proposal as follows: GLMV Architecture, PBA Architects, Convergence Design, LawKingdon Architecture, Schaefer Johnson Cox Frey Architecture, WDM Architects, and Spangenberg Phillips Tice Architecture.

The Staff Screening and Selection Committee met on July 12, 2012 and selected the three qualifying firms with the best fee proposals for further interviews. These were; LawKingdon Architecture, Schaefer Jonson Cox Frey Architecture, and GLMV Architecture. The Staff Screening and Selection Committee held interviews with the three firms on July 19, 2012. Following the interviews, the firms were rated based on their presentation, fee proposal, qualifications and past experience with related projects. The results were as follows:

1st – LawKingdon Architecture
2nd – GLMV Architecture
3rd – Schaefer Jonson Cox Frey Architecture

Therefore, the architectural firm of LawKingdon Architecture is recommended to provide professional services for the Multi-Purpose Events Center at Botanica for its quoted price of $84,100. The scope of work will include the normal phases of architectural services which are schematic design, design development, construction documents, assist with bidding, and construction observation as required for the completed project.

Financial Considerations: Funding for design and construction work not to exceed $1,500, 000 is authorized in the 2009 – 2018 Capital Improvement Program Park and Recreation Department.

Goal Impact The goal impact of this Multi-Purpose Events Center will be to Maintain and Optimize Public Facilities and Assets and to provide Improved Environmental Health and Community Safety.

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

Recommendations/Actions: It is recommended that the City Council approve the selection of LawKingdon Architecture, approve the contract and authorize the necessary signatures.

Attachments: Contract.

CONTRACT FOR CONSULTANTURAL SERVICES

THIS AGREEMENT, Made and entered into this _____day of _____, 2012,

BY AND BETWEEN THE CITY OF WICHITA, KANSAS, A Municipal Corporation, hereinafter referred to as "**OWNER**"

AND LAWKINGDON ARCHITECTURE, hereinafter referred to as "**CONSULTANT**"

WHEREAS, The CITY is authorized by law to employ professional architectural and engineering services to assist in the design of a Multi-purpose Events Center and Minor Site Improvements for the PROJECT; and

WHEREAS, the **OWNER** desires to have a new Multi-purpose Events Center and Minor Site Improvements designed, bid/construction documents prepared, and assistance provided in the construction administration of a new Multi-purpose Events Center and Minor Site Improvements at Botanica in the City of Wichita, hereinafter referred to as the "PROJECT"; and

WHEREAS, **CONSULTANT** wishes to provide professional services to the **OWNER** to do such plans, specifications, and related services therefore:

NOW, THEREFORE, in consideration of the promises and covenants herein contained and to be performed, the parties hereto agree as follows:

I. PURPOSE:

The **OWNER** employs the **CONSULTANT** and he agrees to perform all necessary professional services hereinafter set forth in connection with the "PROJECT" of the City of Wichita; Professional Services for the design of a New Multi-purpose Events Center and Minor Site Improvements at Botanica per RFP FP240039.

II. BASIC SERVICES:

The **CONSULTANT** shall render all services necessary as set out in **EXHIBIT "A"** a copy of which is attached hereto and which is incorporated herein by reference.

III. THE CONSULTANT AGREES

A. To provide the various technical and professional services and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit "A").

B. To attend meetings with the **OWNER** and other local, State and Federal agencies as necessitated by the SCOPE OF SERVICES (Exhibit "A").

C. To make available during regular office hours, all calculations, sketches and drawings such as the **OWNER** may wish to examine periodically during performance of this Agreement.

D. To save and hold **OWNER** 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 **CONSULTANT**, 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 **CONSULTANT** and, where relevant to method of payment, to make such material available to the **OWNER**.

F. To comply with 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 **OWNER'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 V and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with the tasks as outlined in the SCOPE OF SERVICES (Exhibit “A”).

H. To complete the services to be performed by **CONSULTANT** within the time allotted for the PROJECT in accordance with Paragraph VI, Time of Completion; EXCEPT that the **CONSULTANT** shall not be responsible or held liable for delays occasioned by the actions or inactions of the **OWNER** or other agencies, or for other unavoidable delays beyond the control of the **CONSULTANT**.

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

J. **CONSULTANT** shall procure and maintain such insurance as will protect the **CONSULTANT** from damages resulting from the negligent acts of the **CONSULTANT**, its officers, and employees 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. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. 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 **CONSULTANT** that shall be written in a comprehensive form and shall protect **CONSULTANT** against all claims arising from injuries to persons (other than **CONSULTANT'S** employees) or damage to property of the **OWNER** or others arising out of any negligent act or omission of **CONSULTANT**, 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 **OWNER** before the time **CONSULTANT** starts any work under this Agreement. In addition, insurance policies applicable hereto shall contain a provision

that provides that the **OWNER** shall be given thirty (30) days written notice by the insurance company before such policy is canceled.

K. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The **CONSULTANT** agrees to advise the **OWNER**, in writing, of the person 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 **CONSULTANT** shall also advise the **OWNER** of any changes in the person designated Project Manager. Written notification shall be provided to the **OWNER** for any changes exceeding one week in length of time.

The designated Project Manager SHALL coordinate ALL aspects of this Project through the **OWNER'S** Project Manager. The **OWNER'S** Project Manager MUST approve any requests from any other staff agency, which would affect the **CONSULTANTS** time or expense relative to this Project.

IV. THE OWNER AGREES:

A. To furnish all available data pertaining to the PROJECT now in the **OWNER'S** files at no cost to the **CONSULTANT**. The **CONSULTANT** will keep confidential material so furnished confidential.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the **CONSULTANT**, except as specified in EXHIBIT "A".

C. To pay the **CONSULTANT** for his services in accordance with the requirements of this Agreement.

D. To provide the right-of-entry for **CONSULTANT'S** personnel in performing field surveys and observations.

E. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The **OWNER** agrees to advise, the **CONSULTANT**, in writing, of the person designated as Project Manager with the issuance of the notice to proceed on the work required by this Agreement. The **OWNER** shall also advise the **CONSULTANT** of any changes in the person designated Project Manager. Written notification shall be provided to the **CONSULTANT** 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 **CONSULTANT** in a timely fashion.

G. To save and hold **CONSULTANT** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or cause by errors, omissions, or negligent acts of **OWNER**, its agents, servants, employees, or subcontractors occurring in the performance of its services under this Contract.

V. PAYMENT PROVISIONS:

The **OWNER** agrees to pay the **CONSULTANT** for services rendered under this Agreement and as specifically detailed in **EXHIBIT "A"**, a total fee established as follows:

A. For the complete services and other related items including those identified in SCOPE OF SERVICES, EXHIBIT "A", a single stipulated lump sum fee of Eighty Four Thousand, One Hundred Thousand dollars ($84,100.00) which shall constitute complete compensation for these services. This is an all inclusive fee and all reimbursable expenses are included.

B. Payments are payable to the **CONSULTANT** within thirty (30) working days from the date of receipt of invoice. If any invoice is outstanding for more than thirty (30) working days from the date due, the **CONSULTANT** shall have the right, in addition to any and all other rights provided, to refuse to render further services to the **OWNER** and such act or acts shall not be deemed a breach of this agreement. Continued performance and/or completion of work by the **CONSULTANT** under this agreement are contingent upon payment of fees by the **OWNER**. The **OWNER** shall reimburse the **CONSULTANT** for all costs incurred in collection of unpaid accounts, including, without limitation, all reasonable attorney and legal expenses.

C. When requested by the **OWNER,** the **CONSULTANT** 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 **OWNER** in any litigation, administrative hearing, and other legal proceedings related to the PROJECT.

2. Additional design services not covered by the scope of this Agreement.

3. A major change in the SCOPE OF SERVICES for the PROJECT.

D. If additional work should be necessary, the **CONSULTANT** will be given written notice by the **OWNER** 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 based on a Supplemental Agreement duly entered into by the parties.

E. If services are rendered by the **CONSULTANT** for the PROJECT(s) or portions of the PROJECT(s), but the **OWNER** elects to cancel the PROJECT(s) or portions thereof the **CONSULTANT** shall be compensated at an amount in proportion to the services rendered as stated in Paragraph A above, multiplied by the percentage completed.

F. This fee shall be payable in monthly installments, and in proportion to the services performed, payable upon the satisfactory performance of the service.

VI. TIME OF COMPLETION:

The **CONSULTANT** agrees to complete all phases of this PROJECT as follows:

- 08/27/12 Project Kick Off
- 09/07/12 Concept Design Review
- 09/28/12 Design Development Review
- 10/01/12 Start Construction Drawings
- 11/16/12 Complete Construction Drawings
- 11/26/12 Out for Bid
- 12/20/12 Receive Bids
- 01/07/13 Start Construction
- 08/01/13 Complete Construction

VII. THE PARTIES HERETO MUTUALLY AGREE:

Unless the **OWNER** officially in written form has authorized an increase in funds established for the construction estimates of cost, the **CONSULTANT** agrees to make any such revisions in plans and specifications as are necessary and as are satisfactory to the **OWNER**, to bring the PROJECT within the approved estimated cost, such revisions to be made at his own expense without cost to the **OWNER**, whether or not said plans and specifications have theretofore been approved by the **OWNER**; PROVIDED, that if said plans and specifications have been approved by the **OWNER**, should the
OWNER desire any material changes in the type of construction or other changes not necessary to be made for the purpose of bringing the cost of the PROJECT within the estimate, the **OWNER** shall pay the **CONSULTANT** the cost of making such revisions.

VIII. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the **OWNER** to terminate this Agreement, upon fourteen days prior written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the **CONSULTANT'S** inability to proceed with the work, or because the services of the **CONSULTANT** are unsatisfactory; PROVIDED, however, that in any case the **CONSULTANT** 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, in no case shall payment be more than the **CONSULTANT'S** actual costs plus a fee for profit based upon a fixed percentage of the **CONSULTANT'S** actual costs. The **CONSULTANT** may terminate this Agreement upon giving the OWNER 30 days prior written notice for breach by the OWNER of any material term, including but not limited to payment terms.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the **OWNER** upon completion or termination of the **CONSULTANT'S** services and payment in full of monies due the **CONSULTANT**, in accordance with this Agreement. The **OWNER** shall not re-use or make any modification of the plans and specifications without the prior written authorization of the **CONSULTANT**. The **OWNER** agrees to hold the **CONSULTANT** harmless from all claims, liability or cost, including reasonable attorney fees and defense costs, which arise out of such further use without the participation of the **CONSULTANT**.

C. That the services to be performed by the **CONSULTANT** under the terms of this Agreement are personal and cannot be assigned sublet or transferred without specific consent of the **OWNER**. The **OWNER** shall not assign or transfer rights or interest in this Agreement without specific consent of the **CONSULTANT**.

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 **OWNER**, provided, however, that the **CONSULTANT** shall request extensions, in writing, giving the reasons therefore.

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 **OWNER'S** review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the **CONSULTANT** 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 **OWNER** and the **CONSULTANT** 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.

I. Unless otherwise stipulated in this Agreement, all subcontractors retained to assist **CONSULTANT** in performing his duties will be paid by the **CONSULTANT**.

J. The **CONSULTANT** agrees to employ required engineers, as determined by the **CONSULTANT** and **OWNER** jointly, for design and analysis and to pay the fees as contracted for with the individual engineers for such services. These fees are not reimbursable expenses.

K. Special Consultants or Subcontractors are those who provide services other than those provided by the **CONSULTANT**. If it is requested that any Special Consultants or Subcontractors be retained on the **OWNER'S** behalf, their charges will be paid separately and directly by the **OWNER**. Invoicing and payment shall be arranged separately between the **OWNER** and the Special Consultants or Subcontractors.

L. If a firm or firms are separately engaged by the **OWNER** to work under the general direction of the **CONSULTANT**, the **CONSULTANT** shall have no responsibility or technical sufficiency of the services of such separately engaged firms.

M. It is further agreed that this Agreement and all Contracts entered into under the provisions of this Agreement shall be governed by the laws of the State of Kansas.

N. Unless otherwise provided in this Agreement, the **CONSULTANT** and employees, or subcontractors shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

ATTEST:

LAWKINGDON CONSULTANTURE

_____
Karen Sublett

by_____
Dennis D. Smith, AIA

City Clerk President

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf
Director of Law

EXHIBIT "A"

SCOPE OF SERVICES

DESIGN OF MULTI-PURPOSE EVENTS CENTER AND MINOR ALTERATIONS AT BOTANICA, WICHITA, KANSAS

Scope of Architectural/Engineering Design Services

The consultant shall develop a design, construction budget and bid documents as follows:

Phase I: Design Phase

- Design will be coordinated with the local Design Council for approval.
- Design will meet or exceed all current applicable code requirements of governing agencies, and will be in compliance with requirements of the Americans with Disabilities Act (ADA).
- Design will include Public Art.
- Designs shall be done to maintain the integrity of the building for future generations of visitors while meeting today's requirements.

Phase II: Construction Documents, Bidding and Construction Administration

- Consultant will provide Construction Documents for the project based on the approved design and updated budget for the project. The Construction Documents shall set forth in detail the requirements for construction for the project. The Construction Documents shall include drawings and specifications that establish in detail the quality levels of materials and systems required for the project.
- Consultant will prepare the detailed construction drawings and specifications breaking out portions of the construction and/or equipment to be bid as add alternates, so the City can maximize the bidding process and funds available.
- During the bidding the consultant will attend the pre-bid conference, write and coordinate, and otherwise aid in the issuance of addenda or provide clarifications as required, and assist the City in receiving and evaluating bids.
- During the actual construction, the consultant will be responsible for the general administration of the project and provide periodic monitoring of the construction in accordance with professional standards. Review shop drawings and provide consultation and advice during construction.

The CONSULTANT will furnish or provide as a minimum the following services as listed below:

1. Schematic design.

2. Design development.
3. Construction documents and specifications.
4. Services during the Bid Phase.
5. Construction Administration Services.
6. Structural, electrical, civil, mechanical and plumbing engineering services.
7. Project cost estimates/budgets.

SCHEMATIC DESIGN PHASE

The purpose of the Schematic Design Phase is to establish design parameters and Client objectives relating to the PROJECT. During this phase, the following issues will be addressed as a minimum:

1. Meet with City of Wichita (COW) appointed representative(s) and Botanica director to establish administrative procedures and review the time line for the Project.
2. Establish a work plan to outline the tasks to be undertaken and the time frames for review with COW appointed representative(s), including a list of groups/individuals that should be contacted to review the needs for the facilities.
3. Tour Botanica and document the existing conditions.
4. Tour Botanica to familiarize team with the building and site requirements
5. Review prioritized goals, improvements, and modifications as they relate to the development of the schematic design concepts.
6. The schematic design drawings will include all the necessary disciplines and a preliminary estimate of construction cost.
7. **CONSULTANT** agrees to provide **OWNER** with a written accounting of the PROJECT scope and schedule of estimated PROJECT costs. In the event **OWNER** does not approve, Paragraph VII of basic Contract will apply.

DESIGN DEVELOPMENT PHASE

Based on approved plan and project cost estimates/budgets from the previous phase, **CONSULTANT** will develop design drawings, outline specifications and updated construction budget for the PROJECT to the extent all significant systems, structures, materials, equipment and furnishings are realized and can be realistically budgeted for **OWNER'S** approval. This will include but not be limited to floor plans and elevations. This phase will also define the location, quantity, and quality, of the prioritized and approved improvements desirable to complete the PROJECT. This should include but not be limited to the following:

1. Design will be presented to and have approvals from the City staff, Botanica Board, Design Council, District Advisory Boards, and other Boards/Agencies as deemed necessary.

2. Designs will meet current applicable code requirements of governing agencies, and will comply and/or exceed the minimum requirements of the Americans with Disabilities Act (ADAAG). An ADA construction review will be conducted prior to substantial completion certificate being issued.

3. Mechanical and electrical systems (including lighting) will be energy efficient and reliable as determined by **OWNER** and **CONSULTANT**.

4. Plumbing systems will be commercial quality and durable.

5. The design will include conceptual design recommendation(s) by the **CONSULTANT**, supported by line drawings and elevations.

6. **CONSULTANT'S** basic design shall anticipate a base bid for construction and "**ADD**" alternates to allow **OWNER** maximum financial flexibility.

7. The design will include conceptual design recommendation(s) by the CONSULTANT, supported by at least one colored elevation, sufficient for presentations as needed.

8. The drawings and outline specifications are to be sufficiently comprehensive to permit, without need for further architectural study, prompt completion of final detailed plans and specifications.

9. Provide formal and precise estimate of probable construction cost for all material, equipment, and furnishings as will be provided by the construction contracts under the Construction Documents.

CONSULTANT agrees to provide **OWNER** with a written accounting of the PROJECT scope and schedule of estimated PROJECT costs. In the event, **OWNER** does not approve; Paragraph VII of basic Contract will apply.

If their employment is authorized in advance, the **OWNER** will pay the fee of any special consultant for other than the normal structural, mechanical, plumbing, electrical and civil engineering services.

Furnish five (3) copies of the approved Design and estimated construction budget.

WORKING DRAWINGS AND SPECIFICATIONS PHASE:

1. Prepare the detailed construction drawings and specifications after full consideration has been given to the Design Phase sketches and estimates. Obtain approvals of State or other agencies to the drawings and specifications. Prepare proposals, forms, and notices to bidders. Set forth in detail and prescribe the work to be done; the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, plumbing, electrical, service connected equipment, and site work, and contract documents satisfactory to the **OWNER** for the effective coordination and efficient execution of the construction work.

2. Present the Construction Documents to the City's Project Manager and Botanica Director at 50 percent complete for the purpose of informing the Committee on the progress of the PROJECT including an update of the construction estimate.

3. Coordinate engineering disciplines including structural, mechanical, electrical, plumbing, on the PROJECT with the Architectural Documents.

4. Coordinate the interior design, and provide finishes for the project.

5. Submit completed Construction Documents to the COW for plan check, and make any corrections necessary for the general contractor to obtain a building permit. Plan review fees are not included but will be paid from the project by the **OWNER**.

6. The **CONSULTANT** will use the **OWNERS** Modified Construction Contract and General Conditions packages that have been prepared by the City of Wichita, Law Department when American Institute of Architects (AIA) form documents are used in connection with the City's construction of buildings.

7. The **ARCHITECT** will provide final plans, field notes and other pertinent PROJECT mapping records via media acceptable to the **OWNER**. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the Schematic Design Phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, **ARCHITECT** will also need to supply electronic files of the drawings in PDF format. (Refer to Exhibit E)

8. Furnish a formal written estimate of the probable cost of constructing the PROJECT according to the completed drawings and specifications as approved. In the event said cost estimates are not approved by the **OWNER**, Paragraph VII of basic Contract will apply.

9. Conduct the necessary code analysis, consult with governing authorities having jurisdiction over the PROJECT, and incorporate their requirements into the construction documents for the PROJECT.

Furnish six (3) sets of drawings and specifications.

BIDDING PHASE

1. Deliver the original tracings of the Final approved plans to the **OWNER** for their use in printing plans for prospective bidders in pdf full scale CD.

2. Reproduction of the completed plans and specifications for use in bidding purposes will be paid by **OWNER** through owner's appointed vendor**.**

3. Review bidding documents for completeness and coordination before release for bids. Issue Bidding Documents to bidders.

4. Attend pre-bid conference(s), as scheduled to provide guidance to the **OWNER** and to prospective bidders.

5. Write and coordinate and otherwise aid in the issuance of addenda or provide clarifications as required.

6. Assist the **OWNER** in identifying prospective bidders.

7. Furnish a formal written estimate of probable construction costs in a sealed envelope to the Special Projects Coordinator three (3) days before the bid opening

8. Attend formal bid opening(s).

9. Assist the **OWNER** in receiving and evaluating bids.

10. Assist the **OWNER** in final recommendation of prime contractor.

11. Review alternate cost savings methods with the **OWNER** and accepted contractor if PROJECT is over budget.

12. In the event that bids received exceed the **CONSULTANT'S** final official and approved estimate of construction cost, **CONSULTANT** agrees to cooperate with **OWNER** without additional architectural fees in revising the PROJECT scope and quality as required to reduce the construction cost. (Refer to Paragraph VII of the basic Contract).

CONSTRUCTION PHASE

1. Be responsible for the general administration of the PROJECT and provide periodic monitoring of the construction in accordance with professional standards. Review information provided by such inspection bureaus and testing laboratories as may be employed by the **OWNER** for such work. Endeavor to guard the **OWNER** against defects and deficiencies in the work of contractors. The **CONSULTANT** will condemn work, which fails to conform to the Contract Documents. The **CONSULTANT** will prepare certificates of payments due the contractor. By issuing a Certificate for Payment, the **CONSULTANT** will along with **OWNER'S** Project Manager represent to the **OWNER** that, to the best of their knowledge, information and belief based on general practice in the area at this time and based on what their observations have revealed, the quality of work is in accordance with the Contract Documents.

2. For changes in the PROJECT prepare such large – scale or full – size drawings to supplement the working drawings as to permit the proper completion of the work; review shop drawings and material sample submittals for architectural, structural, and electrical portions of the related facilities.

3. Provide consultation and advice during construction.

4. Review submittal material on the PROJECT for conformance to the Contract Documents.

5. Assist OWNER in preparing the AIA 101 – 201 Contract Documents and receiving of Bonds and Insurance.

6. The general monitoring by the **CONSULTANT** is to be distinguished from the continuous on-site inspection of a Project Manager assigned by the **OWNER** (Reference Paragraph IV of the contract for architectural services).

7. The **CONSULTANT** will designate critical construction observation points in advance, to the **OWNER** in writing.

8. Issue necessary interpretations and clarifications of the Contract Documents.

9. Prepare a punch list for the construction, and participate in final punch list review.

10. Secure maintenance and operational manuals from Contractor including descriptions and maintenance procedures for the new facility.

11. Deliver to the **OWNER** one (1) set of as-built pdf drawings in a CD of the contractor's record drawings (plans), as changed or corrected by the Contractor for the PROJECT, such reproducibles to become the property of the **OWNER**.

12. Make final inspection before acceptance of building by the **OWNER**. Complete a final construction report.

13. Provide a joint site visit eleven (11) months after substantial completion to identify any warranty concerns. Provide a final construction report.

EXHIBIT B

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

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

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or

contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Purchase of New Buses – Production Change Order (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the change order.

Background: On August 23, 2011, the City Council approved the purchase of four new buses to replace older buses that have met their useful life. These vehicles are included in Wichita Transit's replacement schedule and are included in the City of Wichita's adopted Capital Improvement Program. The pre-production phase of the project was completed on July 31, 2012, in which several items were added and one was dropped to allow for the buses to be scheduled for completion.

Analysis:

The items that were added to the project are:

1. HVAC main unit digital pressure display
2. Rear step threshold heater
3. Rear passenger seat hinge settee
4. Exterior panel lighting configuration
5. Bike rack mounting bracket installed
6. ITS pre-wire installation and parts

The item that was dropped from the project is:

1. AUX coolant heater

The items added improve servicing efficiency, improve customer safety, or add functionality that coincides with customer service initiatives already approved by the City Council. The significant deducted item is made possible by the available inside storage for vehicles.

Financial Considerations: The original contract amount for the four buses was $1,440,108. The cost of the additional work, less the item dropped, is $31,972 for a net change order of 2.2%. Funds to pay for these additional items have been secured through a Federal Transit Administration (FTA) grant (83% federal portion [$26,537] and 17% local match [$5,435]).

Goal Impact: To Ensure an Efficient and Effective Infrastructure by maintaining and optimizing public facilities and assets.

Legal Considerations: The Law Department has reviewed and approved the change order as to form. The change order amount is within the applicable 10% limit set by AR 6.8.

Recommendations/Actions: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change Order.

CITY OF WICHITA

Transit

August 21,2012

CHANGE ORDER

To: Gillig ~~Corp~~ LLC

Change Order No.: 1
Purchase Order No.: 130685
CHARGE TO OCA No.: 716109

Project: Purchase 4 – 35 Foot Diesel Buses
Project No.:
OCA No.: 629522,629531,716109
PPN:

Please perform the following extra work at a cost not to exceed $31,972.00

Additional Work: ***Per Bus***

1. HVAC Main Unit Digital Pressure Display.
2. Rear Step Threshold Heater.
3. Rear Passenger Seat Hinge Settee.
4. Exterior Rear Panel Lighting Configuration.
5. Bike Rack Mounting Bracket Installed.
6. ITS – Pre-Wire Installation and Parts.
7. AUX Coolant Heater dropped (Credit).

Reason for Additional Work:

1. Adding the digital pressure display will save mechanics time in diagnosing the main problem with HVAC units in the bus by visually seeing the amount of pressure is in the system vs. attaching equipment to get this reading.
2. At the rear exit door of the bus a threshold heater will be installed to keep the step warm to help melt snow and ice off of the step which would be an additional passenger safety feature to minimize slipping and falls.
3. The rear seating layout of the bus calls for a bench seat across the rear section of the bus just in front of the engine compartment. It is necessary on occasion to access the engine from the inside area of the bus. To do so we will add a hinged settee to allow for the rear seats to swing up for easy access to the engine compartment.
4. Based on the paint layout for our bus additional lights in the rear of the bus will be required to match our current light setup. 3 brake lights on the lower panel and 2 brake lights on the upper panel.
5. The current bike racks will be reused on the new bus. It is more efficient to have the standoff brackets mounted to the bumpers during production.
6. The current ITS equipment (Vehicle Logic Unit, Mobile Data Terminal, Voice Annunciator, Interior Sign, Radio, GPS/AVL, Covert Mic, Internal and External Mics, Automated Passenger Counters, Farebox, and Control Panel) will be reused and moved to the new bus. During the initial order for the bus the specification outline for the pre-wiring for this equipment was not available. It is more efficient to have the bus pre-wired during production.
7. The AUX Coolant heater was needed when we were parking buses outside in the elements to start engines in cold weather. Since we have stored buses inside there is minimal need for auxiliary heaters for the engines. We are dropping this item from the specifications.

Item	Negot'd/Bid	Qty	Unit Price	Extension
HVAC Digital Pressure Display.	Negot'd	4	$ 350.00	$ 1,400.00
Rear Step Threshold Heater.	Negot'd	4	$ 288.00	$ 1,152.00
Rear Passenger Seat Hinge Settee.	Negot'd	4	$ 269.00	$ 1,076.00
Exterior Panel Lighting Configuration.	Negot'd	4	$ 171.00	$ 684.00
Bike Rack Mounting Bracket Installed.	Negot'd	4	$ 298.00	$ 1,192.00
ITS – Pre-Wire Installation and Parts.	Negot'd	4	$ 9,000.00	$36,000.00
AUX Coolant Heater dropped.	Negot'd	4	$ -2,383.00	$-9,532.00

CIP Budget Amount: $2,192,750.00

Consultant: None
Exp. & Encum. To Date: $1,440,108.00

CO Amount: $31,972.00
Unencum. Bal. After CO: $31,972.00

Original Contract Amt.: $1,440,108.00

Current CO Amt.: $31,972.00
Amt. of Previous CO's: $0.00
Total of All CO's: $31,972.00
2.22% of Orig. Contract / 25% Max.: %
Adjusted Contract Amt.: $1,472,080.00

Recommended By:

8-7-2012

Stanley Zienkewicz — Date
Trans Develop Coord.

Approved:

8/7/12

Tom Stolz — Date
Interim Director of Transit

Approved:

AUGUST 7, 2012

Gillig ~~Corp~~ LLC — Date
DENNIS L. HOWARD, PRESIDENT

Approved as to Form:

Gary Rebenstorf — Date
Director of Law

By Order of the City Council:

Carl Brewer — Date
Mayor

Attest:
City Clerk

CITY OF WICHITA
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Partial Acquisition of Land at the Southwest Corner of Central and 135th Street West for the Central: 119th to 135th Street Road Improvement Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 19, 2008, the City Council approved the design concept to improve Central Avenue from 119th Street West to 135th Street West. The project will require the acquisition of all or part of 25 tracts. The proposed project includes straightening Central, providing signalization at the intersection of Central and 135th Street, and improving area storm drainage. One of the properties impacted by the project is located at the southwest corner of Central and 135th Street West. The property is currently undeveloped, platted and zoned commercial. The project impacts two lots with 51,836 and 38,768 square feet. The project will require basically the north 75 feet of the lost, 22,753 and 13,638 square feet respectively and reduce the lot depth to 140 feet.

Analysis: The owner rejected the appraised offer of $60,000 ($1.65 per square foot). Through negotiation, the owner agreed to accept $27,500, an amount equal to the estimated cost to replat the remainder of his property after the acquisition. In addition, he will receive the remnant of a City owned property at the northeast corner of 135th and Central. This remnant is estimated to have 47,616 square feet after the project is constructed.

Financial Considerations: The funding source is General Obligations Bonds. A budget of $28,500 is requested. This includes $27,500 for the property and $1,000 for closing costs and related charges.

Goal Impact: The acquisition of this tract is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

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

Recommendation/Action: It is recommended that the City Council; 1) approve the contract; 2) approve the budget; and 3) authorize all necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

PROJECT: Central Avenue – 119th to 135th

DATE: July 10, 2012

COUNTY: Sedgwick

TRACT NO.: 12 and 13

CITY OF WICHITA, KANSAS

A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT made and entered into this 8th day of August, 2012, by and between:

DMD, LLC, a Kansas Limited Liability Company (Landowners), and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, Landowners hereby agree to convey fee title to the City of Wichita by warranty deed to the following described real property in Sedgwick County to wit:

A parcel of land lying in the Northeast Quarter of Section 23, Township 27 South, Range 2 West of the 6th P.M. Sedgwick County, Kansas. Said parcel of land being more particularly described as follows:

Beginning at the Northeast corner of Lot 1, Block B, Highland Springs Commercial Addition, Wichita, Sedgwick County, Kansas; thence S01°02'32"E, 75.00 feet along the east line of said Lot 1; thence S88°57'32"W, 73.84 feet parallel with the north line of said Lot 1; thence N82°30'37"W, 101.12 feet; thence S88°57'32"W, 131.04 feet parallel with the north line of said Lot 1 to the southwesterly line of said Lot 1; thence N56°22'03"W, 105.47 feet along the southwesterly line of said Lot 1 to the Northwest corner of said Lot 1; N88°57'32"E, 391.62 feet along the north line of said Lot 1 to the Point of Beginning.

And

A parcel of land lying in the Northeast Quarter of Section 23, Township 27 South, Range 2 West of the 6th P.M. Sedgwick County, Kansas. Said parcel of land being more particularly described as follows:

Beginning at the Northwest corner of Lot 2, Block B, Highland Springs Commercial Addition, Wichita, Sedgwick County, Kansas; thence N88°57'32"E, 182.37 feet along the north line of said Lot 2; thence S07°47'30"W, 41.94 feet along the east line of said Lot 2; thence continuing along said east line S00°44'15"E, 58.55 feet; thence N45°53'22"W, 35.26 feet; thence S88°57'32"W,

150.75 feet parallel with the north line of said Lot 2 to the west line of said Lot 2; thence N01°02'32"W, 75.00 feet to the Point of Beginning.

It is understood and agreed that landowner is responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, 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 until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property. The City agrees to purchase the above described real estate, and to pay therefore, Twenty-seven Thousand Five Hundred Dollars and Zero Cents ($27,500.00) upon receipt of the warranty deed conveying said property free of encumbrances.

Additionally, the City of Wichita hereby agrees to convey fee title to the Landowners by warranty deed to the following described real property in Sedgwick County to wit:

Lot 1, Block A, Zeigler Office Park Addition to City of Wichita, Sedgwick County, KS except that
part described as follows:

A parcel of land lying in the Northwest Quarter of Section 24, Township 27 South, Range 2 West of the 6th P.M. Sedgwick County, Kansas. Said parcel of land being more particularly described as follows:

Beginning at the Northeast corner of Lot 1, Block A, Zeigler Office Park an Addition to Wichita, Sedgwick County, Kansas; thence S00°44'05"E, 80.00 feet along the east line of said Lot 1; thence S88°33'39"W, 322.44 feet parallel with the north line of said Lot 1; thence S43°54'42"W, 28.46 feet to the east line of a 15' Contingent Street Dedication of said Lot 1; thence N00°44'15"W, 69.97 feet; thence N09°15'20"W, 30.32 feet to a point 10.51 feet east of the northwest corner of said Lot 1; thence N88°33'39"E, 346.94 feet along the north line of said Lot 1 to the Point of Beginning and the South 20 feet of the North 100 feet of the East 200 feet of Lot 1, Block A, Zeigler Office Park, an Addition to Wichita, Sedgwick County, Kansas.

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 including claims that Landowners may assert pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C.A. 4601, et. Seq.

If the construction of the project for which this acquisition is occurring results in surplus fill dirt, said surplus fill dirt will be deposited on the land being conveyed to the Landowners by the City in a location as designated by the Landowner.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year

first above written.

LANDOWNERS:
DMD, LLC
Marlin R Penner, Member

BUYER:
City of Wichita, KS, a municipal corporation

_____
Carl Brewer, Mayor

ATTEST:

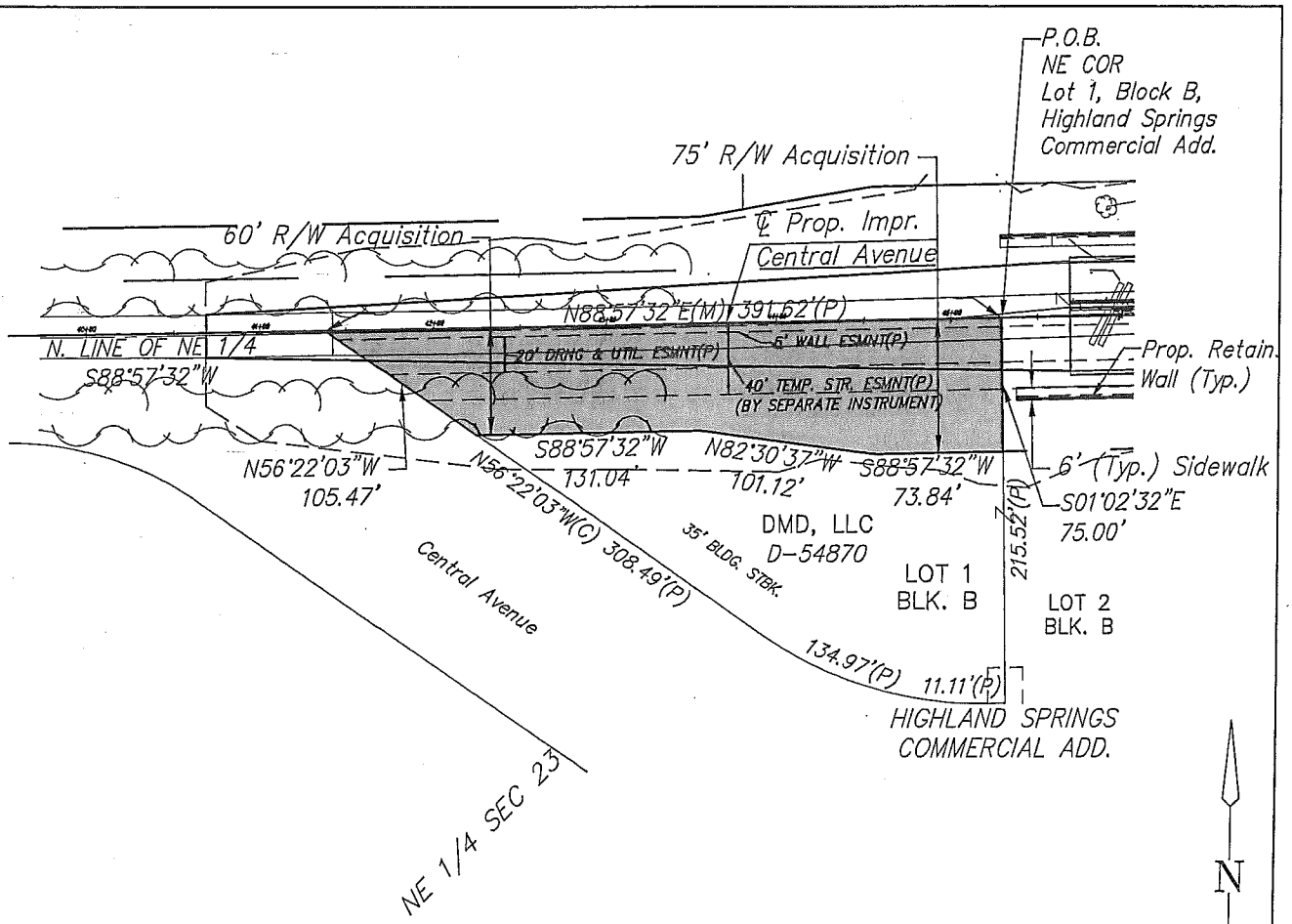
_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

Rev. 9-94
Form No. 1716

D. O. T.



LEGAL DESCRIPTION:

Right of Way Acquisition:

A parcel of land lying in the Northeast Quarter of Section 23, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

Beginning at the Northeast corner of Lot 1, Block B, Highland Springs Commercial Addition, Wichita, Sedgwick County, Kansas; thence S01°02'32"E, 75.00 feet along the east line of said Lot 1; thence S88°57'32"W, 73.84 feet parallel with the north line of said Lot 1; thence N82°30'37"W, 101.12 feet; thence S88°57'32"W, 131.04 feet parallel with said north line to the southwesterly line of said Lot 1; thence N56°22'03"W, 105.47 feet along said southwesterly line to the Northwest corner of said Lot 1; N88°57'32"E, 391.62 feet along said north line to the Point of Beginning.

Said parcel contains 22,753 sq. ft. excluding existing right of way

SCALE: 1" = 100'

100 0 100 200

LEGEND

P – Platted
C – Calculated
M – Measured
P.O.B. – Point of Beginning
Right of Way Acquisition =22,753 sq. ft. Excluding existing right of way.

