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ADDITION OF PLANNING CONSENT ITEM V-2

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. March 8, 2011

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 March 1, 2011

AWARDS AND PROCLAMATIONS

-- Proclamations:

Registered Dietician Day
Women in Construction Week
National Problem Gambling Awareness Week
NCAA March Madness-Comes to Wichita Month

-- City Improvement Award:

Scott Lindebak

I. PUBLIC AGENDA

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

None

COUNCIL BUSINESS

II. UNFINISHED COUNCIL BUSINESS

1. Extension of IRB Tax Abatement, CAP Carpet. (District V)

   RECOMMENDED ACTION: Approve an extension of the tax exemption on CAP Carpet's IRB bond-financed property for one year, subject to amendment to the IRB documents to allow approval of a payment-in-lieu of taxes which reduces the effective rate to 80% and direct staff to prepare the amendment and return the documents for approval by the City Council.

2. Public Hearing and Tax Exemption Request, Spartech Polycom, Inc. (District V)

   RECOMMENDED ACTION: Close the public hearing and approve first reading of the ordinance granting Spartech Polycom, Inc. a 50% tax exemption on the identified real property improvements for a five year term, plus a 50% tax exemption for a second five-year term, subject to City Council review.

III. NEW COUNCIL BUSINESS

1. Public Hearing on the Establishment of the Greenwich and K-96 Community Improvement District. (District II)

   RECOMMENDED ACTION: Close the public hearing, place on first reading the Ordinance establishing a community improvement district for the Greenwich and K-96 CID, and approve the Development Agreement.

2. Public Hearing on Proposed Assessments for two (2) Water Projects, two (2) Sewer Projects, and two (2) Storm Sewer Projects in July Bond Sale Series 806. (Districts II,IV, V, VI and County)

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

3. Public Hearing on Proposed Assessments for Seven (7) Paving Projects in July 2011 Bond Sale Series 806. (Districts I, II, IV, and V)

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

4. Memorandum of Understanding with Westar Energy.

   RECOMMENDED ACTION: Approve the Memorandum of Understanding and authorize the necessary signatures, and accept the $50,000 donation for trees.

5. Talking Books Outreach.

RECOMMENDED ACTION: Authorize Library staff to submit a response to the request for proposal invitation.

6. Management Services for Wichita Ice Center. (District IV)

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

7. Third Program Year Action Plan: 2011-2012 of 2009-2013 Consolidated Plan.

RECOMMENDED ACTION: Approve the recommendations for 2011-2012 expenditures for Community Development Block Grant, HOME Investment Partnerships and Emergency Shelter Grant programs, and authorize the required 30 day public comment period.

8. Budget Adjustment for Sidewalk Improvements.

RECOMMENDED ACTION: Approve the budget adjustment for the Community Development Block Grant-Recover (CDBG-R) and authorize the necessary signatures.

9. St Francis Street Improvement, between Douglas and 2nd Street.(District VI)

RECOMMENDED ACTION: Approve the design concept, approve the design budget and place the amending ordinance on first reading.

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

10. Public Hearing: Repair or Removal of Dangerous and Unsafe Structures. (Districts I, III, and VI)

Property Address	Council District
a. 2139 East Shadybrook	I
b. 2961 / 2965 South Rutan (duplex)	III
c. 2524 West 36th Street North	VI

RECOMMENDED ACTION: Close the public hearing, adopt the resolutions declaring the building 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 the structure would be contingent on the following: (1) All taxes have been paid to date, as of March 8, 2011; (2) the structure has been secured as of March 8, 2011 and will continue to be kept secured; and (3) the premises are mowed and free of debris as of March 8, 2011, as will be so maintained during renovation.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

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

IV. NON-CONSENT PLANNING AGENDA

1. CON2010-00047 – Conditional Use to permit a Heliport on property zoned LI Limited Industrial; generally located at the southeast corner of 119th Street West and Kellogg, 11771 West Kellogg. (District IV)

   RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and deny the requested Conditional Use (simple majority vote required); OR 2) Override the recommendation of the MAPC by adopting alternate findings found in the staff report, and approve the requested Conditional Use, subject to conditions of approval found in the staff report (three-fourths majority vote required), OR 3) Return the application to the MAPC for further consideration (simple majority vote required).

V. CONSENT PLANNING AGENDA (ITEMS 1 AND 2)

1. *ZON2007-00014 – Ordinance for a Zone Change request from SF-5 Single-family Residential and GI General Industrial to LI Limited Industrial located on the north side of 13th Street, west of Greenwich. (District II)

   RECOMMENDED ACTION: Authorize the Mayor to sign the Ordinance and place the Ordinance on first reading.

2. *SUB2010-00060 -- Plat of Berkeley Square First Addition located north of 13th Street North and on the west side of Greenwich Road. (District II)

   RECOMMENDED ACTION: Approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and place the Ordinance on first reading.

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

VII. CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

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

VIII. NON-CONSENT AIRPORT AGENDA

None

IX. CONSENT AIRPORT AGENDA (ITEMS 1 AND 2)

1. *Air Carrier Apron Trench Drain - Grant Application - Wichita Mid-Continent Airport.

   RECOMMENDED ACTION: Approve the grant application and acceptance of grant funds and authorize the Director of Airports to sign all necessary documents related to the grant.

2. *Park and Ride Parking Lot Expansion - Supplemental Agreement No. 1 - Mid-Continent Airport.

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

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 AND 20A)

1. Report of Board of Bids and Contracts dated March 7, 2011.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2011	(Consumption off Premises)
Alma Brambila	Tapatia's Market	1953 South Seneca
Huong Nguyen	Lucky Market	7100 East Harry
Cari Spainhour	QuikTrip #396	324 South West
Cari Spainhour	QuikTrip #316	14402 East Kellogg Drive
Cari Spainhour	QuikTrip #315	1500 South Maize

Renewal	2011	(Consumption on Premises)
John M Wright	Braeburn Golf Course at WSU*	4201 East 21st North

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

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

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

RECOMMENDED ACTION: Receive and file.

4. Consideration of Street Closures/Uses.
   a. Community Events - First Annual Girls on the Run 5K. (District I)

   RECOMMENDED ACTION: Approve street closure.

5. Agreements/Contracts:
   a. Main Water Treatment Plant Evaluations Services.
   b. Settlement Agreement with Weaver Manufacturing for the North Industrial Corridor Site. (District I)

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

6. Design Services Agreement:
   a. Supplemental Design Agreement for St. Francis from Douglas to 2nd Street. (District VI)

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

7. Change Order:
   a. Change Order No. 1 - 72nd Street Transmission Main.

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

8. Property Acquisitions:
   a. Acquisition of a Portion of 457 South Woodlawn for the Woodlawn/Kellogg Drive Intersection Improvement Project. (District II)
   b. Acquisition of a Temporary Construction Easement at 3122 South Seneca for the South Seneca, 31st Street South to Interstate 235 Road Improvement Project. (District IV)

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

9. Minutes of Advisory Boards/Commissions

   Deferred Compensation Board, November 18, 2010
   Board of Appeals of Refrigeration, Air Conditioning, Warm Air Heating and Boiler, January 27, 2011
   Design Council, January 19, 2011

   RECOMMENDED ACTION: Receive and file.

10. Civic Justice Corps Grant Application.

    RECOMMENDED ACTION: Approve submission of the Wichita/Sedgwick County Civic Justice Corps Application and authorize the necessary signatures.

11. Contract Renewal with Sedgwick County for Housing First Funding.

    RECOMMENDED ACTION: Approve the revised contract agreement renewal and authorize the necessary signatures.

12. Contracts and Agreements for February 2011.

    RECOMMENDED ACTION: Receive and file.

13. 2011 Employee Health Fair and Wellness Initiative.

    RECOMMENDED ACTION: Approve the contract and authorize the employee participation incentive.

14. Approval of Design Build for S-Well and M-Well Repairs.

    RECOMMENDED ACTION: Authorize the projects as design-build projects and authorize staff to proceed with a Request for Proposal.

15. Resolution Authorizing Congestion Mitigation and Air Quality (CMAQ) Grant from the Federal Transit Administration.

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

16. Approval of Amended Development Agreement for Maize 54 Community Improvement District. (District V)

    RECOMMENDED ACTION: Approve the amended development agreement.

17. Approval of Amended Development Agreement for Central and Oliver Community Improvement District. (Districts I and II)

    RECOMMENDED ACTION: Approve the amended development agreement.

18. Acquisition by Eminent Domain of Tracts Required for the Integrated Local Water Supply Plan. (Harvey County)

    RECOMMENDED ACTION: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real property; and directing the City Attorney to file the appropriate proceedings in the District court to accomplish such acquisition.

19. Contract for Appraisal Services: Broadway Bridge at 34th Street South. (District III)

    RECOMMENDED ACTION: Approve the Budget; approve the Contract; and authorize the necessary signatures.

20. Second Reading Ordinances: (First Read March 1, 2011)
    a. List of Second Reading Ordinances. (See Attached)

    RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Extension of IRB Tax Abatement (CAP Carpet) (District V)

INITIATED BY: Office of Urban Development

AGENDA: Unfinished Business

Recommendation: Approve the extension of property tax abatement subject to payments-in-lieu-of-taxes.

Background: On April 5, 2005, the City Council approved a 5-year 90% property tax abatement for CAP Carpet Inc., located at 535 South Emerson, near Taft and Ridge Road in west Wichita, with extension of the abatement subject to Council approval. The City issued Industrial Revenue Bonds (IRB) to finance the construction of a new 52,135 square foot distribution center and corporate headquarters building. The bond-financed property is leased to Ridge Plaza Ventures, L.L.C. a related entity to CAP Carpet, and the real property is sub-leased to CAP Carpet.

On February 11, 2011, the City Council considered the extension of Cap Carpet's tax abatement and deferred action to extend the abatement until March 8, 2011, to allow further staff analysis of possible adjustments to the policy governing extensions of tax abatements for non-compliant businesses.

Analysis: As a condition of the tax abatement granted in 2005, CAP Carpet committed to adding 37 new jobs over five years to its base of 50 employees, for a total employment of 87 by the end of 2010. CAP Carpet reached a high of 69 employees at the end of 2008; however, economic downturns and market conditions have forced CAP Carpet to reduce its employment in Wichita to 65 by the end of 2010. The company also committed to make a capital investment of $3,950,000 in land acquisition, new construction and furnishings and equipment. In actuality, Cap Carpet invested $5,190,856 in total capital expenditures during the five-year period. Based on these actual results, WSU's Center for Economic Development and Business Research (CEDBR) re-evaluated the City's return on investment and found a ratio of benefits-to-costs of 1.2 to 1for the City overall and 1.13 to 1 for the City's General Fund.

The City's current policy for extending economic development incentives for non-compliant companies allows one-year extensions to be granted in times of economic downturns, based on three performance measures: 1) whether the company's peak job creation ever met the requirements; 2) whether capital investments were made as committed, and; 3) whether the required return on investment threshold of 1.3 to 1 was actually met.

CAP Carpet has only met one of the three performance measures. As shown above, they invested $1,240,856 more in capital expenditures than the $3,950,000 committed. However, the company reached peak job creation of only 19 new jobs out of 37 committed, and the actual return on investment does not reach the 1.3 to 1 threshold. Based on this performance, staff recommended denial of the extension of the tax abatement.

During its consideration of this matter, the City Council asked staff to analyze two possible adjustments to the policy governing extension of abatements for non-compliant businesses. One adjustment would allow the City Council to approve a reduction in the amount of tax abatement that would bring the General Fund return on investment up to a 1.3 to 1 ratio of benefits-to-costs. The second adjustment would allow the City Council to suspend the tax abatement for one year and then reinstate it the following year if performance measures warrant.

Staff research indicates that both of these adjustments are possible and that the two can work together through the use of payments-in-lieu-of-taxes (PILOT). PILOTs offer a means to contractually structure tax payments to achieve desired taxation levels on specific properties, when those properties have statutory tax abatements. The PILOTs can be set as high as the full amount of abated taxes, which would have the effect of eliminating the tax abatement, for a specified period of time. PILOTs can also be set at any percentage of the full amount of abated taxes.

In the case of Cap Carpet, an adjustment of the tax abatement from the approved 90% to 80% would result in an increase in the City's General Fund return-on-investment from 1.13 to 1 to 1.31 to 1. This could be accomplished by amending the IRB Lease Agreement provision relating to property tax abatement to require PILOT payments in an amount that would reduce the effective amount of the abatement to 80%. Alternatively, the PILOT amount could be set to reduce the effective abatement to zero. The City Council could then revisit the issue at a later date and either eliminate, adjust or continue the PILOT at that time.

Financial Considerations: The cost/benefit analysis performed by CEDBR based on actual job creation**,** payroll and capital investments reflects benefit/cost ratios at the following abatement levels:

	Tax Abatement Level		
	90%	80%	75%
City of Wichita	1.20 to 1	1.40 to 1	1.44 to 1
---General Fund	1.13 to 1	1.31 to 1	1.35 to 1
---Debt Service	1.33 to 1	1.57 to 1	1.61 to 1
Sedgwick County	1.11 to 1	1.30 to 1	1.34 to 1
USD 259	1.00 to 1	1.18 to 1	1.21 to 1
State of Kansas	4.68 to 1	5.16 to 1	5.25 to 1

Payment-in-lieu-of-taxes (PILOT) have the relative disadvantage of being collected by the City as a contractual obligation of the property owner, rather than being collected by the County Treasurer as a statutory obligation. In the event of non-payment, the City would not have the recourse of tax foreclosure, but rather would have to enforce the contractual obligation through litigation.

Goal Impact: Economic Vitality and Affordable Living. Granting ad valorem property tax exemptions help businesses remain competitive and stimulate economic growth for the City of Wichita and Sedgwick County.

Legal Considerations: The IRB Lease Agreement includes a tax abatement section that provides the right to permanently terminate the exemption by withholding certification to the County Clerk that the exempted property continues to be eligible for property tax exemption going forward. As a matter of law, the Lease Agreement may be amended by ordinance to permit payments in lieu of taxes to be imposed as an alternative to permanent termination of a tax exemption.

Recommendations/Actions: It is recommended that the City Council approve an extension of the tax exemption on CAP Carpet's IRB bond-financed property for one year, subject to amendment to the IRB documents to allow approval of a payment-in-lieu of taxes which reduces the effective rate to 80% and direct staff to prepare the amendment and return the documents for approval by the City Council.

Attachments: None

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Public Hearing and Tax Exemption Request (Spartech Polycom, Inc.) (District V)

INITIATED BY: Office of Urban Development

AGENDA: Unfinished Business

Recommendation: Close the Public Hearing and place Ordinance on first reading.

Background: Spartech Polycom, Inc. ("Spartech"), located at 1444 South Tyler Road in southwest Wichita is a plastics manufacturing company that produces sheet and rollstock plastic for a variety of industries. Spartech is consolidating some of their nationwide operations and worked with the Greater Wichita Economic Development Coalition (GWEDC) to expand the plant in Wichita and transfer work here from other facilities in the U.S. Working with the City, Sedgwick County and the State of Kansas, GWEDC developed an incentive package, which was approved by the City Council on April 20, 2010, which included a forgivable loan in the amount of $15,000 and a 50% property tax exemption under the Economic Development Exemption (EDX) Program on the construction of a new manufacturing facility.

After submitting a letter of intent to the City, the company recently expanded its existing facility by 25,000 square feet. Spartech is now requesting approval of the EDX exemption.

On February 15, 2011, the City Council held the public hearing and deferred further Council action to March 8, 2011, to allow staff to clarify ownership issues between Atlas Alchem Plastics, Inc., owner of record for the property and Spartech Corporation, parent company of Atlas Alchem. During the time of the expansion, Atlas Alchem Plastics, Inc. was both the owner and exclusive user of the property. On January 28, 2011, Atlas Alchem Plastics merged into Spartech Polycom, Inc. which is now the owner and exclusive user of the property. Spartech Polycom, Inc. has therefore become the applicant and EDI agreement counterparty.

Analysis: Spartech was founded in downtown Wichita in 1964 as Pawnee Plastics, Inc. and moved to the current location on Tyler Road in 1967. Spartech purchased Pawnee Plastics, Inc. in 1994. Spartech Corporation was the parent company for Atlas Alchem Plastics, Inc and is the parent entity of Spartech Polycom, Inc., the successor of Atlas Alchem Plastics. Spartech Polycom, Inc. is the sole owner and operator of Spartech Polycom, Inc. Spartech Corporation has no direct interest in the property of Spartech Polycom, Inc. and therefor there is not a parent/subsidiary lease on the property owned by Spartech Polycom, Inc.

Spartech Corporation is a leading producer of plastic products including polymeric compounds, concentrates, custom extruded sheet and rollstock products and packaging technologies for a wide spectrum of customers. The company's three business segments, which operate facilities in the United States, Mexico, Canada, and France, annually process more than 1 billion pounds of plastic resins, specialty plastic alloys, and color and specialty compounds.

Prior to the current expansion, Spartech operated in a 63,000 square foot facility on Tyler Road. Spartech also leased over 100,000 square feet of warehouse space at the Garvey Complex nine (9) miles south of the plant on Hoover Road. In addition to expanding its manufacturing space by adding 25,000 square feet, the current expansion project also includes leasing an additional 35,400 square feet of warehousing space. Spartech is also investing approximately $3,700,000 in new machinery and equipment.

Spartech currently has 75 employees in Wichita; the company plans to add an additional 18 jobs to support the new facility over the next five years, for a total local employment of 93 by 2015. The average wage for the new jobs will be $35,000 per year. Under the Economic Development Incentive Policy, Spartech is eligible for a 50%, 5+5-year property tax abatement based on the combined investment and job creation commitment.

Financial Considerations: Based on the 2010 mill levy, the estimated tax value of exempted property for the first full year is approximately $10,961.10. The value of the 50% real property tax exemption as applicable to taxing jurisdictions is:

City	$ 2,904	State	$ 135
County	$ 5,663	USD 259	$ 5,123

Wichita State University's Center for Economic Development and Business Research performed a cost-benefit analysis indicating benefit-to-cost ratios, which are as follows:

City of Wichita	3.14 to one
City of Wichita – General Fund	2.90 to one
City of Wichita – Debt Service	3.56 to one
Sedgwick County	2.62 to one
USD 259	2.00 to one
State of Kansas	34.65 to one

Goal Impact: Economic Vitality and Affordable Living. Granting an ad valorem property tax exemption will encourage the business to create new job opportunities and stimulate economic growth for the City of Wichita and Sedgwick County.

Legal Considerations: The Law Department has approved the attached ordinance and Economic Development Incentive Agreement as to form.

Recommendations/Actions: It is recommended that City Council close the public hearing, and approve first reading of the ordinance granting Spartech Polycom, Inc. a 50% tax exemption on the identified real property improvements for a five year term, plus a 50% tax exemption for a second five-year term, subject to City Council review.

Attachments: Ordinance, Economic Development Incentive Agreement

Economic Development Incentive Agreement

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (the "Agreement") is made and entered into on this ____ day of February, 2011, by and between the City of Wichita, Kansas, hereinafter referred to as the "City," and Spartech, Polycom, Inc., hereinafter referred to as the "Company."

WHEREAS, the Company currently operates a facility in Wichita, Kansas, for producing plastic products and polymeric compounds**,** and, prior to the end of 2010, Atlas Alchem Plastics, Inc., an affiliated corporation, as to which the Company is successor by merger, completed an expansion by constructing and equipping an expansion to its facility; and

WHEREAS, both the City and the Company desire for the Company to continue operating its business in Wichita, Kansas; and

WHEREAS, the City desires to increase employment opportunities for the citizens of Wichita, Kansas, and to further the other goals advanced by its economic development incentive policy; and

WHEREAS, the Company warrants that it is capable of, and desires to, increase the number of employment positions at its Wichita, Kansas facility; and

WHEREAS, the City has designed an economic development incentive program to accomplish its goal of increasing employment opportunities in Wichita, Kansas; and

WHEREAS, the purpose of this Agreement is to state the terms and conditions under which the City will cooperate in furnishing said economic development incentives.

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

1. **THE COMPANY.** The Company agrees (to the extent not already hitherto performed) that it shall do the following:

   A. Between October 8, 2009 and December 31, 2010, the Company (or its corporate predecessor) will have completed the construction of a new facility at its manufacturing facility, located at 1444 South Tyler Road, Wichita, Kansas, at a cost of $720,000, to be used exclusively for the purposes of manufacturing articles of commerce;

   B. Maintain, throughout the period from the date of this Agreement to October 8, 2014, employment of not less than seventy five (75) employees at the existing manufacturing facility;

C. On or prior to October 8, 2014, the Company will add an additional eighteen (18) new jobs at the new manufacturing facility, and thereafter, maintain employment of not less than ninety-three (93) employees at combined manufacturing facility, through at least December 31, 2020;

D. During the entire term of this Agreement, the Company will continuously maintain the average wage paid to its employees at a level (1) equal to or greater than the average wage paid by businesses in the Wichita Metropolitan Statistical Area with the Company's NAICS classification, or alternatively, (2) greater than the average wage for all jobs in the Wichita Metropolitan Statistical Area excluding wages paid by businesses classified in NAICS Sector 326;

E. During the entire term of this Agreement, the Company will meet any Equal Employment Opportunity/Affirmative Action goals set forth in its periodic filings with the City, and will annually file its Equal Employment Opportunity/Affirmative Action Plan with the City;

F. During the entire term of this Agreement, the Company will timely pay all *ad valorem* property taxes levied on its real or personal property within Sedgwick County, Kansas;

G. During the entire term of this Agreement, the Company will ensure that it does not discriminate or permit discrimination against any person on the basis of race, color, national origin or ancestry, religion, sex, age, disability or marital status in its operations or services, and the Company will comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000, *et seq.*; the Code of the City of Wichita Section 2.12.950; and, any laws, amendments or regulations promulgated thereunder, including any Ordinance of the City of Wichita, Kansas, presently existing or hereafter enacted, which pertains to civil rights and equal employment opportunity;

H. During the entire term of this Agreement, the Company will comply with all applicable governmental laws, rules and regulations; and,

I. During the entire term of this Agreement, the Company will cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with conditions, including any annual reports required of the Company and any inspection of the Company's premises or interviews with the Company's staff.

2. **EFFECT OF COMPANY'S BREACH; REMEDIES**. The Company acknowledges that in the event of its noncompliance with any of its obligations or agreements under the foregoing Section 1, the City will not have received the social and economic development benefits expected in connection with its entry into this Agreement and its furnishing of the economic development incentives provided for hereunder, and the resulting loss to the City will be difficult to measure. In such event, Company shall be required to pay to the City, as liquidated damages, or as a payment in lieu of tax, an amount equal to the *ad valorem* taxes that would theretofore have been payable but for the tax exemption referred to in Section 3 of this Agreement, and the City shall be entitled to take action to cancel and revoke such exemption for any subsequent period. No delay or omission by the City to enforce any of its rights as provided for herein shall impair such right, nor shall any such delay or omission be construed to be a waiver of such right.

3. **THE CITY.** So long as the Company meets and performs its obligations under this Agreement, it is the City's intention that the renovation and 9,240 square foot building addition constructed by the Company pursuant to Section 1.A., above, shall be entitled to an 50% exemption from *ad valorem* taxation for a period of five (5) calendar years, commencing January 1, 2011, and provided proper application is made therefor. It is the City's further intention that the building expansion shall be entitled to a 50% exemption from *ad valorem* taxation for an additional period of five years from January 1, 2016 to December 31, 2020, subject to the approval, in 2015, of the then current governing body. The City agrees that, during the term of this Agreement, and so long as the Company continues to meet and perform all of its obligations under this Agreement, the City will reasonably cooperate with the Company's efforts to perfect the intended exemption before the Kansas Court of Tax Appeals, and to make all necessary annual filings required to maintain such *ad valorem* tax exemption in full force and effect during the term of this Agreement, in accordance with K.S.A. 79-210 *et seq.*

4. **TERM.** This Agreement shall commence on the date first written above, and shall end on December 31, 2020.

5. **INCORPORATION OF APPENDIX**. Appendix A (Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements) is attached hereto and made a part hereof as if fully set out herein.

6. **ENTIRE AGREEMENT.** This Agreement and any Appendices attached hereto contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor of any force or effect. In

the event of a conflict between the terms of this Agreement and the terms contained in an Appendix, Statement of Work or other attachment, the terms of this Agreement will control.

7. **NOTIFICATION.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

City: Office of Economic Development
Attn: Economic Development Administrator
455 North Main, 13th Floor
Wichita, Kansas 67202

and

Department of Law
Attn: City Attorney
455 North Main, 13th Floor
Wichita, Kansas 67202

Company: Spartech Polycom, Inc.
120 S. Central, Suite 1700
Clayton, MO 63105

8. **AUTHORITY.** Each person executing this Agreement represents and warrants that they are duly authorized to do so on behalf of the entity that is a party hereto.

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

CITY OF WICHITA, KANSAS

ATTEST:

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

SPARTECH POLYCOM, INC.

APPROVED AS TO FORM:

_____
Name: _____
Title: _____

_____
Gary Rebenstorf
Director of Law

APPENDIX 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.

_____FIRST PUBLISHED IN THE WICHITA EAGLE ON MARCH 25, 2011_____

ORDINANCE NO. 48-969

AN ORDINANCE EXEMPTING PROPERTY FROM AD VALOREM TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES PURSUANT TO ARTICLE 11, SECTION 13, OF THE KANSAS CONSTITUTION; PROVIDING THE TERMS AND CONDITIONS FOR AD VALOREM TAX EXEMPTION; AND DESCRIBING THE PROPERTY OF SPARTECH POLYCOM, INC., SO EXEMPTED.

WHEREAS, Article 11, Section 13, of the Kansas Constitution provides that the governing body of the City may, by Ordinance, exempt from all ad valorem taxation all or any portion of the appraised value of certain property meeting the requirements of the constitutional provision; and

WHEREAS, the City of Wichita has adopted an Economic Development Incentive Policy by which the City will consider granting tax exemptions upon a clear and factual showing of direct economic benefit including the creation of additional jobs or the upgrading of existing jobs and the stimulation of additional private investment; and

WHEREAS, Spartech Polycom, Inc., requests an ad valorem tax exemption on a proposed expansion project of 50% for a five-plus-five year term on the expansion and modification of an existing building and certain pieces of equipment; and

WHEREAS, the parent company of Spartech Polycom, Inc. has operated within the City for more than forty-five years as a producer of plastic products and polymeric compounds; and

WHEREAS, Atlas Alchem Plastics, Inc., the corporate predecessor of Spartech Polycom, Inc. (and owned by the same parent entity) proposed, and in 2010 completed, a $720,000 expansion by the construction of a new building expansion located at 1444 South Tyler Road in west Wichita, and, as of January 28, 2011, has merged into Spartech Polycom, Inc., its successor; and

WHEREAS, the City Council of the City of Wichita has reviewed the application and supporting documentation supplied by Spartech Polycom, Inc. (as successor by merger of Atlas Alchem Plastics, Inc.), has reviewed the impact statements provided by Staff, and the Cost-Benefit Analysis by the Wichita State University and has conducted a public hearing on such application on February 15, 2011; and

WHEREAS, the City Council of the City of Wichita has found and determined:

1. Spartech Polycom, Inc. (successor by merger of Atlas Alchem Plastics, Inc.) is an

existing business located in Wichita, Kansas, and intends to expand its business by construction of a building expansion.

2. The construction of the expansion for which exemption is given occurred after October 8, 2009. No exemption will be given for construction which occurred before that date.

3. Such construction is to be used exclusively for manufacturing articles of commerce.

4. By such expansion, Spartech Polycom, Inc., will create new employment for 18 employees within five years after the start of the project.

5. Tax exemption will be given only for the construction of the building expansion.

6. The property on which exemption is given will meet the requirements of the Kansas Constitution and the City of Wichita's Economic Development Incentive Policy.

7. Such ad valorem tax exemption is in the public interest providing for economic growth and benefit including the creation of jobs and stimulating additional private investment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS,

1. The City Council of the City of Wichita, Kansas hereby makes a factual determination that an ad valorem tax exemption of the type requested by Spartech Polycom, Inc., is required to retain jobs in the State of Kansas, and that the property to be exempted is to be used exclusively for manufacturing articles of commerce.

2. Spartech Polycom, Inc., is hereby granted an ad valorem tax exemption of 50% for a five-year term on the construction of a building expansion and 50% for a second five years, subject to approval by the then current governing body, located within the Wichita City limits at 1444 South Tyler Road in west Wichita, at an estimated cost of $720,000. Such exemption is to begin in the calendar year after the calendar year in which the expansion is completed, and may be terminated early (and Spartech Polycom, Inc., may be required to repay amounts previously abated), in the event of any failure by Spartech Polycom, Inc., to perform its obligations under the Economic Development Incentive Agreement it has executed with the City.

3. The Economic Development Incentive Agreement between the City of Wichita and Spartech Polycom, Inc., is hereby approved.

4. The Office of Urban Development shall be responsible for monitoring the performance of Spartech Polycom, Inc., and shall provide annual reports on such performance.

5. Such exemption is subject to verification that the level of employment at the time of the completion of the project is at least equal to the level of employment as stated in Spartech Polycom, Inc.’s written request for ad valorem tax exemptions as presented to the City Council and to administrative staff and dated January 25, 2011 and as stated in Spartech Polycom, Inc.’s annually approved EEO/AA Plan.