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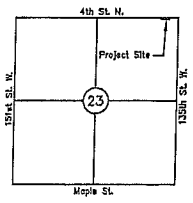
Owner:
DMD, LLC
250 N. Water, Ste. 300
Wichita, Ks. 67202

Property Identification:
D-54870

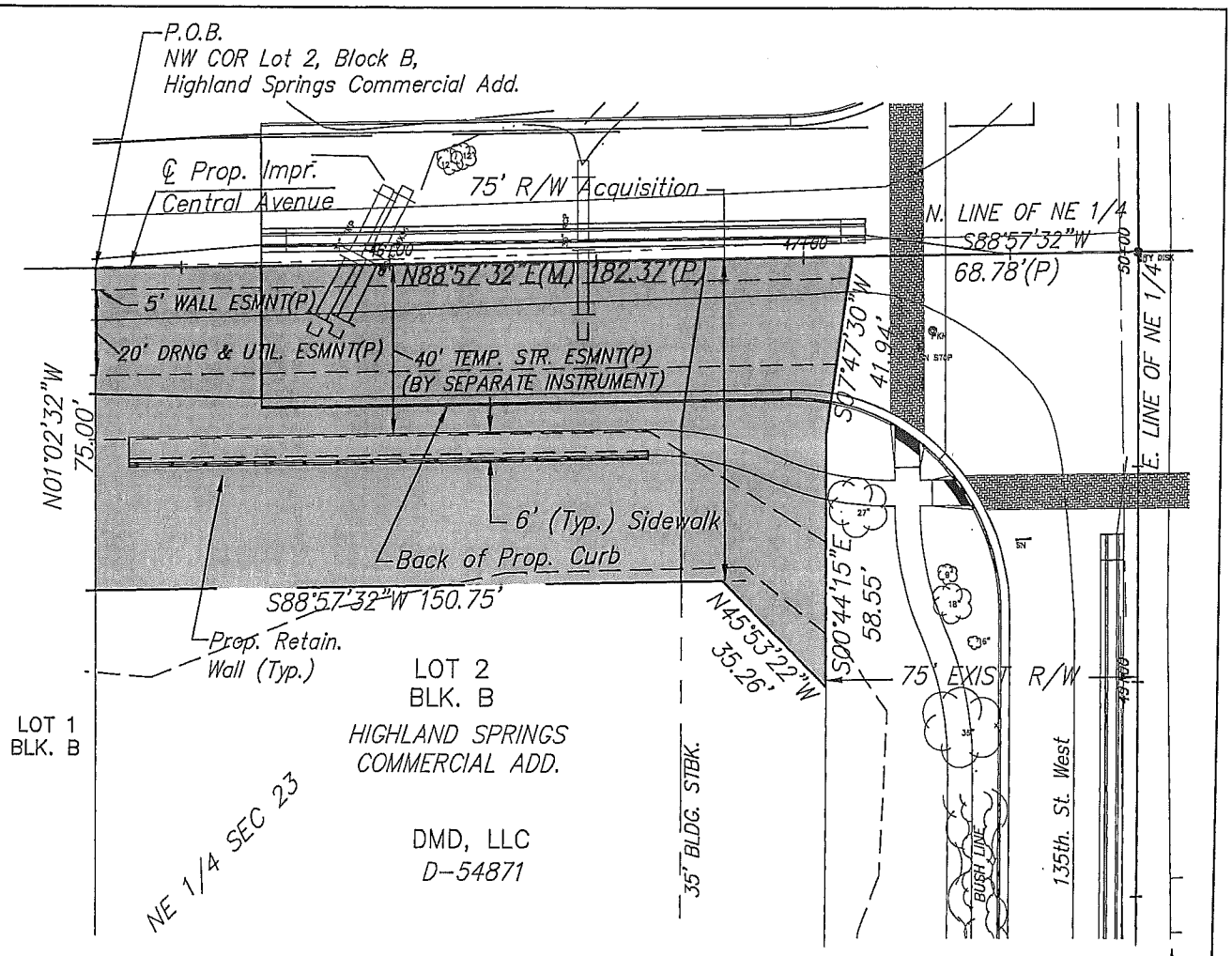


VICINITY MAP

MKEC ENGINEERING CONSULTANTS
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

CENTRAL 135TH TO 119TH ST. WEST
PROJECT NAME
RIGHT OF WAY ACQUISITION
TRACT MAP 12
SHEET TITLE

JRA	WNJ/DSN	JCM
DESIGN BY:	DRAWN BY:	CHECKED BY:
OCTOBER 2010 MARCH 2011 rev	04238	1 / 1
DATE	JOB NO.	SHEET/OF



LEGAL DESCRIPTION:

Right of Way Acquisition:

A parcel of land lying in the Northeast Quarter of Section 23, Township 27 South, Range 2 West of the 6th P.M. Sedgwick County, Kansas. Said parcel of land being more particularly described as follows:

Beginning at the Northwest corner of Lot 2, Block B, Highland Springs Commercial Addition, Wichita, Sedgwick County, Kansas; thence N88°57'32"E, 182.37 feet along the north line of said Lot 2; thence S07°47'30"W, 41.94 feet along the east line of said Lot 2; thence continuing along said east line S00°44'15"E, 58.55 feet; thence N45°53'22"W, 35.26 feet; thence S88°57'32"W, 150.75 feet parallel with the north line of said Lot 2 to the west line of said Lot 2; thence N01°02'32"W, 75.00 to the Point of Beginning.

Said parcel contains 13,638 sq. ft. excluding existing right of way

SCALE: 1"= 40'

0 20 40 80

N

LEGEND

P – Platted
C – Calculated
M – Measured
P.O.B. – Point of Beginning
Right of Way Acquisition =13,638 sq. ft. Excluding existing right of way.

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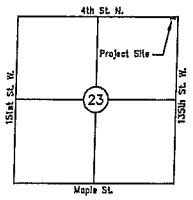
Owner:

DMD, LLC
250 N. Water, Ste. 300
Wichita, KS 67202

Property Identification:

D-54871



VICINITY MAP

MKEC ENGINEERING CONSULTANTS
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

CENTRAL 135TH TO 119TH ST. WEST
PROJECT NAME

RIGHT OF WAY ACQUISITION
TRACT MAP 13
SHEET TITLE

JRA	WNJ/DSN	JCM
DESIGN BY:	DRAWN BY:	CHECKED BY:
OCTOBER 2010 MARCH 2011 rev	04238	1 / 1
DATE	JOB NO.	SHEET/OF

Water and Sewer Lines

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 12224 West Central for the Central: 119th to 135th Street Road Improvement Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 19, 2008, the City Council approved the design concept to improve Central Avenue from 119th Street West to 135th Street West. The project will require the acquisition of all or part of 25 tracts. The proposed project includes straightening Central, providing signalization at the intersection of Central and 135th Street, and improving area storm drainage. One of the properties impacted by the project is located 12224 West Central. The property is improved with a single-family residence. The project requires the acquisition of the south 20 feet of the site, totaling 4,000 square feet as well as a 525 square foot temporary easement. After the taking, the house will be twenty-five feet from the road and approximately 25 trees that shield the house from the road will be removed.

Analysis: The owner rejected the appraised offer of $23,300 which was comprised of $13,000 ($3.25 per square foot) for the right-of-way and proximity damages, $10,200 for the trees and $100 for the temporary easement. Through negotiation, the owner agreed to accept $45,000. This amount includes $13,000 for the land and proximity damages, $31,900 for trees and other site damages (based on estimates) and $100 for the temporary easement.

Financial Considerations: The funding source is General Obligations Bonds. A budget of $46,000 is requested. This includes $45,000 for the property and $1,000 for closing costs and related charges.

Goal Impact: The acquisition of this tract is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

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

Recommendation/Action: It is recommended that the City Council; 1) approve the contract; 2) approve the budget; and 3) authorize all necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

PROJECT: Central Avenue – 119th to 135th DATE:

COUNTY: Sedgwick TRACT NO.: 10

CITY OF WICHITA, KANSAS

A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT made and entered into this____day of_____, 2012, by and between:

Russel J. Whitley, (Landowner), and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, Landowners hereby agree to convey fee title to the City of Wichita by warranty deed to the following described real property in Sedgwick County to wit:

A parcel of land lying in the Southeast Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

The north 20.00 feet of the south 50.00 feet of the west 200.00 feet of the east 1000.00 feet of said Southeast Quarter.

Additionally, landowners hereby agree to convey a temporary easement for construction of public improvements over the following described real property in Sedgwick County to wit:

A parcel of land lying in the Southeast Quarter of Section 13, Township 27 South, Range 2 West of the 6th P.M. Sedgwick County, Kansas. Said parcel of land being more particularly described as follows:

Commencing at the Southeast Corner of said Southeast Quarter; thence S87°50'28"W, 800.00 feet along the south line of said Quarter; thence N00°22'47"W, 50.02 feet; thence S87°50'28"W, 139.00 feet parallel with said south line to the Point of Beginning; thence continuing S87°50'28"W, 35.00 feet parallel with said south line; thence N02°09'32"W, 15.00 feet; thence N87°50'28"E, 35.00 feet parallel with said south line; thence S02°09'32"E, 15.00 feet to the Point of Beginning.

It is understood and agreed that landowner is responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, 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 until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property. The City agrees to purchase the above described real estate, and to pay therefore, the following amount within 30 days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 4,000 Sq. Ft. for right-of-way	$13,000.00
Approximately 525 Sq. Ft. for temporary easement	$ 100.00
Allowance for trees and other improvements in the acquisition area	$31,900.00
TOTAL	**$ 45,000.00**

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out including claims that Landowners may assert pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C.A. 4601, et. Seq.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

_____

Russel J. Whitley

BUYER:
City of Wichita, KS, a municipal corporation

_____

Carl Brewer, Mayor

ATTEST:

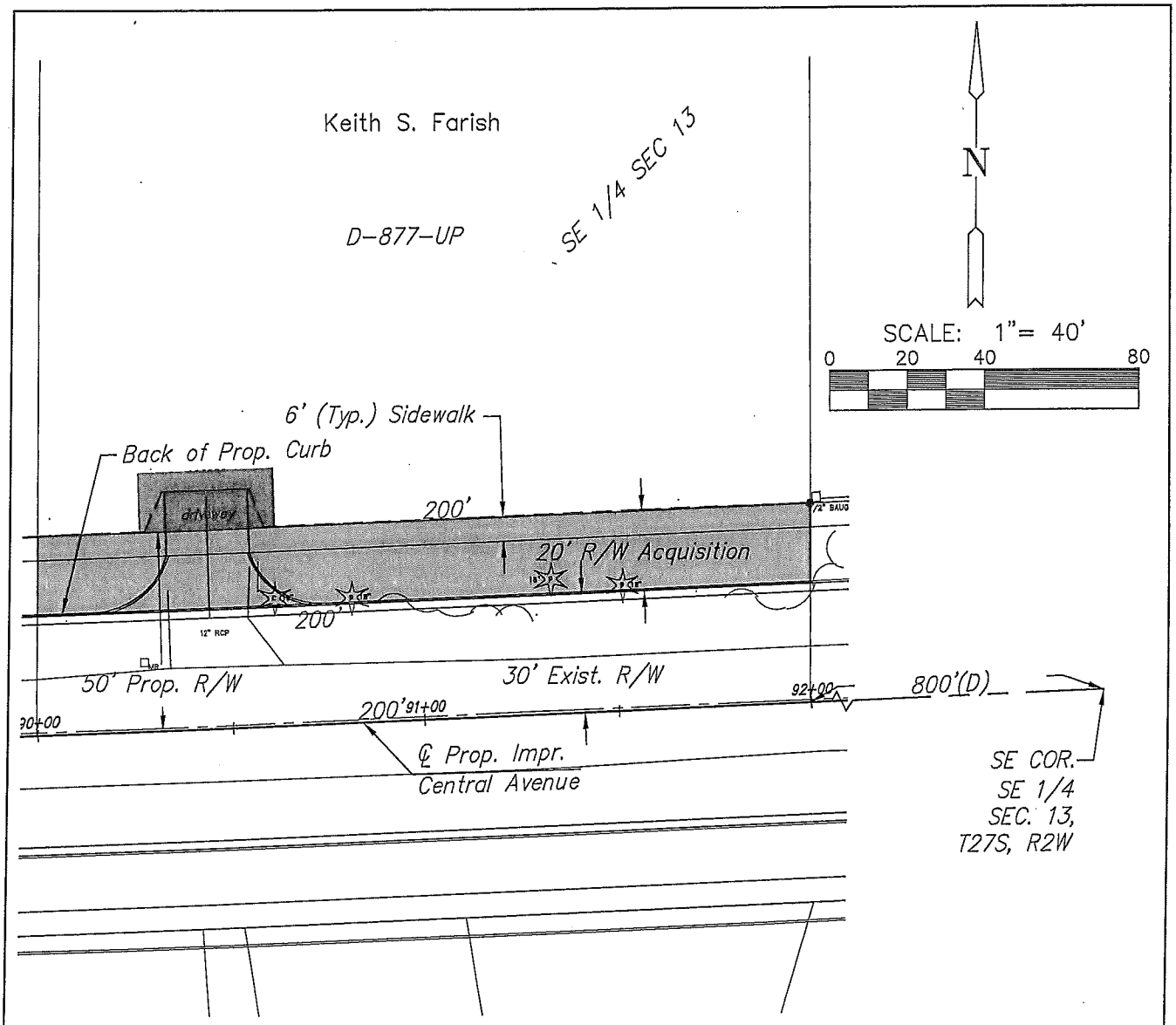
_____

Karen Sublett, City Clerk

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law



LEGAL DESCRIPTION:

Right of Way Acquisition:

A parcel of land lying in the Southeast Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

The north 20.00 feet of the south 50.00 feet of the west 200.00 feet of the east 1000.00 feet of said Southeast Quarter.

Said parcel contains 4,000 sq. ft. excluding existing right of way.

LEGEND

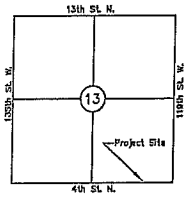
Temporary Construction Easement

Right of Way Acquisition =4,000 sq. ft. Excluding existing right of way.

J:\CIVIL\04238\DWG\PROP\ROW TRACTMAP.DWG

Owner:
Keith S. Farish
12224 W. Central
Wichita, Ks. 67235

Property Identification:
D-877-UP



VICINITY MAP

MKEC ENGINEERING CONSULTANTS
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

CENTRAL 135TH TO 119TH ST. WEST
PROJECT NAME

RIGHT OF WAY ACQUISITION TRACT MAP 10A
SHEET TITLE

JRA	WNJ/DSN	JCM
DESIGN BY:	DRAWN BY:	CHECKED BY:
OCTOBER 2010 MARCH 2011 rev	04238	1 / 1
DATE	JOB NO.	SHEET/OF

12224 West Central

- Property Parcels
- Roads
  - State Highway
  - US Federal Highway
  - Interstate
  - KTA
  - Arterial
  - Collector
  - Minor
  - Ramp
- Railroads
- Quarter Section
- Waterways
- Streams
- Parks
- Airports
- SDERASTER.SDEDATA.ORTHO1FT
- SDERASTER.SDEDATA.ORTHO
- City Limits
  - Andale
  - Bel Aire
  - Bentley
  - Cheney
  - Clearwater
  - Colwich
  - Derby
  - Eastborough
  - Garden Plain
  - Goddard
  - Haysville
  - Kechi
  - Maize
  - Mount Hope
  - Mulvane
  - Park City

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Partial Acquisition of Land at 2011 South Seneca for the Meridian Drainage Outfall Project (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 19, 2008, the City Council approved a project to provide storm water drainage relief for the area bounded by Meridian, Harry, Pawnee and the Big Arkansas River. Additionally, the project will improve Meridian from Pawnee to Orient. Orient will be realigned to intersect at Meridian, south of the current intersection. This will create a separation from the railroad corridor. The drainage portion of the project requires the acquisition of all or part of five parcels. Two of the properties required are also impacted by the Meridian street improvement project. At this time, the design of the drainage portion of the project is sufficient to allow the acquisition of right of way. All the tracts required for the road project have not been defined but the two also in the drainage project have been described, and will be acquired with this approval.

The property located at 2011 South Seneca is comprised of 15,000 square feet and improved with a 1,326 square foot retail store built in 1967. It is necessary to acquire an easement for storm water drainage through the unimproved portion of the property together with a temporary easement during construction. The permanent easement consists of 3,725 square feet and the temporary is 3,419 square feet. Until construction is complete, the easements reduce the onsite parking from twenty spaces to four.

Analysis: The owner rejected the appraised offer of $20,800, or $7,800 for the easement ($2.09 per square foot), $2,600 for the temporary easement ($0.76 per square foot), and $10,400 as cost-to-cure the surface lot after construction. The owner rejected the appraised value and agreed to accept $25,000. The $4,200 increase in compensation is for the owner to lease replacement parking from an adjacent property during construction and provide signage.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $26,500 is requested. This includes $25,000 for the acquisitions and $1,500 for title work, closing costs and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to Ensure Efficient Infrastructure by improving the storm water drainage and control through a developed part of the City.

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

Recommendation/Action: It is recommended that the City Council; 1) approve the budget and 2) accept the utility easement.

Attachments: Real estate agreement, tract maps, aerial map.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, Made and entered into this 6 day of August, 2012 by and between Chit Chat Holdings, LLC, a Kansas limited liability company, hereinafter referred to as "Seller," whether one or more, and City of Wichita, Kansas, a municipal corporation, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to convey to the Buyer a perpetual easement for drainage purposes, the following described real property, situated in Sedgwick County, Kansas, to wit:

> A portion of Lot 2, Block A, McAbdeel Second Addition to Wichita, Sedgwick County, Kansas described as beginning at the southeast corner of said Lot 2: thence west along the south line of said Lot 2 a distance of 79.83 feet; thence northwesterly a distance of 81.04 feet to a point on the west lot line of said Lot 2, said point being 40.52 feet north of the Southwest corner of said Lot 2; thence north along the west line of said Lot 2 a distance of 34.65 feet; thence southeasterly a distance of 131.97 feet to a point 9.18 feet normally distant north of the south lot line of said Lot 2; thence east parallel to the south line of said Lot 2 a distance of 35.73 feet to a point on the east line of said Lot 2; thence south along the east line of said Lot 2 a distance of 9.18 feet to the point of beginning.

In addition, the Seller does hereby agree to sell and convey to the Buyer a temporary easement for construction purposes, the following described real property, situated in Sedgwick County, Kansas, to wit:

> A portion of Lot 2, Block A, McAbdeel Second Addition to Wichita, Sedgwick County, Kansas described as beginning at the southeast corner of said Lot 2; thence north along the east line of Lot 2 a distance of 9.18 feet for a Point of Beginning; thence west a distance of 35.73 feet parallel to and 9.18 feet normally distant north of the south line of said Lot2; thence northwesterly a distance of 131.97 feet to a point on the west line of said Lot 2, said point being 24.83 feet south of the northwest corner of said Lot 2; thence north along the west line of said Lot 2 a distance of 11.55 feet to a point 13.28 feet south of the Northwest corner of said Lot 2; thence southeasterly a distance of 113.82 feet to a point 29.80 feet normally distant north of the south line of said Lot 2; thence east a distance of 36.44 feet parallel to the south line of said Lot 2 to a point 15.00 feet normally distant west of the east line of Lot 2; thence north a distance of 39.75 feet parallel to the east line of said Lot 2; thence east 15.00 feet to a point on the east line of said Lot 2: thence south 60.39 feet along the east line of said Lot 2 to the Point of beginning.
>
> TOGETHER WITH
>
> A portion of Lot 2, Block A, McAbdeel Second Addition to Wichita, Sedgwick County, Kansas described as beginning at the southwest corner of said Lot 2; thence north along the west line of said Lot 2 a distance of 28.97 feet for a Second Point of Beginning; thence continuing north along the west line of said Lot 2 a distance of 11.55 feet; thence

southeasterly a distance of 113.82 feet to a point on the south line of said Lot2, said point being 70.17 feet east of the southwest corner of said Lot 2; thence west along the south line of said Lot 2 a distance of 20.00 feet to a point 50.17 feet east of the southwest corner of said Lot 2; thence northwesterly a distance of 131. 97 feet to the Point of Beginning

2. The Buyer hereby agrees to purchase and pay to the Seller the above-described easements, including but not limited to light pole and parking lot, as consideration for the conveyance to it the sum of Twenty-five Thousand Dollars and zero cents ($25,000) in the manner following, to-wit: cash at closing.

3. Buyer shall have the right to obtain, at the Buyer's expense, a complete abstract of title certified to date, or a title insurance commitment to insure to the above-described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to City of Wichita, Kansas, Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before September 30, 2012.

6. The Seller further agrees to convey the above-described premises with no additional improvements, other than what is in place at the time this agreement is executed, located thereon and deliver possession of the same and in the same condition as they now.

7. Possession to be given to Buyer at closing.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be split 100% Buyer and 0% Seller. Buyer will pay 100% of the closing costs.

9. Site Assessment

A. At any time prior to the closing of this agreement, the buyer shall have the right to conduct or cause to be conducted, at Buyer's expense, an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Buyer shall have the right to void this agreement upon notice to Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to buyer any deposit made hereunder.

B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:
Chit Chat Holdings, LLC

John Kennedy, Member

BUYER:

Carl Brewer, Mayor

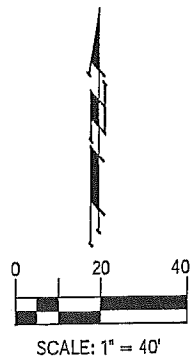
ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

EXHIBIT A

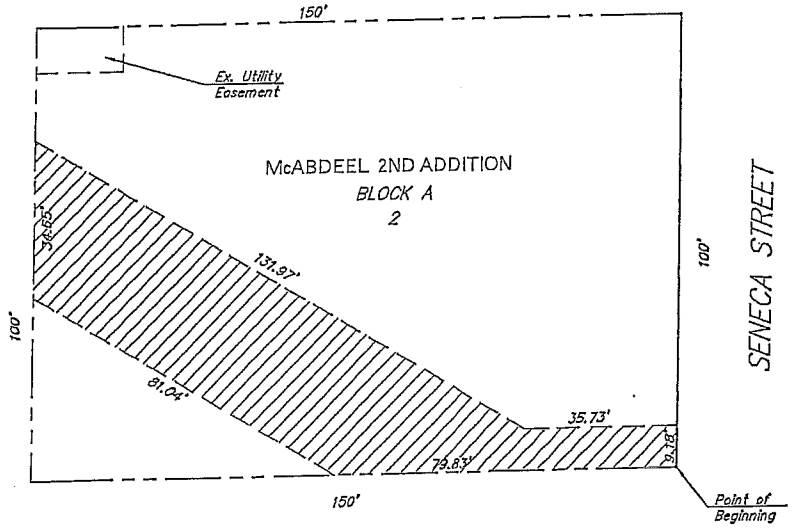


LEGAL DESCRIPTION:

A Proposed Drainage Easement in Lot 2, Block A, McAbdeel Second Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

A portion of Lot 2, Block A, McAbdeel Second Addition to Wichita, Sedgwick County, Kansas described as beginning at the the SE Corner of said Lot 2; thence west along the south line of said Lot 2 a distance of 79.83 feet; thence northwesterly a distance of 81.04 feet to a point on the west lot line of said Lot 2, said point being 40.52 feet north of the SW. corner of said Lot 2; thence north along the west line of said Lot 2 a distance of 34.65 feet; thence southeasterly a distance of 131.97 feet to a point 9.18 feet normally disant north of the south lot line of said Lot 2; thence east parallel to the south line of said Lot 2 a distance of 35.73 feet to a point on the east line of said Lot 2; thence south along the east line of said Lot 2 a distance of 9.18 feet to the Point of Beginning.

Containing 3,725.7 Sq. Ft., more or less.



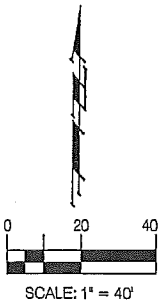
11-9-09

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Project Number 08-02-E038
E:eng/Meridian Drainage\Exhibit\McAbdeel 2-Drainage.dwg

#5
(revised)

EXHIBIT B



LEGAL DESCRIPTION:

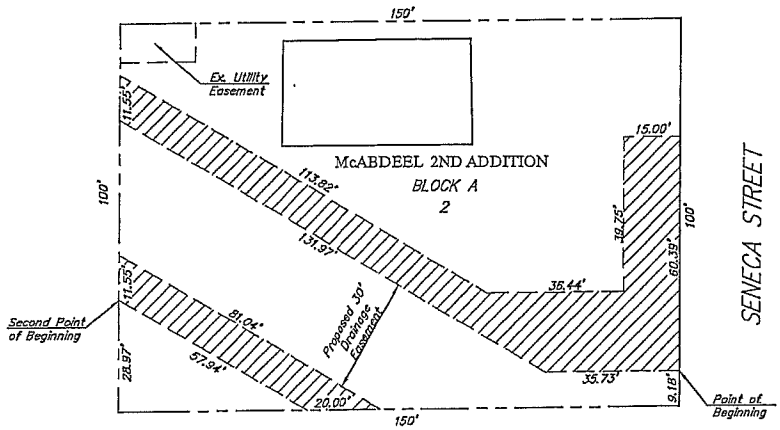
A Proposed Temporary Construction Easement in Lot 2, Block A, McAbdeel Second Addition to Wichita, Sedgwick County, Kansas, Described as Follows:

A portion of Lot 2, Block A, McAbdeel Second Addition to Wichita, Sedgwick County, Kansas described as commencing at the southeast corner of said Lot 2; thence north along the east line of Lot 2 a distance of 9.18 feet for a Point of Beginning; thence west a distance of 35.73 feet parallel to and 9.18 feet normally distant north of the south line of said Lot 2; thence northwesterly a distance of 131.97 feet to a point on the west line of said Lot 2, said point being 24.83 feet south of the northwest corner of said Lot 2; thence north along the west line of said Lot 2 a distance of 11.55 feet to a point 13.28 feet south of the northwest corner of said Lot 2; thence southeasterly a distance of 113.82 feet to a point 29.80 feet normally distant north of the south line of said Lot 2; thence east a distance of 36.44 feet parallel to the south line of said Lot 2 to a point 15.00 feet normally distant west of the east line of Lot 2; thence north a distance of 39.75 feet parallel to the east line of said Lot 2; thence east 15.00 feet to a point on the east line of said Lot 2; thence south 60.39 feet along the east line of said Lot 2 to the Point of Beginning.

TOGETHER WITH

A portion of Lot 2, Block A, McAbdeel Second Addition to Wichita, Sedgwick County, Kansas described as commencing at the southwest corner of said Lot 2; thence north along the west line of said Lot 2 a distance of 28.97 feet for a Second Point of Beginning; thence continuing north along the west line of said Lot 2 a distance of 11.55 feet; thence southeasterly a distance of 113.82 feet to a point on the south line of said Lot 2, said point being 70.17 feet east of the southwest corner of said Lot 2; thence west along the south line of said Lot 2 a distance of 20.00 feet to a point 50.17 feet east of the southwest corner of said Lot 2; thence northwesterly a distance of 131.97 feet to the Point of Beginning.

Containing 3,419.4 Sq. Ft., more or less.



Submitted: 2–25–11

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Project Number 08–02–E038
E:eng/Meridian Drainage\Exhibit\McAbdeel 2–Temp.dwg

McAbdeel 2nd Addition

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CITY OF WICHITA
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 12316 West Central for the Central: 119th to 135th Street Road Improvement Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 19, 2008, the City Council approved the design concept to improve Central Avenue from 119th Street West to 135th Street West. The project will require the acquisition of all or part of 25 tracts. The proposed project includes straightening Central, providing signalization at the intersection of Central and 135th Street, and improving area storm drainage. One of the properties impacted by the project is located 12316 West Central. The property is improved with a single-family residence. The project requires the acquisition of the south 20 feet of the site, totaling 6,477 square feet. After the taking, the house will be forty feet from the road and a row of trees will be impacted by the improvements.

Analysis: The owner rejected the appraised offer of $14,900, which was comprised of $2,000 ($0.31 per square foot) for the right-of-way, $7,000 as damages to the remainder, $5,800 to replace the drive and sprinklers together with $100 for a temporary construction easement. Through negotiation, the owner agreed to accept $25,000. This amount includes $2,000 for the land, $22,900 for proximity damage and costs to cure damages to the site, and $100 for the temporary easement.

Financial Considerations: The funding source is General Obligations Bonds. A budget of $26,000 is requested. This includes $25,000 for the property and $1,000 for closing costs and related charges.

Goal Impact: The acquisition of this tract is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

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

Recommendation/Action: It is recommended that the City Council; 1) approve the contract; 2) approve the budget; and 3) authorize all necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

PROJECT: Central Avenue DATE: May 30, 2012

COUNTY: Sedgwick TRACT NO.: 9

CITY OF WICHITA, KANSAS

A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY PERMANENT EASEMENT

THIS AGREEMENT made and entered into this____day of_____, 2012 by and between:

Julia A. Tiemeyer and Gerald Lee Tiemeyer, Trustees under the Ray Tiemeyer Credit Shelter Trust, dated July 29, 2010, and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

A Permanent Easement for Right-of-way and Public Purpose Described as Follows: A parcel of land lying in the Southeast Quarter of Section 13, Township 27 South, Range 2 West of the 6th P.M. Sedgwick County, Kansas. Said parcel of land being more particularly described as follows:

The north 20.00 feet of the south 50.00 feet of the west 323.84 feet of the east 1,323.84 feet of said Southeast Quarter

And a Temporary Construction Easement Described as Follows: A parcel of land lying in the Southeast Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

Commencing at the Southeast Corner of said Southeast Quarter of Section 13; thence S87°50'28"W, 1000.00 feet along the south line of said Southeast Quarter; thence N00°13'27"W, 50.03 feet; thence S87°50'28"W, 39.37 feet parallel with said south line to the Point of Beginning; thence continuing S87°50'28"W, 35.00 feet parallel with said south line of said Quarter; thence N02°09'32"W, 15.00 feet; thence N87°50'28"E, 35.00 feet parallel with said south line; thence S02°09'32"E, 15.00 feet to the Point of Beginning.

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. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, 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 until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property.

The City agrees to purchase the above described real estate, and to pay therefore, the following amount within thirty (30) days after the permanent easement conveying said property free of encumbrance has been delivered.

Approximately 6,477 sq. ft. for Permanent Easement		$24,000.00
Approximately 525 sq. ft. for Temporary Easement		$ 1,000.00
	TOTAL	**$25,000.00**

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

_____
Julia A. Tiemeyer, Trustee
Under the Ray Tiemeyer Credit Shelter Trust
dated July 29, 2010

_____
Gerald Lee Tiemeyer, Trustee
Under the Ray Tiemeyer Credit Shelter
Trust dated July 29, 2010

City of Wichita
County of Sedgwick
State of Kansas

BUYER:
City of Wichita, KS, a municipal corporation

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Rev. 9-94
Form No. 1716

D. O. T.

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

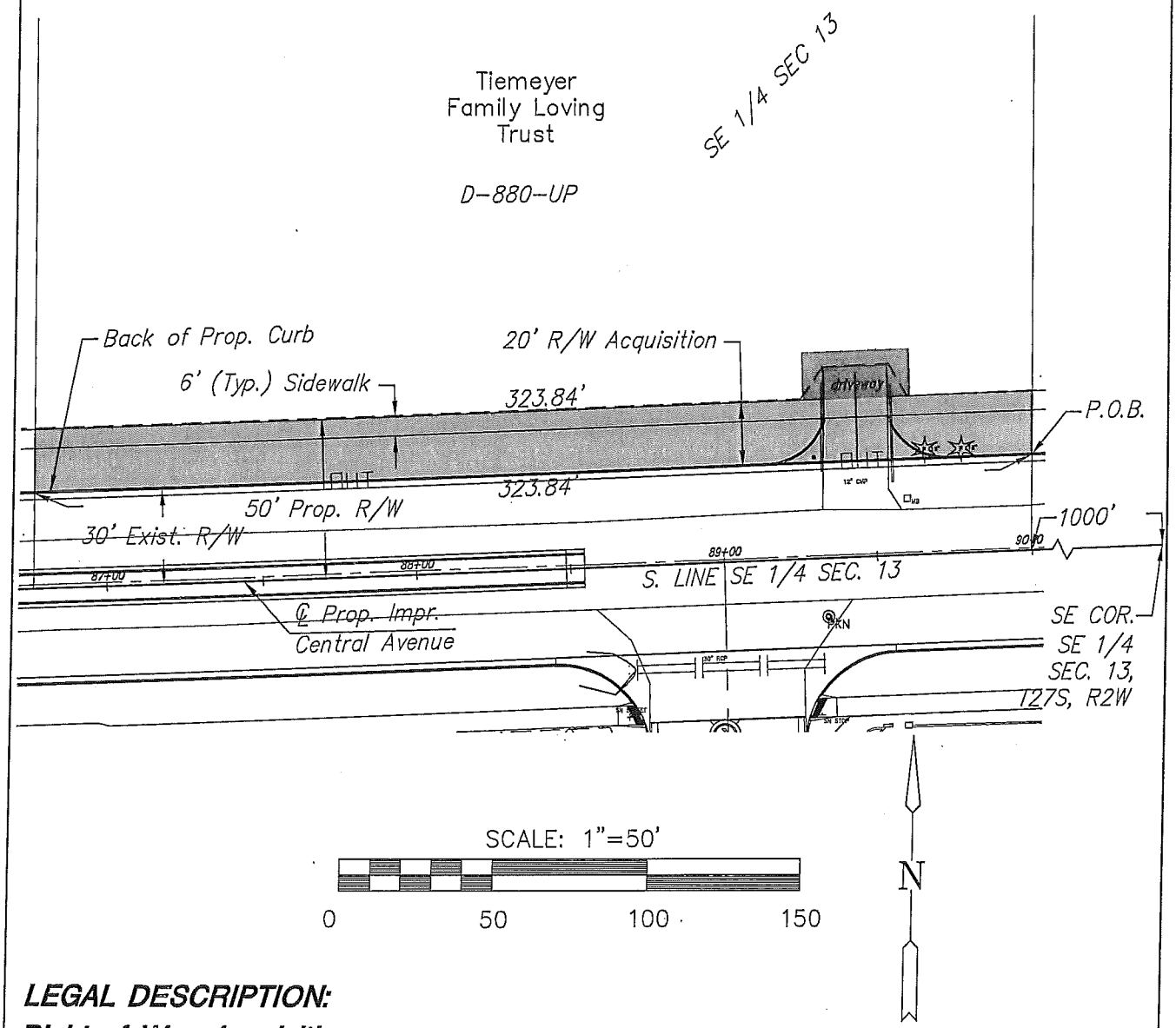
MEMORANDA

Exact and full name of owner, as it appears of record:

Julia A. Tiemeyer and Gerald Lee Tiemeyer, Trustees of the Ray Tiemeyer Credit Shelter Trust, dated July 29, 2010,

If mortgage or other liens, show names of holders:

REMARKS:



LEGAL DESCRIPTION:

Right of Way Acquisition:

A parcel of land lying in the Southeast Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

The north 20.00 feet of the south 50.00 feet of the west 323.84 feet of the east 1323.84 feet of said Southeast Quarter.

Said parcel contains 6,477 sq. ft. excluding existing right of way.

LEGEND

Temporary Construction Easement

Right of Way Acquisition =6,477 sq. ft. Excluding existing right of way.

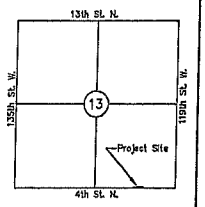
J:\CIVIL\04238\DWG\PROP\ROW TRACTMAP.DWG

Owner:

Tiemeyer Family Loving Trust
ATTN: Raymond A. Tiemeyer Etal, Trustees
RR 2, 10605 S. Essex Heights
Sedgwick, KS 67135

Property Identification:

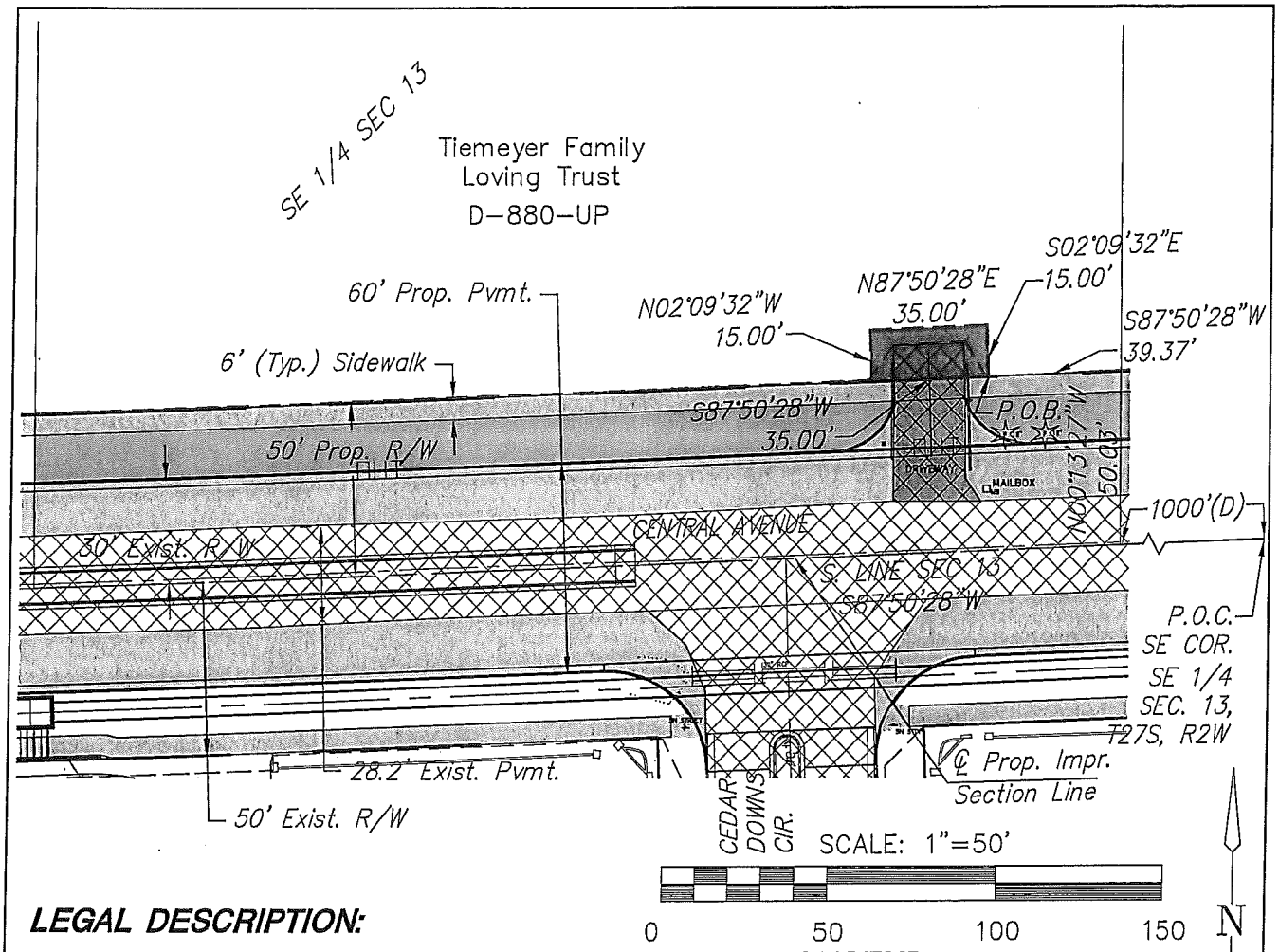
D-880-UP



VICINITY MAP

MKEC ENGINEERING CONSULTANTS
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

CENTRAL 135TH TO 119TH ST. WEST (PROJECT NAME)		
RIGHT OF WAY ACQUISITION TRACT MAP 9A (SHEET TITLE)		
JRA (DESIGN BY)	WNJ/DSN (DRAWN BY)	JCM (CHECKED BY)
OCTOBER 2010 MARCH 2011 rev (DATE)	04238 (JOB NO.)	1 / 1 (SHEET/OF)



LEGAL DESCRIPTION:

Temporary Construction Easement:

A parcel of land lying in the Southeast Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

Commencing at the Southeast Corner of said Southeast Quarter of Section 13; thence S87°50'28"W, 1000.00 feet along the south line of said Southeast Quarter; thence N00°13'27"W, 50.03 feet; thence S87°50'28"W, 39.37 feet parallel with said south line to the Point of Beginning; thence continuing S87°50'28"W, 35.00 feet parallel with said south line of said Quarter; thence N02°09'32"W, 15.00 feet; thence N87°50'28"E, 35.00 feet parallel with said south line; thence S02°09'32"E, 15.00 feet to the Point of Beginning.

Said parcel contains 525 sq. ft.

LEGEND

- D – Deeded
- POC – Point of Commencement
- POB – Point of Beginning
- Right of Way
- Construction Limits
- Existing paved drives, walks, and street to be removed and replaced
- New street and sidewalks
- Property owners existing drive within Right-of-Way
- Temporary Construction Easement =525 sq. ft.
- Right of Way Acquisition

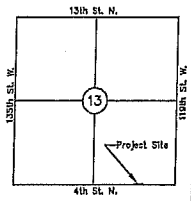
J:\CIVIL\04238\DWG\PROP\ROFE TRACTMAP.DWG

Owner:

Tiemeyer Family Loving Trust
ATTN:
Raymond A. Tiemeyer
RR 2, 10605 S. Essex Heights
Sedgwick, KS 67135

Property Identification:

D-880-UP



VICINITY MAP

MKEC ENGINEERING CONSULTANTS
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

CENTRAL 135TH TO 119TH ST. WEST
PROJECT NAME

TEMPORARY CONSTRUCTION EASEMENT TRACT MAP 9B
SHEET TITLE

JRA	WNJ/DSN	JCM
DESIGN BY:	DRAWN BY:	CHECKED BY:
October 2010 March 2011 rev	04238	1 / 1
DATE	JOB NO.	SHEET/OF

12316 West Central

- Identified Features
- Property Parcels

Roads

- State Highway
- US Federal Highway
- Interstate
- KTA
- Arterial
- Collector
- Minor
- Ramp
- Quarter Section

SDERASTER.SDEDATA.ORTHO1FT

SDERASTER.SDEDATA.ORTHO

City Limits

- Andale
- Bel Aire
- Bentley
- Cheney
- Clearwater
- Colwich
- Derby
- Eastborough
- Garden Plain
- Goddard
- Haysville
- Kechi
- Maize
- Mount Hope
- Mulvane
- Park City
- Sedgwick
- Sedgwick County
- Unincorporated

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CITY OF WICHITA
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 12822 West Central for the Central: 119th to 135th Street Road Improvement Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 19, 2008, the City Council approved the design concept to improve Central Avenue from 119th Street West to 135th Street West. The project will require the acquisition of all or part of 25 tracts. The proposed project includes straightening Central, providing signalization at the intersection of Central and 135th Street, and improving area storm drainage. One of the properties impacted by the project is located 12822 West Central. The property consists of 78.86 acres, the majority of which is unimproved and utilized for agricultural purposes. There is a farmstead with a single-family residence located towards the middle of the tract on the south side. The project requires the acquisition of a strip of land ranging in width from 20 to 90 feet along the south side of the site. This strip is for road right-of-way and consists of 51,580 square feet. Temporary easements totaling 4,953 square feet are also required.