6. Such exemption may hereafter be withdrawn by the City Council upon a finding that Spartech Polycom, Inc., no longer is entitled to such exemption in accordance with the Economic Development Incentive Agreement, which Spartech Polycom, Inc., has executed with the City.

7. The City Council may, at its discretion, require Spartech Polycom, Inc., to return all funds exempted if there is a failure to meet the terms and conditions of the Economic Development Incentive Agreement which Spartech Polycom, Inc., has executed with the City.

8. Upon finding that Spartech Polycom, Inc., has failed to meet its obligations under the Economic Development Incentive Agreement, the City Council shall require the repayment of all prior amounts of taxes that have been exempted and shall withhold any future exemption of taxes on Spartech Polycom, Inc.'s expansion project. All repayments shall be redistributed to the local taxing authorities at the proper taxing rates.

9. This Ordinance shall be in full force and effect from and after its passage and publication in the official City paper.

Passed by the governing body of the City of Wichita, Kansas this 22nd day of March , 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, City Attorney

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Public Hearing on the Establishment of the Greenwich and K-96 Community Improvement District (District II)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close the public hearing, place the ordinance on first reading and approve the development agreement.

Background: On February 10, 2011, the City received a petition from Regency Development Co., LLC and Parkway Signs; LLC on behalf of Cabela's requesting the creation of a Community Improvement District (CID) for the development of a Cabela's store near the southwest corner of the intersection of Highway K-96 and Greenwich Road, to be called the Greenwich & K-96 CID. On February 15, 2011, the City Council adopted a resolution stating its intent to consider the establishment of the proposed CID and setting March 8, 2011 as the time for a public hearing on this matter.

Community Improvement Districts allow property owners to petition cities or counties to create districts in which certain special taxes are imposed and the resulting revenue used to fund public and private improvements and the payment of certain ongoing operating costs, within the districts. CID projects may be funded by either special assessment taxes on real property within the CID or by a special retail sales tax of up to two percent (2%) on all retail sales within the district, or both. Under the CID Act, cities and counties may use the CID tax revenues to repay bonds issued to finance eligible improvements; or the CID revenue may be passed through to developers to reimburse the cost of eligible improvements and operating costs, on a pay-as-you-go basis. The maximum term of a CID is 22 years.

In April of 2010**,** the City Council adopted a policy which addresses how the City will utilize the tool and outlines the approval process. The City's CID Policy encourages the use of pay-as-you-go financing and allows the use of special obligation bonds, but does not permit the use of general obligation bonds. The CID Policy also requires a 100% petition and a public hearing in all cases. In December 2010, the City Council amended the CID Policy to require a public purpose statement in a CID petition, limit the maximum eligible reimbursement amount to 125% of the projected CID revenue, require that notice of public hearing be provided to any existing occupants within the district, and require signs to be posted next to store entrances.

Analysis: Cabela's plans to purchase approximately 9.4 acres within the proposed CID and construct an 80,000 square foot outdoor sporting goods store. The estimated total cost of the project is $28,078,436, a portion of which will be paid by CID. The petition also lists infrastructure, site improvements, parking, landscaping and operating costs as eligible for CID reimbursement. The maximum eligible amount for reimbursement by CID identified in the petition is $17,198,360 based on 125% of the projected tax revenue. The proposed amount of Community Improvement District sales tax for the district is one and two tenths percent (1.2%) which will be distributed on a pay-as-you-go basis for up to 22 years. The additional 0.2% sales tax is intended to contribute to the cost of a possible interchange improvement at K-96 and Greenwich.

A table identifying the sources and uses of funds is provided below:

Sources		Uses	
Private Equity	11,119,748	Site Acquisition and Development	$3,078,000
Other Contributions to Public Infrastructure	3,200,000	Construction	15,820,697
CID	13,758,688	Special Assessments/Public Infrastructure	4,500,000
		Contingency	4,679,739
	$28,078,436		**$28,078,436**

Public Purpose Statement: The public purpose of the Project is to encourage significant economic activity in the City of Wichita by facilitating a new location for a major national retailer that is not already located in the market and the construction of significant public infrastructure in the form of a new interchange. The result will be a substantial increase in commercial sales, jobs, tax revenues for the local taxing jurisdictions, new shopping opportunities for the citizens of the City of Wichita, and tourism from regional consumers, as well as a substantial improvement to the area's public infrastructure system.

The Office of Urban Development has conducted a background check on Cabela's. Cabela's is a publicly held company with 30 stores in 20 states, which resulted in a large number of public records to check. The records were reviewed by the Office of Urban Development and Law Department. The records were determined to be to normal exposure for a company of this size and did not reveal any negative information indicative of bad business behavior.

Upon adoption of the Ordinance, the City will have created the improvement district and authorized the imposition of a one and two tenths percent (1.2%) sales tax to pay for eligible costs as identified in the development agreement. The CID sales tax will start to be collected following the delivery of a certified copy of the Ordinance to the Kansas Department of Revenue, upon instruction from the Developer.

The attached Development Agreement between the City and Cabela's Inc provides the contractual framework for the CID. The Developer will be required to submit certified expenditures to the City for reimbursement of eligible costs. The City will reimburse the Developer with CID funds for eligible costs as expenditures are approved if sufficient funds are available or quarterly as funds become available if funds are insufficient at the time. The draft agreement has been revised to include the CID Policy amendments.

Financial Considerations: The developer has requested pay-as-you-go financing; therefore the City will not issue debt for this project. Proceeds will be held by the City and disbursed pursuant to the development agreement. The City will withhold five percent (5%) of the CID revenues distributed by the State as an administrative service fee, after giving credit for the application fee, and disburse the balance of the CID proceeds to the developer until the maximum amount identified in the petition ($17,198,360) has been reimbursed or the 22-year term has expired, whichever is earlier.

Goal Impact: Economic Vitality and Affordable Living and Quality of Life. Business prospects and workers seeking to relocate are attracted to a city that takes care of its older sections.

Legal Considerations: Copies of the resolution setting the public hearing were mailed to all owners and occupants of property in the district and published twice in the City's official newspaper according to state law. The ordinance and development agreement have been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council close the public hearing, place on first reading the Ordinance establishing a community improvement district for the Greenwich & K-96 CID, and approve the Development Agreement.

Attachments: Ordinance and Development Agreement

_____PUBLISHED IN THE WICHITA EAGLE ON MARCH 25, 2011 028001

_____

Ordinance No. 48-971

AN ORDINANCE OF THE CITY OF WICHITA ESTABLISHING
THE GREENWICH & K-96 COMMUNITY IMPROVEMENT DISTRICT

WHEREAS, the provisions of K.S.A. 12-6a26, as amended, (the "CID Act") set forth the procedure for the establishment of a Community Improvement District ("CID"); and

WHEREAS, the CID Act provides that prior to creating any CID, the Governing Body shall, by resolution, direct and order a public hearing on the advisability of creation of such CID and the construction and expenditure of costs of community improvement district projects relating thereto, and give notice of the hearing by publication once each week for two consecutive weeks in the official City newspaper, the second publication to be at least seven days prior to the hearing, and by the mailing of notice to the owners of property within the proposed CID; and

WHEREAS, the Governing Body of the City adopted Resolution No. R-11-027 (the "Resolution") on February 15, 2011, directing that a public hearing on the proposed Greenwich & K-96 CID be held March 8, 2011, and requiring that the City Clerk provide for notice of such public hearing as set forth in the Act; and

WHEREAS; the Resolution was published once each week for two consecutive weeks in the newspaper and notice of the hearing was given to all property owners within the proposed CID as required by the CID Act; and

WHEREAS, the CID Act further authorizes the City, in order to pay the costs of such projects, to impose a community improvement district sales tax on the selling of tangible personal property at retail or rendering or furnishing of taxable services within a CID in any increment of .10% or .25% not to exceed 2.0% and to reimburse the costs of community improvement district projects from community improvement district sales tax; and

WHEREAS, on March 8, 2011, the Governing Body of the City conducted a public hearing on the proposed "Greenwich & K-96 CID", the proposed community improvement district projects related thereto, the method of financing the same and the imposition of a community improvement district sales tax; and

WHEREAS, the Governing Body of the City hereby finds and determines it to be advisable to create the Greenwich & K-96 CID and set forth the boundaries thereof, authorize CID Projects relating thereto, approve the maximum costs of such community improvement district projects, approve the method of financing the same and impose the community improvement district sales tax, all in accordance with the provisions of the CID Act;

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

Section 1. **Creation of The Greenwich & K-96 CID District**. The Governing Body hereby finds and determines it is advisable to create the Greenwich & K-96 CID within the City and approve the boundaries thereof, and, as such, hereby creates the Greenwich & K-96 CID and approves the boundaries thereof. A legal description of the property within the Greenwich & K-96 CID is set forth in **Exhibit B** attached hereto and incorporated by reference. A map generally outlining the boundaries of the Greenwich & K-96 CID is attached hereto as **Exhibit C** and incorporated herein by reference.

Section 2. **Authorization of CID Projects.** The Governing Body hereby finds and determines that it is advisable to authorize the community improvement district projects described on the attached **Exhibit A**, incorporated herein by reference, (the "CID Projects") within the Greenwich & K-96 CID and as such authorizes the CID Projects.

Section 3. Maximum Cost. The maximum cost of the CID Projects, exclusive of administrative fees and costs to be paid to the State of Kansas and to the City, is $17,198,360.

Section 4. Method of Financing The CID Projects will be financed on a pay-as-you-go basis from revenues received from the imposition of a community improvement district sales tax in the amount of one and two tenths percent (1.2%) (the "CID Sales Tax") on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailers' sales tax act within the Greenwich & K-96 CID. There will be no special assessments levied pursuant to the CID Act within the boundaries of the Greenwich & K-96 CID. There will be no bonds issued pursuant to the CID Act.

Section 5. **Imposition of the Community Improvement District Sales Tax.** In order to provide for the payment of costs of the CID Projects on a pay-as-you-go basis, the Governing Body hereby imposes the CID Sales Tax within the Greenwich & K-96 CID in an amount of one and two tenths percent (1.2%) on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the Kansas retailers' sales tax act within the Greenwich & K-96 CID, with such CID Sales Tax to commence following submittal by the City of a certified copy of the ordinance to the Kansas Department of Revenue. Submittal to the Kansas Department of Revenue shall occur following publication of the ordinance and written notice from the developer requesting submittal. Such CID Sales Tax shall remain in effect for the maximum period provided for in the CID Act, or such period as may be required for payment from CID Sales Tax revenues of the maximum amount of costs approved for CID Projects in Section 3, above, whichever is the lesser period.

Section 6. Collection of the Sales Tax. The collection of the CID Sales Tax shall be made in the manner presented in the CID Act

Section 7. **Segregation of the Sales Tax Revenues.** All revenues derived from the collection of the CID Sales Tax shall be deposited into a special fund of the City to be designated as the Greenwich & K-96 CID Sales Tax Revenue Fund. Such revenues shall be used to pay the

costs of the CID Projects on a pay-as-you-go basis and related expenses, including administrative fees and reimbursement to be paid to the State of Kansas and to the City.

Section 8. Effective Date. This Ordinance shall take effect from and after its passage by the Governing Body, and its publication once in the official newspaper of the City.

ADOPTED at Wichita, Kansas, this 22nd day of March, 2011.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

Approved as to Form:

_____

Gary E. Rebenstorf, City Attorney

EXHIBIT A

PROJECT

The general nature of the proposed projects (the "**Projects**") is to partially finance the construction, maintenance, and procurement of certain improvements, costs, and services within the District, for the construction of a Cabela's retail center and contribution to a possible highway interchange improvement at K-96 and Greenwich, including, but not limited to: land acquisition, infrastructure related items, streets, sidewalks, parking lots and facilities, buildings, facilities, tenant improvements, water management and drainage related items, landscaping, lighting, art, water features and other cultural amenities, ongoing maintenance of the District, marketing, advertisement and economic development, cleaning and maintenance, and the City's administrative costs in establishing and maintaining the District, and any other items permitted to be financed within the District under the Act.

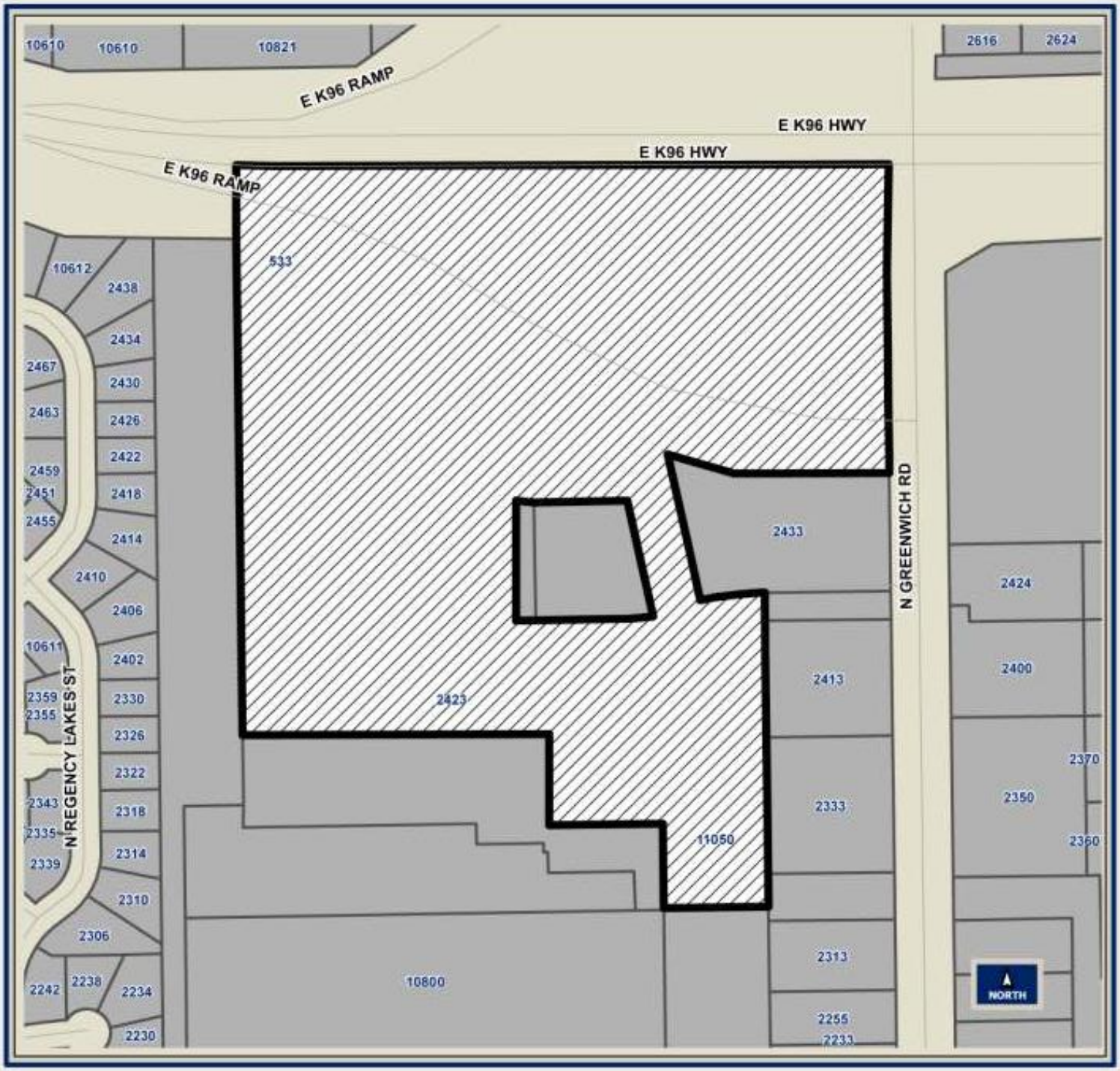
EXHIBIT B

LEGAL DESCRIPTION

A tract of land lying north of and adjacent to the north line of Regency Lakes Commercial 2nd Addition, an addition to Wichita, Sedgwick County, Kansas, to the north side of south lane of Kansas Highway 96, EXCEPT the right-of-way of Greenwich Road, lying within the east 1425 feet of the Southeast Quarter, Section 4, Township 27 South, Range 2 East, of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas.
CONTAINING: 15.69 acres of land, more or less.

AND

A tract of land lying within a portion of Lot 10, Block 1, Regency Lakes Commercial 2nd Addition, an addition to Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:
BEGINNING at the northwest corner of said Lot 10, thence along the north line of said Lot 10 on a platted bearing of S83°46'10”E, 168.62 feet; thence parallel with and 33.69 feet west of the east line of said Lot 10, S01°00'03”E, 254.27 feet to the south line of said Lot 10; thence along said south line, S88°59'57”W, 167.28 feet to the southwest corner of said Lot 10; thence along the west line of said Lot 10, N01°00'03”W, 275.50 feet to the POINT OF BEGINNING,
TOGETHER WITH,
A tract of land lying within a portion of Lot 11, Block 1, Regency Lakes Commercial 2nd Addition, an addition to Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:
BEGINNING at the northwest corner of said Lot 11, thence along the north line of said Lot 11 on a platted bearing of N88°59'57”E, 416.79 feet to the northeast corner of said Lot 11; thence along an easterly line of said Lot 11, S01°00'03”E, 275.50 feet; thence along a northerly line of said Lot 11, N88°59'57”E, 26.93 feet; thence along an easterly line of said Lot 11, S00°43'50”E, 40.00 feet; thence along a northerly line of said Lot 11, N88°59'57”E, 429.53 feet to a northeasterly corner of said Lot 11; thence along an easterly line of said Lot 11 for the next two (2) courses, S12°35'14”E, 26.58 feet; thence S00°43'50”E, 343.31 feet; thence S88°59'57”W, 231.24 feet; thence N01°00'03”W, 189.00 feet; thence S88°59'57”W, 647.88 feet to the west line of said Lot 11; thence along said west line, N00°43'50”W, 495.85 feet to the POINT OF BEGINNING,
TOGETHER WITH,
That part of Reserve “A”, Lakes Commercial 2nd Addition, an addition to Wichita, Sedgwick County, Kansas, lying north of the extended south line of said Lot 11, Block 1, said addition,
CONTAINING: 19.33 acres of land, more or less.



Proposed Greenwich & K-96 Community Improvement District

City of Wichita, Kansas

Proposed Greenwich & K-96 Community Improvement District

Property Parcels within District

Property Parcels outside District

Software: ArcGIS 9.3.1
Hardware: Dell Xeon
Printer: HP 5000 Plotter

Map Data Source:
Property Parcels provided by Sedgwick County GIS

Road Centerlines provided by City of Wichita

Tuesday, February 22, 2011 3:39:53 PM
A:\giswork\Projects\NRA\K96_CID.mxd

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 of information incorporated in the base map, the Data Center GIS per

EXHIBIT C

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this _____ day of March, 2011 by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the "City"); and **CABELA'S WHOLESALE, INC.**, a Nebraska corporation (the "Developer") (with the "Developer" and the "City" collectively referred to as the "Parties" and each a "Party").

RECITALS

A. The City has authority to create a community improvement district ("CID"), pursuant to K.S.A. § 12-6a26 *et seq*. (the "CID Act"), for the purpose of financing certain public and private improvements as defined therein. Under the CID Act, the owners of at least 55% of the total assessed value and land area within the proposed CID boundaries may petition the City to request the creation of a CID and to impose special assessments or a special sales tax to pay the cost of eligible projects.

B. The Developer is the owner of certain land in the City located immediately to the South of K-96 Highway and Greenwich Road within the City (the "Project").

C. On or about February 10, 2011, the Developer submitted a petition (the "Petition") to the City requesting the formation of a community improvement district (the "District"). A copy of the Petition is attached hereto as **Exhibit A**. A legal description and map of the boundaries of the District is set forth on **Exhibit B** attached hereto.

D. On _____, 2011, the City approved the creation of the District through the adoption of Ordinance No. _____ (the "CID Ordinance"). As was contemplated in the Petition, the CID Ordinance approved certain public and private improvements within the District (the "CID Improvements"), as well as certain City and State administrative expenses to be incurred within the District, as more particularly described on **Exhibit C** attached hereto (collectively, the "CID Costs"), to be financed with pay-as-you-go financing payable from revenues received from the imposition of an additional 1.2% sales tax on all taxable sales within the District (the "CID Sales Tax"). The CID Sales Tax shall commence following submittal by the City of a certified copy of the CID Ordinance to the Kansas Department of Revenue. Submittal to the Kansas Department of Revenue shall occur following publication of the CID Ordinance and written notice to the City from the Developer requesting submittal.

E. The Parties now desire to enter into this Agreement to formalize the construction and financing of the CID Improvements.

NOW, **THEREFORE**, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION

A. Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

1. "Administrative Service Fee" means the fee charged by the City for administration of the CID Sales Tax Fund and distributions from same, in the amount of five percent (5%) of the CID Sales Tax collected.

2. "Agreement" means this Agreement as may be amended in accordance with the terms hereof.

3. "CID Act" means K.S.A. § 12-6a26 *et seq*.

4. "CID Bonds" means community improvement district special obligation bonds issued by the City to finance all or a portion of the CID Projects, if any.

5. "CID Costs" means, collectively, the costs of the CID Improvements and other eligible expenses related to the Project to the extent such expenses are "costs" of a "project" as defined in the CID Act, the estimated amounts of which are shown in **Exhibit C**, which also includes the City's administrative service fee. In the event KSA 12-6a27(f) is subsequently amended or construed by a judicial or attorney general's opinion to include in the definition of "cost" interest accrued on borrowed money after the period of construction, post-construction costs of private financing shall then also be deemed included in "CID Costs."

6. "CID Improvements" means the Project and related permissible improvements as set forth in the CID Act and the CID Ordinance.

7. "CID Policy" means the policy of the City of Wichita governing the use of CID financing within the City, as originally approved by the City Council on April 6, 2010 and as amended from time-to-time thereafter.

8. "CID Ordinance" means Ordinance No. _____ adopted by the City on _____, 2011.

9. "CID Sales Tax" means the community improvement district sales tax authorized by the CID Act and the CID Ordinance.

10. "CID Sales Tax Fund" means the separate fund established by the City for deposit of the CID Sales Tax received from the State collected within the District, and that is used to finance the CID Costs pursuant to the CID Act.

11. "City" means the City of Wichita, Kansas.

12. "City Representative" means the City Manager or his or her designee as evidenced by a written certificate furnished to the Developer containing the specimen signature of such person or persons and signed by the City Manager.

13. "Developer" means Cabela's Wholesale, Inc.**,** and its successors and assigns.

14. "Event of Default" means any event or occurrence as defined in Article V of this Agreement.

15. "Parties" means the City and the Developer.

16. "Pay-as-you-go Financing" means pay-as-you-go financing, as that term is defined in the CID Act, which financing shall be used to pay the CID Costs.

17. "Signage" means a sign at least 24 square inches in size containing the words :THIS PROJECT MADE POSSIBLE BY COMMUNITY IMPROVEMENT DISTRICT FINANCING" using type face of at least 18 points in size, and direct individuals to the City website for further information using type face of at least 12 points in size.

18. "State" means the State of Kansas.

19. "Term" means the earlier of twenty-two (22) years from the date the Director of Taxation for the State of Kansas begins collecting the CID Sales Tax within the District or when all CID Costs up to the amount of $17,198,360 have been paid.

B. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

1. The terms defined in this Article include the plural as well as the singular.

2. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.

3. All references herein to "generally accepted accounting principles" refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

4. All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.

5. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

6. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

ARTICLE II
DEVELOPMENT OF THE PROJECT

A. Completion of the CID Improvements. Any of the CID Improvements completed by the Developer shall be in conformance with approved plans for such improvements, City building codes, City Ordinances and all other applicable rules and regulations. Before commencement of construction or development of any buildings, structures or other work or improvement, the Developer shall obtain any and all permits which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work.

B. Cost of the Project. The Developer shall be responsible for and will bear all the CID Costs, other than the costs of the Interchange (defined below), which shall be borne by the City as set forth in Article IV below, subject to the terms of this Agreement governing reimbursement for expenditures on the CID Costs.

ARTICLE III
CID FINANCING

A. CID Sales Tax. The City shall deliver a certified copy of the CID Ordinance to the Kansas Department of Revenue imposing the CID Sales Tax upon the receipt of written notice from the Developer requesting such delivery. Except as otherwise set forth herein, all of the CID Sales Tax collected and delivered to the CID Sales Tax Fund shall be available for and dedicated to pay the CID Costs for the duration of the Term.

B. CID Sales Tax Fund. During the existence of the District all CID Sales Taxes generated within the District shall be deposited into a CID Sales Tax Fund, which shall be established and administered by the City in compliance with the laws of the State of Kansas and this Agreement and shall be held solely for the payment of the CID Costs and shall not be otherwise expended or commingled with other funds.

C. Pay-as-you-go Financing of the CID Costs. The CID Sales Tax shall be used to reimburse the Developer for the CID Costs, as described in **Exhibit C**. The City hereby agrees that the estimates of expenses related to the CID Costs may change prior to and during the expenditure of the CID Costs. However, the aggregate total amount of all CID Costs to be paid hereunder shall not exceed $17,198,360. Unless otherwise agreed by the Parties in writing, reimbursements shall be made solely to the Developer unless otherwise set forth in this Agreement, except for payment of the City's Administrative Service Fee, which will be deducted by the City in advance of distribution of the CID Sales Tax funds to Developer.

D. Certification of Expenditures. The Developer shall certify all costs and expenditures to be made in connection with the CID Costs in accordance with the following:

1. The Developer shall submit to the City a Certification of Expenditures in the form attached hereto as **Exhibit D** setting forth the amount for which reimbursement is sought and an itemized listing of the related CID Improvements.

2. Each Certification of Expenditures shall be accompanied by such bills, contracts, invoices, and other evidence as the City shall reasonably require to document appropriate payment.

E. Reimbursement. The City shall have twenty (20) calendar days after receipt of any Certification of Expenditures to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certification of Expenditures shows payment by the Developer of the CID Costs; (2) the expense was incurred; (3) the aggregate amount of CID Costs theretofore paid pursuant to this Agreement is less than $17,198,360 and if added to the amount of the Certification of Expenditures, would not exceed $17,198,360; (4) the Developer is not in material default under this Agreement; and (5) there is no fraud on the part of the Developer, then the City shall approve the Certification of Expenditures and promptly reimburse the Developer for the CID Costs pursuant to the terms of this Agreement if sufficient funds are available in the CID Sales Tax Fund, and quarterly as funds become available in the event that funds in the CID Sales Tax Fund are at that time insufficient. If the City reasonably disapproves of the Certification of Expenditures, the City shall notify the Developer in writing of the reason for such disapproval within such twenty (20) day period.

F. Payment of the City's Administrative Service Fee. The City shall be paid from the CID Sales Tax Fund an Administrative Service Fee in an amount equal to five percent (5%) of the total CID revenues generated within the District. The $5,000 application fee paid by Developer upon submission of this Agreement to the City shall be applied as a credit toward payment of the Administrative Service Fee.

ARTICLE IV
INTERCHANGE PROVISIONS

A. Statement of Intent. The City and the Developer agree that construction of the K-96 Highway and Greenwich Road interchange adjacent to the Project (the "Interchange") to a full-movement interchange is in their mutual interest. Accordingly, the parties agree to mutually contribute to the costs of construction of the Interchange in accordance with this Agreement.

B. Division of the CID Sales Tax. Subject to the terms and conditions of this Agreement, 0.2% of the 1.2% CID Sales Tax, less any City and State administrative fees attributable to that 0.2%, (the "Interchange CID Sales Tax") shall be dedicated to the purpose of paying the costs of the Interchange. The remaining 1% of the CID Sales Tax shall continue to be dedicated to pay the Developer's CID Costs in accordance with this Agreement.

C. Use of the Interchange CID Sales Tax. Upon the commencement of the collection of the CID Sales Tax in accordance with this Agreement, the revenues of the Interchange CID Sales Tax, less any City or State administrative fees attributable to the Interchange CID Sales Tax, shall be held in escrow in an interest bearing account. Upon the commencement of the grading and site preparation of the Interchange, the revenues of the Interchange CID Sales Tax,

including any and all escrowed revenues and the interest thereon, shall be distributed to the City to finance the costs of the Interchange for the duration of the maximum term set forth below. Notwithstanding the foregoing, in the event that the grading and site preparation of the Interchange has not commenced within two (2) years after a final certificate of occupancy is issued for the Cabela's store within the Project, the revenues of the Interchange CID Sales Tax, including any and all escrowed revenues and the interest thereon, shall not be used to finance any costs of the Interchange, and shall be made available to the Developer for the purpose of paying the Developer's CID Costs in accordance with this Agreement for the duration of the Term.

D. Developer's Maximum Contribution to the Interchange. The Developer's contribution, in any form of financing methodology, to the costs of the Interchange shall not exceed the actual annual revenues of the Interchange CID Sales Tax, less any City and State administrative fees attributable to the Interchange CID Sales Tax, for fifteen (15) years after the commencement of collection of the CID Sales Tax in accordance with this Agreement. Immediately upon completion of such fifteen (15) year period, the revenues of the Interchange CID Sales Tax shall be used to pay the Developer's CID Costs in accordance with this Agreement.

E. City Interchange Obligations. The City shall use good faith and best efforts in all matters concerning the construction of the Interchange. Without limiting the generality of the foregoing, the City shall (1) place and keep the Interchange as a priority of its Capital Improvement Program; (2) contribute City funds to the construction of the Interchange; (3) diligently consider and approve the methodology for financing the full costs of the Interchange, whether through the dedication of any funds of the City, through the approval of a special benefit district, or any other financing methodology, or any combination thereof; (4) concurrently pursue, to the extent possible, the design and environmental approvals required for construction of the Interchange with reasonable diligence; and (5) diligently complete the construction of the Interchange after construction has commenced.