Analysis: The owner rejected the appraised offer of $52,800, which was comprised of $10,500 ($8,800 per acre) for the right-of-way and $42,300 for fencing. The appraisal placed no value on the temporary easement, a concrete feeding area or the loss of several trees that help shield the farmstead improvements from the road. The owner provided documentation of an offer of $15,000 per acre dated in 2004 for the subject property as well as other sales in the area at $20,000 or more per acre. Through negotiation, the owners agreed to accept $70,000. This amount includes $26,700 ($22,550 per acre) for the land, $42,300 for fencing, a concrete feeding pad and trees being removed in front of the farmstead. The agreement also includes $1,000 for the temporary easement.

Financial Considerations: The funding source is General Obligations Bonds. A budget of $71,000 is requested. This includes $70,000 for the property and $1,000 for closing costs and related charges.

Goal Impact: The acquisition of this tract is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

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

Recommendation/Action: It is recommended that the City Council; 1) approve the contract; 2) approve the budget; and 3) authorize all necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

PROJECT: Central Avenue DATE: May 30, 2012

COUNTY: Sedgwick TRACT NO.: 9

CITY OF WICHITA, KANSAS

A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY PERMANENT EASEMENT

THIS AGREEMENT made and entered into this____day of_____, 2012 by and between:

Leslie J. Albert and Venessa I. Albert, and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

A Permanent Easement for Right-of-way and Public Purpose Described as Follows: A parcel of land lying in the Southwest Quarter of Section 13, Township 27 South, Range 2 West of the 6th P.M. Sedgwick County, Kansas. Said parcel of land being more particularly described as follows:

Beginning at the southwest corner of the East Half of said Southwest Quarter; thence N00°58'18"W, 90.00 feet along the west line of said East Half; thence N88°33'39"E, 322.22 feet parallel with the south line of said Southwest Quarter; thence S01°26'21"E, 40.00 feet; thence N88°33'39"E, 989.45 feet parallel with the south line of said Southwest Quarter to the east line of said Southwest Quarter; thence S00°53'10"E, 20.00 feet along said east line; thence S88°33'39"W, 897.25 feet parallel with the south line of said Southwest Quarter; thence S01°26'21"E, 30.00 feet to the South line of said Southwest Quarter; thence S88°33'39"W, 414.96 feet along said South line to the Point of Beginning.

And Temporary Construction Easements Described as Follows: A parcel of land lying in the East Half of the Southwest Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

Commencing at the southwest corner of said East Half; thence N00°58'18"W, 90.00 feet along the west line of said East Half to the Point of Beginning; thence continuing N00°58'18"W, 20.00 feet along said west line; thence N88°33'39"E, 106.56 feet parallel with the south line of said East Half; thence S01°26'21"E, 20.00 feet; thence S88°33'39"W, 106.72 feet parallel with said south line to the Point of Beginning.

And a parcel of land lying in the East Half of the Southwest Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

Commencing at the southwest corner of said East Half; thence N88°33'39"E, 507.14 feet along the south line of said East Half; thence N01°26'21"W, 50.00 feet to the Point of Beginning; thence continuing N01°26'21"W, 15.00 feet; thence N88°33'39"E, 188.00 feet parallel with the said south line; thence S01°26'21"E, 15.00 feet; thence S88°33'39"W, 188.00 feet parallel with said south line to the Point of Beginning.

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. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, 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 until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property.

The City agrees to purchase the above described real estate, and to pay therefore, the following amount within thirty (30) days after the permanent easement conveying said property free of encumbrance has been delivered.

Approximately 51,580 sq. ft. for Permanent Easement	$26,700.00
Approximately 4,953 sq. ft. for Temporary Easements	$ 1,000.00
Costs to Cure including fencing, trees, and concrete pad	$42,300.00
TOTAL	**$70,000.00**

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

Leslie J. Albert

Venessa I. Albert

City of Wichita
County of Sedgwick
State of Kansas

BUYER:

Rev. 9-94
Form No. 1716

D. O. T.

City of Wichita, KS, a municipal corporation

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

MEMORANDA

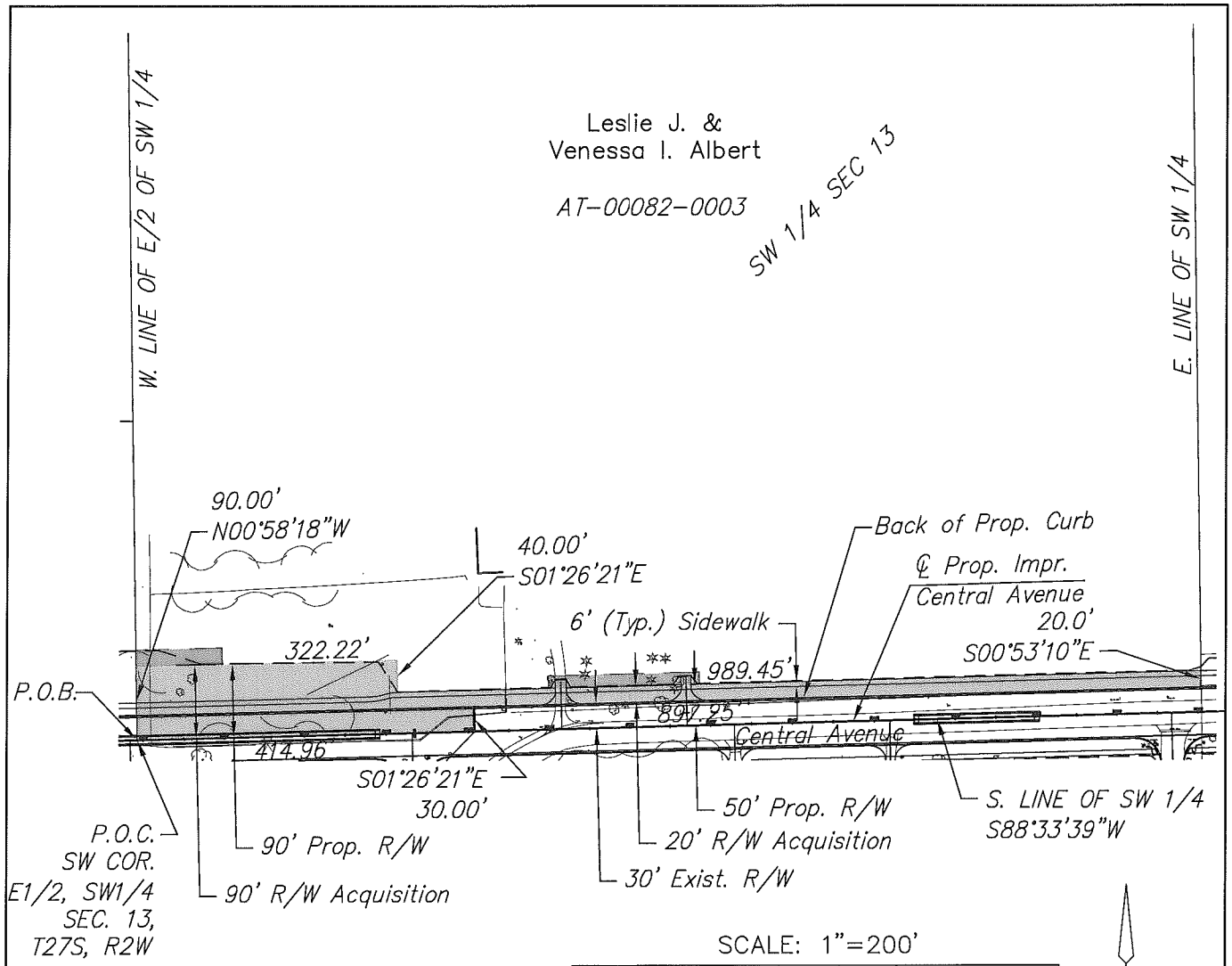
Exact and full name of owner, as it appears of record:

Leslie J. Albert and Venessa I. Albert

If mortgage or other liens, show names of holders:

Meritrust Credit Union

REMARKS:



LEGAL DESCRIPTION:

Right of Way Acquisition:

A parcel of land lying in the East Half of the Southwest Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

Beginning at the southwest corner of the East Half of said Southwest Quarter; thence N00°58'18"W, 90.00 feet along the west line of said East Half; thence N88°33'39"E, 322.22 feet parallel with the south line of said Southwest Quarter; thence S01°26'21"E, 40.00 feet; thence N88°33'39"E, 989.45 feet parallel with the south line of said Southwest Quarter to the east line of said Southwest Quarter; thence S00°53'10"E, 20.00 feet along said east line; thence S88°33'39"W, 897.25 feet parallel with the south line of said Southwest Quarter; thence S01°26'21"E, 30.00 feet to the South line of said Southwest Quarter; thence S88°33'39"W, 414.96 feet along said South line to the Point of Beginning.

Said parcel contains 51,580 sq. ft. excluding existing right of way

LEGEND

P.O.C. – Point of Commencement
P.O.B. – Point of Beginning

Temporary Construction Easement

Right of Way Acquisition
=51,580 sq. ft.
Excluding existing right of way.

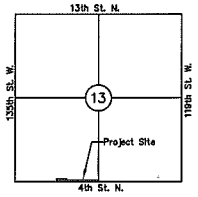
J:\CIVIL\04238\DWG\PROP\ROW TRACTMAP.DWG

Owner:

Leslie J. & Venessa I. Albert
14601 W. Central
Wichita, KS 67235

Property Identification:

AT-00082-0003



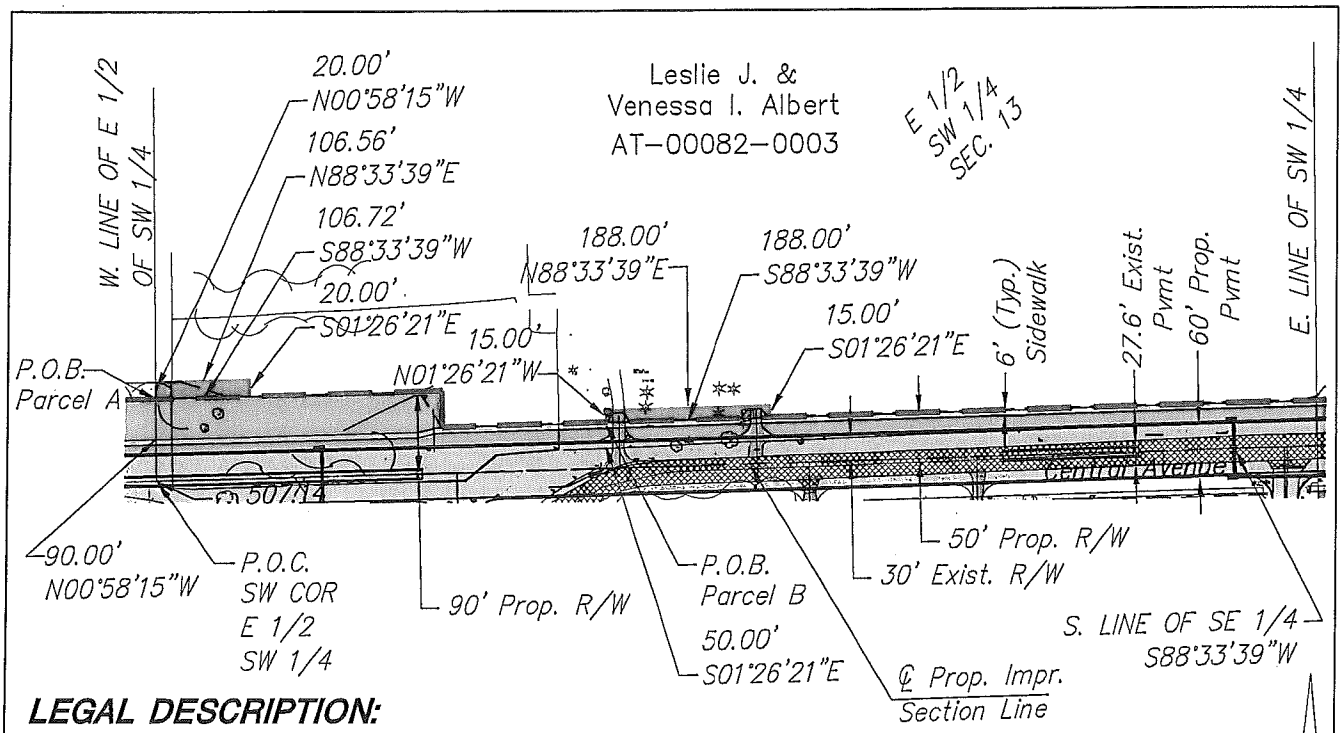
VICINITY MAP

MKEC ENGINEERING CONSULTANTS
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

CENTRAL 135TH TO 119TH ST. WEST
PROJECT NAME

RIGHT OF WAY ACQUISITION TRACT MAP 3A
SHEET TITLE

JRA	WNJ/DSN	JCM
DESIGN BY:	DRAWN BY:	CHECKED BY:
OCTOBER 2010 MARCH 2011 rev JUNE 2011 rev	04238	1 / 1
DATE	JOB NO.	SHEET/OF



LEGAL DESCRIPTION:

Temporary Construction Easements:

Parcel A

A parcel of land lying in the East Half of the Southwest Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

Commencing at the southwest corner of said East Half; thence N00°58'18"W, 90.00 feet along the west line of said East Half to the Point of Beginning; thence continuing N00°58'18"W, 20.00 feet along said west line; thence N88°33'39"E, 106.56 feet parallel with the south line of said East Half; thence S01°26'21"E, 20.00 feet; thence S88°33'39"W, 106.72 feet parallel with said south line to the Point of Beginning.

Said parcel contains 2,133 sq. ft.

Parcel B

A parcel of land lying in the East Half of the Southwest Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

Commencing at the southwest corner of said East Half; thence N88°33'39"E, 507.14 feet along the south line of said East Half; thence N01°26'21"W, 50.00 feet to the Point of Beginning; thence continuing N01°26'21"W, 15.00 feet; thence N88°33'39"E, 188.00 feet parallel with the said south line; thence S01°26'21"E, 15.00 feet; thence S88°33'39"W, 188.00 feet parallel with said south line to the Point of Beginning.

Said parcel contains 2,820 sq. ft.

SCALE: 1"=200'

200 0 200 400

N

LEGEND

POC – Point of Commencement
POB – Point of Beginning
Right of Way
Construction Limits
Existing paved drives, walks, and street to be removed and replaced
Property owners existing drive within Right-of-Way
New street and sidewalks
Temporary Construction Easements
=2,133 sq. ft. Parcel A
=2,820 sq. ft. Parcel B
Right of Way Acquisition

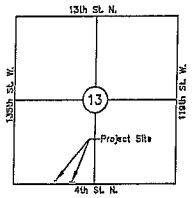
J:\CIVIL\04238\DWG\PROP\ROFE TRACTMAP.DWG

Owner:

Leslie J & Venessa L. Albert
14601 W. Central
Wichita, KS 67235

Property Identification:

AT-00082-0003



VICINITY MAP

MKEC ENGINEERING CONSULTANTS
411 N. WEBB ROAD
WICHITA, KS. 67206
316-684-9600

CENTRAL 135TH TO 119TH ST. WEST
PROJECT NAME

TEMPORARY CONSTRUCTION EASEMENT TRACT MAP 3B
SHEET TITLE

JRA	WNJ/DSN	JCM
DESIGN BY:	DRAWN BY:	CHECKED BY:
October 2010 March 2011 rev	04238	1 / 1
DATE	JOB NO.	SHEET/OF

12822 West Central

- Identified Features
- Property Parcels

Roads

- State Highway
- US Federal Highway
- Interstate
- KTA
- Arterial
- Collector
- Minor
- Ramp
- Township and Range
- Section
- Quarter Section

SDERASTER.SDEDATA.ORTHO1FT

SDERASTER.SDEDATA.ORTHO

City Limits

- Andale
- Bel Aire
- Bentley
- Cheney
- Clearwater
- Colwich
- Derby
- Eastborough
- Garden Plain
- Goddard
- Haysville
- Kechi
- Maize
- Mount Hope
- Mulvane
- Park City

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Partial Acquisition of Land in the Northeast Quadrant of Central and 135th Street West for the Central: 119th to 135th Street Road Improvement Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 19, 2008, the City Council approved the design concept to improve Central Avenue from 119th Street West to 135th Street West. The project will require the acquisition of all or part of 25 tracts. The proposed project includes straightening Central, providing signalization at the intersection of Central and 135th Street, and improving area storm drainage. One of the properties impacted by the project is located in the northeast quadrant of Central and 135th Street West. The property consists of 38.27 acres, utilized for agricultural purposes. The project requires the acquisition of 141,668 square feet (3.25 acres) of the site in strip along the west and south sides for right of way as well as a 381,686 square feet (8.76 acres) area for drainage and retention.

Analysis: The owner rejected the appraised offer of $211,100, which was comprised of $144,100 ($12,000 per acre) for the right-of-way and $67,000 for fencing. The owner provided documentation of an offer of $15,000 per acre dated in 2004 for the subject property as well as other sales in the area at $20,000 or more per acre. Through negotiation, the owners agreed to accept $275,000. This amount includes $208,000 ($17,320 per acre) for the land and $67,000 for fencing.

Financial Considerations: The funding source is General Obligations Bonds. A budget of $276,000 is requested. This includes $275,000 for the property and $1,000 for closing costs and related charges.

Goal Impact: The acquisition of this tract is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

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

Recommendation/Action: It is recommended that the City Council; 1) approve the contract; 2) approve the budget; and 3) authorize all necessary signatures.

Attachments: Aerial map, tract map, and real estate purchase agreement.

PROJECT: Central Avenue DATE: May 30, 2012

COUNTY: Sedgwick TRACT NO.: 9

CITY OF WICHITA, KANSAS

A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY PERMANENT EASEMENT

THIS AGREEMENT made and entered into this___day of_____, 2012 by and between:

Donald A. Albert and Micki K. Albert, and the City of Wichita, State of Kansas,

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

A Permanent Easement for Right-of-way and Public Purpose Described as Follows: A parcel of land lying in the Southwest Quarter of Section 13, Township 27 South, Range 2 West of the 6th P.M. Sedgwick County, Kansas. Said parcel of land being more particularly described as follows:

Beginning at a point 25 feet east of the southwest corner of said Southwest Quarter; thence N01°03'27"W, 704.79 feet parallel with the west line of said Southwest Quarter; thence N88°56'33"E, 35.00 feet; thence S01°03'27"E, 279.55 feet parallel with the west line of said Southwest Quarter; thence S09°35'47"E, 101.02 feet; thence S01°03'27"E, 225.00 feet parallel with the east line of said Southwest Quarter; thence S46°14'54"E, 14.10 feet; thence N88°33'39"E, 1227.06 feet parallel with the south line of said Southwest Quarter to the east line of the West Half of said Southwest Quarter; thence S00°58'18"E, 90.00 feet along said east line to a point on the south line of said Southwest Quarter; thence S88°33'39"W, 1286.92 feet along the south line of said Southwest Quarter to the Point of Beginning.

And Permanent Easement for Drainage and Public Purpose Described as Follows: A parcel of land lying in the Southwest Quarter of Section 13, Township 27 South, Range 2 West of the 6th P.M. Sedgwick County, Kansas. Said parcel of land being more particularly described as follows:

Beginning at a point 75 feet east and 100 feet north of the southwest corner of said Southwest Quarter; thence N01°03'27"W, 225.00 feet parallel with the west line of said Southwest Quarter; thence N09°35'46"W, 83.38 feet; thence N89°25'00"E, 1249.90 feet; thence S00°58'18"E, 298.88 feet to a point 90 feet north of the

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. In the event of relocation,

landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, 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 until the relocation is completed. In no event will the land owner(s) be required to move until the City becomes legally entitled to the property.

The City agrees to purchase the above described real estate, and to pay therefore, the following amount within thirty (30) days after the permanent easement conveying said property free of encumbrance has been delivered.

Approximately 141,668 sq. ft. for Permanent Easement	$ 56,300.00
Approximately 381,686 sq. ft. for Drainage Easement	$151,700.00
Costs to Cure including fencing and trees	$ 67,000.00
TOTAL	**$275,000.00**

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

Donald A. Albert

Micki K. Albert

City of Wichita
County of Sedgwick
State of Kansas

BUYER:
City of Wichita, KS, a municipal corporation

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Rev. 9-94
Form No. 1716

D. O. T.

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

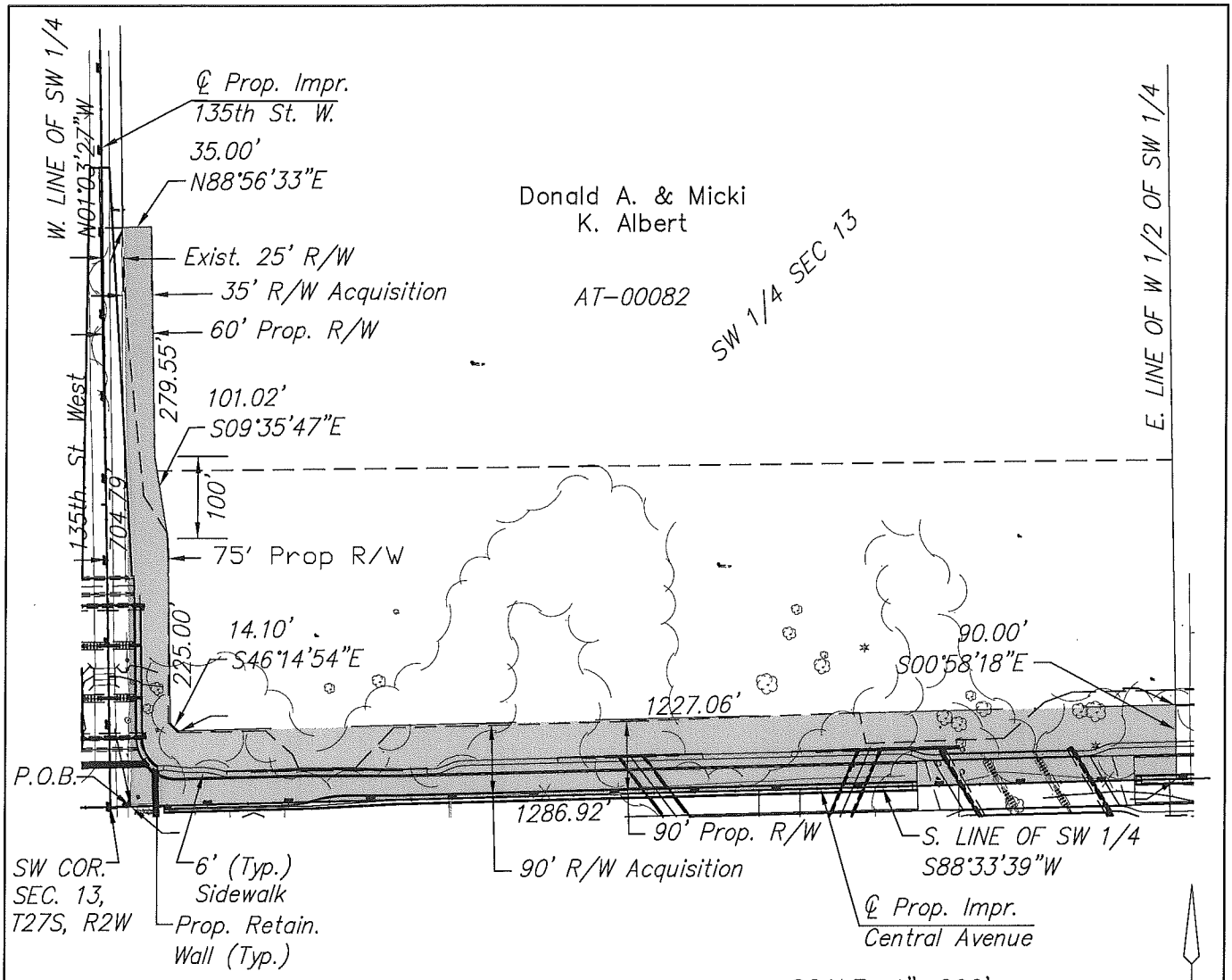
MEMORANDA

Exact and full name of owner, as it appears of record:

Donald A. Albert and Micki K. Albert

If mortgage or other liens, show names of holders:

REMARKS:



LEGAL DESCRIPTION:

Right of Way Acquisition:

A parcel of land lying in the West Half of the Southwest Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

Beginning at a point 25 feet east of the southwest corner of said Southwest Quarter; thence N01°03'27"W, 704.79 feet parallel with the west line of said Southwest Quarter; thence N88°56'33"E, 35.00 feet; thence S01°03'27"E, 279.55 feet parallel with the west line of said Southwest Quarter; thence S09°35'47"E, 101.02 feet; thence S01°03'27"E, 225.00 feet parallel with the east line of said Southwest Quarter; thence S46°14'54"E, 14.10 feet; thence N88°33'39"E, 1227.06 feet parallel with the south line of said Southwest Quarter to the east line of the West Half of said Southwest Quarter; thence S00°58'18"E, 90.00 feet along said east line to a point on the south line of said Southwest Quarter; thence S88°33'39"W, 1286.92 feet along the south line of said Southwest Quarter to the Point of Beginning.

Said parcel contains 141,668 sq. ft. excluding existing right of way

LEGEND

P.O.B. – Point of Beginning

Right of Way Acquisition
=141,668 sq. ft.
Excluding existing right of way.

Permanent Drainage Dedication

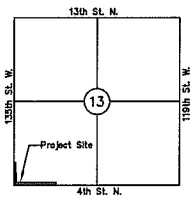
J:\CIVIL\04238\DWG\PROP\ROW TRACTMAP.DWG

Owner:

Donald A. & Micki K. Albert
120 S. 151st St. W.
Goddard, KS 67052

Property Identification:

AT-00082



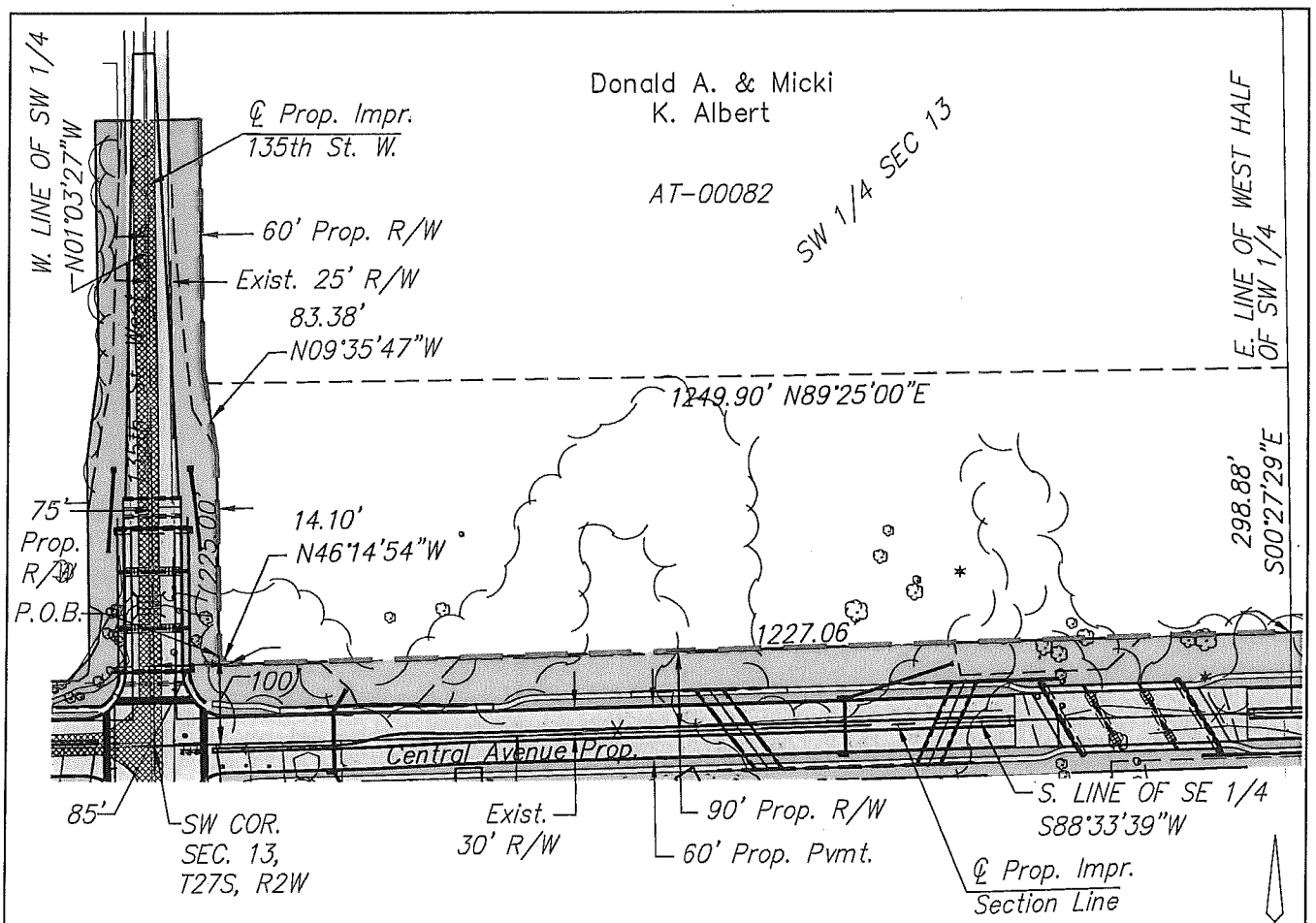
VICINITY MAP

MKEC ENGINEERING CONSULTANTS
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

CENTRAL 135TH TO 119TH ST. WEST
PROJECT NAME

RIGHT OF WAY ACQUISITION TRACT MAP 2A
SHEET TITLE

JRA	WNJ/DSN	JCM
DESIGN BY:	DRAWN BY:	CHECKED BY:
OCTOBER 2010 MARCH 2011 rev JUNE 2011 rev	04238	1 / 1
DATE	JOB NO.	SHEET/OF



SCALE: 1"=200'

200 0 200 400

N

LEGAL DESCRIPTION:

Permanent Drainage Dedication:

A parcel of land lying in the Southwest Quarter of Section 13, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

Beginning at a point 75 feet east of the west line and 100 feet north of the south line of said Southwest Quarter; thence N01°03'27"W, 225.00 feet parallel with said west line; thence N09°35'46"W, 83.38 feet; thence N89°25'00"E, 1249.90 feet to the east line of the west half of said Southwest Quarter; thence S00°58'18"E, 298.88 feet along said east line to a point 90 feet north of said south line; thence S88°33'39"W, 1227.06 feet parallel with said south line; thence N46°14'54"W, 14.10 feet to the Point of Beginning.

Said parcel contains 381,686 sq. ft. excluding existing right of way

LEGEND

POB – Point of Beginning

Right of Way

Construction Limits

Exist. drives, walks, and street to be removed and replaced

New street and sidewalks

Permanent Drainage Dedication =381,686 sq. ft.

Right of Way Acquisition

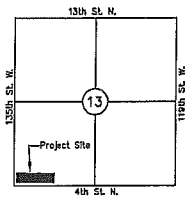
J:\CIVIL\04238\DWG\PROP\ROFE TRACTMAP.DWG

Owner:

Donald A. & Micki K. Albert
120 S. 151st St. W.
Goddard, KS 67052

Property Identification:

AT-00082



VICINITY MAP

MKEC ENGINEERING CONSULTANTS
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 654 - 9600

CENTRAL 135TH TO 119TH ST. WEST
PROJECT NAME

PERMANENT DRAINAGE DEDICATION TRACT MAP 2B
SHEET TITLE

JRA	WNJ/DSN	JCM
DESIGN BY:	DRAWN BY:	CHECKED BY:
October 2010 March 2011 rev	04238	1 / 1
DATE	JOB NO.	SHEET/OF

Northeast quadrant of Central and 135th West

- Identified Features
- Property Parcels

Roads

- State Highway
- US Federal Highway
- Interstate
- KTA
- Arterial
- Collector
- Minor
- Ramp
- Township and Range
- Section
- Quarter Section
- SDERASTER.S-DEDATA.ORTH-O1FT
- SDERASTER.S-DEDATA.ORTH-O

City Limits

- Andale
- Bel Aire
- Bentley
- Cheney
- Clearwater
- Colwich
- Derby
- Eastborough
- Garden Plain
- Goddard
- Haysville
- Kechi
- Maize
- Mount Hope
- Mulvane
- Park City

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Issuance of General Obligation Local Sales Tax Bonds

INITIATED BY: Finance Department

AGENDA: Consent

Recommendation: Adopt the resolution.

Background: Voters approved a one percent sales tax in 1985 to reduce property tax and to provide revenues for a roadway construction program, with special emphasis on freeway construction. The City has largely completed the construction of the K-96/Northeast Expressway, reconstruction of major portions of Kellogg/US-54 from Rock Road (East) to Maize Road (West), as well as supporting $4 million to $6 million in annual arterial road and bridge construction using local sales tax dollars, federal/state highway funding and bonding.

The City previously issued General Obligation (GO) Local Sales Tax Bonds -- $50 million in 1992, which matured in 2002; $25 million in 1996, with a $7.5 million remaining balance refunded in 2003; $46 million in 2002, with a $28.49 million remaining balance refunded in 2009; $49 million in 2003; $36 million in 2004, with a $23.93 million remaining balance refunded in 2010; $8.75 million in 2011; and, $16.2 million in 2011 for the crossover refunding of the Series 2003B bonds, to supplement current sales tax revenues in financing the freeway construction program.

Analysis: Based on freeway construction expenditures and projections through the year 2012, the City has determined it necessary to issue additional GO Sales Tax Bonds in the amount of $18,540,000 to reimburse and continue the development and reconstruction of Kellogg/US-54 to the east and west. Fifteen-year bonds with level principal and interest payments will be sold in October 2012.

In accordance with State statute, before GO Local Sales Tax Bonds can be issued, a resolution regarding the City's intent to issue such bonds must be published once each week for two consecutive weeks in the City's official newspaper and a protest period of 30 days following the date of the last publication must be satisfied.

Financial Considerations: The City's intent to issue $18,540,000 in GO Local Sales Tax Bonds serves to provide reimbursement for previous capital expenditures. Fifteen-year bonds with level principal and interest payments will be sold in October 2012. As with the issuance of previous Local Sales Tax Bonds, fifty percent (50%) of the revenues received by the City from the county-wide retailer's sales tax will be pledged for the payment of the bonds.

Goal Impact: This item impacts Economic Vitality/Affordable Living and Internal Perspective goals through the permanent financing of capital improvements and offering the City's debt obligations through competitive sale.

Legal Considerations: The resolution was prepared by the City's Bond Counsel and has been approved by the Law Department. The resolution will be published twice in the City's official newspaper and will be subjected to a 30-day protest period.

Recommendation/Action: It is recommended the City Council adopt the resolution declaring it necessary to issue general obligation bonds and to pledge local sales tax revenues for the payment of such bonds and provide for the giving of notice as required by law.

Attachment: Resolution

(Published in *The Wichita Eagle* on August 24, 2012 and August 31, 2012.)

RESOLUTION NO. 12-201

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT TO BE NECESSARY TO ISSUE GENERAL OBLIGATION BONDS FOR THE PURPOSE OF PAYING THE COSTS OF CONSTRUCTING ROADS, HIGHWAYS AND BRIDGES IN THE CITY, AND TO PLEDGE SALES TAX REVENUES FOR THE PAYMENT OF SUCH GENERAL OBLIGATION BONDS, AS PROVIDED BY K.S.A. 12-195b; AND PROVIDING FOR THE GIVING OF NOTICE THEREOF IN THE MANNER REQUIRED BY LAW.

WHEREAS, the City of Wichita, Kansas (the "City"), is authorized under the laws of the State of Kansas to issue general obligation bonds to construct roads, highways and bridges in the City; and

WHEREAS, the City is the recipient of funds derived from a county-wide retailer's sales tax in Sedgwick County, Kansas, pursuant to K.S.A. 12-187 *et seq.*, and is authorized under K.S.A. 12-195b to issue general obligation bonds for the payment of the costs of public facilities or improvements and to pledge the revenues received by the City from a county-wide retailer's sales tax for the payment of such general obligation bonds; and

WHEREAS, the Governing Body of the City has adopted Ordinance No. 41-815 pledging one-half of the revenues received by the City from the county-wide retailer's sales tax for the purpose of financing the construction of roads, highways and bridges in the City; and

WHEREAS, the Governing Body hereby finds and determines it to be necessary to issue general obligation bonds for the purpose of financing $18,540,000 of the costs of constructing additional roads, highways and bridges in the City through the issuance of general obligation bonds under the authority of K.S.A. 12-195b, and to pledge fifty percent (50%) of the revenues received by the City from the county-wide retailer's sales tax for the payment of such general obligation bonds;

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

SECTION 1. That it is hereby determined and declared to be necessary to issue general obligation bonds of the City, under the authority of K.S.A. 12-195b, in the aggregate principal amount of $18,540,000, to pay the costs of constructing additional roads, highways and bridges in the City, which general obligation bonds shall be paid from fifty percent (50%) of the revenues received by the City derived from a local county-wide retailer's tax, and if not so paid, then such general obligation bonds shall be paid from ad valorem taxes which may be levied by the City for such purpose without limit as to rate or amount.

SECTION 2. That it is hereby further determined and declared to be necessary to pledge fifty percent (50%) of the revenues received by the City from the county-wide retailer's sales tax to the payment of such general obligation bonds.

SECTION 3. That before such general obligation bonds can be issued and revenues received by the City from the county-wide retailer's sales tax pledged to the payment thereof, this Resolution shall be published once each week for two (2) consecutive weeks in the City's official newspaper as required by K.S.A. 12-195b; and that if, within thirty (30) days from and after the date of the last such publication, there shall be filed with the Sedgwick County Commissioner of Elections a written petition requesting an election on the proposition of issuing such general obligation bonds and pledging such sales tax revenues, which petition is signed by not less than five percent (5%) of the electors of the City who voted at the last preceding general election, then such general obligation bonds shall not be issued or such sales tax revenues pledged for the payment thereof unless the proposition is submitted to and approved by a majority of the voters of the City voting at an election held thereon. If a sufficient petition requesting such election is not filed within said thirty (30) day period, then the Governing Body shall have the authority to authorize and proceed with the issuance of the general obligation bonds and the pledging of sales tax revenues for the payment thereof as herein provided.

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ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on August 21, 2012.

(Seal)

ATTEST

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By_____
Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Forgivable Loan Repayment (Burnham Composite Structures, Inc. (District IV)

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendations: Approve the forgivable loan repayment agreement plan.

Background: On December 19, 2006, the City Council approved an economic development incentive package for Burnham Composites Structures, Inc. for the construction of its new corporate headquarters and manufacturing facility in Wichita. The incentive package included a $62,000 forgivable loan from the City of Wichita and Sedgwick County each.

The forgivable loan has reached its maturity, but the projected job creation has not met projected levels.

Analysis: In 2007, Burnham Composite Structures, Inc. constructed a new corporate headquarters and manufacturing facility on a 10-acre site located in the Ecco Industrial Park on South Hoover Road south of 31st Street South, immediately south of the Case New Holland plant with capital investment in excess of $5,000,000.

Burnham committed to maintaining the base employees at the time of approval of the incentives of 29 jobs and to adding 60 jobs over the next five years. If annual employment and wage commitments were met, a proportional share of the loan would be forgiven each year, over a five-year period. Annual compliance audits show that Burnham was not able to create the projected jobs and therefore must repay the loan. According to Burnham, the severe downturn in the aviation industry prevented the firm from growing its business as projected. Due to this hardship, Burnham has asked that it be allowed to repay the $62,000 to the City in five equal installments of $12,400 with the first payment due by December 31, 2012 and each successive payment due on the anniversary through 2016.