F. Special Benefit District. The Developer shall reasonably consider participating in a special benefit district proposed to finance the Interchange. In the event that the Developer chooses to participate in any such special benefit district, the Parties shall reasonably cooperate to determine a method by which the revenues of the Interchange CID Sales Tax may be used to pay any special assessments levied against the Project, which in no event shall exceed the maximum contribution set forth in Article IV(D).

ARTICLE V
DEFAULTS AND REMEDIES

A. Defaults - General. The following events shall constitute an Event of Default under this Agreement:

1. Subject to the extensions of time set forth in subsection F below (Enforced Delay), failure or delay by any Party to perform any term or provision of this Agreement, after receiving written notice and failing to cure, as set forth in paragraph (2) below, constitutes a default under this Agreement. A Party claiming a default (claimant) shall give written notice of default to the other parties, specifying the default complained of.

2. The claimant shall not institute proceedings against a Party, nor be entitled to damages if the other Party within fourteen (14) days from receipt of such written notice, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice; or if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period, such cure, correction or remedy is diligently and continuously prosecuted until completion thereof.

B. Remedies on Default. Whenever any Event of Default by the City shall have occurred and be continuing, subject to applicable cure periods, the Developer may pursue any remedy at law and in equity, except as provided below. Whenever any Event of Default by the Developer shall have occurred and be continuing, subject to applicable cure periods, the City may (1) pursue any remedy at law and in equity, except as provided below, and/or (2) refuse to approve any further Certificates of Expenditures and make any disbursements until such Event of Default is cured by the Developer and/or terminate this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall the Developer or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise (the use of the Interchange CID Sales Tax for the Developer's CID Costs rather than the costs of financing the Interchange as is contemplated in Article IV(C) shall not constitute a punitive, special, incidental, or consequential damage). For the purposes of this Section, consequential damages shall include, but not be limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred by the non-defaulting Party. Further, specific performance shall not be available to the City to require the Developer to construct any improvements within the District. The only remedy that may be sought from the City is strictly limited to use of CID revenues available in the CID Fund to pay CID Costs (i.e., the City can have no liability under this Agreement that in any way extends to its general or tax funds, or any other source of funds apart from the CID revenues derived from this project), except that, in case of any diversion by the City of CID revenues from the CID Fund in breach of this Agreement, the City will be obligated to restore such diverted revenues, dollar for dollar, from any lawfully available source of appropriations.

C. Legal Actions.

3. Institution of Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Sedgwick County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas.

4. Applicable Law. The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement.

5. Acceptance of Service of Process.

(a) In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(b) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon an officer or agent of the Developer and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law. In the event the Developer no longer has an officer or registered agent to serve, the Secretary of State is hereby irrevocably appointed to accept service for the Developer.

D. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

E. Inaction Not a Waiver of Default. Any failures or delays by a Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

F. Enforced Delay; Extension of Times of Performance.

1. In addition to specific provisions of this Agreement, performance by a Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays or defaults are due to default of the other Party; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; market conditions; quarantine restrictions; freight embargoes; lack of transportation; or unusually severe weather; or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform.

2. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer.

ARTICLE VI
GENERAL PROVISIONS

A. Termination of the CID. The City shall not terminate the CID prior to the expiration of its Term, except as provided by law, or as requested by the Developer.

B. Modification of the District. From time to time during the Term, the Developer may request, and the City shall reasonably consider, any modification to the District, in accordance with the CID Act and the CID Policy.

C. Public Disclosure. The Developer will post Signage adjacent to the main entrance of the property. Signage is to be posted and maintained throughout the term of the CID and Agreement.

D. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties, upon official action of the City's governing body approving said amendment, and by the execution of said amendment by the Parties or their successors in interest. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties shall take such reasonable measures including, but not limited to, reasonable amendment of this Agreement to cure such invalidity where the invalidity contradicts the clear intent of the Parties in entering into this Agreement.

E. Assignment. No Party may assign all or any part of its interest in this Agreement without the prior written consent of the other Parties, and any such assignment without such consent shall be void; except that the Developer may assign all or any part of its interest in this Agreement upon the prior written consent of the City Representative; provided, however, in the event the City Representative does not consent to such assignment, the Developer may proceed before the City's governing body to request that such assignment be approved; and provided further that any such assignments be administered through a single, third party fiduciary who would receive any payments made pursuant to such assignments and distribute funds to assignees and who would be responsible for calculating any subdivision of funds for such distribution. Under no circumstances shall the City be responsible for determining the amount of funds to be assigned under this provision. Notwithstanding the foregoing, the Developer, with prior written notice to the City, may make a collateral assignment of 100% its rights under this Agreement to a single financial institution as security for a financing of the Project. Any decision to consent or refuse consent to an assignment pursuant to this paragraph shall solely at the discretion of the City Representative or the City's governing body, as the case may be. Nothing herein shall be construed to delegate rights or responsibilities of the City under this agreement, including without limitation the determination of eligible project costs for reimbursement.

F. Right to Inspect. The Developer agrees that the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect, audit, and copy, from time to time, all of the Developer's books and records relating to the CID Costs as pertinent to the purposes of this Agreement.

G. Right of Access. For the purposes of assuring compliance with this Agreement, the City Representative shall have the right of access to the District, without charges or fees, during normal business hours for purposes related to this Agreement, including, but not limited to, the inspection of the work being performed in constructing any of the CID Improvements.

H. No Other Agreement. Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the Parties.

I. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter

the balance of this Agreement in order to render the same valid and enforceable. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

J. Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To the Developer:

Real Estate Department
Cabela's, Inc.
One Cabela Drive
Sidney, NE 69160

With a copy to:

Legal Department
Cabela's, Inc.
One Cabela Drive
Sidney, NE 69160

With a copy to:

Korb W. Maxwell
Polsinelli Shughart, P.C.
6201 College Blvd., Ste. 500
Overland Park, KS 66211

To the City:

City Manager
City Hall, 13th Floor
455 N. Main
Wichita, Kansas 67202

With copies to:

Urban Development Office
Attention: Allen Bell
City Hall, 13th Floor
455 N. Main
Wichita, Kansas 67202

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

K. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

L. Recordation of Agreement. The Parties agree to execute and deliver a memorandum of this Agreement in proper form for recording in the real property records of Sedgwick County, Kansas.

M. Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld.

N. Survivorship. Notwithstanding the termination of this Agreement, the Developer's obligations set out in Article II and Section V.E. shall survive the termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during the Term hereof.

O. Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

P. Amendment to Carry Out Intent. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties shall take such reasonable measures including but not limited to reasonable amendment of this Agreement, to cure such invalidity where the invalidity contradicts the clear intent of the parties in entering into this Agreement; provided, however, nothing herein is intended to bind a future governing body of the City in a manner prohibited by the laws of the State of Kansas. If any provision in this Agreement relating to the performance by the City of an act in the future is determined by a court of law to be the exercise of the City's legislative or governmental power, as opposed to an exercise of its proprietary or administrative power, such provision shall be deemed to be an expression of the intent of the City to perform such act.

Q. Cash Basis and Budget Laws. The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. §§10-1112 and 10-1113), the Budget Law (K.S.A.§ 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted in such a manner as to ensure the City shall at all times remain in conformity with such laws.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF WICHITA, KANSAS

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, City Attorney

CABELA'S WHOLESALE, INC.,
a Nebraska corporation

By: _____

Name: _____

Title: _____

Date: _____

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

On this _____ day of _____, 2011, before me personally appeared ___ _____ to me personally known, who being by me duly sworn did say that he is the _____ of Cabela's Wholesale, Inc., a Nebraska corporation, and that said instrument was signed and delivered on behalf of said corporation and acknowledged to me that he/she executed the same as the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____
NOTARY PUBLIC

My Commission Expires:

EXHIBIT LIST

EXHIBIT A – CID PETITION

EXHIBIT B – LEGAL DESCRIPTION AND MAP EXHIBIT OF DISTRICT

EXHIBIT C – CID COSTS

EXHIBIT D – CERTIFICATION OF EXPENDITURES

EXHIBIT A
CID PETITION

EXHIBIT B
LEGAL DESCRIPTION AND MAP EXHIBIT OF DISTRICT

EXHIBIT C
CID COSTS

EXHIBIT D
CERTIFICATION OF EXPENDITURES

Request No. _____ Date:_____

Pursuant to the Development Agreement (the "Agreement") for the K-96 and Greenwich Community Improvement District between the City of Wichita, Kansas and the undersigned (the "Developer"), the Developer requests reimbursement and hereby states and certifies as follows:

1. The date and number of this request are as set forth above.

2. All terms in this request shall have and are used with the meanings specified in the Agreement.

3. The names of the persons, firms or corporations to whom the payments have been made and reimbursement is hereby requested, the amounts to be reimbursed and the general classification and description of the costs for which each obligation requested to be reimbursed hereby was incurred are as set forth on **Attachment I** hereto.

4. These costs have been incurred and are reasonable costs that are reimbursable under the Agreement.

5. Each item listed above has not been previously reimbursed from the CID Sales Tax Fund and no part thereof has been included in any other Certification of Expenditures or other disbursement request previously filed with the City.

Cabela's Wholesale, Inc.

By: _____
Title: _____

Approved this ____ day of _____, 20__

CITY OF WICHITA

By: _____
City Representative

ATTACHMENT I
TO CERTIFICATION OF EXPENDITURE

REQUEST NO. _____ DATED_____ _

SCHEDULE OF PAYMENTS REQUESTED

Person, firm or corporation to whom payment was made	Amount to be reimbursed	General classification and description of the costs of issuance for which the Obligation to be reimbursed was incurred

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council Members

SUBJECT : Public Hearing on Proposed Assessments for two (2) Water Projects, Two (2) Sewer Projects, and two (2) Storm Sewer Projects in the July Bond Sale Series 806 (Districts; II, IV, VI, County)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the proposed assessments and ordinances.

Background: The City Council was notified on January 25, 2011, that the proposed assessment rolls were on file for public inspection in the Department of Finance.

Analysis: Notice of hearing letters were published February 11, 2011 in the Wichita Eagle, being not less than ten days prior to the date of hearing for two main water lines, one main sewer, one lateral sewer, and two storm water drains for new additions. All affected property owners have been notified in writing. Department of Finance and Public Works staff held an informal hearing on February 28, 2011 at 11:00 a.m. for the water, sewer and storm sewer projects.

Financial Considerations: Statements of Special Assessment will be mailed to the property owners on March 25, 2011. The property owners have 30 days from the date of statement to pay their assessment and avoid paying interest. The assessments not paid during this period will be in the July 2011 Bond Sale. The interest added to the principal amount will be determined by the rate at which the bonds sell. The principal and interest will then be spread and placed on the 2011 tax roll.

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

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

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

Attachment: Special Assessments projects list.

HEARING ON PROPOSED ASSESSMENTS FOR CONSTRUCTION OF WATER, SEWER, AND STORM SEWER PROJECTS**:**

On January 25, 2011 the Council was notified that the Proposed Assessment Rolls for construction of the following water, sewer and storm sewer projects has been prepared and were on file in the office of Debt Management in the Finance Department for public inspection:

WATER PROJECTS:

a. (470-113/448-90447) Construction of Water Distribution System, North of I-235, West of Broadway, as authorized by Resolution No. 09-266, adopted August 11, 2009, published August 14, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 14, 2010 in the amount of $271,300.00 is to be apportioned $88,221.00 payable by the improvement district; $183,079.00 payable by the Wichita Water Utility. The cost has been assessed on a square foot basis. District VI

b. (470-115/448-90452) Construction of Water Distribution System, South of Macarthur, West of Hoover, as authorized by Resolution No. 09-290, adopted September 1, 2009, published September 4, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 14, 2010 in the amount of $24,300.00 is to be apportioned 100 % payable by the improvement district. The cost has been assessed on a fractional basis. District IV

SEWER PROJECTS:

c. (480-983/ 468-84543) Construction of Main 11, Northwest Interceptor Sewer, To Serve Via Christi-West Campus Addition, East of 151st St. West, North of 21st, as authorized by Resolution No. 08-462, adopted September 23, 2008 published September 26, 2008, corrected and republished October 16, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 14, 2010 in the amount of $1,188,200.00 is to be apportioned $240,176.00 payable by the improvement district, $948,024.00 payable by the Sewer Utility Fund. The cost has been assessed on a fractional basis. District - County

d. (480-003/ 468-84668) Construction of Lateral 534, Southwest Interceptor Sewer, To Serve Angel Fire Addition, North of 47th St. South, East of West Street, as authorized by Resolution No. 10-055, adopted March 9, 2010, published March 12, 2010. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 14, 2010 in the amount of $145,600.00. is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

STORM SEWER PROJECTS:

e. (485-374/468-84575) Construction of SWD No. 354, North of Kellogg, East of Maize, as authorized by Resolution No. 09-041, rescinded by 09-193, rescinded by 10-010, rescinded by 10-059, adopted February 10, 2009, July 7, 2009, January 12, 2010, March 9, 2010, and published February 13, 2009, July 10, 2009, January 15, 2010, March 12, 2010. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 14, 2010, in the amount of $1,791,200.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

f. (485-379/468-84592) Construction of SWD No. 356, North of 29th Street, East of Greenwich, as authorized by Resolution No. 09-096, adopted April 7, 2009, and published April 10, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 14, 2010, in the amount of $153,200.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

(470-113/448-90447)

ORDINANCE NO. 48-956

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90447, 470-113, (North of I - 235, West of Broadway).

(470-115/448-90452)

ORDINANCE NO. 48-957

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90452, 470-115, (South of Macarthur, West of Hoover).

(480-983/468-84543)

ORDINANCE NO. 48-958

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of To Serve Via Christi-West Campus Addition, (East of 151st St. West, North of 21st)**.**

(480-003/468-84668)

ORDINANCE NO. 48-959

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of To Serve Angel Fire Addition, (North of 47th St. South, East of West Street)**.**

(485-374/468-84575)

ORDINANCE NO. 48-960

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of SWD No. 354, Maize 54 Addition, (North of Kellogg, East of Maize).

(485-379/468-84592)

ORDINANCE NO. 48-961

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of SWD No. 356, North Greenwich Addition, (North of 29th Street, East of Greenwich).

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council Members

SUBJECT: Public Hearing on Proposed Assessments for Seven (7) Paving Projects in July 2011 Bond Sale Series 806 (Districts I, II, IV, V)

INITIATED BY: Department of Public Works and Utilities

AGENDA: New Business

Recommendation: Approve the proposed assessments and ordinances.

Background: The City Council was notified on January 25, 2011, that the proposed assessment rolls were on file for public inspection in the Department of Finance.