Financial Considerations: The forgivable loan to Burnham Composite Structures, Inc. will be repaid in five equal installments with final payment December 31, 2016.

Goal Impact: Economic Vitality. Allowing the company to repay its loan over time ensures that the company has time to address its original job creation commitment.

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

Recommendation/Action: It is recommended that the City Council approve the letter agreement authorizing repayment of the forgivable loan for Burnham Composite Structures, Inc. in installments and the authorize necessary signatures.

Attachment(s): Forgivable Loan Repayment Letter Agreement

Burnham Composite Structures
Mr. Darrel Dugan
6262 W. 34th St. South
Wichita, KS 67215

RE: Forgivable Loan Agreement

Dear Mr. Dugan,

This letter is to confirm the arrangement under which the City of Wichita will accept payment of your outstanding forgivable loan balance of $62,000 in installments. Please sign and return one copy of this letter indicating your acknowledgement and acceptance of the terms and conditions agreed upon.

The original Forgivable Loan Agreement and Promissory Note between the City of Wichita ("Lender") and Burnham Composite Structures, Inc. ("Borrower") was dated February 6, 2007 in the principal amount of $62,000.

The Borrower agrees to pay Lender annual installments of $12,400 on, or before, December 31st of each year beginning in 2012. The final installment shall be made on, or before, December 31, 2016.

If there is a default in making any installment payment, at the Lender's option, the full balance owing on the account shall immediately become due and payable.

Please sign one copy of this agreement it and return it to:

City of Wichita
Attn: Urban Development Office
455 N. Main, 13th Floor
Wichita, Ks 67202

Sincerely,

Carl Brewer
Mayor

ATTEST:

ACCEPTED:
Burnham Composite Structures, Inc.

_____
Karen Sublett, City Clerk

_____
Darrel Dugan, Treasurer

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Memorandum of Understanding (MOU) between Wichita Area Technical College (WATC) and Wichita Police Department (WPD)

INITIATED BY: Wichita Police Department

AGENDA: Consent

Recommendation: Approve the Memorandum of Understanding (MOU) between the City of Wichita and Wichita Area Technical College (WATC).

Background: The Wichita Police Department is responsible for monitoring private security permits according to City of Wichita Code of Ordinances, title three, chapter 3.72. In December 2010, a Memorandum of Understanding was agreed upon between the Wichita Police Department and WATC. Chapter 3.72 of the City ordinances establishes guidelines for the licensing of private security agencies, and the training and issuance of permits of private security officers. Currently, the Wichita Police Department monitors thirty private merchant businesses, ten corporations and the local hospital within the City limits of Wichita. These companies employ approximately 683 private security officers.

Analysis: The purpose of the MOU is to ensure quality of the training provided to private security officers, and award a certificate upon successful completion of the training. The training includes a basic and an advance private security class in compliance with City ordinance. The MOU establishes and defines the relationship, scope of responsibilities, and method of retraining the private security officers. The Wichita Police Department as directed by the Chief of Police, administers the training as required by City ordinance 3.72 (Private Security Merchants' Licenses).

The MOU shall be in effect for a one-year term and thereafter be automatically extended for successive one-year periods, unless cancelled by written notice or needed revisions by either party.

Financial Considerations: There will be no expenses incurred by the City of Wichita for this service. Wichita Area Technical College will assume all financial considerations for the logistics and supplies for the training.

Goal Impact: The Memorandum of Understanding supports the City of Wichita's Safe and Secure goal by enhancing the quality and quantity of training for private security officers attending WATC private security classes in accordance with City ordinance 3.72.

Legal Considerations: The Memorandum of Understanding has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that Wichita City Council approve the Memorandum of Understanding, and authorize the necessary signatures.

Attachments: Memorandum of Understanding between the City of Wichita and WATC.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

This Memorandum of Understanding ("MOU") is between **Wichita Area Technical College**, a technical educational institution organized under the laws of Kansas, located at 4004 N. Webb Road, Wichita, Kansas, 67226 (hereinafter referred as WATC) and the **Wichita Police Department**, located at 2235 W. 37th North, Wichita, Kansas, 67203 (hereinafter referred as WPD), which have entered into an agreement to provide Security Officer Training. This MOU shall be in force and effect on the date signed by all parties thereto and until July 1, 2013. It will thereafter be automatically extended for successive one-year periods, unless cancelled by written notice by either party. Such written notice must be delivered to the other party by March 15 and/or 90 days prior to the renewal date of June 15 of the year prior to the termination becoming effective.

Purpose

The purpose of this MOU is to enhance the quality of the training provided, develop the curriculum, provide training, and award a certificate upon successful completion of the Basic Private Security Training class or Advanced Private Security Training class in compliance with the Code of the City of Wichita. The MOU will establish and define the relationship, scope of responsibilities, and method of retaining curriculum for WATC and WPD.

1. Any security officer who works within the corporate limits of the City of Wichita (hereinafter referred to as "City") must hold at least a Basic Private Security permit. The 32-hour Basic Private Security Training class (hereinafter referred as Basic PSOT) is designed to train security officers in basic duties and requirements of a security officer.

2. The 32-hour Advanced Private Security Training class (hereinafter referred to as Advanced PSOT) is designed to train security officers in advanced duties and requirements of a security officer.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Contact information (See Attachment D for specific contact information):

- **WATC-**This program is under the direction of the **Director for Employer & Career Services.** Support is provided by the Training Coordinator. Both report to the Executive Director, Employer & Career Services Division.
- **WPD -**This program is managed by the **Recruit Training Lieutenant** under the supervision of the **Training Bureau Commander**.

Areas of Responsibility:

1. WATC will be responsible for developing, updating and providing a repository for the Basic PSOT and Advanced PSOT curriculum. The initial and subsequent curriculum development will be directed by WATC Director and WPD Training Bureau Commander at a mutually agreed upon time.

2. WATC will provide instructors, classroom space, materials, enrollment services, registration fee, certificate, and final roster for each class.

3. WATC will contract qualified adjunct instructors to teach Basic PSOT and Advanced PSOT. Instructors will be recommended and approved by WPD.

4. WATC will establish cost of class, class size, class location, and cancellation policy as directed under the WATC budget guidelines. WATC and WPD will enter into discussion and agreement on such matters. WATC budgeting process for recommendations and/or approval is from January through March of each year, effective July 1 each year.

5. WATC will provide reasonable and customary marketing for classes, provide schedule of classes on WATC website, provide description of classes and participant requirements, as well as, share all information with WPD.

6. WPD will maintain the final roster, final exams, and administer appropriate security permits to participants who have successfully completed Basic and Advanced PSOT classes.

7. WATC will adhere to the following policies: Academic Honesty, Attendance, Make-up Policy, Refund Policy, Late Papers, Evaluation System, Code of Conduct, and ADA Statement.

8. WPD - **Testing Out of Private Security School:** No applicant may test out of, or be given a waiver from attending, the private security school, unless approved by the Training Bureau Commander.

9. WPD - All applicants are required to attend the entire 32 hour class session(s) to receive a Private Security permit, per Standard Operation Procedures (SOP). WATC will award the certificate based on this policy. If an applicant has successfully completed the currently approved course or courses of study for private security officers within one calendar year prior to his or her application and can show satisfactory proof thereof, the applicant will be considered to have complied with the training requirement for the category of permit corresponding to the level of training completed.

10. Any absences must be approved by the Training Bureau Commander/Instructor in writing. The Private Security permit will not be awarded by WPD without the certificate from WATC (See attachments F, G, and H).

11. WPD Make-up Course Work (including exams, projects, and papers): All make up course work must be approved by the Training Bureau Commander or the Commander's designee and completed by the last scheduled day of class. Participants absent from class more than four (4) hours during the 32-hour course will be academically withdrawn with no refund according to the current Institutional Refund Policy found in WATC Catalog.

12. WATC will officially close out the course at the conclusion of the 32-hour course and transfer the final written exams and roster to WPD within five (5) business days.

13. WPD will be responsible for preparing all examinations to be administered to all class participants.

14. WATC and WPD will conduct an annual review of the curriculum to take place **May 1 through June 15, each year** to update curriculum, adhere to City ordinances, and implement other necessary changes, as directed by WATC Leadership team and WPD Training staff.

15. WATC reserves the right to cancel scheduled classes due to insufficient enrollment up to one week before class is scheduled to begin. WATC will notify WPD staff, registered participants, and private security companies. WATC will make every effort to re-schedule registered participants in the next available class.

Curriculum:

WATC will provide repository for original and updated curriculum under the WATC Employer & Career Services Division on WATC intranet. Curriculum will consist of the following:

- Basic PSOT, as developed
- Advanced PSOT, as developed
- Trainers' manual; on file at WPD and WATC
- Participant manual; on file at WPD and WATC
- Copy of manual, related exercises, assessments, and activities on CD
- Syllabus (See Attachment B for Basic PSOT syllabus, Attachment C for Advanced PSOT syllabus)
- Specialty equipment for Defensive Tactics will be provided by WPD

Access to curriculum will be provided by WATC Director, WATC Training Coordinator, or Executive Director of the Employer & Career Services Division. In case of unforeseen circumstances that dictate updating curriculum before the annual curriculum review, WATC will make reasonable allowances to update all materials to accommodate changes.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Organizational Chart: (See Attachment A)

- WATC-Executive Director-Employer & Career Services Division
- WATC-Director-Employer & Career Services
- WATC-Training Coordinator
- WPD Deputy Chief-Support Services
- WPD Training Bureau Commander
- WPD Secretary
- WPD Instructor - Recruit Training Lieutenant
- WPD Police Officer-Private Security Administrator

Location of Training—WATC will provide classroom space for scheduled classes at WATC facility at 4004 N. Webb Rd., Wichita, Kansas, or other designated WATC facility.

Schedule of Classes—Classes are scheduled for the first full (2) two weeks of every month, excluding holidays. The specific class schedule will be determined jointly on an annual basis between both parties for the traditional school year of July 1 through June 30th. WATC will post class schedule via internet and related course schedule postings. Classes will be held Monday through Thursday, 5:30 to 9:30 pm., unless otherwise determined. WATC reserves the right to cancel classes due to insufficient enrollment and will make the necessary notifications as set forth in this MOU.

Web Pages- WATC will provide an on-line link webpage with PSOT specific information and enrollment link @ www.watc.edu.

WPD will provide an on-line link to the WATC webpage at www.wichita.gov.

Inclement Weather Policy – Wichita Area Technical College provides participants the following four ways to check on class cancellations due to weather:

- **Local Radio and Television Stations**
  Listen specifically for announcements regarding Wichita Area Technical College classes.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
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- **Weather Line**
  Call 316-677-9596 for a recorded message providing current information about class cancellations due to weather – the number is a single line and may be busy.

- **WATC Web Site, Twitter and Facebook**
  Go to www.watc.edu and look for information on the home page under News and Events, which will provide current information regarding class/activity cancellations. Participants may also check for information at twitter.com/watcwichita or www.facebook.com/watcwichita.

- WPD Face Book WPD Twitter WPD You Tube

Please Note – Announcements concerning class cancellations due to weather conditions will be specific as to day and/or evening classes. Cancellation of day classes does not necessarily result in the cancellation of evening classes/activities.

Recruit Training Lieutenant - The Recruit Training Lieutenant shall have a minimum of a Bachelor's degree with a background in a police related field of study, as well as a comprehensive background in law enforcement, including supervisory experience.

Instructors - WATC will employ qualified instructors, as recommended by WPD. Instructors will be hired under WATC policy and guidelines. Instructors are part time, adjunct positions, and hours are as per schedule. WPD will determine monthly schedule for instructors. WATC will administer contracts for instructors pursuant to this schedule.

Revisions:
The terms of this MOU may be amended upon written approval by the original parties, or their designated representatives.

No Private Rights Created:
This is an internal agreement between Wichita Area Technical College and the Wichita Police Department and is not intended to confer any right or benefit to any private person or party.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

AUTHORIZED SIGNATURES:

This MOU is hereby accepted as setting forth the general intentions and understandings of the undersigned officials on behalf of their respective agencies.

CITY OF WICHITA
Wichita Police Department

_____ _____

Norman Williams Date
Chief of Police

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf
Director of Law

WICHITA AREA TECHNICAL COLLEGE

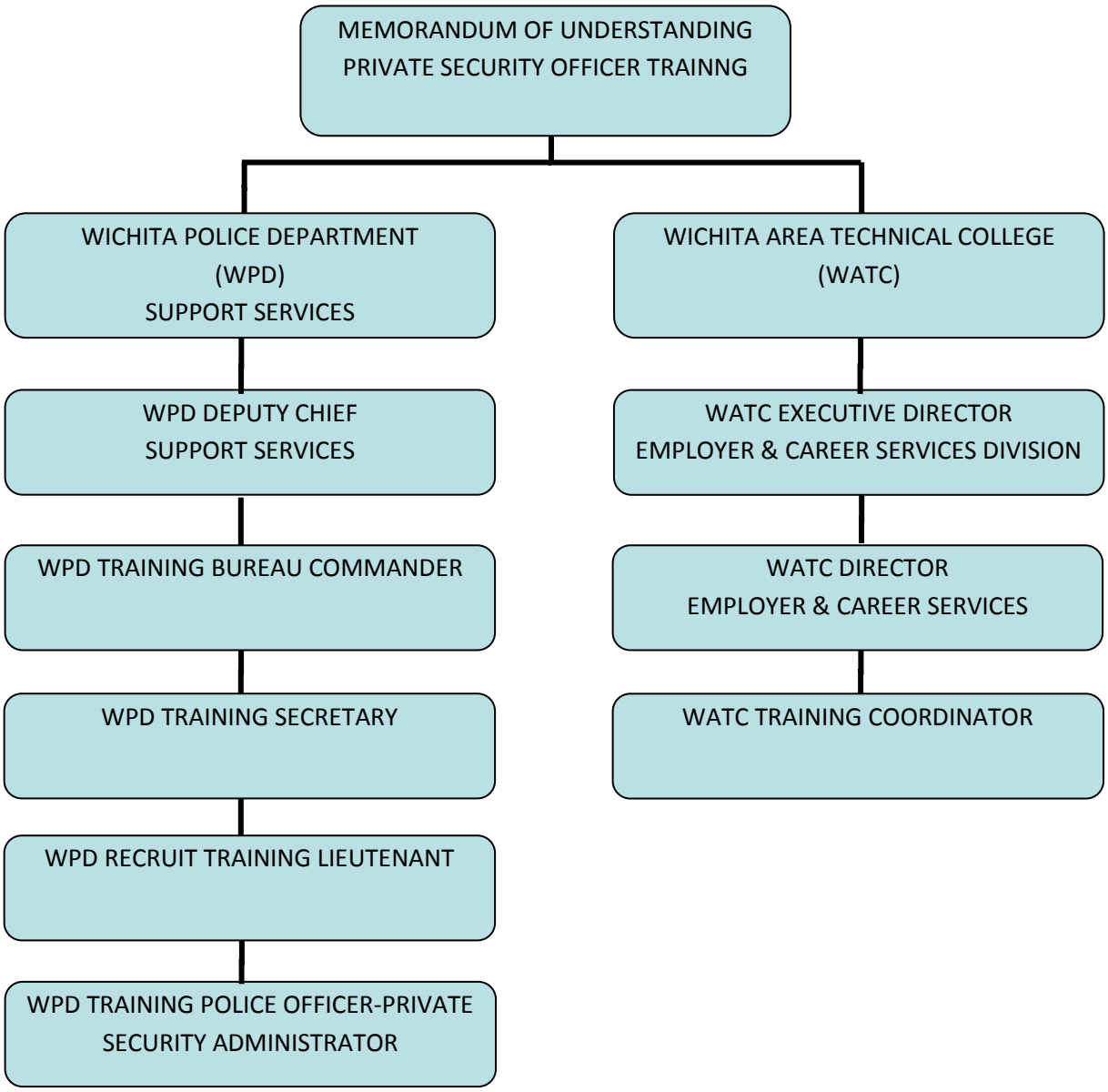
_____ _____

James E. Fly Date
Executive Director—Employer &
Career Services Division

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

ORGANIZATIONAL CHART
Attachment A



Memorandum of Understanding
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Attachment B

Course Syllabus

PSOT Basic

Course Number: PST010

Instructor: Lieutenant- Recruit Training WPD
Office Hours/Hours of Availability
Monday-Thursday Class schedule only

WATC Contact: Denise Sherman--- Director, Employer & Career Services
Office Phone: 316-677-1404
Fax: 316-677-1343
E-Mail: dsherman@watc.edu

Alternate WATC Contact: Ashley Savage --- Training Coordinator, Employer & Career Services
Office Phone: 316-677-1009
Fax: 316-677-9510
E-Mail: asavage@watc.edu

Prerequisites
Recommended ----temporary security permit issued from Wichita Police Department.

Course Description
The Private Security Officer Training (PSOT) Basic 32 hour course is offered to private security officers in compliance with the Code of the City of Wichita, Kansas, and is designed to train participants in the duties and requirements of a security officer. All aspects of basic security responsibilities will be covered in this course.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

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Course Outcomes and Competencies

Upon completion of this course, participants will be able to perform the duties and responsibilities of a private security officer, including vehicle patrol and carrying authorized equipment.

Course Outline

As approved by WATC and WPD.

Textbook & Instructional Materials

Basic PSOT manual – as approved by WATC and WPD.

College Policies and Procedures

Refer to course material in Online Learning for College Policies and Procedures.

Code of Conduct:

WATC strives to make its campuses as representative as possible of business and industry. Thus, all individuals are asked to conduct themselves in a businesslike manner, to avoid disruptive or threatening behavior, and to dress appropriately. All individuals are held responsible for their personal actions. These expectations are explained in the Student Bill of Rights (http://watc.edu/?s=student+bill+of+rights#BillofRights) and Student Code of Conduct (http://watc.edu/?s=student+bill+of+rights#StudentCoC).

Nondiscrimination Statement:

WATC does not discriminate with regard to race, religion, color, sex, disability, national origin or ancestry, age, or gender in its admissions, progress, or activities. Persons having inquiries may contact WATC Dean of Students, 4004 N. Webb Rd, Wichita, KS 67226, 316.677.1020.

Compliance Statement:

WATC complies with all applicable federal, state, and local laws and regulations, including but not limited to: the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Drug Free Schools and Campuses Act, the Campus Security Act (Jeanne Cleary Act), as amended, the Family Educational Rights and Privacy Act of 1974, as amended, and the Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance rules. Persons having inquiries may contact the WATC Director of Employer & Career Services, 4004 N. Webb Rd, Wichita, KS 67226, 316.677.1404.

Memorandum of Understanding
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Academic Honesty:
Students who compromise the academic integrity of the classroom, laboratory, internship or clinical areas are subject to disciplinary action, which may result in suspension and/or expulsion from WATC. Violations of academic honesty include, but are not limited to, cheating, plagiarism, falsification, forgery or alteration of records.

Grading System
The Basic PSOT course is based upon industry criteria; WATC issues a pass/fail grade to communicate the participant's level of achievement or competency. Letter grades noted on attendance, participation, classroom assignments, and final written exam are at the discretion of WPD. All final written exams are kept on file at WPD for a total of one year.

Letter Grade	Credit Hours	Grade Description
P	N/C	Pass-Satisfactory achievement or credit by examination (Certificate of Completion awarded)
F	N/C	Fail—Unsatisfactory achievement (No Certificate of Completion awarded)
W	N/C	Withdrawn

Incomplete Courses:
If a participant fails to complete PSOT class with the 32-hour course offering, certificate of completion will not be awarded. Participants will not be allowed to transfer partial class hours to another PSOT session and will have to re-take entire 32-hour course.

Homework
Not applicable to this course.

Quizzes
As assigned by instructor.

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Exams
All participants must score a 70% or better on the final exam to pass the course. Final written exam is administered on last day of class. No make-up exams allowed without written approval from WPD Training Bureau Commander or Lieutenant- Recruit Training.

Projects Required
As assigned by instructor.

Evaluation System
Participants will be evaluated on attendance, participation, class assignments, and written exams. All participants must score a 70% or better on the final exam to pass the course. Final written exam is administered on last day of class. No make-up exams allowed without written approval from WPD Training Bureau Commander or Lieutenant- Recruit Training.

Extra Credit
Not applicable to this course.

Make-Up Course Work (including exams, projects, and papers)
All make up course work, which must be approved by WPD Training Bureau Commander or Lieutenant-Recruit Training, is required to be completed by last scheduled day of class. Participants absent from class more than four (4) hours during the 32-hour course will be academically withdrawn with no refund according to the current Institutional Refund Policy found in WATC Catalog.

Attendance
This course is designed to prepare participants to develop proper attitudes and habits. Therefore, participants are expected to attend all classes. Any make-up time and missed assignments must have written approval by WPD Training Bureau Commander or Lieutenant-Recruit Training. WATC requires all make-up time and assignments be completed by the last day of class.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Instructor Comments Regarding Attendance:
Attendance for all 32 hours is mandatory to complete course and receive WATC certificate. Participants are expected to attend all scheduled classes and be punctual. Missed classroom time and make up is not automatically granted for the completion of class, and **written approval** to make up by WPD Training Bureau Commander or Lieutenant- Recruit Training is required. WATC requires all **approved** make up time to be completed by the last day of class. Failure to complete 32 hours will result in failure of class, and WATC certificate will not be granted as per WPD SOP and City ordinance setting forth requirements for a permanent private security permit.

Promptness:
This course is training participants to be valuable employees; promptness to the class is of high importance. Any participant more that fifteen (15) minutes late to class will be considered absent for that entire class period.

Instructor Class Policies & Additional Course Information

- All enrollment fees must be paid prior to the first scheduled class period.
- Participants must be able to read and write English language.
- Participants will need pencil/pen and paper for notes.
- Any time missed will not be excused and make-up time must be approved by WPD Training Bureau Commander or Lieutenant-Recruit Training. All approved make-up time and assignments must be completed by last day of scheduled class.
- Participants are required to complete 32 hours of coursework. Participants who have an unexcused absence in excess of four (4) hours will be dropped from the class without refund.
- Cell phones, pagers, PDA's, computers, musical devices, or any other electronic device must be turned off during class unless prior approval is made by WATC Director or WPD Training Bureau Commander or Lieutenant-Recruit Training.
- Participants will be required to take a comprehensive written test at the end of the 32-hour course and must score a 70% minimum to pass the course and receive WATC certificate of completion.
- Participants are **required** to practice professional hygiene at all times and will be dismissed from the program if non-compliant.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Tuition Refund Policy

To receive a tuition refund, or an adjustment, students must drop course(s) by the deadlines shown below. When courses are dropped by the deadlines shown below, any refunds or adjustments will be automatically computed by the College.

For Courses less than 3 weeks and for Non-Credit courses:

- Drops received on or before the 1st day of class: 100% refund for tuition, lab fees, online fees, and refundable fees.
- After the 1st day of class: There are no refunds.
- Students who did not drop and who failed to attend the first day of class are administratively dropped on or after the 2nd calendar day. There are no refunds in such cases.

Book Store purchases, tool purchases, and non-refundable fees are not refunded.

Smoking/Tobacco Policy

College policy strictly prohibits the use of tobacco products in any building owned or operated by WATC. Adult students may smoke only in the outside designated-smoking areas at each location. High school students are not permitted to use tobacco on college property.

Use of Alcoholic Beverages on College Property Policy

Possession, consumption or sale of alcoholic beverages is prohibited in college-owned, leased or operated facilities and on campus grounds unless otherwise specifically authorized by college administration for an event.

Illegal Drug Activity Policy

Possession, manufacture, distribution, use or sale of drugs or drug paraphernalia and narcotics classified as illegal, except those taken under a doctor's prescription, are prohibited on college-owned or controlled property or at any college-sponsored or supervised function.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)
Revised 07/31/12

Attachment C

Course Syllabus

PSOT Advanced

Course Number: PST015

Instructor: Lieutenant- Recruit Training WPD
Office Hours/Hours of Availability
Monday-Thursday Class schedule only

WATC Contact: Denise Sherman--- Director, Employer & Career Services
Office Phone: 316-677-1404
Fax: 316-677-1343
E-Mail: dsherman@watc.edu

Alternate WATC Contact: Ashley Savage --- Training Coordinator, Employer & Career Services
Office Phone: 316-677-1009
Fax: 316-677-9510
E-Mail: asavage@watc.edu

Prerequisites
Recommended ----temporary security permit issued from Wichita Police Department.

Course Description
The Private Security Officer Training (PSOT) Advanced 32 hour course is offered to private security officers in compliance with the Code of the City of Wichita, Kansas, and is designed to train participants in the duties and requirements of a security officer. All aspects of advanced security responsibilities will be covered in this course.

Course Outcomes and Competencies
Upon completion of this course, participants will be able to perform the duties and responsibilities of a private security officer, including vehicle patrol and carrying authorized equipment.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Course Outline

As approved by WATC and WPD.

Textbook & Instructional Materials

Advanced PSOT manual – as approved by WATC and WPD.

College Policies and Procedures

Refer to course material in Online Learning for College Policies and Procedures.

Code of Conduct:

WATC strives to make its campuses as representative as possible of business and industry. Thus, all individuals are asked to conduct themselves in a businesslike manner, to avoid disruptive or threatening behavior, and to dress appropriately. All individuals are held responsible for their personal actions. These expectations are explained in the Student Bill of Rights (http://watc.edu/?s=student+bill+of+rights#BillofRights) and Student Code of Conduct (http://watc.edu/?s=student+bill+of+rights#StudentCoC).

Nondiscrimination Statement:

WATC does not discriminate with regard to race, religion, color, sex, disability, national origin or ancestry, age, or gender in its admissions, progress, or activities. Persons having inquiries may contact WATC Dean of Students, 4004 N. Webb Rd, Wichita, KS 67226, 316.677.1020.

Compliance Statement:

WATC complies with all applicable federal, state, and local laws and regulations, including but not limited to: the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Drug Free Schools and Campuses Act, the Campus Security Act (Jeanne Cleary Act), as amended, the Family Educational Rights and Privacy Act of 1974, as amended, and the Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance rules. Persons having inquiries may contact the WATC Director of Employer & Career Services, 4004 N. Webb Rd, Wichita, KS 67226, 316.677.1404.

Academic Honesty:

Students who compromise the academic integrity of the classroom, laboratory, internship or clinical areas are subject to disciplinary action, which may result in suspension and/or expulsion from WATC. Violations of academic honesty include, but are not limited to, cheating, plagiarism, falsification, forgery or alteration of records.

Grading System

The Advanced PSOT course is based upon industry criteria; WATC issues a pass/fail grade to communicate the participant's level of achievement or competency. Letter grades noted on attendance, participation, classroom assignments, and final written exam are at the discretion of WPD. All final written exams are kept on file at WPD for a total of one year.

Letter Grade	Credit Hours	Grade Description
P	N/C	Pass-Satisfactory achievement or credit by examination (Certificate of Completion awarded)
F	N/C	Fail—Unsatisfactory achievement (No Certificate of Completion awarded)
W	N/C	Withdrawn

Incomplete Courses

If a participant fails to complete PSOT class with the 32-hour course offering, certificate of completion will not be awarded. Participants will not be allowed to transfer partial class hours to another PSOT session and will have to re-take entire 32-hour course.

Homework

Not applicable to this course.

Quizzes

As assigned by instructor.

Exams

All participants must score a 70% or better on the final exam to pass the course. Final written exam is administered on last day of class. No make-up exams allowed without written approval from WPD Training Bureau Commander or Lieutenant- Recruit Training.

Projects Required

As assigned by instructor.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Evaluation System

Participants will be evaluated on attendance, participation, class assignments, and written exams. All participants must score a 70% or better on the final exam to pass the course. Final written exam is administered on last day of class. No make-up exams allowed without written approval from WPD Training Bureau Commander or Lieutenant- Recruit Training.

Extra Credit

Not applicable to this course.

Make-Up Course Work (including exams, projects, and papers)

All make up course work, which must be approved by WPD Training Bureau Commander or Lieutenant-Recruit Training, is required to be completed by last scheduled day of class. Participants absent from class more than four (4) hours during the 32-hour course will be academically withdrawn with no refund according to the current Institutional Refund Policy found in WATC Catalog.

Attendance

This course is designed to prepare participants to develop proper attitudes and habits. Therefore, participants are expected to attend all classes. Any make-up time and missed assignments must have written approval by WPD Training Bureau Commander or Lieutenant-Recruit Training. WATC requires all make-up time and assignments be completed by the last day of class.

Instructor Comments Regarding Attendance:

Attendance for all 32 hours is mandatory to complete course and receive WATC certificate. Participants are expected to attend all scheduled classes and be punctual. Missed classroom time and make up is not automatically granted for the completion of class, and **written approval** to make up by WPD Training Bureau Commander or Lieutenant- Recruit Training is required. WATC requires all **approved** make up time to be completed by the last day of class. Failure to complete 32 hours will result in failure of class, and WATC certificate will not be granted as per WPD SOP and City ordinance setting forth requirements for a permanent private security permit.

Promptness:

This course is training participants to be valuable employees; promptness to the class is of high importance. Any participant more that fifteen (15) minutes late to class will be considered absent for that entire class period.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Instructor Class Policies & Additional Course Information

- All enrollment fees must be paid prior to the first scheduled class period.

- Participants must be able to read and write English language.
- Participants will need pencil/pen and paper for notes.
- Any time missed will not be excused and make-up time must be approved by WPD Training Bureau Commander or Lieutenant-Recruit Training. All approved make-up time and assignments must be completed by last day of scheduled class.
- Participants are required to complete 32 hours of coursework. Participants who have an unexcused absence in excess of four (4) hours will be dropped from the class without refund.
- Cell phones, pagers, PDA's, computers, musical devices, or any other electronic device must be turned off during class unless prior approval is made by WATC Director or WPD Training Bureau Commander or Lieutenant-Recruit Training.
- Participants will be required to take a comprehensive written test at the end of the 32-hour course and must score a 70% minimum to pass the course and receive WATC certificate of completion.
- Participants are **required** to practice professional hygiene at all times and will be dismissed from the program if non-compliant.

Tuition Refund Policy

To receive a tuition refund, or an adjustment, students must drop course(s) by the deadlines shown below. When courses are dropped by the deadlines shown below, any refunds or adjustments will be automatically computed by the College.

For Courses less than 3 weeks and for Non-Credit courses:

- Drops received on or before the 1st day of class: 100% refund for tuition, lab fees, online fees, and refundable fees.
- After the 1st day of class: There are no refunds.
- Students who did not drop and who failed to attend the first day of class are administratively dropped on or after the 2nd calendar day. There are no refunds in such cases.

Book Store purchases, tool purchases, and non-refundable fees are not refunded.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Smoking/Tobacco Policy

College policy strictly prohibits the use of tobacco products in any building owned or operated by WATC. Adult students may smoke only in the outside designated-smoking areas at each location. High school students are not permitted to use tobacco on college property.

Use of Alcoholic Beverages on College Property Policy

Possession, consumption or sale of alcoholic beverages is prohibited in college-owned, leased or operated facilities and on campus grounds unless otherwise specifically authorized by college administration for an event.

Illegal Drug Activity Policy

Possession, manufacture, distribution, use or sale of drugs or drug paraphernalia and narcotics classified as illegal, except those taken under a doctor's prescription, are prohibited on college-owned or controlled property or at any college-sponsored or supervised function.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Attachment D

Contact Information

WATC – Director of Employer & Career Services – 677-1404

WATC – Employer & Career Services Training Coordinator – 677-1009

WATC – Executive Director, Employer & Career Services Division – 677-1679

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Attachment E

Human Resources Agreement

Recruit Training Lieutenant – The Recruit Training Lieutenant shall have a minimum of a Bachelor's degree with a background in a police related field of study, as well as a comprehensive background in law enforcement, including supervisory experience.

Instructors – In accordance with employment, policy, and hiring practices, PSOT instructors will be hired at WATC as adjunct instructors and assigned teaching schedules for PSOT as per course schedule and WPD assignments. PSOT instructors' employment at WATC will remain as long as WATC agrees to employ only instructors that are identified, are deemed qualified, meet the qualifications, and are employed through WPD. Instructors will be hired under WATC policy and guidelines. WPD will determine monthly schedule for instructors. WATC will administer contracts for instructors per schedule.

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Attachment F

Certificate Example

WICHITA AREA TECHNICAL COLLEGE

This

Certificate of Completion

acknowledges that

Student Name

has completed 32 clock hours
in

BASIC PRIVATE SECURITY OFFICER TRAINING

on

July 19, 2012

Executive Director, Employer and Career Services

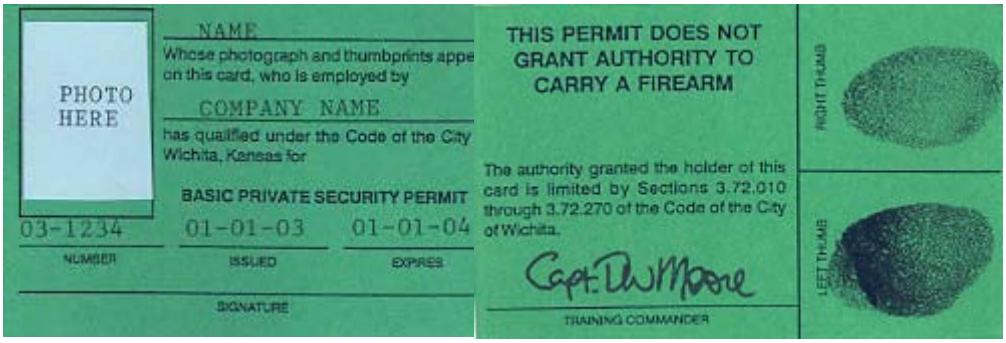
Instructor, Wichita Area Technical College

Memorandum of Understanding
Between Wichita Area Technical College (WATC) and
Wichita Police Department (WPD)

Revised 07/31/12

Attachment G

Basic Permit Example

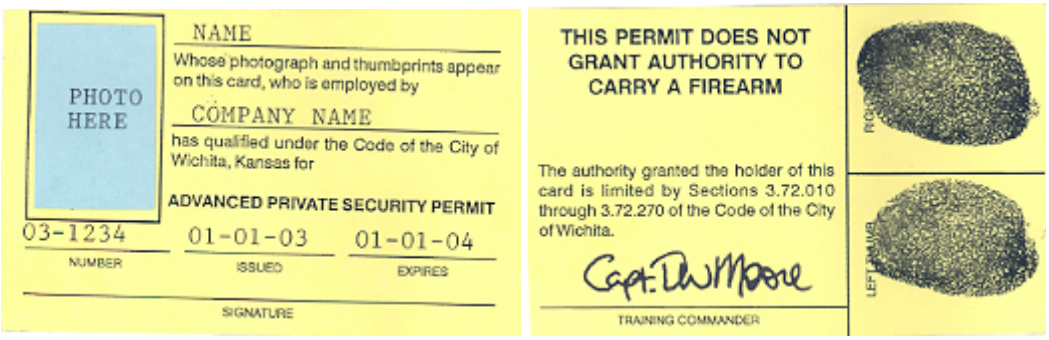


Memorandum of Understanding
Between Wichita Area Technical College (WATC) and Wichita Police Department (WPD)

Revised 07/31/12

Attachment H

Advanced Permit Example



City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Notice of Intent to Use Debt Financing Amendments
Air Capital Terminal 3 and Parking Facilities Program
Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Consent

Recommendation: Adopt the Amended Resolutions.

Background: Capital projects undertaken by the Wichita Airport Authority are funded by Federal Aviation Administration grants, Passenger Facility Charge (PFC) collections, grants from other sources such as the Transportation Security Administration, and Airport operating revenues. The timing for the actual receipt of outside funds can vary depending on circumstances, such as Congressional action and passenger activity levels. In order to assure that capital project schedules are not interrupted due to these timing fluctuations, City procedure calls for a notice of intent to issue debt financing for the full budget of the project. The Airport Authority relies on the City of Wichita (City) for the issuance of General Obligation bonds and/or notes for capital projects. In order to use debt financing for a project, it is necessary to declare that a public necessity exists for, and that the public safety, service, and welfare will be advanced by, the authorization of certain capital improvements to the Mid-Continent Airport facility. Additionally, the nature of said improvements, the estimated costs thereof, and the manner of payment needs to be disclosed. The actual issuance of the bonds/notes will require a separate authorization from the City Council. Debt financing can be in the form of temporary notes for durations as short as six months for timing considerations, or in the form of General Obligation bonds for long term financing.

Resolution No. 11-154 was adopted on June 28, 2011, finding the existence of public necessity for the Parking Facilities Program and approved the payment and financing of the same under the authority of K.S.A. 13-1348a, as amended by Charter Ordinance No. 78, at an estimated cost of $40,000,000.

Resolution No. 09-211 was adopted on July 14, 2009, finding the existence of public necessity for the Air Capital Terminal 3 – Landside Utilities, Phase I and Mid-Continent Drive Relocation, and approved the payment and financing of the same under the authority of K.S.A. 13-1348a, as amended by Charter Ordinance No. 78, at an estimated cost of $38,364,572. Subsequently, Resolution No. 11-155 was adopted on June 28, 2011 to amend the project description to Air Capital Terminal 3 (ACT 3) Program and increased the estimated cost to $160,000,000.

Analysis: K.S.A. 13-1348a provides that a city having an airport authority established pursuant to K.S.A. 3-162 is authorized to issue General Obligation bonds for airport capital purposes. Bonds issued under K.S.A. 13-1348a are not within the debt limitations prescribed for the City under K.S.A. 10-308. The total amount of bonds outstanding for airport or park projects at any one time and issued under K.S.A 13-1348a cannot exceed 3% of the assessed value of all taxable tangible property within the city. It was recognized early in the ACT 3 and Parking Facilities Programs that the debt financing needs for these projects would exceed the 13-1348a cap. Therefore the financial planning reflected the use of the City's authority under K.S.A. 13-1024c as modified by City of Wichita Charter Ordinance No. 156 to issue General Obligation bonds for the purpose of paying the cost of construction, purchase or improvement of

any public improvement. However, the notices of intent to debt finance these projects referenced the incorrect authority.

Financial Considerations: As of June 30, 2012, the City's legal debt limit under K.S.A. 10-308 is $1,060,000,000 of which $857,000,000 is available. The debt financing requirement for the ACT 3 and Parking Facilities Programs is estimated to be $122,000,000. As of June 30, 2012, the legal debt limit under K.S.A. 13-1348a is $106,000,000 of which $89,000,000 is available and will be used as needed for projects other than the ACT 3 and Parking Facilities Programs.

Goal Impact: The Airport's contribution to the Economic Vitality and Quality of Life of Wichita is leveraged through the use of financing for capital projects.

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

Recommendation/Action: It is recommended that the City Council adopt the Amended Resolutions and authorize the necessary signatures.

Attachments: Amended Resolutions.

OCA = 501853; UC1 = 1004

(Published in the Wichita Eagle on August 24, 2012)

RESOLUTION NO. 12-202

A RESOLUTION AMENDING RESOLUTION NO. 11-154, DECLARING THAT A PUBLIC NECESSITY EXISTS FOR, AND THAT THE PUBLIC SAFETY, SERVICE AND WELFARE WILL BE ADVANCED BY, THE AUTHORIZATION OF LAND ACQUISITION AND/OR CERTAIN CAPITAL IMPROVEMENTS TO THE WICHITA MID-CONTINENT AIRPORT FACILITY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS; THE ESTIMATED COSTS THEREOF; AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 3-114 provides that an airport authority established pursuant to K.S.A. 3-162 shall have the power to equip, improve and maintain an airport; and,

WHEREAS, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City of Wichita, Kansas (the "City") the City is authorized to issue general obligation bonds for the purpose of paying the cost of construction, purchase or improvement of any public improvement; and

WHEREAS, Resolution No. 11-154 of the City of Wichita, Kansas, adopted on June 28, 2011 and published on July 1 and July 8, 2011, found the existence of public necessity for the Parking Facilities Program and approved the payment and financing of the same under the authority of K.S.A. 13-1348a, as amended by Charter Ordinance No. 78, at an estimated cost of $40,000,000, exclusive of the cost in interest on borrowed money; and,

WHEREAS, it has now become necessary to amend Resolution No. 11-154 to modify the authority for the general obligation bonds.

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

SECTION 1. That Section 2 of Resolution No. 11-154 is hereby amended to read as follows:

> "SECTION 2. That the cost of the above described Project is estimated to be Forty Million Dollars ($40,000,000), exclusive of the cost of interest on borrowed money, and is to be paid by the Wichita Airport Authority of the City of Wichita. Said Wichita Airport Authority cost shall be financed through the issuance of general obligation bonds under the authority of K.S.A. l3-1024c, as amended by Charter Ordinance No. 156 of the City of Wichita, Kansas. The maximum principal amount of bonds issued for this Project shall not exceed $40,000,000."

SECTION 2. That the version of Section 2 of Resolution No. 11-154, as the same previously existed, is hereby repealed and replaced with the amended version set forth herein.

SECTION 3. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

ADOPTED at Wichita, Kansas, August 21, 2012.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

OCA = 501440; UC1 = 1002

(Published in the Wichita Eagle on August 24, 2012.)

RESOLUTION NO. 12-203

A RESOLUTION AMENDING RESOLUTION NO. 11-155, DECLARING THAT A PUBLIC NECESSITY EXISTS FOR, AND THAT THE PUBLIC SAFETY, SERVICE AND WELFARE WILL BE ADVANCED BY, THE AUTHORIZATION OF LAND ACQUISITION AND/OR CERTAIN CAPITAL IMPROVEMENTS TO THE WICHITA MID-CONTINENT AIRPORT FACILITY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS; THE ESTIMATED COSTS THEREOF; AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 3-114 provides that an airport authority established pursuant to K.S.A. 3-162 shall have the power to equip, improve and maintain an airport; and,

WHEREAS, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City of Wichita, Kansas (the "City") the City is authorized to issue general obligation bonds for the purpose of paying the cost of construction, purchase or improvement of any public improvement; and

WHEREAS, Resolution No. 09-211 of the City of Wichita, Kansas, adopted on July 14, 2009 and published on July 17 and July 24, 2009, found the existence of public necessity for the Air Capital Terminal 3 – Landside Utilities, Phase I and Mid-Continent Drive Relocation, and approved the payment and financing of the same under the authority of K.S.A. 13-1348a, as amended by Charter Ordinance No. 78, at an estimated cost of $38,364,572, exclusive of the cost in interest on borrowed money; and,

WHEREAS, Resolution No. 11-155 of the City of Wichita, Kansas, adopted on June 28, 2011and published on July 1, 2011, amended the project description to Air Capital Terminal 3 (ACT 3) Program and increased the estimated cost to $160,000,000, exclusive of the cost in interest on borrowed money; and,

WHEREAS, it has now become necessary to amend Resolution No. 11-155 to modify the authority for the general obligation bonds.

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

SECTION 1. That Section 2 of Resolution No. 11-155 is hereby amended to read as follows:

"SECTION 2. That Section 2 of Resolution No. 09-211 is hereby amended to read as follows:

'SECTION 2. That the cost of the above described Project is estimated to be One Hundred and Sixty Million Dollars ($160,000,000), exclusive of the cost of interest on borrowed money, and is to be paid by the Wichita Airport Authority of the City of Wichita. Said Wichita Airport Authority cost shall be financed through the issuance of general obligation bonds under the authority of K.S.A. l3-1024c, as amended by Charter Ordinance No. 156 of the City of

Wichita, Kansas. The maximum principal amount of bonds issued for this Project shall not exceed $160,000,000.'"

SECTION 2. That the version of Section 2 of Resolution No. 11-155, as the same previously existed, is hereby repealed and replaced with the amended version set forth herein.

SECTION 3. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

ADOPTED at Wichita, Kansas, August 21, 2012.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Electrical Repair Service-Selection of Contractor

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Approve contract.

Background: Various City departments require residential and commercial electrical repair services. To obtain the most qualified electrical repair service at a cost that would be most beneficial to the City, a Request for Proposal was sent to forty-five (45) contractors and six (6) responded.

Analysis: A selection committee reviewed the proposals and interviewed two (2) contractors. Based on the evaluation criteria of qualifications, experience, references and costs, Shelley Electric Inc. was the selected contractor. The selected contractor also submitted the lowest hourly rate for a Master/Journeyman electrician.

Financial Considerations: The contract will not obligate the City to any specific purchases or volume of purchases on electrical repair services; it only provides the departments the ability to obtain electrical repair services on an as needed basis from the most qualified, cost-effective contractor. The current 3 year contract is at $39 per hour (2009-present) and will increase to $46.75 per hour.

Goal Impact: Ensure Efficient Infrastructure Goal in order to maintain and optimize public facilities and assets.

Legal Considerations: The contract is approved as to form by the Law Department. The contract will be for one year with an annual renewal option for an additional two years.

Recommendations/Actions: It is recommended that the City Council approve the selection of Shelley Electric, Inc. for the electrical repair services and authorize the necessary signatures.

Attachments:
1. Contract for Electrical Repair Services for various departments

CONTRACT
for
ELECTRICAL REPAIRS

BLANKET PURCHASE ORDER NUMBER BP240082

THIS CONTRACT entered into this 21st day of August, 2012, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"**, and **SHELLEY ELECTRIC, INC.** (Vendor Code Number 806593-001), whose principal office is at 3619 W. 29th Street South, Wichita, Kansas, 67217, Telephone Number (316) 945-8311, hereinafter called **"VENDOR"**.

WITNESSETH:

WHEREAS, the **CITY** has solicited proposals for **Electrical Repairs** (Formal Proposal – FP240029) [Commodity Code Number 91082]; and

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

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services. VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP240029 [Commodity Code Number 91082], which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal Number – FP240029, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation. CITY** agrees to pay to **VENDOR** the following labor and parts rates for electrical repairs for Formal Proposal – FP240029 [Commodity Code Number 91082], for Various Departments, Boards and Agencies of the City of Wichita as shown below as compensation as per the proposal, plans, specifications, addenda and **VENDOR's** proposal of May 14, 2012, and as approved by the City Council on August 21, 2012.

Item Number	Description	Standard Hourly Labor Rate Per Man Per Hour
1	Service for electrical repair for the hours from 8:00 a.m. to 5:00 p.m., Monday through Friday for Journeyman or Master Electrician.	$46.75
2	Service for electrical repair work for the hours from 8:00 a.m. to 5:00 p.m., Monday through Friday for an Apprentice (Helper).	$38.00
	Percentage markup above cost on parts - twelve percent (12%).	
	Billing Terms – Net Thirty (30) Days	

3. **Term.** The term of this contract shall be effective from **September 1, 2012 through August 31, 2013**, with options to renew the contract under the same terms and conditions for two (2) successive one (1) year terms by mutual agreement of the parties. This contract is subject to cancellation by the city, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **VENDOR.**

4. **Indemnification and Insurance.**

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

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

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

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

Or

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

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

Bodily Injury Liability	$500,000 each accident
Property Damage Liability	$500,000 each accident

Or

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

3. Workers' Compensation Statutory

Employers Liability	$100,000 Each Accident $500,000 Aggregate $100,000 Occupational Disease

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

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

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

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

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

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

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

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

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

ATTEST:

Janis Edwards
Deputy City Clerk

THE CITY OF WICHITA

Melinda A. Walker
Purchasing Manager

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

SHELLEY ELECTRIC, INC.

Signature

Roy Meinkendt
Print Signature Name

VP
Title *(President or Corporate Officer)*

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

EXHIBIT A

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

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

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

Agenda Item No. II-15.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: Community Events – Orpheum Theater 90th Anniversary Celebration (District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure the event promoter Adam Hartke, Orpheum Theater, Inc. is coordinating the Orpheum Theater 90th Anniversary Celebration with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Orpheum Theater 90th Anniversary Celebration August 25, 2012 7:00 am – August 26, 2012 1:00 am

- First Street, Broadway Avenue to Topeka Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with special events.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CONSUMPTION OF ALCOHOLIC LIQUOR ON PUBLIC STREETS DURING THE ORPHEUM THEATRE 90TH ANNIVERSARY CELEBRATION

WHEREAS, the City Council has approved as a community event the Orpheum Theatre 90th Anniversay Celebration, to occur on August 25, 2012, from 3:00 p.m. to 12:00 midnight.

WHEREAS, the City Council has approved certain streets to be closed to vehicular traffic for such event as follows:

First Street from Broadway Avenue to Topeka Avenue from 7 a.m. on Saturday, August 25th until 1:00 a.m. on Sunday, August 26, 2012.

WHEREAS, a temporary permit for the consumption of alcoholic liquor at the Orpheum Theatre 90th Anniversay Celebration has been applied for and will be issued by the State of Kansas and the City of Wichita upon the presentation of this Resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council, pursuant to Section 3.11.065(d) of the Code of the City of Wichita, and in consideration of the factors set forth in Section 3.11.080 of the Code of the City of Wichita, grants its approval for the consumption of alcoholic liquor on the city streets, sidewalks and public right of ways which are located within the designated event area of the Orpheum Theatre 90th Anniversay Celebration to occur August 25, 2012, from 3:00 p.m. to 12:00 midnight.

ADOPTED by the governing body of the City of Wichita, Kansas, this _____day of _____, 2012.

CITY OF WICHITA, KANSAS

By_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett
City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: North Iva Avenue and 27th Street Storm Water Sewer Environment Protection Agency Grant Award and Acceptance (District I)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Receive and file the grant award and approve the budget.

Background: During heavy rain events, water collects at the intersection of North Iva Avenue and East 26th Street. The storm water runoff has difficulty draining out of the neighborhood via the grass-lined portion of 26th Street and the alley just east of North Iva Avenue.

On October 4, 2010, the City Manager approved a design contract with Certified Engineering Design PA (CED) for $23,658 to develop plans. On January 27, 2011, City staff met with area residents to present a preliminary design concept to address the drainage problems. A majority of residents in attendance supported the project, and many citizens also expressed their desires for the alley between Iva and Bluff Avenue, from 26th to 27th Streets, to be cleared of excess vegetation, debris, and uneven ground surfaces. On May 10, 2011, the City Council approved the submission of a grant to the Environmental Protection Agency (EPA) to help fund the project.

Analysis: The proposed solution is a new storm sewer system with area inlets in the alley and curb inlets at street intersections which will reduce the time for standing water and ice. The system will start near the intersection of 26th Street & North Iva Avenue and discharge into East Fork Chisholm Creek.

On December 8, 2011, the EPA awarded the grant to assist in paying for the drainage improvements. The project was originally scheduled for construction in the summer of 2012, but bid prices for a 2012 spring drainage project in Greenbriar Manor Addition were higher than expected. The Iva and 27th Street project is now slated for construction in the summer of 2013.

Financial Considerations: The EPA grant is a matching grant with a maximum payout of $123,000. The grant requires a minimum funding split of 55/45 with the City covering at least 45% of the direct (construction) costs for the project. The City will bear 69% of the overall project cost of $391,000. Funding for the City's share, $268,000, is available in the Stormwater Utility's 2013 Hot Spot project budget.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing storm water improvements for an existing neighborhood with known drainage problems.

Legal Considerations: The application submittal has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the grant award, approved the budget and authorize the necessary signatures.

Attachments: Grant award.

Mayor's Office Received
DEC 22 2011

U. S. ENVIRONMENTAL PROTECTION AGENCY
ASSISTANCE AGREEMENT NOTICE

City of Wichita
455 N. Main
Wichita, Kansas 67202

Grant Number: XP-97727001

Enclosed are two copies of an Assistance Agreement offer from the U.S Environmental Protection Agency.

To accept this offer, please carefully review any terms and conditions, sign[1], and return one original copy to the following address within three weeks[2] of the mailing date on the Assistance Agreement:

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 7
PLMG/RFMB/GRMS
901 North 5th Street
Kansas City, Kansas 66101
ATTN: Grants Assistant

The other original should be retained for your official records and copies distributed within your organization as needed. Please note, funds will not be available to draw until we receive your countersigned acceptance of this offer.

Below is a list of required reports as stipulated by the Terms and Conditions within your award. It is important these reports are submitted timely.

1. **Federal Financial Report (FFR) – SF425**
2. **Minority Business Enterprise and Women-Owned Business Enterprise Utilization Report (MBE/WBE) –EPA Form 5700-52A**

For the frequency of these required reports and other technical reports please review the Terms and Conditions of your award. For further assistance with your post award management responsibilities, please see Managing Your Grant.[3] This link contains important post award reporting requirements and instructions on how to receive payments. To view this and other grant related information visit our Grants Office Website at:

http://www.epa.gov/region7/grants_funding/index.htm

Please reference the EPA Assistance Number on all future correspondence regarding this Assistance Agreement. If you have any questions, you may contact the Grant Specialist identified in the Assistance Agreement.

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[1] Must be signed by authorized representatives as shown on the Assistance Agreement Offer signature block or formally authorized delegate.
[2] Failure to countersign and return within three weeks of the mailing of this offer may result in withdrawal of this offer.
[3] Please contact your Grant Specialist if you need a paper copy of this document.

BASIS FOR EPA GRANT PAYMENT NO. ____

Grantee Name: City of Wichita, Kansas

Grant No.: XP977270 01 Total Grant Amount: $123,000

Prepared by: _____ Date of Grant Draw: _____

ATTACH ALL BACKUP DOCUMENTATION TO THIS FORM.

List Each Payee Requesting Contract/Invoice Payment	Total Billings to Date[1]
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
Total Project Costs Due to Date[2]	$
EPA Grant Percentage[3]	55%
Total Payment Due from EPA (not to exceed grant amount)[4]	$
Total Payments Previously Received[5]	$
Payment Due from EPA This Request[6]	$

[1] Deduct any grant ineligible items and retainage not paid to contractor. Click to right of column.
[2] Total all Contract/Invoice 'Total Due to Date'
[3] As specified in grant agreement
[4] Multiply 'Total Project Costs Due to Date' by 'EPA Grant Percentage' (i.e., $100 x 0.55 = $55)
[5] Insert 'Total Payment Due from EPA' from the previous payment request
[6] Subtract 'Total Payments Previously Received' from 'Total Payments Due from EPA'

U.S. ENVIRONMENTAL PROTECTION AGENCY

Grant Agreement

GRANT NUMBER (FAIN): 97727001 **MODIFICATION NUMBER:** 0 **PROGRAM CODE:** XP	**DATE OF AWARD** 12/08/2011
TYPE OF ACTION New	**MAILING DATE** 12/15/2011
PAYMENT METHOD: ASAP	**ACH#** 77592

RECIPIENT TYPE:
Municipal

Send Payment Request to:
U.S. Environmental Protection Agency - Las Vegas Finance Center
P.O. Box 98515, Las Vegas, NV 89193-8515
Phone Contact: 702-798-2426 FAX: 702-798-2423

RECIPIENT:
City of Wichita
455 N. Main
Wichita, KS 67202
EIN: 48-6000653

PAYEE:
Same as Recipient
455 N. Main
Wichita, KS 67202

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Scott Lindebak 455 N. Main Wichita, KS 67202 **E-Mail:** slindebak@wichita.gov **Phone:** 316-268-4545	Don Gibbins 901 North Fifth Street, WWPD/WIMB Kansas City, KS 66101 **E-Mail:** Gibbins.Don@epamail.epa.gov **Phone:** 913-551-7417	Robert Bukaty Grants Management Office, PLMG/RFMB/GRMS **E-Mail:** Bukaty.Robert@epa.gov **Phone:** 913-551-7846

PROJECT TITLE AND DESCRIPTION
Wichita Storm Water Sewer Improvements
FOR A STORM WATER TECHNOLOGY PILOT PROJECT consisting of the construction of a new storm sewer drainage system in an established residential neighborhood.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
12/09/2011 - 12/08/2012	12/09/2011 - 12/08/2012	$391,000.00	$391,000.00

NOTICE OF AWARD

Based on your application dated 05/10/2011, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards $123,000. EPA agrees to cost-share 55.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $123,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
Grants Management Office 901 North Fifth Street Kansas City, KS 66101	U.S. EPA, Region 7 Water, Wetlands & Pesticides Division 901 North Fifth Street Kansas City, KS 66101

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official Karen L. Sherrill - Grants Management Officer	**DATE** 12/08/2011

AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE
	Carl Brewer, Mayor	

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 123,000	$ 123,000
EPA In-Kind Amount	$	$	$ 0
Unexpended Prior Year Balance	$	$	$ 0
Other Federal Funds	$	$	$ 0
Recipient Contribution	$	$ 268,000	$ 268,000
State Contribution	$	$	$ 0
Local Contribution	$	$	$ 0
Other Contribution	$	$	$ 0
Allowable Project Cost	$ 0	$ 391,000	$ 391,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.202 - Congressionally Mandated Projects	Consolidated Appropriations Act 2010 Public Law 111-117 Division C Section 723	40 CFR PART 31

Fiscal

Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1207SX2012	11	E4	0700HF9	202B51	4192	-	-	123,000
									123,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$0
2. Fringe Benefits	$0
3. Travel	$0
4. Equipment	$0
5. Supplies	$0
6. Contractual	$0
7. Construction	$391,000
8. Other	$0
9. Total Direct Charges	$391,000
10. Indirect Costs: % Base	$0
11. Total (Share: Recipient 45.00 % Federal 55.00 %.)	$391,000
12. Total Approved Assistance Amount	$123,000
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$123,000
15. Total EPA Amount Awarded To Date	$123,000

Administrative Conditions

1. I. Central Contractor Registration and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at http://www.ccr.gov).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

a. A Governmental organization, which is a State, local government, or Indian tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec.__.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

2. Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –

i. the total Federal funding authorized to date under this award is $25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at www.ccr.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at

2 CFR 170.320 (and subawards); and
(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions - If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. subawards, and;

ii. the total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2 Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carryout the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations")

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus .
ii. *Awards of stock, stock options, and stock appreciation rights* . Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
iii.*Earnings for services under non-equity incentive plans* . This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
vi.*Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
v. *Above-market earnings on deferred compensation which is not tax-qualified* .
vii. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

3. Recipient agrees to submit the Federal Financial Report (FFR) form SF-425 to EPA no later than ninety (90) days after the end of the grant budget/project period. The EPA requires only the information requested on FFR lines 10d through 10o. A blank FFR is available for completion on the Las Vegas Finance Center's (LVFC) website: http://www.epa.gov/ocfo/finservices/forms.htm The Final FFR form SF-425 **must be submitted to: U.S. EPA-Las Vegas FC, P.O. Box 98515, Las Vegas, NV 89193-8515.**

4. Recipient agrees to submit, at a minimum, a quarterly billing (payment) request(s) to the EPA, for all eligible, allowable, allocable, necessary and reasonable costs which are incurred for this project/program. A payment request is not required to be submitted in the event that the recipient has not incurred such costs during the quarterly period, but more frequent payments may be requested as costs are incurred.

5. The Recipient agrees that none of the funds provided under this agreement may be used for subawards/subgrants or contracts to the Association of Community Organizations for Reform Now (ACORN) or any of its subsidiaries. Congress has prohibited the EPA from using its FY 2010 and/or FY 2011 appropriations to provide funds to ACORN or its subsidiaries. Recipients should direct any questions about this prohibition to the EPA Grants Management Specialist listed on the first page of this award document.

6. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

7. Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

   Recipient agrees to comply with the respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States. Recipients subject to the requirements of 40 CFR Part 30 agree to comply with the respective OMB Circular (A-21 or A-122), which prohibits the use of Federal grant funds to participate in various forms of lobbying or other political activities.

8. Recipient agrees to comply with the Anti-Lobbying Act, Section 319 of Public Law 101-121, effective December 23, 1989.

Recipient acknowledges that if any expenditure is made as prohibited by the Act, that he shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

Recipient further acknowledges that failure to file or amend the disclosure form, if required, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Recipient also agrees to include in all solicitation documents the following:

"Sub recipients who request or receive from the grant recipient a subgrant, contract, or subcontract exceeding $100,000, at any tier under a federal grant shall comply with the Anti-Lobbying Act, Section 319 of Public Law 101-121, and file an Anti-Lobbying Certification form, and the Disclosure of Lobbying Activities form, if required, to the next tier above."

9. Recipient agrees to fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled Responsibilities of Participants Regarding Transactions. Recipient must ensure that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled Covered Transactions, includes a term or condition requiring compliance with Subpart C. Recipient agrees to include a similar term or condition in any subsequent lower tier covered transactions. Recipient agrees that failing to disclose the required information in 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

   Recipient may access the Excluded Parties List System at www.epls.gov.

10. The recipient agrees to an ongoing, good faith effort to maintain a drug-free work place pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

    Recipients classified as individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

    Details concerning violation of this condition may be found under Title 40 CFR 36.510.

11. Recipient agrees to ensure that all space for conferences, meetings, conventions or training funded in whole or in part with Federal funds comply with the Hotel and Motel Fire Safety Act of 1990.

12. The Recipient agrees if $500,000 or more in total Federal funds is expended in any fiscal year, they will obtain a single audit from an independent auditor according to the guidance provided in OMB Circular A-133. The Recipient agrees that within nine months after the fiscal year end or 30 days after receiving the report from the auditor, they will electronically submit a copy of the data collection form SF-SAC and a Single Audit Report Package to the Federal Audit Clearinghouse Internet Data Entry System.

    For complete instructions for electronic submission of the SF-SAC and the Single Audit Report Package are located at the Federal Audit Clearinghouse Web site:

    http://harvester.census.gov/fac/

13. To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

    a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a sub-recipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an

individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, sub-recipients under this award, and sub-recipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award.

14. The Recipient agrees, in accordance with EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

The Recipient agrees to follow the requirements set out in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). RCRA Section 6002 that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in the guidelines contained in 40 CFR 247.

15. The Environmental Protection Agency (EPA) participation in the salary rate (excluding overhead and travel) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2011, the limit is $596.00 per day and $74.50 per hour. The rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Sub-agreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j)(2) or 30.27(b), as applicable.

16. **GENERAL COMPLIANCE, 40 CFR, Part 33** - The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D - A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

Current Fair Share Objective/Goal - The award amount of this assistance agreement is $250,000, or less; or the total dollar amount of all of the recipient's financial assistance agreements from EPA in the current Federal fiscal year is $250,000, or less. Therefore,

the recipient of this assistance agreement is exempt from the fair share objective requirements of 40 CFR, Part 33, Subpart D, and is not required to negotiate a fair share objective/goal for the utilization of MBE/WBEs in its procurements.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C - Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503 - The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31 and September 30.

The reports are due within 30 days of the end of the semiannual reporting periods (April 30 and October 30). Reports should be sent to ATTN: Grant Assistant. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's home page on the Internet at www.epa.gov/osbp.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302 -The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c) - Recipients and sub recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and

(c) for specific requirements and exemptions.

Programmatic Conditions

1. Recipient agrees that this grant is FOR A STORM WATER TECHNOLOGY PILOT PROJECT consisting of the construction of a new storm sewer drainage system in an established residential neighborhood as described in Recipient's grant application.

2. Recipient understands that 55% of the eligible costs incurred after the award of this grant for the construction of the project described above will be eligible for reimbursement by the Environmental Protection Agency (EPA) up to but not to exceed a maximum grant amount of $123,000. Recipient also understands that no additional EPA grant funds are available for EPA participation in eligible project costs that exceed $ 223,636, and Recipient agrees to complete all contracts partially funded with this grant. Recipient also agrees that the non-EPA project funding described in the grant application will be available for a specific project before a construction contract is advertised for bids for that project.

3. Recipient understands that this grant is subject to the provisions in EPA regulations at 40 CFR Part 31 and the EPA memorandum dated March 29, 2010, with the subject title "Award of Special Appropriations Act Project Grants Authorized by the Agency's FY 2010 Appropriations Act."

4. In accordance with the requirements of the National Environmental Policy Act, EPA has issued a categorical exclusion for this project in accordance with provisions in Part 6 of Title 40 of the Code of Federal Regulations. If EPA determines that a categorical exclusion is not appropriate for this project, Recipient agrees to submit information necessary to issue a Finding of No Significant Impact. If the scope of the project changes, Recipient understands that additional environmental review may be necessary.

5. Recipient agrees to meet the project schedule provided with the grant application or the most recent amended schedule approved by the EPA Project Officer unless justifiable delays occur due to unexpected circumstances. Whenever significant schedule changes occur, Recipient will provide the EPA Project Officer with an amended schedule and an explanation for the changes.

6. Recipient agrees to submit plans and specifications to the EPA Project Officer for review and approval prior to advertising for bids. Recipient will also submit any addenda to the plans and specifications to the EPA Project Officer for approval prior to the opening of bids, and any change orders executed after the award of the contract.

7. Recipient agrees to submit supporting documentation to the EPA Project Officer for review at the same time a request is made to the EPA payment office for a grant payment by electronic funds transfer. The review of supporting documentation will not impact the timing of the electronic funds transfer, but based on the findings of the review, the Recipient may be required to repay an overdraw, or to modify the subsequent request for reimbursement, to adjust for any ineligible or unallowable costs noted.

8. Recipient agrees to make prompt payment to its contractor(s) of sums due under this grant and to retain only amounts as may be justified by specific circumstances and provisions of this grant or the construction contract(s).

9. Recipient agrees to properly operate and maintain all facilities partially funded by this grant for the useful life of the facilities.

10. Recipient agrees that no more than 95% of the grant amount for each construction contract will be requested for reimbursement until a final inspection is conducted by the EPA Project Officer and any noted deficiencies are resolved, including punch list items identified by the Recipient's consulting engineer. Recipient also agrees to provide notification in writing to the EPA Project Officer when each construction contract is ready for final inspection. Exceptions to the 95% payment limitation will be considered for any contract if EPA funds are limited so that EPA is not

participating in the full contract amount.

11. Recipient agrees to provide **Semi-annual Performance Reports,** for all activities identified in the work plan, including those performed by the Recipient through Interagency Agreements and sub-agreements in accordance with 40 CFR 31.40.

Performance reports submitted under this agreement will contain at a minimum:
i) a comparison of actual accomplishments to the outputs/outcomes established in the work plan for the performance period;
ii) the reasons for slippage if established outputs/outcomes were not met; and,
iii) additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

These reports shall be due no later than ninety (90) days after the end of the reporting period based on the grant year (anniversary of the original grant award date). The **final performance report** is due to the EPA Project Officer within ninety (90) days after the expiration of the project period.

Questions, concerns, notification of any problems or delays should be directed to the EPA Project Officer listed on the first page of your assistance award or assistance amendment document.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Grant Agreement

GRANT NUMBER (FAIN): 97727001 **MODIFICATION NUMBER:** 0 **PROGRAM CODE:** XP	**DATE OF AWARD** 12/08/2011
TYPE OF ACTION New	**MAILING DATE** 12/15/2011
PAYMENT METHOD: ASAP	**ACH#** 77592

RECIPIENT TYPE:
Municipal

Send Payment Request to:
U.S. Environmental Protection Agency - Las Vegas Finance Center
P.O. Box 98515, Las Vegas, NV 89193-8515
Phone Contact: 702-798-2426 FAX: 702-798-2423

RECIPIENT:
City of Wichita
455 N. Main
Wichita, KS 67202
EIN: 48-6000653

PAYEE:
Same as Recipient
455 N. Main
Wichita, KS 67202

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Scott Lindebak 455 N. Main Wichita, KS 67202 **E-Mail:** slindebak@wichita.gov **Phone:** 316-268-4545	Don Gibbins 901 North Fifth Street, WWPD/WIMB Kansas City, KS 66101 **E-Mail:** Gibbins.Don@epamail.epa.gov **Phone:** 913-551-7417	Robert Bukaty Grants Management Office, PLMG/RFMB/GRMS **E-Mail:** Bukaty.Robert@epa.gov **Phone:** 913-551-7846

PROJECT TITLE AND DESCRIPTION
Wichita Storm Water Sewer Improvements
FOR A STORM WATER TECHNOLOGY PILOT PROJECT consisting of the construction of a new storm sewer drainage system in an established residential neighborhood.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
12/09/2011 - 12/08/2012	12/09/2011 - 12/08/2012	$391,000.00	$391,000.00

NOTICE OF AWARD

Based on your application dated 05/10/2011, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards $123,000. EPA agrees to cost-share 55.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $123,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
Grants Management Office 901 North Fifth Street Kansas City, KS 66101	U.S. EPA, Region 7 Water, Wetlands & Pesticides Division 901 North Fifth Street Kansas City, KS 66101

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official Karen L. Sherrill - Grants Management Officer	**DATE** 12/08/2011

AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE
	Carl Brewer, Mayor	

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 123,000	$ 123,000
EPA In-Kind Amount	$	$	$ 0
Unexpended Prior Year Balance	$	$	$ 0
Other Federal Funds	$	$	$ 0
Recipient Contribution	$	$ 268,000	$ 268,000
State Contribution	$	$	$ 0
Local Contribution	$	$	$ 0
Other Contribution	$	$	$ 0
Allowable Project Cost	$ 0	$ 391,000	$ 391,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.202 - Congressionally Mandated Projects	Consolidated Appropriations Act 2010 Public Law 111-117 Division C Section 723	40 CFR PART 31

Fiscal

Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1207SX2012	11	E4	0700HF9	202B51	4192	-	-	123,000
									123,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$0
2. Fringe Benefits	$0
3. Travel	$0
4. Equipment	$0
5. Supplies	$0
6. Contractual	$0
7. Construction	$391,000
8. Other	$0
9. Total Direct Charges	$391,000
10. Indirect Costs: % Base	$0
11. Total (Share: Recipient 45.00 % Federal 55.00 %.)	$391,000
12. Total Approved Assistance Amount	$123,000
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$123,000
15. Total EPA Amount Awarded To Date	$123,000

Administrative Conditions

1. I. Central Contractor Registration and Universal Identifier Requirements.

A. Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at http://www.ccr.gov).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

a. A Governmental organization, which is a State, local government, or Indian tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec.__.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

2. Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –

i. the total Federal funding authorized to date under this award is $25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at www.ccr.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at

2 CFR 170.320 (and subawards); and
(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions - If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. subawards, and;

ii. the total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2 Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carryout the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations")

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus .
ii. *Awards of stock, stock options, and stock appreciation rights* . Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
iii.*Earnings for services under non-equity incentive plans* . This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
vi.*Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
v. *Above-market earnings on deferred compensation which is not tax-qualified* .
vii. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

3. Recipient agrees to submit the Federal Financial Report (FFR) form SF-425 to EPA no later than ninety (90) days after the end of the grant budget/project period. The EPA requires only the information requested on FFR lines 10d through 10o. A blank FFR is available for completion on the Las Vegas Finance Center's (LVFC) website: http://www.epa.gov/ocfo/finservices/forms.htm The Final FFR form SF-425 **must be submitted to: U.S. EPA-Las Vegas FC, P.O. Box 98515, Las Vegas, NV 89193-8515.**

4. Recipient agrees to submit, at a minimum, a quarterly billing (payment) request(s) to the EPA, for all eligible, allowable, allocable, necessary and reasonable costs which are incurred for this project/program. A payment request is not required to be submitted in the event that the recipient has not incurred such costs during the quarterly period, but more frequent payments may be requested as costs are incurred.

5. The Recipient agrees that none of the funds provided under this agreement may be used for subawards/subgrants or contracts to the Association of Community Organizations for Reform Now (ACORN) or any of its subsidiaries. Congress has prohibited the EPA from using its FY 2010 and/or FY 2011 appropriations to provide funds to ACORN or its subsidiaries. Recipients should direct any questions about this prohibition to the EPA Grants Management Specialist listed on the first page of this award document.

6. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

7. Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

   Recipient agrees to comply with the respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States. Recipients subject to the requirements of 40 CFR Part 30 agree to comply with the respective OMB Circular (A-21 or A-122), which prohibits the use of Federal grant funds to participate in various forms of lobbying or other political activities.

8. Recipient agrees to comply with the Anti-Lobbying Act, Section 319 of Public Law 101-121, effective December 23, 1989.

Recipient acknowledges that if any expenditure is made as prohibited by the Act, that he shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

Recipient further acknowledges that failure to file or amend the disclosure form, if required, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Recipient also agrees to include in all solicitation documents the following:

"Sub recipients who request or receive from the grant recipient a subgrant, contract, or subcontract exceeding $100,000, at any tier under a federal grant shall comply with the Anti-Lobbying Act, Section 319 of Public Law 101-121, and file an Anti-Lobbying Certification form, and the Disclosure of Lobbying Activities form, if required, to the next tier above."

9. Recipient agrees to fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled Responsibilities of Participants Regarding Transactions. Recipient must ensure that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled Covered Transactions, includes a term or condition requiring compliance with Subpart C. Recipient agrees to include a similar term or condition in any subsequent lower tier covered transactions. Recipient agrees that failing to disclose the required information in 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

   Recipient may access the Excluded Parties List System at www.epls.gov.

10. The recipient agrees to an ongoing, good faith effort to maintain a drug-free work place pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

    Recipients classified as individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

    Details concerning violation of this condition may be found under Title 40 CFR 36.510.

11. Recipient agrees to ensure that all space for conferences, meetings, conventions or training funded in whole or in part with Federal funds comply with the Hotel and Motel Fire Safety Act of 1990.

12. The Recipient agrees if $500,000 or more in total Federal funds is expended in any fiscal year, they will obtain a single audit from an independent auditor according to the guidance provided in OMB Circular A-133. The Recipient agrees that within nine months after the fiscal year end or 30 days after receiving the report from the auditor, they will electronically submit a copy of the data collection form SF-SAC and a Single Audit Report Package to the Federal Audit Clearinghouse Internet Data Entry System.

    For complete instructions for electronic submission of the SF-SAC and the Single Audit Report Package are located at the Federal Audit Clearinghouse Web site:

    http://harvester.census.gov/fac/

13. To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

    a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a sub-recipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an

individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, sub-recipients under this award, and sub-recipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under the award.

14. The Recipient agrees, in accordance with EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

The Recipient agrees to follow the requirements set out in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). RCRA Section 6002 that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in the guidelines contained in 40 CFR 247.

15. The Environmental Protection Agency (EPA) participation in the salary rate (excluding overhead and travel) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2011, the limit is $596.00 per day and $74.50 per hour. The rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Sub-agreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j)(2) or 30.27(b), as applicable.

16. **GENERAL COMPLIANCE, 40 CFR, Part 33** - The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D - A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

Current Fair Share Objective/Goal - The award amount of this assistance agreement is $250,000, or less; or the total dollar amount of all of the recipient's financial assistance agreements from EPA in the current Federal fiscal year is $250,000, or less. Therefore,

the recipient of this assistance agreement is exempt from the fair share objective requirements of 40 CFR, Part 33, Subpart D, and is not required to negotiate a fair share objective/goal for the utilization of MBE/WBEs in its procurements.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C - Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503 - The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31 and September 30.

The reports are due within 30 days of the end of the semiannual reporting periods (April 30 and October 30). Reports should be sent to ATTN: Grant Assistant. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's home page on the Internet at www.epa.gov/osbp.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302 -The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c) - Recipients and sub recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and

(c) for specific requirements and exemptions.

Programmatic Conditions

1. Recipient agrees that this grant is FOR A STORM WATER TECHNOLOGY PILOT PROJECT consisting of the construction of a new storm sewer drainage system in an established residential neighborhood as described in Recipient's grant application.

2. Recipient understands that 55% of the eligible costs incurred after the award of this grant for the construction of the project described above will be eligible for reimbursement by the Environmental Protection Agency (EPA) up to but not to exceed a maximum grant amount of $123,000. Recipient also understands that no additional EPA grant funds are available for EPA participation in eligible project costs that exceed $ 223,636, and Recipient agrees to complete all contracts partially funded with this grant. Recipient also agrees that the non-EPA project funding described in the grant application will be available for a specific project before a construction contract is advertised for bids for that project.

3. Recipient understands that this grant is subject to the provisions in EPA regulations at 40 CFR Part 31 and the EPA memorandum dated March 29, 2010, with the subject title "Award of Special Appropriations Act Project Grants Authorized by the Agency's FY 2010 Appropriations Act."

4. In accordance with the requirements of the National Environmental Policy Act, EPA has issued a categorical exclusion for this project in accordance with provisions in Part 6 of Title 40 of the Code of Federal Regulations. If EPA determines that a categorical exclusion is not appropriate for this project, Recipient agrees to submit information necessary to issue a Finding of No Significant Impact. If the scope of the project changes, Recipient understands that additional environmental review may be necessary.

5. Recipient agrees to meet the project schedule provided with the grant application or the most recent amended schedule approved by the EPA Project Officer unless justifiable delays occur due to unexpected circumstances. Whenever significant schedule changes occur, Recipient will provide the EPA Project Officer with an amended schedule and an explanation for the changes.

6. Recipient agrees to submit plans and specifications to the EPA Project Officer for review and approval prior to advertising for bids. Recipient will also submit any addenda to the plans and specifications to the EPA Project Officer for approval prior to the opening of bids, and any change orders executed after the award of the contract.

7. Recipient agrees to submit supporting documentation to the EPA Project Officer for review at the same time a request is made to the EPA payment office for a grant payment by electronic funds transfer. The review of supporting documentation will not impact the timing of the electronic funds transfer, but based on the findings of the review, the Recipient may be required to repay an overdraw, or to modify the subsequent request for reimbursement, to adjust for any ineligible or unallowable costs noted.

8. Recipient agrees to make prompt payment to its contractor(s) of sums due under this grant and to retain only amounts as may be justified by specific circumstances and provisions of this grant or the construction contract(s).

9. Recipient agrees to properly operate and maintain all facilities partially funded by this grant for the useful life of the facilities.

10. Recipient agrees that no more than 95% of the grant amount for each construction contract will be requested for reimbursement until a final inspection is conducted by the EPA Project Officer and any noted deficiencies are resolved, including punch list items identified by the Recipient's consulting engineer. Recipient also agrees to provide notification in writing to the EPA Project Officer when each construction contract is ready for final inspection. Exceptions to the 95% payment limitation will be considered for any contract if EPA funds are limited so that EPA is not

participating in the full contract amount.

11. Recipient agrees to provide **Semi-annual Performance Reports,** for all activities identified in the work plan, including those performed by the Recipient through Interagency Agreements and sub-agreements in accordance with 40 CFR 31.40.

Performance reports submitted under this agreement will contain at a minimum:
i) a comparison of actual accomplishments to the outputs/outcomes established in the work plan for the performance period;
ii) the reasons for slippage if established outputs/outcomes were not met; and,
iii) additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

These reports shall be due no later than ninety (90) days after the end of the reporting period based on the grant year (anniversary of the original grant award date). The **final performance report** is due to the EPA Project Officer within ninety (90) days after the expiration of the project period.

Questions, concerns, notification of any problems or delays should be directed to the EPA Project Officer listed on the first page of your assistance award or assistance amendment document.

Project Name: _____
Grant No.: _____ Reviewer: _____ Date: _____

GRANT CONDITION REQUIREMENTS (may vary - check grant conditions.)

_____ (a) Eligibility Contract is part of the scope of the project as per the grant award agreement.

_____ (b) Environmental Review The environmental review requirements of NEPA have been completed for this project with the issuance of a Categorical Exclusion, A Finding of No Significant Impact, or and Environmental Impact Statement.

_____ (c) Anti-Lobbying Act Language required by grant condition is included in specifications.

_____ (d) Debarment & Suspension/Excluded Parties Required language is included in specs.

_____ (e) DBE EPA spec insert included in specifications, or goals and affirmative steps for grants awarded prior to May 28, 2008.