Analysis: Notice of hearing letters were published February 4, 2011, in the Wichita Eagle being not less than ten days prior to the date of hearing for pavement and traffic signalization for new additions and pavement for two existing neighborhoods. All affected property owners have been notified in writing. Department of Finance and Public Works staff held an informal hearing on February 14, 2011 at 11:00 a.m. for the paving projects.

Financial Considerations: Statements of Special Assessment will be mailed to the property owners on March 25, 2011. The property owners have 30 days from the date of statement to pay their assessment and avoid paying interest. The assessments not paid during this period will be in the July 2011 bond sale. The interest added to the principal amount will be determined by the rate at which the bonds sell. The principal and interest will then be spread and placed on the 2011 tax roll.

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

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

Paving Projects:

472-84753	67% Petition	Constructing pavement on Elizabeth and 46th Street South
472-84762	64% Petition	Constructing pavement on Siefkin to and including cul-de-sac

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

Attachments: Special assessments projects list.

HEARING ON PROPOSED ASSESSMENTS FOR IMPROVING PAVING PROJECTS

On January 25, 2011, the Council was notified that the proposed assessment rolls for improving of paving projects had been prepared and were on file in the office of Debt Management in the Finance Department for public inspection:

PAVING PROJECTS:

a) (490-255/472-83241) authorizing traffic signalization improvements at the northwest corner of Lincoln and Webb Road (East of Webb, North of Harry), as authorized by Resolution No. 00-220, adopted May 16, 2000, and published May 19, 2000. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 7, 2010 in the amount of $30,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

b) (490-240/472-84753) constructed pavement on Elizabeth and 46th Street South (North of 47th Street South, West of Seneca), as authorized by Resolution No. 08-433, adopted September 9, 2008, and published September 12, 2008. Petition for this improvement was signed by owners representing 67% of the property ownership. The Statement of Cost approved December 7, 2010 in the amount of $218,300.00 is to be apportioned 90.6% payable by the improvement district and 9.4% payable by City at Large. The cost has been assessed on a fractional basis. District IV

c) (490-244/472-84762) constructed pavement on Siefkin to and including the cul-de-sac (North of 13th, West of Woodlawn), as authorized by Resolution No. 08-488, adopted October 21, 2008, and published October 24, 2008. Petition for this improvement was signed by owners representing 64% of the property ownership. The Statement of Cost approved December 7, 2010 in the amount of $139,200.00 is to be apportioned 98.3% payable by the improvement district and 1.7% payable by City at Large. The cost has been assessed on a fractional basis. District I

d) (490-245/472-84763) constructed pavement on Bellechase, Bellchase Ct., Sierra Hills, and Alden (East of 127th Street East, North of Harry), as authorized by Resolution No. 08-492, rescinded by 09-274, adopted October 21, 2008, August 18, 2009, and published October 24, 2008, August 21, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 7, 2010 in the amount of $304,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

e) (490-265/472-84798) constructing a hammerhead turnaround within Ridge Road (South of Maple, East of Mid Continent Road), as authorized by Resolution No. 09-075, adopted March 24, 2009, and published March 27, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 7, 2010 in the amount of $37,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

f) (490-267/472-84862) constructed pavement on Gilda Court to and including the cul-de-sac (South of MacArthur, West of Hoover), as authorized by Resolution No. 09-291, rescinded by 10-130, adopted September 1, 2009, May 4, 2010, and published September 4, 2009, May 7, 2010. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 7, 2010 in the amount of $70,900.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District IV

g) (490-263/472-84866) constructed pavement on Bayside including a connection to West Street (North of 21st Street, West of West Street), as authorized by Resolution No. 09-296, rescinded by 09-390, rescinded by 10-179, adopted September 15, 2009, December 22, 2009, July 13, 2010, and published September 18, 2009, December 25, 2009, July 16, 2010. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 7, 2010 in the amount of $301,100.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

(490-255/472-83241)

ORDINANCE NO. 48-962

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of authorizing traffic signalization improvements at the northwest corner of Lincoln and Webb Road, (East of Webb, North of Harry)

(490-240/472-84753)

ORDINANCE NO. 48-963

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructed pavement on Elizabeth and 46th Street South, (North of 47th Street South, West of Seneca)

(490-244/472-84762)

ORDINANCE NO. 48-964

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructed pavement on Siefkin to and including the cul-de-sac, (North of 13th, West of Woodlawn)

(490-245/472-84763)

ORDINANCE NO. 48-965

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructed pavement on Bellechase, Bellchase Ct., Sierra Hills, and Alden, (East of 127th Street East, North of Harry)

(490-265/472-84798)

ORDINANCE NO. 48-966

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructing a hammerhead turnaround within Ridge Road, (South of Maple, East of Mid Continent Road)

(490-267/472-84862)

ORDINANCE NO. 48-967

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructed pavement on Gilda Court to and including the cul-de-sac, (South of MacArthur, West of Hoover)

(490-263/472-84866)

ORDINANCE NO. 48-968

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructed pavement on Bayside including a connection to West Street, (North of 21st Street, West of West Street)

City of Wichita
City Council Meeting
March 8, 2011

To: Mayor and City Council

Subject: Memorandum of Understanding with Westar Energy (All Districts)

Initiated By: Department of Park and Recreation

Agenda: New Business

Recommendation: Approve the Memorandum of Understanding.

Background: Westar Energy, Inc. is re-energizing its vegetation management practices in Wichita and the surrounding areas with a pilot program called ReliabiliTree. The program will help improve electric service reliability by mitigating a leading cause of power outages -- trees near power lines. The program will put vegetation management, the clearing of and pruning of trees, on a four to five year cycle as well as boost Westar's customer education regarding line clearance and tree planting.

Tree pruning prevents power outages and improves safety by reducing the risk of accidental contact with power lines. Westar's priority is to provide the citizens of Wichita the highest quality service while preserving the beauty of the environment and neighborhoods.

Customer education is an important component of the ReliabiliTree program. Westar will provide customers an informational packet prior to the work being done, as it currently does with any vegetation management work. The packets include information about the ReliabiliTree program and pruning practice, as well as a tree planting guide to help customers in selecting the right tree.

Analysis: The Park Department negotiated a tree replacement donation agreement with Westar Energy. Westar will match the City's tree replacement fund in exchange for the Park Department's participation in the ReliabiliTree program. Westar will be responsible for the removal of the trees that have been deemed dangerous. The Park Department will be responsible for following up the tree removal by removing the stumps and possibly planting a new tree that is properly sized for the placement under the power line.

The Board of Park Commissioners reviewed the ReliabiliTree Program on December 20, 2010 and voted to recommend partnership to the City Council.

During the last budget cycle, reforestation funds were reduced from $100,000 to $50,000. Westar agrees to match the City's tree fund of $50,000 with an equal amount of $50,000. Accepting the match from Westar would put the reforestation fund back to the same funding level.

Financial Consideration: Since the Park Department staff is responsible for tree stump removal through the forestry budget, there will be no new costs created by this partnership. A net gain of $50,000 will be realized by using the available City funds as leverage for funds from Westar.

Goal Impact: The Memorandum of Understanding will Ensure Efficient Infrastructure and Enhance the Quality of Life for citizens.

Legal Consideration: The Memorandum of Understanding has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council approve the Memorandum of Understanding and authorize the necessary signatures, and accept the $50,000 donation for trees.

Attachment: Memorandum of Understanding.

AGREEMENT

THIS AGREEMENT entered into and effective this _____ day of _____, 2011 (the Effective Date"), by and between the City of Wichita, a duly organized municipal corporation hereinafter referred to as "City" and Westar Energy, Inc., hereinafter referred to as "Westar."

WHEREAS, City and Westar desire to enter into an agreement which outlines key steps to managing trees in the City's rights-of-way; and

WHEREAS, the goals of City and Westar are to increase the quality and quantity of trees in the City rights-of-way while reducing pruning and to educate, improve communications and raise satisfaction level of affected landowners and customers; and

WHEREAS, City, like most Kansas towns, has numerous tall growth trees underneath distribution and transmission lines in rights-of-way which need to be frequently pruned to maintain required clearances for reliability and safety; and

WHEREAS, even using approved pruning practices, pruning to heights much shorter than what is natural has negative aesthetic and health effects for the tree; and

WHEREAS, frequent pruning is also costly and can upset landowners who want the tree to be as large as possible and do not fully understand the hazards these tall-growth trees may pose in close proximity to power lines.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN THE PARTIES AGREE AS FOLLOWS:

1. Westar will identify to the City's Director of Parks & Recreation, or the City's representative, its circuits planned for vegetation management immediately following its semi-annual forecast and as-needed in the interim.

2. A combination of Westar, vegetation management contractors, and the City's Director of Parks & Recreation, or the City's representative, will identify tall growth trees in the rights-of-way in planned areas that are good candidates for removal.

3. Westar and the City's Director of Parks & Recreation, or the City's representative, will communicate with homeowners prior to any work being done to a tall growth tree that has been identified for removal, giving a number to call to voice questions or concerns, and informing them about short-growth, replacement trees. Everyone that communicates with a homeowner should emphasize the National Arbor Day Foundation's "Right Tree in the Right Place" program that is endorsed by both the City and Westar. If an acceptable tree removal and replacement plan is approved by the homeowner, then the tree will be removed. If a tree removal and replacement plan is not acceptable to the homeowner, then the tree will be pruned. Westar's Line Clearance Contractor crews will do the tree removal to the stump. The stump removal and any additional landscape work that is required will be the responsibility of the City.

4. The City is responsible for selecting, planting, and maintaining the replacement tree(s) as it sees fit. Westar's responsibility for a tree removal concludes when the tree has been removed to the stump, remaining stump should be no taller than 6 inches in height. Westar will match the City's contribution for new tree stock up to $50,000 per year. The City agrees to plant only short-growth trees under or around Westar facilities. The City may purchase tall growth trees with the funding provided by Westar for installation away from Westar facilities. City will ensure Westar's investment is for tree stock only, and not to cover installation and maintenance costs.

5. During work planning and survey activity, noteworthy trees may be identified which are unusual because of their type, age, size or location. For these trees, the survey team will discuss reasonable options for minimizing impact on these trees. Since these will often be old, slow growing species such as oaks, alternate pruning approaches will be discussed and even line rerouting may be considered in exceptional cases.

7. The term of this Agreement shall be for one (1) year and will automatically renew each year until it is terminated in writing by either party upon no less than 30 days notice prior to the anniversary of the Effective Date.

8. This Agreement constitutes the entire agreement of the parties and supersedes any and all prior oral or written agreements between the parties. Neither party shall rely upon any verbal representations, either express or implied, not specifically stated herein. This Agreement shall not be amended, modified, or assigned except by written agreement of both parties.

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

THE CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

_____
Date

Westar Energy, Inc.

_____
Caroline Williams, Vice President
Distribution Power Delivery

_____
Date

DEPARTMENT OF PARK AND RECREATION

_____
Douglas R. Kupper, CPRP, Director

_____
Date

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

_____
Date

Agenda Item No. III-5

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Talking Books Outreach

INITIATED BY: Library

AGENDA: New Business

Recommendation: Authorize submission of the request for proposals response.

Background: The Wichita Public Library has served as a Subregional Library for the Blind and Physically Handicapped (Talking Books Service) since 1971 through a contract with the State Library of Kansas. The Library's assigned service area is all of Sedgwick County and fifteen counties in Southeast Kansas. In response to declining readership and the inability of the State Library of Kansas to fully fund contracted subregional operations throughout the state, a task force was established in 2008. It was charged with creating a new model of Kansas Talking Books service. Based on recommendations from that group, the State Library has decided to close all subregional libraries and to consolidate all Talking Books operations into a single regional library/distribution center housed at Emporia State University. The State Library intends to continue to contract with local libraries, but only for assistance with outreach and programming. The Wichita Public Library is among the libraries that have been invited to respond to a request for proposals for this new level of service.

Analysis: A contract for service will require that the Wichita Public Library complete a series of activities to promote awareness of the Talking Books program by residents of Sedgwick County and to encourage involvement by eligible readers. The counties in Southeast Kansas currently served by the Wichita Talking Books Subregional would be reassigned to a library in that area. Pursuing a contract for Talking Books outreach aligns with the Library's developing strategic plan and the emphasized service responses of reading and listening for pleasure and lifelong learning. Since the State Library's requirements for Talking Books outreach are closely related to the Library's homebound and bulk loan services, it will be possible to complete many of the activities required for this new service simultaneously with the Library's other senior outreach initiatives. If selected for funding, the Library intends to dedicate an average of ten hours of staffing per week (.25 FTE) to activities relating to Talking Books outreach. The Library's proposed response to the request for proposal solicitation has been reviewed by the Library Board of Directors and was unanimously endorsed on February 15, 2011.

Financial Considerations: For the fiscal year which ends September 30, 2011, the Library has received $122,079 for operation of the subregional library. Three Library positions (2.25 FTE) are funded through this grant. It is anticipated that these employees will be able to transfer into other vacant positions within the Library or other City departments when the subregional ceases operation.

According to the terms outlined in the request for proposals solicitation, the Library is eligible to receive a grant of $26,500 to be used to deliver Talking Books outreach service throughout Sedgwick County from October 1, 2011 through September 30, 2012. No local match or subsidizing of costs will be required of

the Library. Because the Library proposes dedicating only 25% of the time of a Library Assistant V authorized within the General Fund to complete the requirements of this grant, the Library and Budget Office anticipate planned salary savings to the General Fund of approximately $20,000 if the Library receives a contract for this service.

Goal Impact: Ensuring access to reading material for citizens who are blind or physically handicapped contributes directly to the Quality of Life for these individuals as well as for their families and caregivers.

Legal Considerations: If Wichita is selected to receive a grant, the proposed contract will be reviewed by the Law Department and submitted to the City Council for acceptance.

Recommendation/Action: It is recommended that the City Council authorize Library staff to submit a response to the request for proposal invitation.

Attachment: Talking Books Outreach Proposal

PROPOSAL

For Talking Books Library

Outreach Services to

Sedgwick County

WICHITA PUBLIC LIBRARY
The Discovery Center
www.wichita.lib.ks.us

WICHITA PUBLIC LIBRARY
The Discovery Center
www.wichita.lib.ks.us

March 8, 2011

Jo Budler, State Librarian
State Library of Kansas
300 SW 10th Ave., Room 169-W
Topeka, KS 66612-1593

Dear Jo,

I am pleased to submit this response on behalf of the Wichita Public Library to your request for proposals for the delivery of outreach service for the Kansas Talking Books Program for residents of Sedgwick County.

Our Library's partnerships with the other libraries throughout this county, our involvement in the Senior Wednesday coalition and our existing services to schools, nursing homes and retirement communities positions us to perform the tasks outlines in the outreach guidelines with efficiency and effectiveness.