_____ (f) Prompt Payment Grantee will make prompt payment to contractors retaining only justifiable amounts

PROCUREMENT STANDARDS

_____ (g) Contract awards will be made to responsible contractors possessing the ability to perform successfully considering integrity, compliance with public policy, record of past performance, and financial and technical resources. [31.36(b)(8)]

_____ (h) Time and material contracts will not be used unless no other kind of contract is suitable and the proposed contract includes a ceiling price. [31.36(b)(10)]

_____ (i) Specs should advise contractors that the grantee will be responsible for settling all issues including source evaluation, protests, disputes, and claims. [31.36(b)(11)]

_____ (j) Specs should advise contractor to exhaust all administrative remedies with the grantee before protesting to the EPA, which will only review protests based on violation of Federal law or regulation or for failure of grantee to review a protest under their protest procedures. [31.36(b)(12)]

COMPETITION

_____ (k) Full and open competition should not be restricted by placing unreasonable requirements on firms to qualify to do business or by requiring unnecessary experience and excessive bonding. [31.36(c)(1)(i) & (ii)]

_____ (l) Full and open competition should not be restricted by specifying only a brand name instead of allowing "an equal" product. [31.36(c)(1)(vi)]

_____ (m) The use of statutorily or administratively imposed in-State or local geographical preferences is prohibited except where applicable Federal statutes expressly mandate or encourage geographic preference. [31.36(c)(2)]

_____ (n) Specifications shall incorporate a clear and accurate description of the technical requirements for materials, products, and services to be provided. Minimum essential characteristics and standards should be used. Detailed requirements which unduly limit competition should not be used. [31.36(c)(3)]

_NA_ (o) Buy American requirements do not apply to special infrastructure grant projects. The grantee should be advised if this requirement is included. [31.36(c)(5)]

REQUIREMENTS FOR SEALED BID PROCUREMENT

_____ (p) A firm-fixed-price contract, either lump sum or unit price, will be used. [31.36(d)(2)]

____ (q) Award of contract will be made to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The basis of award must be specified if bid alternates are included. [31.36(d)(2)]

____ (r) Invitation for bids will be publicly advertised providing sufficient time to attract an adequate number of bidders. If less than 30 days is proposed, grantee should provide a justification which demonstrates adequate competition will be obtained. [31.36(d)(2)(ii)(A)]

____ (s) Any or all bids may be rejected for a sound documented reason. [31.36(d)(2)(ii)(E)]

____ (t) Noncompetitive procurement from a sole source may be used when (1) the item is available only from a single source, (2) public exigency or emergency requires quick action, (3) the awarding agency authorizes noncompetitive proposals, or (4) after solicitation, competition is determined inadequate. [31.36(d)(4)]

BONDING REQUIREMENTS

____ (u) A 5% bid guarantee is required. A firm commitment such as bid bond, certified check or other negotiable instrument will be provided. [31.36(h)(1)]

____ (v) A 100% performance bond is required to secure the fulfillment of the contractor's obligations. [31.36(h)(2)]

____ (w) A 100% payment bond is required for payment for all labor and material. [31.36(h)(3)]

CONTRACT PROVISIONS

____ (x) Administrative, contractual or legal remedies shall be provided for when contractors violate or breach contract terms, with sanctions and penalties as appropriate. [31.36(i)(1)]

____ (y) Provisions to terminate for cause and for convenience shall be provided including the manner it will be effected and the basis for settlement. [31.36(i)(2)]

____ (z) Compliance with Executive Order 11246 (Equal Employment Opportunity) shall be required. The Advertisement for Bids and the Notice to Contractors shall cite this requirement and list the goals for minorities and women on the contractor's workforce, and the specifications shall include the two Department of Labor inserts. [31.36(i)(3)]

NA (aa) The Copeland "Anti-Kickback" Act only applies to contracts subject to Davis-Bacon Act wage rates. This grant is not subject to Federal wage rates. [31.36(i)(4)]

NA (bb) Davis-Bacon Act Federal wage rates are not required by the special infrastructure grant funding legislation. Advise the grantee if included. [31.36(i)(5)]

____ (cc) Contractor will comply with Sections 103 & 107 of the Contract Work Hours and Safety Standards Act as directed in Dept. of Labor regulations at 29 CFR Part 5. [31.36(i)(6)]

____ (dd) Access to pertinent contract records is provided to the grantee, EPA, US Comptroller General, or any duly authorized representatives for the purpose of making audit, examination, excerpts, and transcriptions. [31.36(i)(10)]

____ (ee) Contractor is required to retain contract records for 3 years after final payment is made and all other pending matters are closed. [31.36(i)(11)]

____ (ff) Contractor will comply with Clean Air Act Section 306, Clean Water Act Section 508, Executive Order 11738, and EPA regulations at 40 CFR 15, which prohibits dealing with entities in noncompliance with the cited acts. [31.36(i)(12)]

____ (gg) Contractor will comply with the energy efficiency requirements in the state energy conservation plan issued as required by the Energy Policy and Conservation Act. (P.L. 94-163) [31.36(i)(13)]

____ (hh) EPA and authorized representatives will be provided access to construction site. [31.40(e)]

____ (ii) Specs should provide for steps to be taken if historical or archaeological artifacts are uncovered during construction. [44 CFR 800.11]

(a) *NOTE: This is a check to ensure that the project defined by the plans and specifications agrees with the definition of the scope of the project in the grant award document. If not, this is a show stopper and the grantee should be advised accordingly.*

(b) *NOTE: This is a check to make sure that the appropriate NEPA environmental review document has been issued as per the grant condition. If not, a judgment should be made as to whether this will delay the project, and the grantee should be advised accordingly. The NEPA review process should be completed before construction begins, and should preferably be completed before a construction contract is awarded, in case the NEPA review results in a change in the project.*

(c) Administrative Condition No. X in the Environmental Protection Agency grant agreement requires the following to be included in all solicitation documents:

> "Subrecipients who request or receive from the grant recipient a subgrant, contract, or subcontract exceeding $100,000, at any tier under a Federal grant, shall comply with the Anti-Lobbying Act, Section 319 or Public Law 101-121, and file an Anti-Lobbying Certification form, and the Disclosure of Lobbying Activities form, if required, to next tier above."

The forms can be found at the following websites:
http://epa.gov/region07/economics/pdf/Certification_Regarding_Lobbying.pdf
http://epa.gov/region07/economics/pdf/lobbying_activities_disclosure.pdf

(d) **For the older condition requiring a suspension & debarment certification, use the following:**

Administrative Condition No. X in the Environmental Protection Agency grant agreement requires the following language to be included in all solicitation documents:

> The prospective participants must certify by submittal of EPA Form 5700-49, Certification Regarding Debarment, Suspension and Other Responsibility Matters, that to the best of its knowledge and belief it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

For the newer condition not requiring the certification form, use the following comment:

To satisfy Administrative Condition No. X in the Environmental Protection Agency grant agreement, the following should be included in the Instructions to Bidders section of the project specifications:

> The Code of Federal Regulations at Title 2, Part 180, prohibits participation in EPA funded contracts by persons excluded or disqualified from doing business with the federal government. Bidders are responsible for advising the Owner if they are excluded or disqualified, and to check whether subcontractors they intend to use are excluded or disqualified. All tiers of subcontractors have the same responsibility to notify the one for which they are providing services if they are excluded or disqualified, and to check the status of any subcontractors they intend to use. Status can be checked on the Excluded Parties List System located on the Internet at www.epls.gov. All subcontracts at any tier should include this language.

(e) **For grants awarded after May 27, 2008, use the following comment:**

To satisfy Administrative Condition No. X in the Environmental Protection Agency grant agreement, the enclosed EPA DBE spec insert should be included in the specifications.

For grants awarded prior to May 28, 2008, use the following comment:

NOTE: The following comment should be edited to fit the particular project situation.

As per Administrative Condition No. X in the Environmental Protection Agency grant agreement, the specifications must require the contractor and any subcontractors to take the six affirmative steps listed at 40 CFR 31.36(e)(2) in attempting to reach the fair share objectives of XX% subcontracting to minority business enterprises and XX% subcontracting to women business enterprises. A copy of the six affirmative steps is enclosed for your information. This list should be included in the specifications for clarity. Although no goals are required, the contractor must take the same affirmative steps to subcontract with small business enterprises. Prior to award of the contract, the apparent low bidder should be required to identify the disadvantaged firms which will receive subcontracts, and for each firm, a listing of the type of enterprise and the contract amount. If the established goals are not met, the bidder should also be required to submit documentation which demonstrates that the six affirmative steps were taken. The bidder would be considered unresponsive without such documentation. Further information on this EPA requirement can be obtained at the following web site address: www.epa.gov/osdbu/pubs.htm.

NOTE: Some consultants include in the specifications an old EPA document developed for the SRF program which does not include the current six affirmative steps. This form should be revised to include the wording in the current regulation, as included on page 5 of this document.

(f) As per Programmatic Condition No. X, the specifications must include a description of the payment process which insures that the contractor will receive prompt payments of sums due except for justifiable amounts retained until completion of the project.

(g) As per 40 CFR 31.36(b)(8), the specifications should advise bidders that contract award will be made only to responsible contractors possessing the ability to perform successfully, which will be determined by considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(h) As per 40 CFR 31.36(b)(10), time and material contracts will not be used unless no other kind of contract is suitable and the proposed contract includes a ceiling price. Please provide a justification which explains why a lump sum or unit price type of contract is not suitable.

(i) As per 40 CFR 31.36(b)(11), the specifications should advise bidders that the grantee alone will be responsible, in accordance with good administrative practice and sound business judgment, for settlement of all contractual and administrative issues including source evaluation, protests, disputes, and claims.

(j) As per 40 CFR 31.36(b)(12), the specifications should advise bidders that a protestor must exhaust all administrative remedies with the grantee before pursuing a protest with the Environmental Protection Agency, and that protests reviewed by EPA will be limited to situations where Federal law or regulations are violated or where the grantee fails to review a protest under their procedures.

(k) As per 40 CFR 31.36(c)(1), full and open competition should not be restricted [by placing unreasonable requirements on firms in order for them to qualify to do business and/or by requiring unnecessary experience and/or excessive bonding.] *INCLUDE HERE the unacceptable requirements.*

NOTE: edit the first sentence, within the brackets, to fit each situation.

(l) As per 40 CFR 31.36(c)(1)(vi), specifying only a "brand name" product restricts full and open competition. Brand names can only be used to define performance and other relevant requirements of the item, and the specification must allow the use of an "or equal" product when "brand names" are specified.

(m) As per 40 CFR 31.36(c)(2), unless mandated by applicable Federal statutes, the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of proposals is prohibited and such requirements should be removed from the specifications. ***INCLUDE HERE*** *what the unallowable provisions are and where they are located in the specifications.*

NOTE: HUD Section 3 requirements for Community Development Block Grants are an example of federally mandated, local preference requirements which can be included in the specifications, but if included, make sure grantee is receiving CDBG funds.

(n) *NOTE: This comment needs to be written with reference to 40 CFR 31.36(c)(3) on a case-by-case basis to identify where specifications do not adequately describe the technical requirements or are too detailed and thereby limit competition.*

(o) The "Buy American" requirement is not required for construction contracts funded by the Environmental Protection Agency special infrastructure grant, but it can be included in the specifications.

NOTE: This comment can be used if this provision is in the specifications to advise the grantee that they are not required to include it.

(p) As per 40 CFR 31.36(d)(2), a firm-fixed-price contract, either lump sum, unit price or a combination of these two types, must be used for sealed bid procurement.

(q) As per 40 CFR 31.36(d)(2), the award of contract must be made to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. ***OR***

As per 40CFR 31.36(d)(2), bid alternates cannot be used in the proposal for bids unless the specifications define a definite basis of award which is the same for all bidders. ***OR***

As per 40 CFR 31.36(d)(2), the award of contract must be made to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price, and bid alternates cannot be used in the proposal for bids unless the specifications define a definite basis of award which is the same for all bidders.

(r) As per 40 CFR 31.36(d)(2)(ii)(A), the publicly advertised invitation for bids will provide bidders with sufficient time prior to the date set for the bid opening. 30 days has been used historically to provide sufficient time. How long will the invitation for bids be advertised? If it will be advertised less than 30 days, provide a justification which explains why the purposed advertisement period will provide sufficient time to attract an adequate number of qualified bidders.

s) As per 40 CFR 31.36(d)(2)(ii)(E), the specifications should advise bidders that any or all bids may be rejected for a sound, documented reason.

(t) As per 40 CFR 31.36(d)(4), noncompetitive procurement from a sole source is usually not allowed. Provide justification for specifying a sole source to procure ***INSERT HERE*** *the material or equipment in question.*

(u) As per 40 CFR 31.36(h)(1), the specifications must require bidders to submit a bid guarantee in an amount equal to five percent of the bid price. The guarantee shall be a firm commitment such as a bid bond, certified check, or other negotiable instrument, which assures that the bidder will, upon acceptance of the bid, execute required contract documents within the time period specified.

NOTE*: Can combine with comment "v" and/or "w" if applicable.*

(v) As per 40 CFR 31.36(h)(2), the specifications must require the successful bidder to provide a performance bond in an amount equal to 100 percent of the contract price. The bond will assure fulfillment of all of the obligations of the contractor as required by the contract documents.

NOTE: Can combine with comment "v" and/or "x" if applicable.

(w) As per 40 CFR 31.36(h)(3), the specifications must require the successful bidder to provide a payment bond in an amount equal to 100 percent of the contract price. The bond will assure payment as required by law to all persons supplying labor and material in the execution of the work specified in the contract documents.

NOTE: Can combine with comment "v" and/or "w" if applicable.

(x) As per 40 CFR 31.36(i)(1), for contracts exceeding $100,000, the specifications must include the administrative, contractual, and legal remedies which will be used by the grantee in instances where contractors violate or breach contract terms, and also provide for such sanctions and penalties as may be appropriate.

(y) As per 40 CFR 31.36(i)(2), for contracts exceeding $10,000, the specifications must include provisions for the grantee to terminate the contract for cause and for convenience, including the manner by which the termination will be effected and the basis for settlement.

(z) As per 40 CFR 31.36(i)(3), for contracts exceeding $10,000, the specifications must require the contractor to comply with Executive Order 11246, entitled "Equal Employment Opportunity." This requirement is not the same as the Environmental Protection Agency MBE/WBE program which deals with subcontracting. Attached are two documents which must be included in the specifications. They are entitled "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" and "Standard Federal Equal Employment Opportunity Construction Contract Specifications. The 6.9% figure for female participation on the contractor's aggregate work force is a nation-wide figure. The XX% figure for minority participation is specific to the project area. Also, include the following statement in the Advertisement for Bids and the Notice to Contractors:

> Bidders of this Work will be required to comply with the President's Executive Order Number 11246, as amended, which requires the contractor to take steps to meet aggregate workforce goals of XX% for minority participation and 6.9% for female participation. These requirements are explained in the Equal Employment Opportunity provisions included in the Contract Documents.

NOTE: Replace the XXs above with the appropriate percentage for minority participation for the applicable area from the 10/3/80 Federal Register. Also type the same percentage for minority participation and edit Section 4 to include the geographical area in the copy of the DOL "Notice...." form that is sent to the grantee as an attachment to the comment letter. The inserts and table of percentages by county are attached to this document.

(aa) NA

(bb) The legislation which authorized the funding for this project did not make the Federal wage rates of the Davis-Bacon Act a requirement for this construction project, so the Federal wage rates do not need to be included in the specifications.

NOTE: Use this comment if Federal wage rates are included in the specifications.

(cc) As per 40 CFR 31.36(i)(6), for contracts exceeding $2000, the specifications must require the contractor to comply with Sections 103 and 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5)

(dd) As per 40 CFR 31.36(i)(10), the specifications must require the contractor to provide access for the grantee, the Environmental Protection Agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.

(ee) As per 40 CFR 31.36(i)(11), the specifications must require the contractor to retain all required records for three years after the latter of grantee making final payment or all other pending matters are closed.

(ff) As per 40 CFR 31.36(i)(12), for contracts exceeding $100,000, the specifications must require the contractor and subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations at 40 CFR part 15.

(gg) As per 40 CFR 31.36(i)(13), the specifications must require the contractor to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163, 89 Stat 871).

(hh) As per 40 CFR 31.40(e), the specifications must require the contractor to provide access to the site for the Environmental Protection Agency and its duly authorized representatives.

(ii) As per 44 CFR 800.11, the following requirement must be included in the specifications:

If during the course of construction evidence of deposits of historical or archaeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner, who shall notify the EPA and ***INSERT HERE*** *the name and address of the State Historic Preservation Officer*. No further disturbance of the deposits shall ensue until the contractor has been notified by the owner that construction may proceed. The owner will issue a notice to proceed only after the state official has surveyed the find and made a determination to the EPA and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the contract documents.

NOTE: Following are the ***affirmative steps*** *for MBE/WBE/SBE subcontracting as included in the current EPA regulation at 40 CFR 31.36(e)(2).*

(e) Contracting with small and minority firms, women's business enterprises and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
(v) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
All years	Insert goals for area	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign

two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting it's EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than once month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m.Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory affect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these Specifications are being carried out.

n. Ensure that all facilities and company activities re nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female

construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications providing that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these Specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these Specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligation under these Specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these Specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these Specifications, the Director shall proceed in accordance with 41-CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Department of Labor EEO Minority Goals for Contractor Workforce
as per the October 3, 1980 Federal Register by Region 7 Counties
(For information, not for inclusion in specifications.)

Iowa

Adair	2.4
Adams	5.3
Allamakee	0.5
Appanoose	2.4
Audubon	5.3
Benton	1.5
Black Hawk	4.7
Boone	2.4
Bremer	2.0
Buchanan	2.0
Buena Vista	0.4
Butler	2.0
Calhoun	0.4
Carroll	0.4
Cass	5.3
Cedar	1.5
Cerro Gordo	2.0
Cherokee	1.2
Chickasaw	2.0
Clarke	2.4
Clay	0.4
Clayton	0.5
Clinton	3.4
Crawford	1.2
Dallas	2.4
Davis	2.4
Decatur	2.4
Delaware	0.5
Des Moines	3.4
Dickinson	0.4
Dubuque	0.6
Emmet	0.4
Fayette	2.0
Floyd	2.0
Franklin	2.0
Fremont	5.3
Greene	0.4
Grundy	2.0
Guthrie	2.4
Hamilton	0.4
Hancock	2.0
Hardin	2.0
Harrison	5.3
Henry	3.4
Howard	2.0
Humboldt	0.4
Ida	1.2
Iowa	1.5
Jackson	0.5
Jasper	2.4
Jefferson	2.4
Johnson	1.5
Jones	1.5
Keokuk	2.4
Kossuth	0.4
Lee	3.4
Linn	1.7
Louisa	3.4
Lucas	2.4
Lyon	0.8
Madison	2.4
Mahaska	2.4
Marion	2.4
Marshall	2.4
Mills	5.3
Mitchell	2.0
Monona	1.2
Monroe	2.4
Montgomery	5.3
Muscatine	3.4
O'Brien	1.2
Osceola	0.8
Page	5.3
Palo Alto	0.4
Plymouth	1.2
Pocahontas	0.4
Polk	4.5
Pottawattamie	7.6
Poweshiek	2.4
Ringgold	2.4
Sac	0.4
Scott	4.6
Shelby	5.3
Sioux	1.2
Story	2.4
Tama	2.4
Taylor	5.3
Union	2.4
Van Buren	2.4
Wapello	2.4
Warren	4.5
Washington	1.5
Wayne	2.4
Webster	0.4
Winnebago	2.0
Winneshiek	0.5
Woodbury	1.9
Worth	2.0
Wright	0.4

Kansas

Allen	2.3
Anderson	10.0
Atchison	10.0
Barber	5.7
Barton	5.7
Bourbon	2.3
Brown	10.0
Butler	7.9
Chase	5.7
Chautauqua	5.7
Cherokee	2.3
Cheyenne	1.5
Clark	5.7
Clay	6.5
Cloud	1.5
Coffey	6.5
Comanche	5.7
Cowley	5.7
Crawford	2.3
Decatur	1.5
Dickinson	1.5
Doniphan	10.0
Douglas	7.2
Edwards	5.7
Elk	5.7
Ellis	1.5
Ellsworth	1.5
Finney	5.7
Ford	5.7
Franklin	10.0
Geary	6.5
Gove	1.5
Graham	1.5
Grant	5.7
Gray	5.7
Greeley	5.7
Greenwood	5.7
Hamilton	5.7
Harper	5.7
Harvey	5.7
Haskell	5.7
Hodgeman	5.7
Jackson	6.5
Jefferson	9.0
Jewell	1.5
Johnson	12.7
Kearny	5.7
Kingman	5.7
Kiowa	5.7
Labette	2.3
Lane	5.7
Leavenworth	10.0
Lincoln	1.5
Linn	10.0
Logan	1.5
Lyon	6.5
Marion	5.7
Marshall	6.5
McPherson	5.7
Meade	5.7
Miami	10.0
Mitchell	1.5
Montgomery	2.3
Morris	6.5
Morton	5.7
Nemaha	6.5
Neosho	2.3
Ness	5.7
Norton	1.5
Osage	9.0
Osborne	1.5
Ottawa	1.5
Pawnee	5.7
Phillips	1.5
Pottawatomie	6.5
Pratt	5.7
Rawlins	1.5
Reno	5.7
Republic	1.5
Rice	5.7
Riley	6.5
Rooks	1.5
Rush	5.7
Russell	1.5
Saline	1.5
Scott	5.7
Sedgwick	7.9
Seward	5.7
Shawnee	9.0
Sheridan	1.5
Sherman	1.5
Smith	1.5
Stafford	5.7
Stanton	5.7
Stevens	5.7
Sumner	5.7
Thomas	1.5
Trego	1.5
Wabaunsee	6.5
Wallace	1.5
Washington	6.5
Wichita	5.7
Wilson	2.3
Woodson	2.3
Wyandotte	12.7

Department of Labor EEO Minority Goals for Contractor Workforce
as per the October 3, 1980 Federal Register by Region 7 Counties
(For information, not for inclusion in specifications.)

Missouri

Adair	4.0
Andrew	9.2
Atchison	10.0
Audrain	4.0
Barry	2.3
Barton	2.3
Bates	10.0
Benton	10.0
Bollinger	11.4
Boone	6.3
Buchanan	9.2
Butler	11.4
Caldwell	10.0
Callaway	4.0
Camden	4.0
Cape Girardeau	11.4
Carroll	10.0
Carter	11.4
Cass	12.7
Cedar	2.3
Chariton	4.0
Christian	2.0
Clark	3.4
Clay	12.7
Clinton	10.0
Cole	4.0
Cooper	4.0
Crawford	11.4
Dade	2.3
Dallas	2.3
Daviess	10.0
De Kalb	10.0
Dent	11.4
Douglas	2.3
Dunklin	26.5
Franklin	14.7
Gasconade	11.4
Gentry	10.0
Greene	2.0
Grundy	10.0
Harrison	10.0
Henry	10.0
Hickory	2.3
Holt	10.0
Howard	4.0
Howell	2.3
Iron	11.4
Jackson	12.7
Jasper	2.3
Jefferson	14.7
Johnson	10.0
Knox	4.0
Laclede	2.3
Lafayette	10.0
Lawrence	2.3
Lewis	3.1
Lincoln	11.4
Linn	4.0
Livingston	10.0
McDonald	2.3
Macon	4.0
Madison	11.4
Maries	11.4
Marion	3.1
Mercer	10.0
Miller	4.0
Mississippi	11.4
Moniteau	4.0
Monroe	4.0
Montgomery	11.4
Morgan	4.0
New Madrid	26.5
Newton	2.3
Nodaway	10.0
Oregon	2.3
Osage	4.0
Ozark	2.3
Pemiscot	26.5
Perry	11.4
Pettis	10.0
Phelps	11.4
Pike	3.1
Platte	12.7
Polk	2.3
Pulaski	2.3
Putnam	4.0
Ralls	3.1
Randolph	4.0
Ray	12.7
Reynolds	11.4
Ripley	11.4
St. Charles	14.7
St. Clair	2.3
St. Francois	11.4
Ste. Genevieve	11.4
St. Louis	14.7
St. Louis City	14.7
Saline	10.0
Schuyler	4.0
Scotland	4.0
Scott	11.4
Shannon	2.3
Shelby	4.0
Stoddard	11.4
Stone	2.3
Sullivan	4.0
Taney	2.3
Texas	2.3
Vernon	2.3
Warren	11.4
Washington	11.4
Wayne	11.4
Webster	2.3
Worth	10.0
Wright	2.3

Nebraska

Adams	1.4
Antelope	1.2
Arthur	1.4
Banner	5.3
Blaine	1.4
Boone	1.4
Box Butte	5.3
Boyd	1.4
Brown	1.4
Buffalo	1.4
Burt	5.3
Butler	1.9
Cass	5.3
Cedar	1.2
Chase	1.4
Cherry	1.4
Cheyenne	5.3
Clay	1.4
Colfax	5.3
Cuming	1.2
Custer	1.4
Dakota	1.9
Dawes	5.3
Dawson	1.4
Deuel	5.3
Dixon	1.2
Dodge	5.3
Douglas	7.6
Dundy	1.4
Fillmore	1.9
Franklin	1.4
Frontier	1.4
Furnas	1.4
Gage	1.9
Garden	5.3
Garfield	1.4
Gosper	1.4
Grant	1.4
Greeley	1.4
Hall	1.4
Hamilton	1.4
Harlan	1.4
Hayes	1.4
Hitchcock	1.4
Holt	1.4
Hooker	1.4
Howard	1.4
Jefferson	1.9
Johnson	1.9
Kearney	1.4
Keith	1.4
Keya Paha	1.4
Kimball	5.3
Knox	1.2
Lancaster	2.8
Lincoln	1.4
Logan	1.4
Loup	1.4
McPherson	1.4
Madison	1.2
Merrick	1.4
Morrill	5.3
Nance	1.4
Nemaha	1.9
Nuckolls	1.4
Otoe	1.9
Pawnee	1.9
Perkins	1.4
Phelps	1.4
Pierce	1.2
Platte	5.3
Polk	1.9
Red Willow	1.4
Richardson	1.9
Rock	1.4
Saline	1.9
Sarpy	7.6
Saunders	5.3
Scotts Bluff	5.3
Seward	1.9
Sheridan	5.3
Sherman	1.4
Sioux	5.3
Stanton	1.2
Thayer	1.9
Thomas	1.4
Thurston	1.2
Valley	1.4
Washington	5.3
Wayne	1.2
Webster	1.4
Wheeler	1.4
York	1.9

EPA DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

(See **http://www.epa.gov/osbp/dbe_team.htm** for more information.)

Prime Contractor Responsibilities:

1. The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 (DBE regulations) in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

2. If the contractor awards subcontracts, the contractor should take the following good faith efforts to subcontract with small business enterprises, minority business enterprises, and women's business enterprises (i.e. DBEs):

   a. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and local government grant recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

   b. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

   c. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local government grant recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

   d. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

   e. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

3. The contractor should provide the attached DBE Subcontractor Participation Form (6100-2) and the attached DBE Subcontractor Performance Form (6100-3) to each DBE subcontractor when soliciting bid proposals.

4. The contractor should complete the attached DBE Subcontractor Utilization Form (6100-4).

5. The contractor should submit to the Owner with the bid package the completed DBE Subcontractor Utilization Form (6100-4), plus a DBE Subcontractor Performance Form (6100-3) for each DBE subcontractor used in the contractor's bid.

6. The contractor should pay DBE subcontractors for satisfactory performance no more than 30 days from receipt of payment from Owner.

7. The contractor should notify the Owner in writing prior to the termination of a DBE subcontractor for convenience.

8. The contractor should employ the good faith efforts in paragraph No. 2 if soliciting a replacement after a DBE subcontractor fails to complete work under the subcontract for any reason.

9. The contractor should report to the Owner each April 5 and October 5 the DBE participation achieved in each semiannual period ending March 31 and September 30.

10. The contractor should maintain records documenting efforts to comply with DBE requirements, including documentation of good faith efforts. The records of the successful bidder will be requested by Owner to be maintained in Owner's file.

Subcontractor Responsibilities:

1. A DBE must be certified as per the EPA regulation at 40 CFR 33.204. The DBE must first attempt to be certified by the U.S. Small Business Administration, the U.S. Department of Transportation, an Indian Tribal Government, State Government, local Government, or independent private organization. If unsuccessful, the DBE may apply to EPA.

2. The DBE may submit the attached DBE Subcontractor Participation Form (6100-2) to ATTN: Grant Assistant, EPA Region 7 PLMG, 901 N 5th Street, Kansas City, KS 66101.

3. The DBE should complete the attached DBE Subcontractor Performance Form (6100-3), and submit it to the prime contractor soliciting services from the subcontractor prior to the opening of bids for the prime contract.

Attachments

Website for forms:
http://www.epa.gov/osbp/dbe_forms.htm under Contract Administration Forms section.

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Participation Form

NAME OF SUBCONTRACTOR[1]	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

Subcontractor Signature

Title/Date

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-2 (DBE Subcontractor Participation Form)

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Participation Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Participation Form to this address.

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Performance Form

NAME OF SUBCONTRACTOR[1]	PROJECT NAME
ADDRESS	BID/PROPOSAL NO.
TELEPHONE NO.	E-MAIL ADDRESS
PRIME CONTRACTOR NAME	

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME	PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR

Currently certified as an MBE or WBE under EPA's DBE Program? _____ Yes _____ No Signature of Prime Contractor Date Print Name Title _____

_____ Signature of Subcontractor Date

_____ _____ Print Name Title

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-3 (DBE Subcontractor Performance Form)

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Performance Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Performance Form to this address.

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form

BID/PROPOSAL NO.	PROJECT NAME
NAME OF PRIME BIDDER/PROPOSER	E-MAIL ADDRESS
ADDRESS	
TELEPHONE NO.	FAX NO.

The following subcontractors[1] will be used on this project:

COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATED DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

Signature of Prime Contractor _____ Date _____

Print Name _____ Title _____

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-4 (DBE Subcontractor Utilization Form)

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Utilization Form to this address.

City of Wichita
City Council Meeting
August 21, 2012

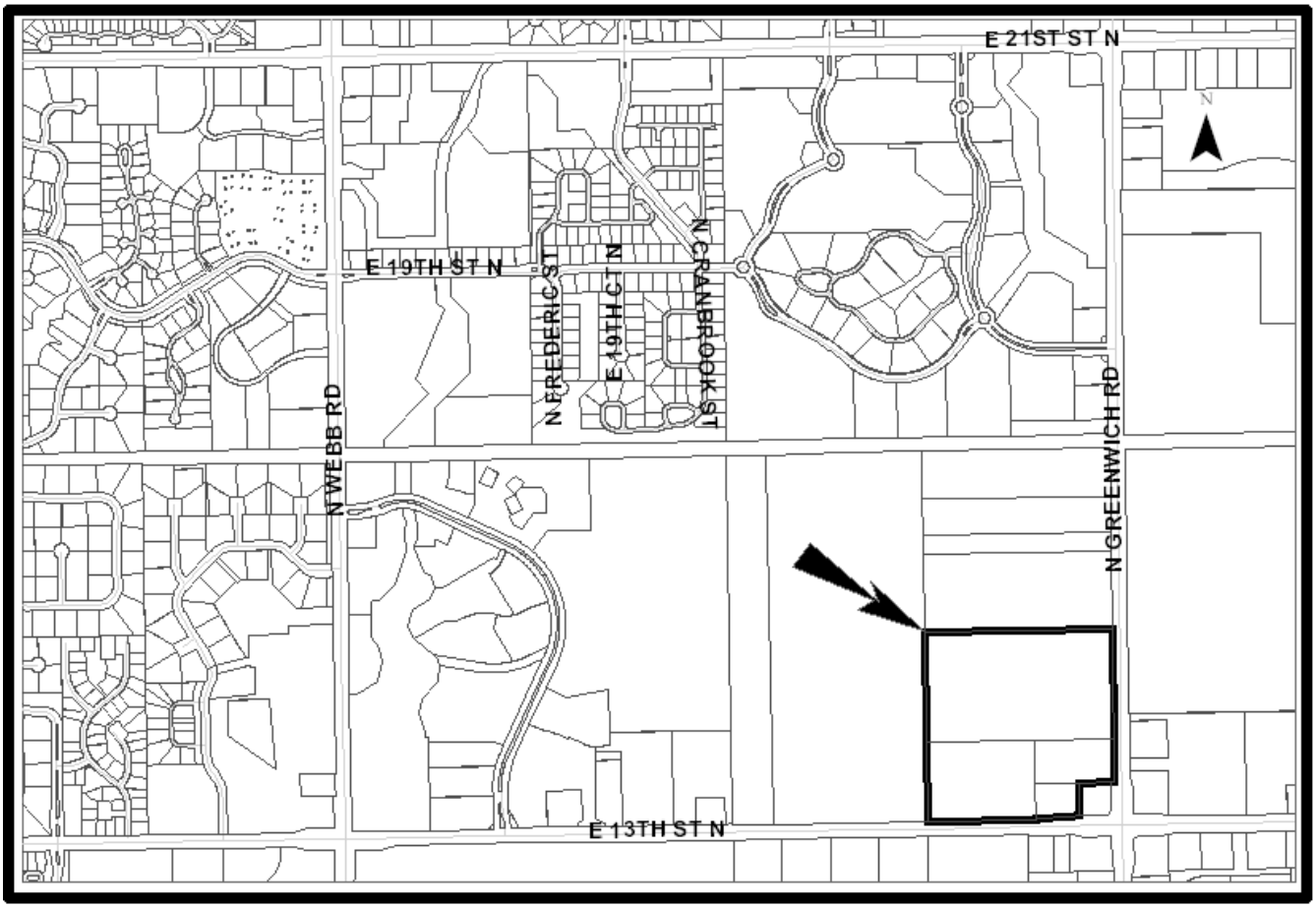
TO: Mayor and City Council

SUBJECT: ZON2007-14 – Extension of time to complete the platting requirement for a zone change request from GI General Industrial ("GI"), SF-5 Single-family Residential ("SF-5") and LC Limited Commercial ("LC") to LI Limited Industrial ("LI"); generally located north of 13th Street and west of Greenwich Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPD Staff Recommendation: Approve a two-year extension of the platting deadline to August 10, 2014.



Background: On June 19, 2007, the City Council approved the zone change from GI General Industrial ("GI"), SF-5 Single-family Residential ("SF-5") and LC Limited Commercial ("LC") to LI Limited Industrial ("LI") subject to the condition of platting the property within one year. The applicant has since received two platting extensions from the City Council, extending the platting deadline to August 10, 2012. As the attached letter indicates, the applicant's development plans continue to be delayed by economic conditions. The applicant requests a two year platting extension to August 10, 2012.

Analysis: Staff recommends that a platting extension be granted. The City Council may deny the request for an extension of time to complete platting; however, denying the extension would declare the zone change null and void and would require reapplication and rehearing if the property owner still desired a zone change.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality and Affordable Living.

Legal Considerations: No legal documents are required to grant the platting extension. The granting of a platting extension is indicated via letter to the applicant noting the extended platting deadline as granted by the City Council.

Recommendation/Actions:

1. Approve an extension of the platting deadline to August 10, 2014.

LAHAM
DEVELOPMENT

RECEIVED
JUL 31 2012
METROPOLITAN PLANNING
ROUTE

July 31, 2012

Metropolitan Area Planning Department
City Hall
455 North Main, 10th floor
Wichita, Kansas 67202
Attn: John Schlegel, Director of Planning

Re: Platting Extension for Zone Case ZON 2007- 14
Generally located north of 13th Street and west of Greenwich Rd.

Dear Mr. Schlegel:

Greenwich 13, L.L.C. requests a **two-year** platting extension for the above referenced zone case, which was approved by City Council on June 17, 2007. Two subsequent platting extensions have resulted in a platting deadline of August 10, 2012. Current economic conditions continue to delay our development plans. We have been exploring development options and holding discussions with possible users, with no success to date. Recent activity in the area, most notably completion of the Regent Park facility and commencement of construction on the Scholfield Buick/GMC dealership, is encouraging. As conditions improve, we intend to complete the platting process and proceed with development of the property.

I have enclosed a check in the amount of $110. Please contact me if you have any questions or need additional information.

Sincerely,

LAHAM DEVELOPMENT COMPANY, L.L.C.,
Manager of Greenwich 13, L.L.C.

George Sherman
Vice President - Development

Enclosure

150 North Market Wichita, KS 67202 T 316.292.3950 F 316.262.5877 lahamdevelopment.com

Agenda Item No. II-19.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

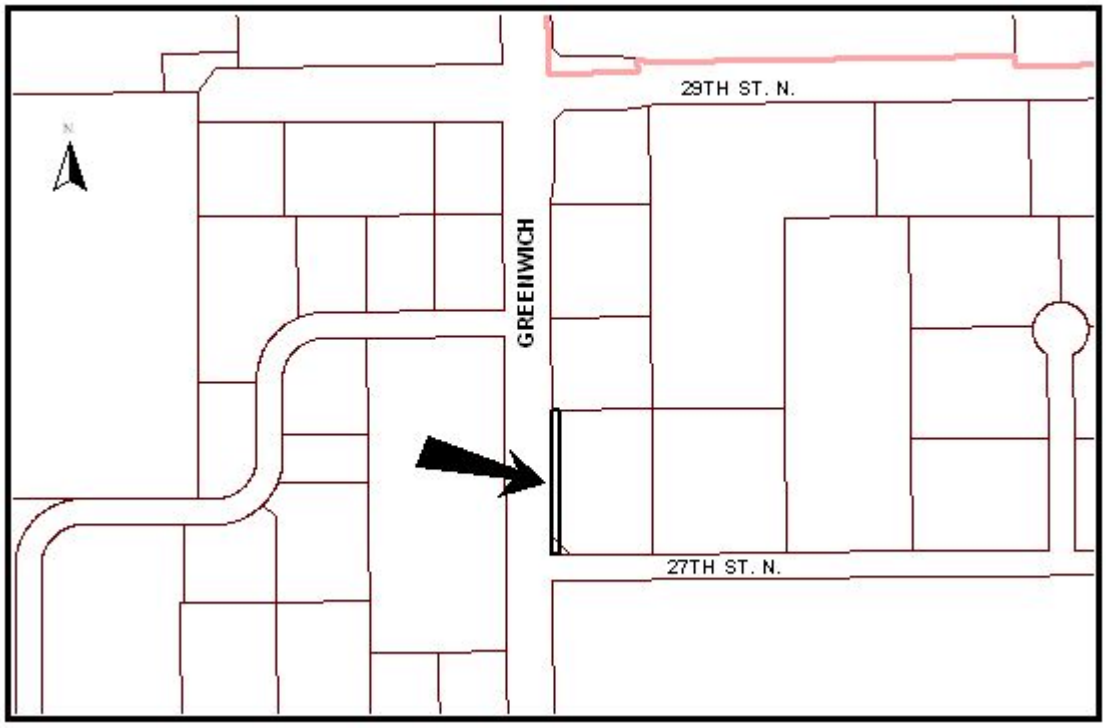
SUBJECT: VAC2012-00019 - Request to vacate an easement dedicated by separate instrument; generally located south of 29th Street North on the east side of Greenwich Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Commission (MAPC) recommends approval of the vacation request.



Background: The applicant proposes to vacate the west 20 feet of the rural water easement dedicated by separate instrument. The rural water easement is located along the west lot line of Lot 4, Block 1, Greenwich Business Center Addition. There are no utilities located in the rural water easement. The rural water easement dedicated by separate instrument was recorded March 8, 1993; Film 1420 – Page 1540-1541. The Greenwich Business Center Addition was recorded with the Register of Deeds November 9, 2007.

Analysis: The MAPC voted (12-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

Goal Impact: The application supports the City's goal to ensure an Efficient Infrastructure.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Vacation Order. A certified copy of the Vacation Order will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

Attachment: No attachments are necessary for this vacation request.