The Wichita Public Library's service as a Subregional Library for the Blind and Physically Handicapped has been a successful partnership for many years. Although we regret that changing conditions have required elimination of subregional libraries, we look forward to the opportunity to continue to be a service provider to Talking Books users through the new business model for this important program.

Sincerely,

Cynthia Berner Harris
Director of Libraries

223 South Main * Wichita, KS 67202 * (316) 261-8500 * cberner@wichita.gov

2011-2012 PROPOSED WORK PLAN

In exchange for an annual grant in the amount of $26,500, the Wichita Public Library proposes to provide the following services during a service year beginning October 1, 2011 and continuing through September 30, 2012.

GOAL #1: Promote awareness of the Talking Books Library throughout Sedgwick County

Strategy #1.1: Develop and maintain a list of agencies and partner service providers, including but not limited to libraries, schools, senior centers, retirement communities, nursing homes, eye care professionals and organizations serving special needs clienteles such as Envision, the Independent Living Center and the Cerebral Palsy Research Foundation.

Strategy #1.1.1: Maintain regular interaction with contacts from schools and libraries in order to keep Talking Books an active part of their service delivery

Strategy #1.1.2: Maintain a supply of information packets about the Talking Books Service to be made widely available to agency and service provider contacts identified in Strategy #1.1 as well as to other individuals and organizations throughout the county who have the opportunity to be in contact with potential clients

Strategy #1.2: Plan and present a minimum of twelve general public presentations per year at events that highlight community resources such as, but not limited to: Senior Expo, home school association conference, community expos at area shopping centers, open houses at area libraries and schools, presentations to civic groups, etc.

Strategy #1.2.1: Promote availability of local Talking Books programming through local media outlets

Strategy #1.3: Supplement the work of the Regional Library by proving staff support via telephone, email, letters and newsletters to Talking Books readers and their families, libraries and other partner service providers.

Strategy #1.4: Contribute content to an accessible website and newsletter containing general information about the Talking Books Program

GOAL #2: Use programming to encourage ongoing involvement and a sense of belonging for eligible Talking Books readers

Strategy #2.1: Work in partnership with county libraries and service providers to identify programs of interest and value to Talking Books readers

Strategy #2.1.1: Active seek programming partnerships for programming on areas beyond reading

Strategy #2.2: Create training opportunities relating to audio books and magazines, downloadable books and music, etc. ensuring inclusion of information about Talking Books Library Services

Strategy #2.2.1: Develop and make available training sessions for specialized Talking Books activities such as downloading titles and selecting and ordering available resources

Strategy #2.3: Create opportunities for readers to participate in reading programs such as Kansas Reads, Kansas Reads to Preschoolers, local summer and winter reading programs, The Big Read, etc.

GOAL #3: Provide administrative support for the Kansas Talking Books Service

Strategy #3.1: Complete and submit monthly reports as required by NLS guidelines and as requested by the State Library of Kansas

Strategy #3.2: Complete data entry into KLAS system updated in a timely manner

Strategy #3.3: To the degree that funding and City of Wichita travel policies allow, ensure attendance of outreach librarian at: 1) quarterly state-wide Talking Books Library meetings; 2) two continuing education activities; 3) one Talking Books related conference

Strategy #3.4: Provide recommendations for service to the Kansas Talking Books Advisory Council and NLS Committees

Delivery of Service and Accomplishment of Work Plan. The Wichita Public Library shall not provide funding subsidies for Talking Books outreach to Sedgwick County. Service provided to the State Library of Kansas/Kansas Talking Books Regional Library under the terms of this proposal shall be limited to staffing, travel and activities that can be accomplished within the grant funding provided for this service delivery.

After deducting from the $26,500 grant funds to be restricted for use toward fees associated with conference attendance and professional development efforts ($1,000) and expected costs for City administrative charges, in-county travel and programming expenses, the Library anticipates the ability to dedicate an average of approximately 25% (10 hours per week) of the time of a full-time Senior Outreach Librarian (Library Assistant V) to Talking Books outreach service.

Expectations of the State Library. To assist the Wichita Public Library in fulfilling the proposed work plan in ways that ensure the outcomes outlined below, the Library will depend on the State Library for the following items:

- The ability to obtain weekly reports of Talking Books readership changes in the Sedgwick County service area. [This may be made available through reports generated and forwarded by state library staff or by ensuring that ability of the Senior Outreach Librarian to generate the reports directly from the KLAS system.]
- Updates about policy and procedure changes at the Kansas Talking Books Regional Library in advance of their implementation.
- Feedback from the State Library/Kansas Talking Books Regional Library concerning service delivery and implementation of the proposed work plan on no less than a monthly basis.
- Forwarding of all comments about Talking Books Service in Sedgwick County received by the State Library/Kansas Talking Books Regional Library on no less than a semi-monthly basis in order to allow the Senior Outreach Librarian an opportunity to address concerns or to build upon identified service successes.

Outcomes and Evaluation. Implementation of the 2011-2012 proposed work plan will position the Wichita Public Library to deliver the following outcomes to the State Library under the terms of this grant. The methods by which each outcome shall be evaluated are also outlined below.

1. Talking Books readership within Sedgwick County will be at least maintained during the initial transition year after the closing of the Wichita Subregional Library for the Blind and Physically Handicapped. *[Evaluation: Comparison of Talking Books readership within Sedgwick County on September 30, 2011 and September 30, 2012]*

2. A network of no less than 100 agencies and partner service providers shall be identified and used to promote Talking Books services. *[Evaluation: Count of list of agencies and service providers as prepared in proposed work plan strategy #1.1]*

3. Participation in Talking Books outreach programming in Sedgwick County will equate to a target goal of 5% of current readership. *[Evaluation: Count of program participants/September 30, 2012 readership]*
4. 100% of reports identified in the work plan will be provided to the State Library/Kansas Regional Library by or before established deadlines. *[Evaluation: Due dates for reports to be provided by State Library staff and to be compared against report submission dates as recorded by WPL Senior Outreach Librarian]*
5. A 95% satisfaction rate by Sedgwick County residents for Talking Books outreach service delivery from the Wichita Public Library will be maintained. *[Evaluation: Satisfaction survey sampling from outreach programming and presentations and feedback from county's Talking Books readership]*

Professional Management Services Agreement

This Agreement is made by and between Genesis Health Clubs Management LLC , a Kansas limited liability company, "Genesis" and the City of Wichita, a Kansas municipal corporation "City", hereinafter collectively referred to as the Parties.

City is the owner of the Wichita Ice Center, located at 505 W. Maple St. in Wichita, Kansas, hereinafter referred to as the "Facility".

City desires to retain a management company to operate and manage the Facility in order to benefit the public's recreational opportunities, to minimize City's operating costs and to maximize the use of the Facility.

Genesis operates and manages recreational and fitness facilities throughout the state of Kansas and desires to manage the facility according to the terms and conditions set forth in this Agreement.

Therefore, in consideration of the mutual promises, terms, and conditions contained in this Agreement, the Parties hereby contract and agree as follows:

Section One
Scope of Services

1.1 Subject to all policies and guidelines that City may establish from time to time and with consideration of Genesis input; Genesis shall provide the following management services in compliance with all applicable Federal, State, and Municipal laws and regulations:

1) Operate and maintain the Facility, its equipment, material and supplies and programs.
2) Fully staff the Facility with its own employees, including a full time manager acceptable to the City, and supervise their conduct and performance in the operation of the Facility.
3) Collect all gross revenues generated by Facility, pay all operating expenses of the Facility and maintain all financial records pertaining to the operation of the facility.

1.2 City agrees to fund capital improvements to the Facility as outlined in Exhibit A for an amount not to exceed $316,000.

1.3 City agrees to allow Genesis management and oversight of capital improvements listed in Exhibit A contingent upon prior review and approval of procurement bid practices by the Purchasing Manager, review and approval of plans and specifications by Public Works and subject to City code enforcement.

Section Two
Term of Agreement

2.1 The initial term of this agreement shall be one (1) year with five (5) one (1) year renewal options. Each renewal option will automatically renew unless either party notifies the other party within ninety (90) days, by written notice, of either parties intent not to renew the Agreement for the next renewal option. Termination shall be effective at the end of the initial term or at the end of any renewal term, if written notice per this Section is provided to either party.

Section Three
Compensation

3.1.1 City shall pay Genesis, as full compensation for services provided the following forty-two thousand and no/100 dollars ($42,000) per year for the first three (3) years of this Agreement, and forty-five thousand and no/100 dollars ($45,000) per year for any renewal term. This amount is payable, in advance, in equal monthly installments paid on the first day of each month during the term thereof. If applicable, the first and last payments shall be prorated.

3.2 Performance based incentive compensation shall be made as described in Exhibit B attached.

Section Four
Operation of the Facility

4.1 Subject to the policies and guidelines established by City, Genesis shall be responsible for and have complete authority over the day to day operation of the Facility.

4.2 Genesis' operational duties and responsibilities shall include, but not be limited to, opening and closing the Facility, collecting and depositing all gross revenues generated by the Facility, hiring, firing, and supervising all employees and contractors, food, beverage, vending and pro-shop operations, payroll and accounting services, maintenance and repairs, ticketing, marketing, promotions, acquisition and maintenance of any required licenses, security and janitorial services.

4.3 Genesis shall, in compliance with City's policies and guidelines, establish and adjust the days and hours of operation and all rates and charges for the use and rental of the Facility.

4.4 City shall provide Genesis with all office space Facility access reasonably necessary for the performance of Genesis' operational duties and responsibilities.

4.5 Genesis shall coordinate and conduct periodic advisory group meetings as necessary involving existing and future stakeholder representatives. Information from these meetings will be shared with the City and used as program and policy development tools.

4.6 Genesis shall comply with the Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements outlined in Exhibit C.

Section Five
Operating Budget

5.1 Genesis shall in accordance with City's schedule, prepare and submit for City's approval a line item budget for the Facility. The Budget shall include, but not be limited to, the following detailed projections:

Gross Revenues by department sources
Operating expenses by department
Administrative and general expenses

Travel expenses
Marketing, advertising and promotion expenses
Energy costs; and
Repairs and maintenance

Each such budget shall be prepared and presented in equal or greater detail as shown on Exhibit D attached hereto.

5.2 It is understood that Genesis shall have an approved budget prior to the first day of each calendar year. Genesis shall use all reasonable efforts not to exceed or encumber any funds in excess of the approved budget.

Section Six
Bank Accounts

6.1 Gross revenues shall include all revenues of every kind derived from the use and operation of the Facility. Genesis shall maintain and have control over an operating account for the Facility. Genesis shall deposit all gross revenues in the operating account within one (1) business day of receipt. Genesis shall use the operating account for payment of all operating expenses.

6.2 Operating expenses shall include all expenses itemized herein and in the approved operating budget. All operating expenses of the Facility shall be paid from the operating account and include documentation of the expense. Genesis shall provide an accounting of all expenses paid on a monthly basis to City and provide any and all documentation supporting these expenditures.

6.3 At all times during the term of this Agreement, and subject to annual appropriation by the City Council, City shall be ultimately responsible for providing funds necessary to pay all valid operating expenses in accordance with City's routine accounting procedures. Concurrent with the commencement of this Agreement, City shall provide initial funding for the operating account in the amount of $100,000. City shall not be required to provide additional funding. However, under no circumstances shall Genesis be liable for the payment of operating expenses and/or shall Genesis be obligated to fund the operation of the Facility pending reimbursement by City. At the termination or expiration of this Agreement, and any extension thereof, City shall be entitled to return of the entire balance of the operating account after payment of all approved outstanding expenses. The Parties anticipate seasonal variation in both revenue and expenses for the Facility. To that end, the parties agree that a reserve balance held in the operating account serves that option to draw down on a monthly basis, after payment by Genesis of that month's expenses, any balance in the operating account exceeding $100,000. The funds of this monthly draw down will be held in an account managed by the City. Failure of Genesis at any time to meet actual Facility operating expense from the current operating account balance shall be a default of this Agreement.

Section Seven
Accounting

7.1 Genesis shall submit to City, within thirty (30) days after the end of each month, GAAP standard financial reports for the Facility including a balance sheet and statement of revenues and expenditures (budget to actual) for the current month and year to date.

Genesis will also provide to City a statement of cash flows and a copy of the general ledger. City shall promptly advise Genesis of any objection to each monthly report.

7.2 Upon initiation of this Agreement and as often as may be reasonably required by City, City and Genesis shall together conduct inventories of all assets, equipment, and expendable supplies of the Facility.

7.3 The City reserves the right with proper notice to review the detailed supporting financial documentation.

7.4 Genesis shall meet with City on a quarterly basis to review the operational/financial performance information.

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Contract Authority

8.1 Genesis shall not without City's prior approval:

1) Enter into any vendor, service or user/rental occupancy contracts for the Facility that have a term longer than one (1) year, or

2) Enter into any contracts for purchase of goods, equipment or services for the Facility that are in excess of two thousand five hundred dollars ($2,500).

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9.1 All routine and minor repairs, maintenance and equipment servicing shall be the responsibility of Genesis as an operating expense of the Facility. Genesis shall obtain approval from City for all such expenses in excess of two thousand five hundred dollars ($2,500). Genesis shall be responsible for assuring that all repairs, replacements and maintenance shall be of a quality and class at least equal to the original work.

9.2 If Genesis is unable to contact City after using all reasonable efforts to do so; Genesis may make emergency repairs without City's prior consent. In such an event, Genesis shall promptly notify City and City shall reimburse Genesis for the full amount of such emergency repairs. An emergency repair is defined as a repair of a condition which if not performed immediately creates an imminent danger to persons, property, or an unsafe condition at the Facility threatening persons or property.

9.3 Genesis, in accordance with the operating budget, shall be responsible for purchasing all expendable supplies for the operation of the Facility.

9.4 City shall be responsible for replacement of all major components or systems to the Facility. These include, but are not limited to, roof replacement or repairs, HVAC unit replacement or repairs, ice making equipment, major ice maintenance equipment, plumbing, and electrical. These expenditures will not come out of the Operating Budget of the Facility.

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10.1 All personnel employed at the Facility shall be employees of Genesis and not of City. Genesis shall select the number, function, qualifications, compensation and benefits of its employees and shall control the terms and conditions of their employment. All employee compensation, including payroll, taxes, insurance and retirement, shall be Facility operating expenses.

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11.1 Ownership of the equipment shall remain with the party who supplied same and each party shall cooperate in the redelivery of said equipment in good working order and condition, reasonable wear and tear excepted, upon the termination of this Agreement.

Article 12
Insurance

12.1 Except as otherwise provided herein, the cost of all insurance required to be carried hereunder by either party shall be an operating expense of the Facility. Genesis will make every reasonable effort to include Facility in the Genesis master policy for the other facilities in its management portfolio.

12.2 City shall carry real and personal property Insurance on the Facility (including contents, loss of income and other additional perils) against loss or damage in such amounts as may be determined by City.