Agenda Item No. II-20.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

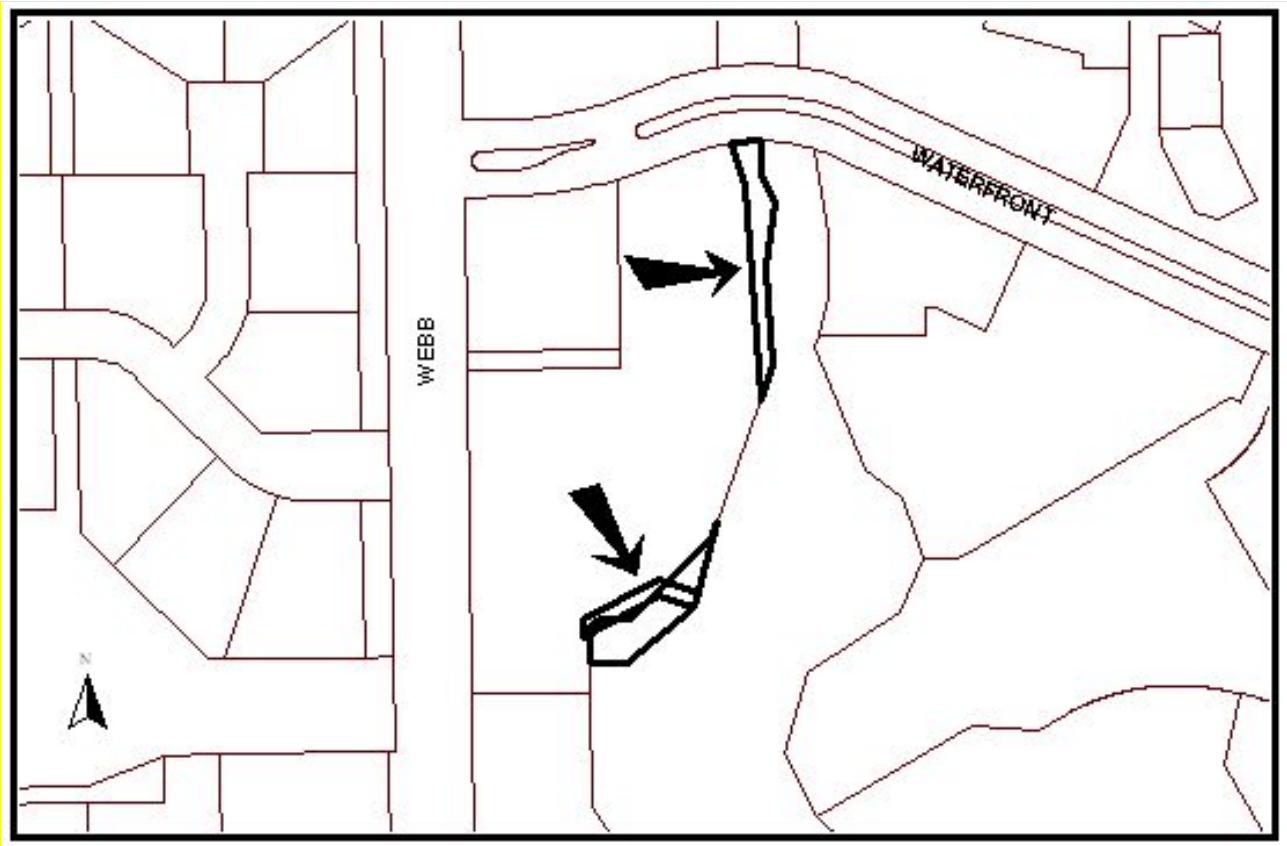
SUBJECT: VAC2012-00021 - Request to vacate a portion of a platted easement, reserve floodway and plattor's text; generally located north of 13th Street North, south of Waterfront Parkway, on the east side of Webb Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Commission (MAPC) recommends approval of the vacation request.



Background: The applicant proposes to vacate a portion of a platted utility easement. There is a sewer line in the easement. The applicant also proposes to vacate a portion of a floodway easement. Lastly the applicant proposes to vacate a portion of a platted reserve and to vacate/amend the plattor's text to eliminate the uses the reserve is currently restricted to. The current FEMA flood boundary is not located within the proposed vacated floodway easement not that portion of the reserve. These vacation requests are located in Lot 1, Block 1, the Waterfront Third Addition and Reserve C, the Waterfront Addition. The Waterfront Third Addition was recorded with the Register of Deeds June 24, 2004. The Waterfront Addition was recorded with the Register of Deeds January 24, 2003.

Analysis: The MAPC voted (11-0-1) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

Goal Impact: The application supports the City's goal to ensure an Efficient Infrastructure.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Vacation Order, the temporary easement and the restrictive covenant. A certified copy of the Vacation Order, the temporary easement and the restrictive covenant will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

Attachment: No attachments are necessary for this vacation request.

Agenda Item No. II-21.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

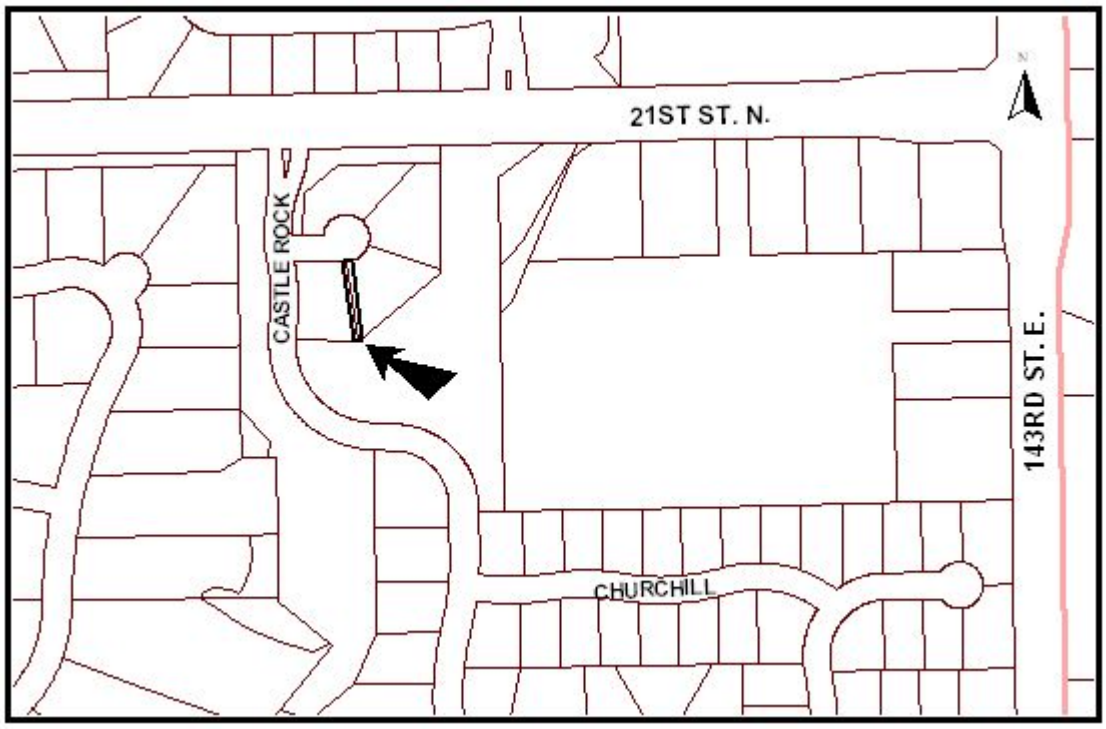
SUBJECT: VAC2012-00023 - Request to vacate platted drainage and utility easement; generally located 1500 feet west of 143rd Street East, south of 21st Street North, on the southeast corner of Castle Rock Street and Castle Rock Court. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Commission (MAPC) recommends approval of the vacation request.



Background: The applicant proposes to vacate the platted 20-foot drainage and utility easement centered between Lots 1 and 2, Block 1, Krug South 2nd Addition.

City Stormwater Management and City of Wichita Public Works and Utilities Department have no objection to the proposed vacation. Westar Energy has no equipment located within the subject easement and has no objection to the vacation request. No objections have been received from other franchised utilities. The Krug South 2nd Addition was recorded with the Register of Deeds on February 13, 2008.

Analysis: The MAPC voted (12-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: There are no financial considerations associated with this vacation.

Goal Impact: The application supports the City's goal to ensure an Efficient Infrastructure.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Vacation Order. A certified copy of the Vacation Order will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

Attachment: None.

City of Wichita
City Council Meeting
August 21, 2012

TO: Mayor and City Council

SUBJECT: A12-06: Request by Midland Baptist Church to annex lands generally located north of K-96 Highway, approximately one-quarter mile east of Ridge Road (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Recommendation: Approve the annexation request.

Background: The City has received a request to annex approximately 6.0 acres of land generally located north of K-96 Highway, approximately one-quarter mile east of Ridge Road. The annexation area abuts the City of Wichita to the east of the property. The annexation area is platted and is a portion of the Lot 1, Block A, Midland Baptist Church 2nd Addition that was recently approved for a lot split.

Analysis:
Land Use and Zoning: The annexation area consists of approximately 6.0 acres zoned "SF-20" Single-Family Residential and is being developed with a church. Upon annexation the zoning of subject property will convert to "SF-5" Single-Family Residential. The adjacent property to north is zoned "SF-20" Single-Family Residential and in an undeveloped church property owned by the same owner. The adjacent properties to south are zoned "SF-20" Single-Family Residential and are used for agriculture. The adjacent properties to the east are zoned "SF-5" Single-Family Residential and are being developed with single family residences. The adjacent properties to the west are zoned "SF-5" Single-Family Residential and are undeveloped but have a pending zone change to permit commercial development.

Public Services: Water and sanitary sewer service is available to be extended to serve the subject property. The owner has submitted a petition for the extension of water and sanitary sewer service.

Street System: The subject property has access to 45th Street North via private drive that crosses the remainder of the owner's property to the north of the subject property.

Public Safety: Fire protection is currently provided to the area on the basis of a first-responder agreement between the City and County, and that service will continue following annexation. Fire Station No. 13 at 3162 W. 42nd St. N. is the nearest City fire station to the site. Upon annexation, police protection will be provided to the area by the Patrol West Bureau of the Wichita Police Department, headquartered at 661 N. Elder.

Parks: The Brooks Tract, a 272 acre future park site is located approximately one-half mile east of the subject property at 4100 N. West. The Parks, Recreation and Open Space Plan identifies the Brooks Tract for "major development of an existing site."

School District: The annexation property is part of Unified School District 266 (Maize School District). Annexation will not change the school district.

Comprehensive Plan: The proposed annexation is consistent with the Wichita-Sedgwick County Comprehensive Plan. The annexation property falls within the Wichita 2030 Urban Growth Area as shown in the Plan.

Financial Considerations: The current approximate appraised value of the proposed annexation lands, according to County records, is $600,000 with a total assessed value of $150,000. Using the current City levy ($32.359/$1000 x assessed valuation), roughly yields $4,584 in City annual property tax revenues for the property upon annexation.

Goal Impact: Approving the annexation request would impact Wichita's goal to ensure Efficient Infrastructure, and annexation of this property would assist the City in satisfying the demand for new infrastructure needed to support growth and development.

Legal Considerations: The property is eligible for annexation under K.S.A. 12-519, *et seq*. The annexation ordinance has been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended that the City Council approve the annexation request, 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: Map Sheet
Ordinance

OCA150004 BID #37529-009 CID #76383

PUBLISHED IN THE WICHITA EAGLE ONAUGUST 31, 2012

ORDINANCE NO. 49-337

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS. (A12-06)

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

SECTION 1. The governing body, under the authority of K.S.A. 12-517, et seq, hereby annexes the following blocks, parcels, pieces and tracts of land and they are hereby included and brought within the corporate limits of the City of Wichita, Kansas and designated as being part of City Council District VI:

> That part of Lot 1, Block A, Midland Baptist Church 2nd Addition, Sedgwick County, Kansas, described as follows: Beginning at the southeast corner of said Lot 1; thence N88°11'55"W along the south line of said Lot 1, 153.60 feet to a deflection corner in said south line; thence S89°05'07"W along the westerly portion of the south line of said Lot 1, 357.63 feet to the southeast corner of Reserve "A" in said Midland Baptist Church 2nd Addition; thence N01°13'41"W along the east line of said Reserve "A", 350.00 feet to the northeast corner of said Reserve "A"; thence N89°05'07"E, parallel with the westerly portion of the south line of said Lot 1, 371.32 feet; thence N01°10'42"W, parallel with the east line of said Lot 1, 599.35 feet; thence N89°05'07"E, parallel with the westerly portion of the south line of said Lot 1, 140.00 feet to a point on said east line; thence S01°10'42"E, along said east line, 956.63 feet to the point of beginning.

SECTION 2. That if any part or portion of this ordinance shall be held or determined to be illegal, ultra vires or void the same shall not be held or construed to alter, change or annul any terms or provisions hereof which may be legal or lawful. And in the event this ordinance in its entirety shall be held to be ultra vires, illegal or void, then in such event the boundaries and limits of said City shall be held to be those heretofore established by law.

SECTION 3. That the City Attorney be and he is hereby instructed at the proper time to draw a resolution redefining the boundaries and limits of the City of Wichita, Kansas, under and pursuant to K.S.A. 12-517, et seq.

SECTION 4. This ordinance shall become effective and be in force from and after its adoption and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this August 28, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

Planning Agenda **Item:** A12-06 Attachment No. 1

An ordinance including and incorporating certain blocks, parcels, pieces, and tracts of land within the limits and boundaries of the City of Wichita, Kansas, and relating thereto.

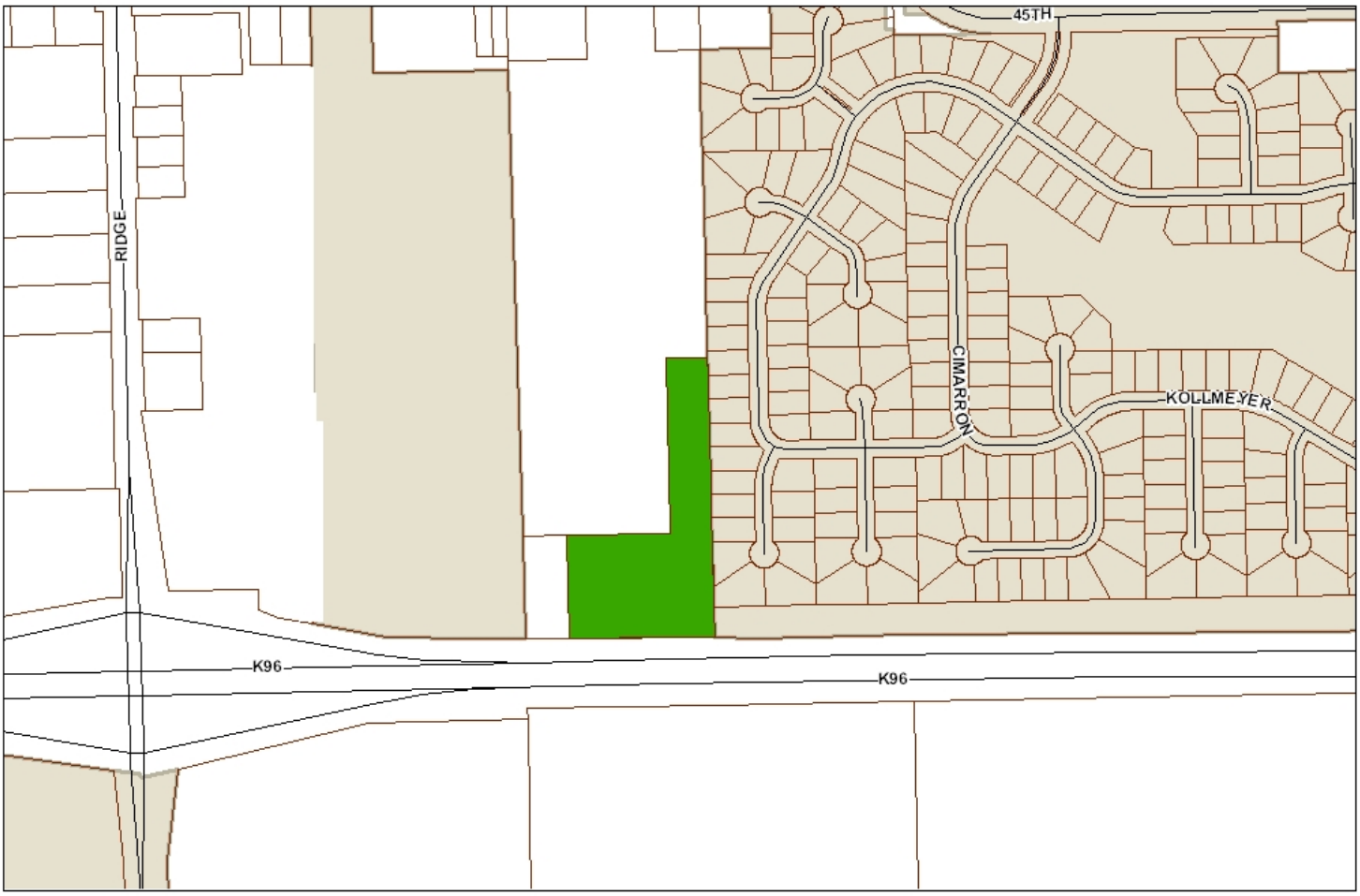
General Location: North of K-96 Highway, approximately one-quarter mile east of Ridge Road

Address: 6701 W. 45th St. N.

6.0	Area in Acres	X	Request
0	Existing population (est.)		Unilateral
0	Existing dwelling units		Island
0	Existing industrial/commercial units		Other:

Reason(s) for Annexation:

Existing zoning:	SF-20 Single Family



ANNEXATION AREA

WICHITA

UNINCORPORATED

N

Software: ArcGIS
Map Data Sources: City of Wichita, Sedgwick County
Prepared: 2/9/09

It is understood that while the City of Wichita Data Center Geographical Information Systems Department have no indication and reason to believe that there are inaccuracies in information incorporated in the base map, the Data Center-GIS personnel make no warranty or representation, either expressed or implied, with respect to the information or data displayed.
Note: Public property represented on this map is not intended to be inclusive.

City of Wichita
City Council Meeting
August 21, 2012

TO: Wichita Airport Authority

SUBJECT: EagleMed, LLC
Supplemental Agreement No. 1 for use of 1761 Airport Road, Suite 400
Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Supplemental Agreement.

Background: In December 1998, the Wichita Airport Authority (WAA) entered into a land lease agreement with Ballard Aviation, Inc. for the purpose of constructing a facility at 6601 Pueblo Road to be used for the provision of public air charter services, including air ambulance services. On August 18, 2009, the WAA approved an assignment of the lease from Ballard Aviation to EagleMed, LLC (EagleMed), a subsidiary limited liability company of Ballard, followed by the acquisition of all of the membership interests of EagleMed by Air Medical Group Holdings, Inc. (AMGH). AMGH is the largest independent provider of emergency air medical transportation services in the United States.

Analysis: Due to growth in its business, EagleMed is now desirous of leasing an additional 229 square feet of office space, bringing the total area leased in 1761 Airport Road, Suite 400 to 4,510 square feet. Supplemental Agreement No. 1 is language modification of the original Lease Agreement dated May 15, 2012.

Financial Considerations: The facility rental for the first year of the initial term is $10 per sq. ft., which will result in additional annual revenue to the WAA of $2,290. The facility rental rate for the second initial term year is $11 per sq. ft., which will result in additional annual revenue to the WAA of $2,519. The facility rental rate for the three (3) option terms is $12 per sq. ft., which will result in additional annual revenue to the WAA of $2,748**.**

Goal Impact: The Airport's contribution to the Economic Vitality and Quality of Life of Wichita is promoted through negotiating agreements which allow the Airport system's business partners to continue operations on the Airport, which generate rental income for the WAA and allows the Airport to continue its operation on a self-sustaining basis.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Supplemental Agreement and authorize the necessary signatures.

Attachments: Supplemental Agreement.

SUPPLEMENTAL AGREEMENT NO. 1

By and Between

WICHITA AIRPORT AUTHORITY
Wichita, Kansas

and

EagleMed, LLC

for

Use of Facility – 1761 Airport Road – Suite 400
Wichita Mid-Continent Airport
Wichita, Kansas

THIS SUPPLEMENTAL AGREEMENT NO. 1 is entered into this August 21, 2012, between THE Wichita Airport Authority, Wichita, Kansas (LESSOR) and EAGLEMED, LLC., (LESSEE).

WHEREAS, the parties previously entered into an Agreement dated May 15, 2012 for use of the facility located at 1761 Airport Road, Suite 400, to be used and occupied for aviation purposes or purposes incidental or related thereto, with the primary purpose being for the operation of public air charter services and general office space of the LESSEE in the administration of its business.

WHEREAS, the LESSOR and LESSEE now wish to enter into this Supplemental Agreement No. 1 for the purpose of leasing additional office at the multi-tenant facility commonly known as 1761 Airport Road, Wichita, Kansas, from the LESSOR:

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby agree as follows:

1. PREMISES

Section 1, Premises, in the Primary Agreement shall be **modified** to add the following language:

LESSOR does hereby lease to LESSEE additional office space to become part of the Premises located at 1761 Airport Road on Wichita Mid-Continent Airport, consisting of 229 square feet of office space, making the total area leased by LESSEE 4,510 square feet known as Suite 400, all referred to herein as the Premises, as outlined on Exhibit "A", attached hereto and made a part hereof.

2. FACILITY RENT DURING INITIAL TERM

Section 2, Facility Rent During Initial Term, in the Primary Agreement shall be **replaced** by the following language:

The parties hereby agree that the Facility Rent for the first year of the Initial Term, effective June 10, 2012, shall be set at $10.00 per square foot. This rental will result in an annual payment of $45,100.00, payable in monthly installments of $3,758.33.

The Facility Rent for the second year of the Initial Term, effective May 1, 2013, shall be set at $11.00 per square foot. This rental will result in an annual payment of $49,610.00, payable in monthly installments of $4,134.17.

The Facility Rent for the three (3) contemplated option terms, effective May 1, 2014, shall be set at $12.00 per square foot per year. This rental will result in an annual payment of $54,120.00, payable in monthly installments of $4,510.00.

3. OTHER TERMS

It is understood and agreed that except as modified herein all other terms and conditions of the original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Carl Brewer, President
"LESSOR"

By _____
Victor D. White, Director of Airports

ATTEST:

By _____

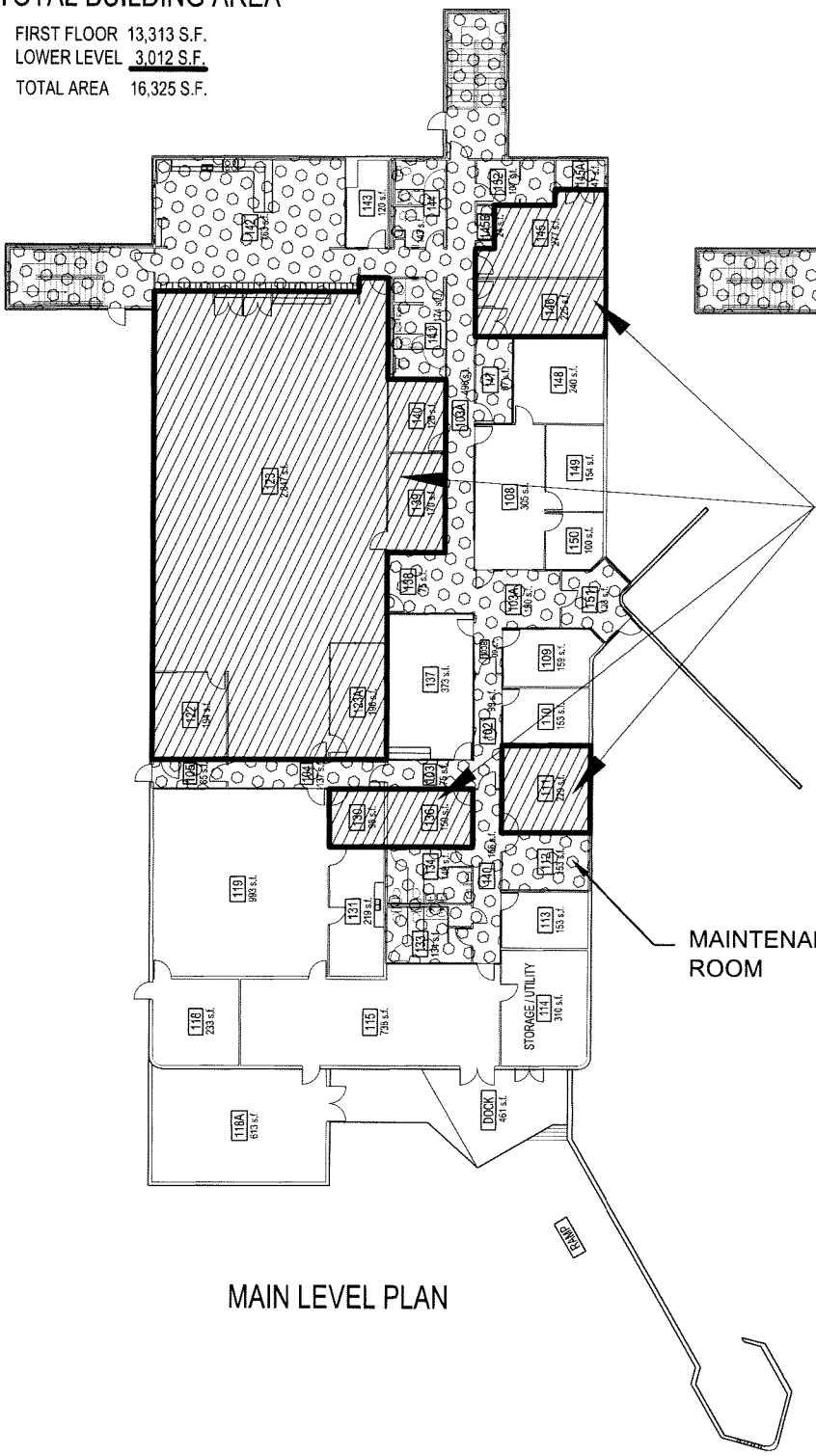
By _____
Larry Bugg, President
EAGLEMED, LLC
"LESSEE"

APPROVED AS TO FORM: _____ Date: _____
Director of Law

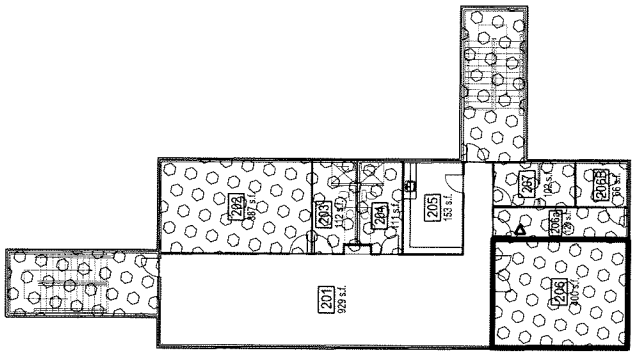
EXHIBIT A

TOTAL BUILDING AREA

FIRST FLOOR 13,313 S.F.
LOWER LEVEL 3,012 S.F.
TOTAL AREA 16,325 S.F.



MAIN LEVEL PLAN



LOWER LEVEL PLAN

EAGLEMED LLC.

SUITE 400

APPROX. 4,511± s.f. OFFICE SPACE

ALL ROOM AREAS ARE CALCULATED TO THE CENTER OF WALLS, INCLUDING OUTSIDE WALLS. AND ARE ROUNDED TO THE NEAREST SQUARE FOOT.

THE STANDARD FOR ROOMS ALONG THE OUTSIDE WALLS IS TO INCLUDE THE SQUARE FOOTAGE TO THE OUTSIDE EDGE. FOR THIS BUILDING WE CALCULATED THE SQUARE FOOTAGE TO MIDDLE OF THE OUTSIDE WALL.

LEGEND

OFFICE AREA = 4,281± sq.ft.

COMMON AREA

DISCLAIMER:

THE INFORMATION ON THIS DRAWING IS THE BEST AVAILABLE AND CURRENT AS OF THE DRAWING DATE. CHANGES AND/OR CORRECTIONS MAY HAVE BEEN MADE AFTER THAT DATE.

1761 AIRPORT ROAD

WICHITA MID-CONTINENT AIRPORT

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
7/18/12	H.G.O.	1" = 30'	1 of 1

D:\Drawings\216-Buildings\Airport Road\1761 AIR-RD\FloorPlan2011.dwg, EagleMed, 7/18/2012 4:57:42 PM

City of Wichita
City Council Meeting
August 21, 2012

TO: Wichita Airport Authority

SUBJECT: Purchase of Builder's Risk Insurance
Air Capital Terminal 3 (ACT 3) and Parking Facility Programs

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Ratify the negotiated contract.

Background: Builder's risk insurance is a necessary and appropriate cost connected to the construction of the new terminal building and parking/rental car facilities. The insurance coverage can be provided either through the prime contractor or by the owner. The ACT 3 and Parking Facilities programs will involve multiple independent contractors working in close physical proximity under separate construction projects. After discussions among staff from Purchasing, Law, Finance and Airport, along with the City's contracted insurance broker (Lockton Companies, LLC) and AECOM ACT 3 program management, it was determined that owner-provided builder's risk coverage would result in a lower cost to the programs and better protect the Wichita Airport Authority (WAA) should there be an incident.

Analysis: The Law department has participated in the evaluation of need and desirability of this policy. The Purchasing Manager and the City Council approved the insurance provider. Lockton solicited quotes from major insurance carriers for the purchase of the necessary coverages in the amount of $149,240,000. The policy limits provide coverage for both physical damage and soft cost risks pertaining to all construction related activities for the ACT 3 and Parking Facilities programs. The Purchasing Manager is authorized to approve this negotiated contract without further public submission under City Code 2.64.020(h), subject to ratification by the City Council. Because the WAA uses the staff of the Purchasing Manager and the City purchasing policies and procedures for its acquisitions and contracts, the prior Council approval of the insurance producer and the existing ordinance authority is properly employed in this instance by the City Council sitting as the Wichita Airport Authority.

Financial Considerations: The premium for this coverage is $205,504 based on total construction duration of thirty-six months. The cost of the premium is within the approved capital project budgets which are funded by a combination of Federal Aviation Administration grants, Transportation Security Administration agreements, airline Passenger Facility Charges, rental car Customer Facility Charges or General Obligation bonds and airport revenues.

Goal Impact: The Economic Vitality and Quality of Life of Wichita are enhanced by the construction of the new airline passenger terminal and parking facilities to better serve the traveling public.

Legal Considerations: The contract for insurance coverages has been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority ratify this negotiated contract and authorize the necessary signatures.

Attachments: Insurance Binder.

ACORD

INSURANCE BINDER

OP ID: MK

DATE (MM/DD/YYYY) 08/01/2012

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

AGENCY
Lockton Companies
444 W. 47th Street, Suite 900
Kansas City, MO 64112
Meyers, Patrick D.

COMPANY: ACE AMERICAN INSURANCE COMPANY

BINDER # 96846

EFFECTIVE DATE	EFFECTIVE TIME		EXPIRATION DATE	EXPIRATION TIME	
08/01/12	12:01	X AM / PM	10/01/12	X 12:01 AM / NOON	

PHONE (A/C, No, Ext): 816-960-9000 FAX (A/C, No): 816-960-9099

CODE: SUB CODE:

AGENCY CUSTOMER ID: CITWI06

THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #: TBD

INSURED
City of Wichita, KS
Verl L. Niedens
455 N. Main St
Wichita KS 67202

DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)
Named Insured- Wichita Airport Authority
Builders Risk

COVERAGES

TYPE OF INSURANCE	COVERAGE/FORMS	LIMITS: DEDUCTIBLE	COINS %	AMOUNT
PROPERTY — CAUSES OF LOSS: [ ] BASIC [ ] BROAD [X] SPEC; [X] Replacement Cost	Physical Damage Soft Costs	25,000	0	140000000 9,240,000
GENERAL LIABILITY: [ ] COMMERCIAL GENERAL LIABILITY; [ ] CLAIMS MADE [ ] OCCUR	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE		$
		DAMAGE TO RENTED PREMISES		$
		MED EXP (Any one person)		$
		PERSONAL & ADV INJURY		$
		GENERAL AGGREGATE		$
		PRODUCTS - COMP/OP AGG		$
AUTOMOBILE LIABILITY: [ ] ANY AUTO; [ ] ALL OWNED AUTOS; [ ] SCHEDULED AUTOS; [ ] HIRED AUTOS; [ ] NON-OWNED AUTOS		COMBINED SINGLE LIMIT		$
		BODILY INJURY (Per person)		$
		BODILY INJURY (Per accident)		$
		PROPERTY DAMAGE		$
		MEDICAL PAYMENTS		$
		PERSONAL INJURY PROT		$
		UNINSURED MOTORIST		$
				$
AUTO PHYSICAL DAMAGE — DEDUCTIBLE: COLLISION: ; OTHER THAN COL:	[ ] ALL VEHICLES [ ] SCHEDULED VEHICLES	[ ] ACTUAL CASH VALUE; [ ] STATED AMOUNT; [ ] OTHER		$
GARAGE LIABILITY: [ ] ANY AUTO		AUTO ONLY - EA ACCIDENT		$
		OTHER THAN AUTO ONLY: EACH ACCIDENT		$
		AGGREGATE		$
EXCESS LIABILITY: [ ] UMBRELLA FORM; [ ] OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE		$
		AGGREGATE		$
		SELF-INSURED RETENTION		$
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY		[ ] WC STATUTORY LIMITS		
		E.L. EACH ACCIDENT		$
		E.L. DISEASE - EA EMPLOYEE		$
		E.L. DISEASE - POLICY LIMIT		$
SPECIAL CONDITIONS/ OTHER COVERAGES		FEES		$
		TAXES		$
		ESTIMATED TOTAL PREMIUM		$

NAME & ADDRESS

[ ] MORTGAGEE [ ] ADDITIONAL INSURED
[ ] LOSS PAYEE

LOAN #

AUTHORIZED REPRESENTATIVE

© ACORD CORPORATION 1993-2004

CONDITIONS

This Company binds the kind(s) of insurance stipulated on the reverse side. The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company.

This binder may be cancelled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be cancelled by the Company by notice to the Insured in accordance with the policy conditions. This binder is cancelled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules and Rates in use by the Company.

Applicable in California

When this form is used to provide insurance in the amount of one million dollars ($1,000,000) or more, the title of the form is changed from "Insurance Binder" to "Cover Note".

Applicable in Colorado

With respect to binders issued to renters of residential premises, home owners, condo unit owners and mobile home owners, the insurer has thirty (30) business days, commencing from the effective date of coverage, to evaluate the issuance of the insurance policy.

Applicable in Delaware

The mortgagee or Obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by an authorized insurer or its agent if the binder includes or is accompanied by: the name and address of the borrower; the name and address of the lender as loss payee; a description of the insured real property; a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least ten (10) days prior to the cancellation; except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt of the full amount of the applicable premium, and the amount of insurance coverage.

Chapter 21 Title 25 Paragraph 2119

Applicable in Florida

Except for Auto Insurance coverage, no notice of cancellation or nonrenewal of a binder is required unless the duration of the binder exceeds 60 days. For auto insurance, the insurer must give 5 days prior notice, unless the binder is replaced by a policy or another binder in the same company.

Applicable in Nevada

Any person who refuses to accept a binder which provides coverage of less than $1,000,000.00 when proof is required: (A) Shall be fined not more than $500.00, and (B) is liable to the party presenting the binder as proof of insurance for actual damages sustained therefrom.

City of Wichita
City Council Meeting
August 21, 2012

TO: Wichita Airport Authority

SUBJECT: Airfield Electrical System Replacement
Supplemental Agreement No. 1
Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the supplemental agreement.

Background: Portions of the airfield electrical system are in need of replacement at Mid-Continent Airport. This project replaces cabling, edge lights, electrical equipment, airfield lighting controls, guidance signage, and reconstructs damaged electrical manholes. On August 2, 2011, Professional Engineering Consultants (PEC) was awarded the contract in the amount of $91,406 for design and bid phase services through the Staff Screening Selection process.

Analysis: During the design phase, new Federal Aviation Administration (FAA) regulations required changes in the runway safety plans, resulting in additional design. In addition, the FAA's 2012 Runway Safety Action Team made recommendations that the FAA required be implemented in the project. During the bid phase, additional work was required for the engineer to develop separate procurement specifications to allow the purchase of proprietary airfield electrical system control equipment directly from the manufacturer. Purchasing staff will manage the purchase of the proprietary equipment.

Financial Considerations: The supplemental agreement with PEC in the amount of $316,356 includes additional design and bid services of $16,397, plus construction related services of $299,959. Ninety percent of the project will be paid for with funds from the Federal Aviation Administration. The remaining costs will be funded with Airport revenues either directly or through the repayment of General Obligation bonds. This cost of the supplemental agreement is within the approved project budget.

Goal Impact: The Airport's contribution to the Economic Vitality and Quality of Life of Wichita is promoted through the maintenance of a safe airfield to serve the aviation community.

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

Recommendations/Actions: It is recommended that the Wichita Airport Authority (WAA) approve the supplemental agreement and authorize the necessary signatures.

Attachments: Supplemental agreement.

SUPPLEMENTAL AGREEMENT NO. 1

to the

AGREEMENT FOR CONSULTING SERVICES

between

THE WICHITA AIRPORT AUTHORITY, WICHITA, KANSAS

Party of the First Part, hereinafter called the

"OWNER"

and

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

303 SOUTH TOPEKA

WICHITA, KANSAS 67202

Party of the Second Part, hereinafter called the

"CONSULTANT"

WITNESSETH:

WHEREAS, there now exists a Contract between the two parties dated August 02, 2011 for consulting services to be provided by the CONSULTANT in conjunction with the Airfield Electrical System Replacement, (PROJECT); and whereas all of the aforesaid being located with the corporate limits of the City of Wichita, Sedgwick County Kanas, and

WHEREAS, the OWNER now desires to proceed with Phase III Construction Phase Services of the existing Agreement in conjunction with constructing the PROJECT under the title Runway and Taxiway Airfield Lighting Improvements; FAA AIP Project No. 3-20-0088-65-2012, City Of Wichita Project No. 451-416.

WHEREAS, Paragraphs I, Exhibit A Paragraph C. of the existing Agreement provides that the Scope of Services and Payment to the CONSULTANT for furnishing Construction Phase Services for the Phase I PROJECT shall be established by Supplemental Agreement; and

WHEREAS, it is the desire of both parties that the CONSULTANT provide Construction Phase Services for the PROJECT, and in compliance with the F.A.A. Central Region criteria:

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

I. SCOPE OF SERVICES

A. ADDITIONAL DESIGN SERVICES

1. Provide additional design services to modify lighting design as necessary for future elimination of West End of existing Taxiway 'C2'.

2. Revise controls for the Rotating Beacon to include controls that are independent of existing South Maintenance Yard Building's Building Control System (BCS).

   a. The Logitrac for the Beacon is located in Room B15 in the lower level of the existing Terminal Building. The existing controls for the Beacon are routed on a pair of 'shared use' fiber optical cables to the South Maintenance Yard Building that it is also used for that facility's BCS that occasionally malfunctions interrupting the Beacon controls.

   b. The OWNER has indicated there is a spare pair of multi-mode fiber optical cables installed from Room B15 to the Airfield Lighting Vault located in the center of the airfield and then on to the South Yard Maintenance Building they want to use to control the Beacon.

   c. Provided by the OWNER for the CONSULTANT's use is a simple diagram with the following items:

      (i) Install patch cords with 'ST' connectors between the existing 2-strands of MM FOC coming from the Beacon to the South Yard Maintenance Building and the existing spare 2-strands of MM FOC cables routed to the Airfield lighting Vault.

      (ii) Install a patch cord with 'ST' connectors between the existing 2-strands of MM FOC at the Airfield Lighting Vault connecting the Beacon at the South

Maintenance Yard Building and the existing spare 2-strands of MM FOC cables routed to Room B15.

(iii) Install A patch cord with 'ST' connectors would be installed in room B15 connecting the existing 2-strands of MM FOC cables from the Airfield Lighting Vault to the existing MM FOC at room B15.

(iv) The OWNER will have the existing cables to be used tested for operability prior to design completion.

3. Replace existing Runway 1R-19L Guard Lights with new LED fixtures due to age of existing equipment and lack of availability of replacement parts.

   a. Replace (4) Runway Guard Light locations with LED type lamps during Phase 5.

   b. Revise the Phasing Plan to include these (4) locations and provide a new CD to the OWNER for FAA submittal.

4. Include runway hold signs as part of project per RSAT action items list.

   a. The CONSULTANT to add 23 signs to plan requirements.

   b. Contractor shall provide signs for OWNER installation.

   c. The scope will require detailing of signs and specification of signs.

5. Revise the signage at Taxiway C at Runway 14/32 to rename to Taxiway 'C4' to match the RSAT recommendations that were used in development of the scope for this project.

6. Add (2) electrical hand holes for taxiway lighting circuiting to replace two existing light cans that contain cable splices.

7. Replace the existing quartz type lights with LED taxiway edge lights at Taxiway 'P' (formerly M1).

8. Revise phasing and safety plans to accommodate changes.

9. Increase the number of electrical manholes requiring lid replacement from 10-11 to 17.

B. ADDITIONAL BID PHASE SERVICES

1. Provide support to Wichita Airport Authority Staff and FAA to determine best course of action with regards to bidding the Airfield Lighting Control and Monitoring System (ALCMS) due to bid protest.

2. Develop cost estimate for comparison of cost between a new ALCMS and replacing the existing system as designed for FAA review.

3. Meet and correspond with Wichita Airport Authority to determine best timing for installation of ALCMS equipment and potential issues with timing for the Contractor installing Owner provided equipment.

4. Work with Crouse-Hinds to get a fixed price for the ALCMS equipment for the Wichita Airport Authority to evaluate.

5. Coordinate with Crouse-Hinds the details for the Owner purchase of the ALCMS equipment as well as the options for installing the equipment early in the project with the existing ALCMS graphics package and the new graphics.

6. Prepare addenda as necessary to modify the bid documents for revisions to the ALCMS.

7. Prepare technical specification for ALCMS and assist with front end documentation to be sent to Crouse-Hinds for purchase order.

C. CONTRACT ADMINISTRATION. Contract Administration duties shall routinely be the responsibility of the CONSULTANT's Project Manager.

1. <u>During Construction Provide the Following</u>:

   a. Assist in conducting Pre-Construction Conference and development of minutes.

   b. Prepare estimate forms for periodic payment to the Contractor.

   c. Receive and review Contractor's shop drawings, and material certifications. Also review these items for the Buy American provision (Origin of Manufacture).

   d. Receive and review Contractor falsework and formwork details as may be required by the contract documents. Submittals shall be reviewed with respect to conformance with the requirements of the project specifications and general conformity to the lines, shapes and dimensions detailed in the plans. This task will not include an analysis of the structural adequacy of the formwork or falsework.

   e. Make periodic visits to the PROJECT site to determine Contractor's progress and general character of the work.

   f. Consult with the Resident PROJECT Representative regarding interpretations or clarifications of the plans and specifications.

   g. Provide CONSULTANT's decision in accordance with the contract documents on questions regarding the work.

   h. Review the construction schedules.

   i. Review materials field test reports as submitted by the Resident PROJECT Representative.

   j. Review Change Orders and/or Supplemental Agreements prepared by the Resident PROJECT Representative.

   k. Conduct inspections at the conclusion of each phase or subphase as identified in the contract documents phasing plans.

l. Conduct Final Inspection of the work. Create list of incomplete items and outstanding work and provide recommendations to the OWNER for resolution as applicable.

m. Issue "Required Determinations for Project Closeout" when the PROJECT has been completed.

n. Meet with OWNER as requested during construction to review progress.

2. <u>After Construction Provide the Following</u>:

a. Prepare a draft review set of black and white "black-line" Record Drawings for the Owner to review within 60 calendar days of Final Acceptance.

b. Deliver "Record" drawings to the OWNER in digital form (CD-Rom) within 30 days of receipt of the Owner's comments on the "black-line" drawings. Digital files shall be prepared using AUTO CAD methods and shall be delivered in a format acceptable to the OWNER. Project Specifications shall be delivered in digital file (MS Word) with the "Record" drawings.

c. Develop documentation for the final construction report to addresses items such as: narrative of work performed, summary of milestone data, contract time, project costs, contract charges, Buy American provision, photos, final inspection.

d. Provide a statement whether or not the submitted Airport lighting equipment and materials covered by Federal Aviation Administration (FAA) specifications complies with the Airport Lighting Equipment Certification Program described in Advisory Circular (AC) 150/5345-53.

e. Monitor the Contractor submittals in regard to the contract document requirements.

D. RESIDENT ENGINEERING SERVICES. Resident Engineering duties will routinely be the responsibility of the CONSULTANT's Resident PROJECT Representative.

1. During Construction Provide the Following:

a. Provide personnel acceptable to the OWNER to perform technical observation during construction of the PROJECT, including a full-time Resident PROJECT Representative, who shall be supervised by the PROJECT Resident Engineer. The Resident Engineer shall be a registered Professional Engineer with qualifications conforming to the Central Region FAA "Standards for Construction Observation", and such supporting staff as may be required. Through continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident PROJECT Representative and his supporting staff, the CONSULTANT will endeavor to provide further protection for the OWNER against defects and deficiencies in the work; but the furnishing of such resident PROJECT representation shall not make the CONSULTANT responsible for the Contractor's failure to perform the construction work in accordance with the contract documents.

b. Establish construction layout control points including benchmarks and horizontal control points as may be required. Periodically review and check in field the Contractor's staking notes and layout.

c. Supervise inspection and OWNER responsible testing. Arrange for, conduct (or witness), field, laboratory, and shop tests of construction materials as required by the plans and specifications; determine the suitability of materials, and compliance with the Buy American provision requirements for materials on the site and brought to the site, to be used in the construction; check the construction activities to determine compliance with the intent of the design; measure, compute, or check quantities of work performed and quantities of material in-place for partial and final payments to the Contractor; and maintain diaries and other project records to document the work.

d. Photograph existing conditions prior to construction beginning, during construction, and after Project Acceptance. File and document as per FAA requirements.

e. Prepare elementary and supplementary sketches required and conduct preliminary negotiations necessary to resolve "changed" field conditions encountered.

f. Attend all project meetings, develop and provide minutes of project meetings within seven (7) calendar days after the meeting.

g. Review and forward all construction schedules, material certifications and detailed shop and erection drawings to the CONSULTANT's Project Manager. Assist the Project Manager in evaluating the acceptability of all submittals.

h. Review, analyze, and prepare recommendations for laboratory, shop and mill test reports of materials and equipment.

i. Monitor compliance with the Construction Safety and Phasing Plan (CSPP) and receive and review the Contractor's Safety Plan Compliance Document (SPCD).

j. Perform on-site Labor Standard Interviews and provide documentation within seven (7) calendar days.

k. Review requests for monthly and final payments and forward same to the OWNER and monitor the status of the required supporting documentation and recommendations for approval.

l. Prepare initial drafts and conduct preliminary negotiations for all Change Orders and Supplemental Agreements covering work on the PROJECT. Submit same to the CONSULTANT'S Project Manager for review and thenceforth to the OWNER for approval.

m. Monitor Contractor's compliance with DBE requirements. Document activities using a commercially useful function form.

n. Provide on-site and local transportation for the Resident PROJECT Representative and supporting staff to perform the duties.

o. Provide basic testing equipment and supplies for the Resident PROJECT Representative and supporting staff to perform the duties associated with the

OWNERS quality assurance testing at the frequency and manner set forth in the contract documents.

p. Provide special field office equipment and all expendable office supplies such as stationery, pencils, report forms, etc., except that the on-site field office, including utilities and furnishings, shall be provided by the OWNER.

q. Receive and prepare recommendations relative to work performed by inspection bureaus and outside commercial testing laboratories for inspection and/or testing of materials or procedures entering into the construction, except that the cost of all such tests and inspections by bureaus and outside commercial testing laboratories, shall be authorized and paid for by the OWNER.

r. Meet with the OWNER as necessary to confer with respect to the duties and project services.

II. TIME OF SERVICES

A. ADDITIONAL DESIGN SERVICES

1. The CONSULTANT shall commence work on the PROJECT immediately following authorization by the OWNER to proceed and shall endeavor to complete the additional plans in accordance with the design schedule for the existing PROJECT.

B. ADDITIONAL BID PHASE SERVICES

1. The CONSULTANT shall commence work on the PROJECT immediately following authorization by the OWNER to proceed and shall endeavor to complete the additional plans in accordance with the design schedule for the existing PROJECT.

C. CONTRACT ADMINISTRATION AND RESIDENT ENGINEERING SERVICES

1. CONSULTANT shall commence work on the PROJECT upon receipt of Authorization to Proceed from the OWNER.

2. Completion of services is dependent upon the Contractor's progress and the time frame set forth in the construction contract documents. It is understood the contractor can only work on airfield lighting circuits between 7:30AM and 6:00PM Monday through Saturday for days in the months of June to August; between 7:30AM and 5:00PM Monday through Saturday for days in the months of September, October November, April, and May; and between 7:30AM and 4:00PM Monday through Saturday for days in the months from December to March. It is understood the contract may work on non-electrical items between 7:30AM and 7:00PM Monday through Saturday. It is also understood the contractor shall complete the work in phases in accordance with the Phasing Plans where once work in a particular phase or subphase is undertaken, the work shall be prosecuted to completion before moving on the another phase. The fee(s) included in this Agreement are based on a Notice to Proceed for construction on 01 October 2012 with Substantial Completion of the work within 165 Calendar Days by 15 March 2012 and delivery of all PROJECT close out items to the OWNER within 60 calendar days following Final Acceptance, exclusive of any delays beyond the control of the CONSULTANT or described otherwise herein.

III. EXCLUSIONS

A. The scope of services does not include preparation of an environmental assessment or environmental impact statement.

B. The OWNER will review the contractor weekly payroll statements and compare them with the Labor Standard Interviews.

C. Observation of contractor activities other than between 7:30AM and 7:00PM Monday through Saturday.

D. Work on Sundays, City holidays, or on Saturdays immediately following a Friday holiday or Saturdays immediately preceding a Monday holiday. If the contractor is granted permission to work on these days, staff will be available for observation but will be considered to be performing "extra work".

IV. THE OWNER AGREES

A. To provide a construction office for the CONSULTANT's field personnel assigned to the PROJECT. Provision of a field office shall include all essential utilities and the monthly costs associated therewith.

B. To pay the CONSULTANT in accordance with the provisions of Article V of this Supplemental Agreement.

V. PAYMENT PROVISIONS

A. ADDITIONAL DESIGN SERVICES

Payment to the CONSULTANT for services provided as outlined in Paragraph I.A. ADDITIONAL DESIGN SERVICES shall be on a basis of a lump sum of $10,216.88 for additional design services. Fee Summary provided in Exhibit SA1-A.

B. ADDITIONAL BID PHASE SERVICES

Payment to the CONSULTANT for services provided as outlined in Paragraph I.B. ADDITIONAL BID PHASE SERVICES shall be on a basis of a lump sum of $6,180.25 for additional bid phase services. Fee Summary provided in Exhibit SA1-E.

C. CONTRACT ADMINISTRATION AND RESIDENT ENGINEERING SERVICES

Payment to the CONSULTANT for services provided as outlined in Paragraphs I.C. CONTRACT ADMINISTRATION and I.B. RESIDENT ENGINEERING SERVICES shall be generally in accordance with Exhibit SA1-D attached, and shall be on the basis of cost, plus a fixed fee for profit of $37,775.00, which shall be limited to 15-percent of the CONSULTANT's direct labor and overhead costs, the total including reimbursable expenses shall not exceed $299,958.48.

D. OVERHEAD

For purposes of this Agreement, the CONSULTANT's overhead factor from the annual compliance audit for the fiscal year ending September 2011 shall be fixed at 150.63. The authoritative source of compliance for this audit is Title 48 CFR Part 31.

E. ADJUSTMENT IN FEE

In the event the Contractor fails to complete the PROJECT within the specified Contract time, 165 calendar days from the Notice to Proceed for Construction for Substantial Completion, the CONSULTANT shall be deemed to be performing "Extra Work" in which case should the maximum contract amount as set forth in Paragraph V.A. above be exceeded, the CONSULTANT shall be eligible for additional compensation.

The parties hereunto mutually agree that all provisions and requirements of the original Agreement not specifically modified by Supplemental Agreement shall remain in force and effect.

The parties acknowledge that the portions of the work eligible to be paid by an AIP grant have not yet been funded. Pursuant to the Kansas Cash Basis Law, the OWNER will not be responsible for payment of those portions of the work designated as AIP eligible should the grant not be funded as anticipated. Therefore, Consultant's work prior to receipt by the OWNER of grant funding will be at its own risk.

IN WITNESS WHEREOF, the OWNER and the CONSULTANT have executed this Agreement as of the date first written above.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Karen Sublett, City Clerk

By: _____
Carl Brewer, President
"OWNER"

By: _____
Victor D. White, Director of Airports

APPROVED AS TO FORM: _____ Date: 8-6-12
Director of Law

ATTEST:

PROFESSIONAL ENGINEERING
CONSULTANTS, P.A.

By: _____
Bradley J. Edmundson, P.E.
Construction Division Manager

By: _____
Gregg K. Greenwood, P.E.
Vice President
"CONSULTANT"

attachments:

EXHIBIT SA1-A:	Additional Design Fee Estimate
EXHIBIT SA1-B:	Res Engr & Contract Admin Fee Estimate
EXHIBIT SA1-C:	Materials Testing Fee Schedule
EXHIBIT SA1-D:	DBE Subconsultant Agreement
EXHIBIT SA1-E:	Additional Bid Phase Fee Estimate

RECEIVED
JUL 20 2012
AIRPORT ENGINEERING

ENGINEERING FEE ESTIMATE

EXHIBIT "SA1-A"

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
ENGINEERS
WICHITA, KANSAS

PROJECT Airfiled Electrical System Replacement Design	LOCATION The Wichita Mid-Continent Airport
WORK ITEM Design P. S. & E.	PROJECT NO. FAA AIP No. 3-20-088-65 COW No. 451-416 PEC No. 11345-004 DATE 19 July 2012
DESCRIPTION Additional Design Services	

(I) SALARY COSTS				
POSITION TITLE	RATE	MAN HOURS	AMOUNT	TOTAL (SUBTOTAL)
1. PRINCIPAL	$45.00 / hr.	2	$ 90.00	
2. PROJECT MANAGER	$38.75 / hr.	9	$ 348.75	
3. PROJECT ENGINEER	$33.80 / hr.	65	$ 2,197.00	
4. DESIGN ENGINEER			$ -	
5. DESIGN TECHNICIAN			$ -	
6. DRAFTER			$ -	
7. CAD OPERATOR			$ -	
8. SURVEYOR, PARTY CHIEF			$ -	
9. SURVEYOR, INSTRUMENT MAN			$ -	
10. SURVEYOR, AIDES			$ -	
11. FIELD ENGINEER			$ -	
12. INSPECTOR, SUPERVISOR			$ -	
13. INSPECTOR			$ -	
14. INSPECTOR (OT)			$ -	
15. INSPECTOR			$ -	
16. INSPECTOR (OT)			$ -	
17. INSPECTOR			$ -	
18. INSPECTOR (OT)			$ -	
19. LAB TECHNICIAN			$ -	
20. LAB TECHNICIAN (OT)			$ -	
21. ADMINISTRATIVE ASSISTANT			$ -	
SUBTOTAL		76		$ 2,635.75
(II) OVERHEAD 1.5063 X (I)				$ 3,970.23
(III) SUBTOTAL [I + II]				$ 6,605.98
(IV) FIXED FEE 15%				$ 990.90
(V) OTHER EXPENSE	RATE	UNITS	AMOUNT	
1. OFFICE EQUIPMENT			$ -	
2. TRAVEL PER MILE			$ -	
3. LAB TESTING			$ -	
4. CELL PHONES (AT COST)			$ -	
5. CAD PER HOUR	$18.00 / hr.	30	$ 540.00	
6. PRINTING (AT COST.)	$100.00 / ea.	1	$ 100.00	
7. CUSTOM ENGINEERING (DBE)	$1,980.00 / ea.	1	$ 1,980.00	
8. OTHER			$ -	
SUBTOTAL				$ 2,620.00
(VI) TOTAL NOT TO EXCEED FEE FOR PROJECT (I + II)				$ 10,216.88

ENGINEERING FEE ESTIMATE

EXHIBIT "SA1-E"

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
ENGINEERS
WICHITA, KANSAS

PROJECT	LOCATION
Airfiled Electrical System Replacement Design	The Wichita Mid-Continent Airport

WORK ITEM	PROJECT NO.	DATE
Additional Bid Phase Services	FAA AIP No. 3-20-088-65 COW No. 451-416 PEC No. 11345-004	19 July 2012

DESCRIPTION
Additional Design Services

(I) SALARY COSTS				
POSITION TITLE	RATE	MAN HOURS	AMOUNT	TOTAL (SUBTOTAL)
1. PRINCIPAL	$45.00 / hr.		$ -	
2. PROJECT MANAGER	$38.75 / hr.	3	$ 116.25	
3. PROJECT ENGINEER	$33.80 / hr.	60	$ 2,028.00	
4. DESIGN ENGINEER			$ -	
5. DESIGN TECHNICIAN			$ -	
6. DRAFTER			$ -	
7. CAD OPERATOR			$ -	
8. SURVEYOR, PARTY CHIEF			$ -	
9. SURVEYOR, INSTRUMENT MAN			$ -	
10. SURVEYOR, AIDES			$ -	
11. FIELD ENGINEER			$ -	
12. INSPECTOR, SUPERVISOR			$ -	
13. INSPECTOR			$ -	
14. INSPECTOR (OT)			$ -	
15. INSPECTOR			$ -	
16. INSPECTOR (OT)			$ -	
17. INSPECTOR			$ -	
18. INSPECTOR (OT)			$ -	
19. LAB TECHNICIAN			$ -	
20. LAB TECHNICIAN (OT)			$ -	
21. ADMINISTRATIVE ASSISTANT			$ -	
SUBTOTAL		63		$ 2,144.25
(II) OVERHEAD 1.5063 X (I)				$ 3,229.88
(III) SUBTOTAL [I + II]				$ 5,374.13
(IV) FIXED FEE 15%				$ 806.12
(V) OTHER EXPENSE	RATE	UNITS	AMOUNT	
1. OFFICE EQUIPMENT			$ -	
2. TRAVEL PER MILE			$ -	
3. LAB TESTING			$ -	
4. CELL PHONES (AT COST)			$ -	
5. CAD PER HOUR	$18.00 / hr.		$ -	
6. PRINTING (AT COST.)			$ -	
7. OTHER			$ -	
8. OTHER			$ -	
SUBTOTAL				$ -
(VI) TOTAL NOT TO EXCEED FEE FOR PROJECT (I + II)				$ 6,180.25

ENGINEERING FEE ESTIMATE

EXHIBIT "SA1-B"

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
ENGINEERS
WICHITA, KANSAS

PROJECT	LOCATION
Runway and Taxiway Airfield Lighting Improvements	The Wichita Mid-Continent Airport

WORK ITEM	PROJECT NO.	DATE
Construction Phase Services - 165 Calendar Days	FAA AIP No. 3-20-088-65 COW No. 451-416 PEC No. 11345-003	19 July 2012

DESCRIPTION
Construction Observation Services

(I) SALARY COSTS				
POSITION TITLE	RATE	MAN HOURS	AMOUNT	TOTAL (SUBTOTAL)
1. PRINCIPAL	$45.00 / hr.	41	$ 1,845.00	
2. PROJECT MANAGER	$45.00 / hr.	1030	$ 46,350.00	
3. PROJECT ENGINEER	$42.33 / hr.	255	$ 10,794.15	
4. DESIGN ENGINEER	$25.96 / hr.	38	$ 986.48	
5. DESIGN TECHNICIAN			$ -	
6. DRAFTER			$ -	
7. CAD OPERATOR	$25.44 / hr.	40	$ 1,017.60	
8. SURVEYOR, PARTY CHIEF			$ -	
9. SURVEYOR, INSTRUMENT MAN			$ -	
10. SURVEYOR, AIDES			$ -	
11. FIELD ENGINEER			$ -	
12. INSPECTOR, SUPERVISOR			$ -	
13. INSPECTOR	$23.75 / hr.	1072	$ 25,460.00	
14. INSPECTOR (OT)	$35.63 / hr.	354	$ 12,611.25	
15. INSPECTOR			$ -	
16. INSPECTOR (OT)			$ -	
17. INSPECTOR		48	$ 960.00	
18. INSPECTOR (OT)			$ -	
19. LAB TECHNICIAN			$ -	
20. LAB TECHNICIAN (OT)			$ -	
21. ADMINISTRATIVE ASSISTANT	$15.20 / hr.	30	$ 456.00	
SUBTOTAL		2,908		$ 100,480.48
(II) OVERHEAD 1.5063 X (I)				$ 151,354.00
(III) SUBTOTAL [I + II]				$ 251,834.48
(IV) FIXED FEE 15%				$ 37,775.00
(V) OTHER EXPENSE	RATE	UNITS	AMOUNT	
1. OFFICE EQUIPMENT	$450.00 / mo.	7	$ 3,150.00	
2. TRAVEL PER MILE	$0.60 / mile	6,505	$ 3,903.00	
3. LAB TESTING	$ 1,976 / LS	1	$ 1,976.00	
4. CELL PHONES (AT COST)	$50.00 / mo.	6	$ 300.00	
5. CAD PER HOUR	$18.00 / hr.	40	$ 720.00	
6. PRINTING (AT COST.)	$300.00 / ea.	1	$ 300.00	
7. OTHER			$ -	
8. OTHER			$ -	
SUBTOTAL				$ 10,349.00
(VI) TOTAL NOT TO EXCEED FEE FOR PROJECT (I + II)				$ 299,958.48

Exhibit SA1-C

Materials Testing Fee Schedule

RUNWAY AND TAXIWAY AIRFIELD LIGHTING IMPROVEMENTS
THE WICHITA MID-CONTINENT AIRPORT
FAA AIP PROJECT NO. 3-20-0088-65
CITY OF WICHITA PROJECT NO. 451-416
PEC File No. 70X-11354-003-019

SOILS TESTING						C	
115 Nuclear Gauge	5 days	@	$ 60.00	per day	=	$	300
177 Moisture-Density Curves (ASTM D-698/1557)	2 each	@	$130.00	per each	=	$	260
178 One Point Curve Checks (ASTM D-698/1557)	2 each	@	$ 50.00	per each	=	$	100
168 Atterberg Limits (ASTM D-4318)	2 each	@	$ 80.00	per each	=	$	160
LIME TREATED SUBGRADE TESTING							
181 Lime Determination (ASTM D-4253/4254)	0 each	@	$550.00	per each	=	$	-
115 Nuclear Gauge	0 days	@	$ 60.00	per day	=	$	-
177 Moisture-Density Curves (ASTM D-698/1557)	0 each	@	$130.00	per each	=	$	-
168 Atterberg Limits (ASTM D-4318)	0 each	@	$ 80.00	per each	=	$	-
CONTROLLED LOW SLUMP MATERIAL TESTING							
118 Plastic Cylinder Molds	3 each	@	$ 2.00	per each	=	$	6
292 Compression Tests of Cylinders, ASTM C-39**	3 each	@	$ 20.00	per each	=	$	60
BITUMINOUS TREATED DRAINAGE LAYER TESTING							
714 Sieve Analysis, greater than 1 inch (ASTM C-136/C-117)	0 each	@	$ 85.00	per each	=	$	-
700 Ignition Oven Test, Asphalt Cement Content only	0 each	@	$150.00	per each	=	$	-
BITUMINOUS PLANT MIX TESTING							
243 Cold Feed Gradation	0 each	@	$ 50.00	per each	=	$	-
242 Marshall Properties, ASTM D-1559	0 slugs	@	$ 35.00	per slug	=	$	-
244 Vacuum Specific Gravity	0 slugs	@	$ 45.00	per slug	=	$	-
700 Ignition Oven Test, Asphalt Cement Content only	0 each	@	$150.00	per each	=	$	-
245 Core Density / Thickness Measurement	0 each	@	$ 25.00	per each	=	$	-
PORTLAND CEMENT PAVEMENT TESTING							
116 Concrete Testing Equipment	0 days	@	$ 25.00	per day	=	$	-
294 Flexural Strength of 6" x 6" x 22" beams, ASTM C-78**	0 each	@	$ 45.00	per each	=	$	-
PORTLAND CEMENT STRUCTURAL CONCRETE TESTING							
118 Plastic Cylinder Molds	15 each	@	$ 2.00	per each	=	$	30
292 Compression Tests of Cylinders, ASTM C-39**	15 each	@	$ 20.00	per each	=	$	300
MISCELLANEOUS							
Supervisor Review	5 hour	@	$ 80.00	per hour	=	$	400
171 Sieve Analysis (ASTM C-136, C-117)	8 each	@	$ 45.00	per each	=	$	360
						$	1,976

CUSTOM ENGINEERING
MECHANICAL & ELECTRICAL ENGINEERING

July 6, 2012

A11079
QC of Eng's Est. PHASE

Dan Biby, P.E.
Principal
PEC
303 S. Topeka
Wichita, Kansas 67202

RE: Wichita Airport
Airfield Electrical System Replacement PEC#20-11354

AGREEMENT FOR ENGINEERING SERVICES

1. SCOPE OF WORK

Custom Engineering will provide electrical construction document review for quantity take-offs and provide QC comments for the Engineer's Cost Estimate. The project consists of replacement of Taxiway lighting, replacement of runway lighting, and rework of the existing taxiway signage.

2. STANDARD SERVICES

A. The Client shall provide the following under the terms of this Agreement:
   1. A full size set of plans for use in providing these services.

4. EXCLUDED SERVICES

A. The following shall not be provided by CEI under the terms of this Agreement:
   1. Storm drainage system design external to the building(s).
   2. Design of extension of water, sewer, storm, gas, electric and telephone utilities to the site.
   3. Construction coordination meetings or visits to the job site during construction.
   4. Detailed life-cycle costs and/or energy-use studies.
   5. Design of telephone, data, audio/visual, network and security systems. CEI will only provide conduit (pathway and locations) and boxes to support these systems.
   6. Special studies, reports or others items requested by lenders or governmental agencies are not provided.
   7. Over-current Protective Device Coordination Calculations and Study Reports.
   8. Arc Flash Calculations and Study Reports.
   9. See "Excluded Services" under Terms and Conditions for additional items not included.
   10. Fire Protection and Fire Alarm Design

6. COMPENSATION FOR PROFESSIONAL SERVICES

12760 East 40 Highway ♦ Independence, MO 64055 ♦ Telephone (816) 350-1473 ♦ Fax (816) 350-1579
♦ www.customengr.com

A. CEI, Inc. will provide professional services for this project in accordance with the Scope of Work, Basic Services and Terms and Conditions of Agreement listed herein for 12 hours at an hourly rate of $165.00 not to exceed **$1,980.00** unless further authorization by the client is provided. All payments shall be received by CEI no later than thirty (30) calendar days after invoice date.

B. Payments for Basic and Additional Services shall not exceed the following percentages of the total Fee for Basic and Additional Services at the completion of each Phase of the Architect/Engineer's Work:

100 % Construction documents review and QC of Engineer's Estimate	100%
TOTAL	100%

C. **Additional Services:** Additional services shall be provided only upon authorization by the Client and shall be paid for by the Client as hereinafter provided. Fees will be billed on a time and expense basis for any Additional Services authorized in writing by the Client, and will be billed separately at the following hourly rates:

Principal	$180
Project Manager	$165
Sr. Mechanical Engineer – III	$145
Advanced Mechanical Engineer – II	$125
Mechanical Engineer – I	$110
Sr. Electrical Engineer – III	$145
Advanced Electrical Engineer – II	$125
Electrical Engineer – I	$110
CADD	$78
Clerical	$65

7. TERMS AND CONDITIONS

This Agreement for professional services has been entered into by the Client, and CEI, Inc. The name CEI shall pertain to all employees, officers, directors, and all divisions of CEI, Inc.

A. **Performance of Services:** CEI shall perform the basic services as outlined above, and any additional services as required or directed by the Client in consideration of the fee arrangements and payment terms described in "Compensation" above.

B. **Excluded Services:** Other services available from CEI and applicable to the project have been made known and explained to the Client. Where CEI has deemed a service needed or advisable, CEI has made this opinion known to the Client and the Client has confirmed his or her opinion that such services are not requested from a source other than CEI. These excluded services include:

1. Civil Engineering.
2. Extensive Lighting Design Documentation. Photometric lighting level calculations for each room/space will not be provided. Photometric calculations for normal lighting conditions for a typical room or area type, i.e. a corridor of a certain width, may be furnished upon request. Coordination with the Architect is limited to two (2) reflected ceiling plan (RCP) revisions beyond the original RCP and two (2) coordination meetings. Lighting design will only include what is required by code for emergency egress illumination.
3. Fire Alarm Construction Drawings (Only a performance specification and panel location will be provided).
4. Structural Engineering.
5. Fire Protection Construction Drawings (with all mains, branches and heads shown and sized on drawings).

6. Full-time, on-site construction observation.
7. Providing financial feasibility or other special studies.
8. Providing extraordinary services to investigate existing conditions or facilities or to make measured drawings thereof.
9. Providing formal life-cycle cost studies of mechanical and/or electrical systems.
10. Providing revisions of drawings, specifications or other documents when such revisions are required by changes to previously approved design criteria.
11. Providing consultation concerning replacement of any work damaged by fire or other causes during construction.
12. Providing professional services made necessary by the default of the contractor or by major defects in the work of the contractor in the performance of the Construction Contract.
13. Providing services or special consultants for other than the normal mechanical, electrical and plumbing engineering services for the Project.
14. Preparing to serve or serving as an expert witness in connection with any public hearing, or legal proceeding where CEI is not a named party to such a hearing or proceeding.
15. Preparing detailed cost estimates or opinions of probable construction cost.

C. **Betterment:** If, due to the Engineer's error, any required item or component of the project is omitted from the Construction Documents produced by CEI, CEI's liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. In no event will CEI be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.

D. **LEED:** Although Consultant will participate in formulating LEED Strategies to maximize obtaining points for LEED Certification, the Consultant makes no guarantee USGBC will award points for which Consultant directly participated such as Energy and Atmosphere, Water Efficiency Indoor Environmental Quality, Sustainable Sites, and Innovation and Design.

E. **Indemnification:** Indemnification: The Consultant agrees, to the fullest extent permitted by laws, to indemnify and hold harmless the Client against damages, liabilities and costs arising from the negligent acts of the Consultant in the performance of professional services under this Agreement, to the extent that the Consultant is responsible for such damages, liabilities and costs on a comparative basis of fault and responsibility between the Consultant and the Client. The Consultant shall not be obligated to indemnify the Client for the Client's own negligence. The Client hereby agrees, to the fullest extent permitted by law, to indemnify and hold CEI harmless from any claim, liability or cost, including reasonable attorney's fees and cost of defense, for injury or loss arising or allegedly arising from CEI's failure to perform a service listed above and excluded at the Client's direction.

F. **Limitation of Liability:** In recognition of the relative risks and benefits of the project to both the Client and CEI, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of CEI and their subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all injuries, claims, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this agreement from any cause or causes, so that the total aggregate liability of CEI and their subconsultants to all those named shall not exceed CEI's total fee for services rendered on this project. Such claims and clauses include, but are not limited to design professional's negligence, errors, omissions, strict liability, or breach of contract.

G. **Insurance**
During the period this contract is in force, Custom Engineering shall carry Workmen's Compensation Insurance, Public Liability Insurance, and Professional Liability Insurance in the amounts of $500,000/$1,000,000/$1,000,000 respectively.

H. **Jobsite Safety:** Neither the professional activities of CEI, nor the presence of his or her employees and subconsultants at a construction site, shall relieve the Contractors and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing or coordinating all portions of the Work of construction in accordance with the contract documents and any health/safety precautions required by regulatory agencies. CEI and their personnel have no authority to exercise any control over any contractor or other entity or their employees in connection with their work or any health/safety precautions. The Client agrees that the Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the Client's agreement with the General Contractor. The Client also agrees that the Client, CEI and CEI's consultants shall be indemnified and shall be made additional insured under the General Contractor's general liability insurance policy.

I. **Hazardous Materials:** Both parties acknowledge that CEI's scope of services does not include any services related to asbestos, hazardous or toxic materials. In the event CEI or any other party encounters asbestos or hazardous or toxic materials at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of CEI's services, CEI may, at their option and without liability for consequential or any other damages, suspend performance of services on the project until the Client retains appropriate specialist consultants or contractors to identify, abate and/or remove the asbestos, hazardous or toxic materials and warrant that the jobsite is in full compliance with applicable laws and regulations.

J. **Information Provided by Others:** CEI shall indicate to the Client the information needed for rendering of services hereunder. The Client shall provide to CEI such information as is available to the Client and the Client's consultants and contractors, and CEI shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for CEI to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees to indemnify and hold CEI and CEI's subconsultants harmless from any claim, liability or cost for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to CEI.

K. **Opinions of Probable Costs:** In providing opinions of probable cost, the Client understands that CEI has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of CEI's qualifications and experience. CEI makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. CEI shall be compensated as Additional Service, as provided for herein, for all time spent to review, redesign and to incorporate revisions due to probable costs.

L. **Value Engineering:** If the Client retains the services of a Value Engineer (VE) or allows the General Contractor or any of his or her subcontractors to function as a VE to review the Construction Documents prepared for this project by CEI, it shall be at the Client's sole expense and shall be performed in a timely manner so as not to delay the orderly progress of CEI's services. All recommendations of the VE shall be given to CEI for their review, and adequate time will be provided for CEI to respond to these recommendations. CEI shall be compensated as Additional Service, as provided for herein, for all time spent to review the recommendations of the VE and to incorporate those accepted by both the Client and CEI. If CEI objects to any recommendations made by the VE, CEI shall so state in writing to the Client, along with their reasons for objecting. If the Client insists on incorporating in the Construction Documents any changes to which CEI has objected in writing, the Client agrees to indemnify and hold CEI harmless from any damage, liability or cost which arise in connection with or as a result of the incorporation of such design changes insisted upon by the Client.

M. **Unauthorized Changes:** In the event that the Client consents to, allows, authorizes or approves of changes to the Construction Documents, and these changes are not approved in writing by CEI, the Client recognizes that such changes and the results thereof are not the responsibility of CEI. Therefore, the Client agrees to release CEI from any liability arising from the construction, use or result of such changes. In addition, the Client agrees to indemnify and hold CEI harmless from any damage, liability or cost arising from such changes, except only those damages, liabilities and costs arising from the sole negligence or willful misconduct of CEI.

N. **Design without Construction Phase Services:** It is understood and agreed that CEI's Standard Basic Service under this Agreement do not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the Client. The Client assumes all responsibility for interpretation of the Contract Documents and for construction observation and supervision and waives any claims against CEI that may be in any way connected thereto. The Client agrees to indemnify and hold CEI harmless from any loss, claim or cost arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of CEI.

O. **Changed Conditions:** The Client shall rely on CEI's judgment as to the continued adequacy of this Agreement in light of occurrences or discoveries that were not originally contemplated by or known to CEI. Should CEI call for contract negotiations, CEI shall identify the changed conditions necessitating renegotiation, and CEI and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.

P. **Defects In Service:** The Client shall promptly report to CEI any defects or suspected defects in CEI's work or services of which the Client becomes aware, so that CEI may take measure to minimize the consequences of such a defect. The Client warrants that he or she will impose a similar notification requirement on all contractors in his or her Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Client, and the Client's contractors or subcontractors to promptly notify CEI, shall relieve CEI of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.

Q. **Dispute Resolution:** Any claims or disputes between the Client and CEI arising out of the services to be provided by CEI or out of this Agreement shall, as a condition precedent to litigation, be submitted to non-binding mediation. The Client and CEI agree to include a similar mediation agreement with all contractors, subcontractors, subconsultants, suppliers and fabricators, providing for mediation as the primary method for dispute resolution among all parties.

R. **Ownership of Documents:** All documents, including all documents on electronic media, prepared by CEI under this Agreement are instruments of CEI's professional service and shall remain the property of CEI and may not be used by the Client for any other purpose without the written prior consent of CEI.

Q. **Termination of Services:** This Agreement may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, the Client shall pay CEI for all services rendered to the date of the termination, and all reimbursable expenses incurred prior to termination and reasonable termination expenses incurred as a result of termination.

R. The Client confirms that neither the Consultant nor any of Consultant's subconsultants or subcontactors owes a fiduciary responsibility to the Client or owner. The Client shall, as a material element of the consideration the Consultant requires for performance of the services enumerated herein, require Owner to formally recognize this provision in Client's agreement.

S. **REUSE OF DOCUMENTS:** All documents, including, but not limited to, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Engineer, Owner or others on modifications or extensions of the Project or

on any other project without compensation. Any use except for the specific purpose intended by this Agreement will be at the user's sole risk and without liability or legal exposure to Consultant.

8. TERMS AND CONDITIONS FOR ALL THE COLLECTION OF PROFESSIONAL SERVICE FEES

A. **Interest:** If payment is not received by CEI within 30 calendar days of the invoice date, the Client shall pay as interest an additional charge of one-and-one-half (1.5) percent (or the maximum allowable by law, whichever is lower) of the PAST DUE amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

B. **Collection Costs:** In the event legal action is necessary to enforce the payment provisions of this Agreement, CEI shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by CEI in connection therewith and, in addition, the reasonable value of CEI's time and expenses spent in connection with such collection action, computed at CEI's prevailing fee schedule and expense policies.

C. **Suspension of Services:** If the Client fails to make payments when due or otherwise is in breach of this Agreement, CEI may suspend performance of services upon five (5) calendar days' notice to the Client. CEI shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client.

D. **Set-Offs, Back-Charges, Discounts:** Payment of invoices shall not be subject to any discounts or set-offs by the Client, unless agreed to in writing by the Consultant. Payment to the Consultant for services rendered and expenses incurred shall be due and payable regardless o f any subsequent suspension or termination of this Agreement by either party.

9. EXTENT OF AGREEMENT

This proposal represents the entire agreement between the Client and CEI, Inc. and supersedes all prior negotiations, representations or agreements, whether written or oral. This agreement may be amended only by written instrument signed by both the Client and CEI, Inc. Please review this proposal, sign and return one copy to CEI, Inc. We look forward to working with you on this project. If CEI's involvement in the design of the project has not started within 6 months of the date of this agreement, CEI reserves the right to modify the fee. Agreement shall be signed by client within 60 days of writing.

Joseph T. Davis, P.E.
Chief Executive Officer
Custom Engineering, Inc.

7/16/12
Date

I have read the above agreement and accept the terms and conditions stated herein:

Dan Biby, P.E.
Principal

7/6/12
Date

City of Wichita
City Council Meeting
August 21, 2012

TO: Wichita Airport Authority

SUBJECT: Landside Equipment Storage Facility
Approve Design-Build Criteria
Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve design-build services competitive solicitation (request for proposals) evaluation and selection criteria.

Background: The Wichita Airport Authority (WAA) desires to solicit competitive proposals from qualified firms to provide design-build contract services for the development of a Landside Equipment Storage Facility on Mid-Continent Airport. The WAA's intent is to issue a request for proposals (RFP) solicitation, then subsequently enter an agreement with the top-ranked proposer. The scope of this project generally includes a 10,000 sq.ft. metal building with ancillary paved areas and supporting systems and infrastructure. The purpose of this proposed facility is to store and support equipment and material used for the maintenance and snow and ice control of the landside/street side areas of the Airport. This proposed facility replaces facilities previously removed in preparation for the new terminal building construction. Charter Ordinance No. 111 allows for design-build projects solicited through an RFP process subject to approval of evaluation and selection criteria by the WAA.

On January 20, 2009, a capital project was initiated for the 2100 Airport Road (Waterworks) Renovations on Mid-Continent Airport to house the landside maintenance and snow removal equipment and materials that had previously been stored in a building that was demolished to clear the area for the new terminal. Further analysis revealed that renovation of the existing Waterworks building would not be cost effective and would not adequately meet the storage needs. It was determined that a new building would be the most cost effective means to satisfy the storage needs.

Analysis: The design-build methodology for project delivery was chosen for this particular project because it offers maximum flexibility to work with the selected contractor to revise and refine specifications and adjust costs as necessary to stay within the budget. This delivery method provides the most cost effectiveness and efficiencies during construction. In addition, there will be a single source of accountability for all project elements, ranging from design to construction.

The RFP evaluation and selection criteria are proposed as follows:

- Project specific design proposals 15%
- Experience of assigned personnel 10%
- Experience of company with substantially similar recent projects 20%
- Experience with value engineering 20%

- Project commencement and duration 15%
- Fee proposal (including lump sum and add alternates) 20%

If, after considering the weighted factors listed immediately above, two or more proposals are equal or nearly equal, the award will be based solely on lowest lump-sum fixed price from among those proposals determined to be otherwise equal or nearly equal.

Financial Considerations: The future contract agreement will include a project stipulated "lump sum" amount within the parameters of the Airport's capital improvement program budget. In 2009, $450,000 was formally initiated by the WAA. The adopted capital improvement program includes an additional $200,000 for the design and construction of the new facility. A request to adjust the budget will be made when the contract with the design-build firm is brought to the WAA for approval. This project is to be funded with Airport revenue either directly or through the repayment of General Obligation bonds.

Goal Impact: The Wichita Airport Authority's contribution to the Economic Vitality and Quality of Life of Wichita is promoted through providing facilities and services which enhance the efficiency, effectiveness, safety, and security to the traveling public and its tenant partners.

Legal Considerations: The request for proposal criteria have been reviewed and approved as to form by the Law Department as in conformity with the applicable Charter Ordinance.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the design-build construction delivery methodology for this project, and use of the suggested evaluation and selection criteria.

Attachments: None.