12.3 Genesis shall carry the following minimum insurance, in the name of Genesis with City listed as additional insured:

1) Commercial general liability insurance insuring against claims for injury, death or property damage occurring on, in or about the Facility with single limit, aggregate and excess liability coverage in commercially reasonable amounts and with deductible limits established by the City.
2) Worker's Compensation in a statutory amount and Employers Liability Insurance in an equal sum on all personnel employed by Genesis at the Facility, including the fitness center, during the term of this Agreement.
3) Employee Theft Insurance with limits and deductible amounts approved by City.

12.4 Genesis shall provide City with a certification of the above required coverages prior to commencement of the Agreement. All policies required of Genesis shall be insured by companies authorized to do business in the State of Kansas.

Section Thirteen
Default

13.1 When a party fails to timely make any payment due hereunder or breaches any of the material terms hereof, such party shall be in default.

13.2 If a default occurs, the non-defaulting party must notify the defaulting party in writing by certified mail or hand delivered letter within ten (10) days the nature of the default. The defaulting party shall have fifteen (15) days from receipt of the written notice to remedy the default, unless the default presents a danger to the Facility, the public, employees of Genesis, or any other danger. Such defaults that present a danger to the Facility, the public, employees of Genesis or any other danger, must be corrected within twenty-four (24) hours.

13.3 Upon failure of the defaulting party to remedy the default within the time prescribed the non-defaulting party may terminate this Agreement.

13.4 Upon termination of this Agreement the non-defaulting party may pursue all remedies available to it under the terms hereof and under any applicable law.

Section Fourteen
Applicable Law

14.1 This Agreement shall be governed by the laws of the State of Kansas and wherever required shall be construed and interpreted to comply with the cash basis and budget law of the State of Kansas. Venue for any action or proceeding brought by either party to this agreement shall be in Wichita, Kansas. The prevailing party in any such proceeding shall be entitled to recover its costs and reasonable attorney fees including collection costs. No legal proceeding arising out of this Agreement shall be brought by either party more than three (3) years after the cause of action has occurred.

Article Fifteen
Indemnification

15.1 Each party shall indemnify and hold harmless the other party, its directors, officers, employees, agents, successor, and assigns from all damages, costs, expenses and liabilities, including reasonable attorney's fees and disbursements incurred in connection with the indemnifying party's failure to perform its obligations and duties under this Agreement.

Article Sixteen
Other Provisions

16.1 Notices to the parties shall be deemed to have been given when mailed by certified mail, commercial carrier, or personal delivery to the parties at the following addresses:

City of Wichita
Park and Recreation Department
City Hall 11th Floor
455 N. Main
Wichita, KS 67202

Genesis Health Clubs Management LLC
Attn. Rodney Steven II
6100 E. Central STE 3
Wichita, KS 67208

16.2 This Agreement, including all Exhibits, constitutes the entire understanding between the parties relating to the rights herein granted and the obligation herein assumed and correctly sets forth the rights, duties, and obligations of each party to the other as of the date of this Agreement. Any prior Agreements, promises, negotiations or representations regarding the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect. No alteration or variation of any provision of this Agreement shall be valid unless reduced to writing and signed by both parties.

16.3 This Agreement shall benefit and bind the successors, affiliates and assigns of the party. No course of dealing between the parties and no failure to exercise any right granted, or provision included by this Agreement shall be construed as a waiver of the right to enforce the terms of this Agreement as written.

16.4 This Agreement shall not be assigned by either party without the other's prior written consent.

16.5 If any provision of this Agreement is determined to be invalid, illegal or unenforceable in any respect as written, such provision shall be automatically modified to the minimum extent necessary to make it enforceable and the provision as so modified shall be enforced, without invalidating the Agreement as a whole.

16.6 Each party is a valid and legally existing entity and each of the undersigned hereby state that he/she has full authority to enter into this Agreement and hereby accepts this Agreement on behalf of the entities identified below.

16.7 This Agreement may be executed in any number of counterparts, including fax or facsimile transmission or scanned and emailed, and each counterpart shall be deemed to be an original instrument, all such counterparts together shall constitute one (1) instrument.

16.8 The effective date of this Agreement is the date of execution by the last party to sign.

City of Wichita

By: _____
Carl Brewer, Mayor

Date: _____

Attest:

_____
Karen Sublett, City Clerk

Genesis Health Club Management, LLC

By: _____
Rodney Steven II: President

Date: _____

Approved as to form:

_____
Gary Rebenstorf, City Attorney

Exhibit A
Capital Improvements

Capital Improvement Estimates List Building Wide

HVAC-1st floor Lower level: office space, entryway, party room, pro shop, concession	$30,000
New Flooring 1st floor and stairs	$75,000
New Signage on Exterior	$30,000
Interior Painting	$28,000
Exterior Paint	$19,000
Maintenance Room Paint and Repair	$ 6,000
New Lockers	$10,000
New Benches	$ 9,000
New Lighting	$28,000
Interior Doors and Trim Replacement	$ 6,000
Hockey Netting System	$30,000
Video Security System	$25,000
Point of Sale System	$20,000
Subtotal	**$316,000**

Exhibit B
Performance Based Incentive Compensation

City will pay Genesis performance based incentive compensation each year based on the prior year's annual statement of revenues less expenses as referenced in Section 7.1 above if the performance measure targets are met. This incentive payment will occur on about March 1 of the following year.

Performance measures will be two (2) items, net revenue and attendee numbers. The target performance measure for annual net revenue is $10,000. The target performance measure for annual attendance will be measured on public and group skating. During the first year of this agreement an accurate attendance count shall be conducted and established as the attendance target. These performance targets shall increase 2% annually during each year of this agreement.

If these targets are met, City agrees to:

1. Pay Genesis 10% of the net income for any amount of net income up to $10,000.
2. Pay Genesis an additional 20% of the net income for any amount of net income over $10,000.

Exhibit C

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

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

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

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

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

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

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

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

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

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations,

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

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

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

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

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

D. Exempted from these requirements are:

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

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

Exhibit D

Budget Detail

Wichita Ice Center
Proposed Budget for
2011

Revenues				
Public Skating Admissions		$ 152,500		
Adult Hockey Revenue		$ 178,686		
Youth Hockey Revenue		$ 9,793		
Contract Ice Revenue		$ 185,725		
Program Misc. Revenue		$ 529,772		
	Total Revenues		**$**	**1,056,476**
Expenses				
Cost of Goods Sold		$ 214,998		
Payroll and Expenses		$ 378,129		
Management Contract		$ 42,000		
Travel and Entertainment		$ 2,378		
Repairs		$ 39,500		
Utilities		$ 227,454		
Marketing		$ 7,000		
Program Expenses		$ 3,994		
Building and Maintenance		$ 34,800		
Supplies		$ 45,027		
Other Misc.		$ 51,642		
	Total Expenses		**$**	**1,046,922**
	Net Income		**$**	**9,554**

Professional Management Services Agreement

This Agreement is made by and between Genesis Health Clubs Management LLC , a Kansas limited liability company, "Genesis" and the City of Wichita, a Kansas municipal corporation "Owner", hereinafter collectively referred to as the Parties.

Owner is the property owner of the Wichita Ice Center, located at 505 W. Maple St. in Wichita, Kansas, hereinafter referred to as the "Facility".

Owner desires to retain a management company to operate and manage the Facility in order to benefit the public's recreational opportunities, to minimize Owner's operating costs and to maximize the use of the Facility.

Genesis operates and manages recreational and fitness facilities throughout the state of Kansas and desires to manage the facility according to the terms and conditions set forth in this Agreement.

Therefore, in consideration of the mutual promises, terms, and conditions contained in this Agreement, the Parties hereby contract and agree as follows:

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1.1 Subject to all policies and guidelines that Owner may establish from time to time and with consideration of Genesis input; Genesis shall provide the following management services in compliance with all applicable Federal, State, and Municipal laws and regulations:

1) Operate and maintain the Facility, its equipment, material and supplies and programs.
2) Fully staff the Facility with its own employees, including a full time manager, and supervise their conduct and performance in the operation of the Facility.
3) Collect all gross revenues generated by Facility, pay all operating expenses of the Facility and maintain all financial records pertaining to the facility.

1.2 Owner agrees to fund capital improvements to the Facility as outlined in Exhibit A for an amount not to exceed $316,000.

1.3 Owner agrees to allow Genesis management and oversight of capital improvements listed in Exhibit A contingent upon review and approval of plans and specifications by Public Works and subject to City code enforcement.

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Term of Agreement

2.1 The initial term of this agreement shall be three (3) years with two (2) one (1) year renewal options. The two (2) one (1) year renewal options must be agreed upon by both Owner and Genesis. Termination shall be effective at the end of the initial term, at the end of any renewal term, or at the end of any continuation thereof upon ninety (90) day advance written notice.

Section Three
Compensation

3.1 Owner shall pay Genesis, as full compensation for services provided the following: forty-two thousand and no/100 dollars ($42,000) per year for the first three (3) years of this Agreement, and forty-five thousand and no/100 dollars ($45,000) per year for any renewal term. This amount is payable, in advance, in equal monthly installments paid on the first day of each month during the term thereof. If applicable, the first and last payments shall be prorated.

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12.2 Owner shall carry real and personal property Insurance on the Facility (including contents, loss of income and other additional perils) against loss or damage in such amounts as may be determined by Owner.

12.3 Genesis shall carry the following minimum insurance, in the name of Genesis with Owner listed as additional insured:

1) Commercial general liability insurance insuring against claims for injury, death or property damage occurring on, in or about the Facility with single limit, aggregate and excess liability coverage in commercially reasonable amounts and with deductible limits established by the Owner.
2) Worker's Compensation and Employers Liability Insurance on all personnel employed by Genesis at the Facility, including the fitness center, during the term of this Agreement.
3) Employee Theft Insurance with limits and deductible amounts approved by Owner.

Section Thirteen
Default

13.1 When a party fails to timely make any payment due hereunder or breaches any of the material terms hereof, such party shall be in default.

13.2 If a default occurs, the non-defaulting party must notify the defaulting party in writing by certified mail or hand delivered letter within ten (10) days the nature of the default. The defaulting party shall have fifteen (15) days from receipt of the written notice to remedy the default, unless the default presents a danger to the Facility, the public, employees of Genesis, or any other danger. Such defaults that present a danger to the Facility, the public, employees of Genesis or any other danger, must be corrected within twenty-four (24) hours.

13.3 Upon failure of the defaulting party to remedy the default within the time prescribed the non-defaulting party may terminate this Agreement.

13.4 Upon termination of this Agreement the non-defaulting party may pursue all remedies available to it under the terms hereof and under any applicable law.

Section Fourteen
Applicable Law

14.1 This Agreement shall be governed by the laws of the State of Kansas and wherever required shall be construed and interpreted to comply with the cash basis and budget law of the State of Kansas. Venue for any action or proceeding brought by either party to this agreement shall be in Wichita, Kansas. The prevailing party in any such proceeding shall be entitled to recover its costs and reasonable attorney fees including collection costs. No legal proceeding arising out of this Agreement shall be brought by either party more than one (1) year after the cause of action has occurred.

Article Fifteen
Indemnification

15.1 Each party shall indemnify and hold harmless the other party, its directors, officers, employees, agents, successor, and assigns from all damages, costs, expenses and liabilities, including reasonable attorney's fees and disbursements incurred in connection with the indemnifying party's failure to perform its obligations and duties under this Agreement.

Article Sixteen
Other Provisions

16.1 Notices to the parties shall be deemed to have been given when mailed by certified mail to the parties at the following addresses:

City of Wichita
Park and Recreation Department
City Hall 11th Floor
455 N. Main
Wichita, KS 67202

Genesis Health Clubs Management LLC
Attn. Rodney Steven II
6100 E. Central, Ste 3
Wichita, KS 67208

16.2 This Agreement, including all Exhibits, constitutes the entire understanding between the parties relating to the rights herein granted and the obligation herein assumed and correctly sets forth the rights, duties, and obligations of each party to the other as of the date of this Agreement. Any prior Agreements, promises, negotiations or representations regarding the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect. No alteration or variation of any provision of this Agreement shall be valid unless reduced to writing and signed by both parties.

16.3 This Agreement shall benefit and bind the successors, affiliates and assigns of the party. No course of dealing between the parties and no failure to exercise any right granted, or provision included by this Agreement shall be construed as a waiver of the right to enforce the terms of this Agreement as written.

16.4 This Agreement shall not be assigned by either party without the other's prior written consent.

16.5 If any provision of this Agreement is determined to be invalid, illegal or unenforceable in any respect as written, such provision shall be automatically modified to the minimum extent necessary to make it enforceable and the provision as so modified shall be enforced, without invalidating the Agreement as a whole.

16.6 Each party is a valid and legally existing entity and each of the undersigned hereby state that he/she has full authority to enter into this Agreement and hereby accepts this Agreement on behalf of the entities identified below.

16.7 This Agreement may be executed in any number of counterparts, including fax or facsimile transmission or scanned and emailed, and each counterpart shall be deemed to be an original instrument, all such counterparts together shall constitute one (1) instrument.

16.8 The effective date of this Lease is the date of execution by the last party to sign.

Genesis Health Club Management, LLC

By: _____
Rodney Steven II: President

Date: _____

City of Wichita

By: _____
Carl Brewer, Mayor

Date: _____

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary Rebenstorf, City Attorney

Exhibit A
Capital Improvements

Capital Improvement Estimates List Building Wide

HVAC-1st floor Lower level: office space, entryway, party room, pro shop, concession	$30,000
New Flooring 1st floor and stairs	$75,000
New Signage on Exterior	$30,000
Interior Painting	$28,000
Exterior Paint	$19,000
Maintenance Room Paint and Repair	$ 6,000
New Lockers	$10,000
New Benches	$ 9,000
New Lighting	$28,000
Interior Doors and Trim Replacement	$ 6,000
Hockey Netting System	$30,000
Video Security System	$25,000
Point of Sale System	$20,000
Subtotal	**$316,000**

Exhibit B
Performance Based Incentive Compensation

Owner will pay Genesis performance based incentive compensation each year based on the prior year's annual statement of revenues less expenses as referenced in Section 7.1 above if the performance measure targets are met. This incentive payment will occur on about March 1 of the following year.

Performance measures will be two (2) items, net revenue and attendee numbers. The target performance measure for annual net revenue is $10,000. The target performance measure for annual attendance will be measured on public and group skating. During 2010, the actual attendees were 41,982 and 5,653 respectively. These performance targets shall increase 2% annually during each year of this agreement.

If these targets are met, Owner agrees to:

1. Pay Genesis 10% of the net income for any amount of net income up to $10,000.
2. Pay Genesis an additional 20% of the net income for any amount of net income over $10,000.

Exhibit C

Budget Detail

Wichita Ice Center
Proposed Budget for
2011

Revenues					
Public Skating Admissions		$	152,500		
Adult Hockey Revenue		$	178,686		
Youth Hockey Revenue		$	9,793		
Contract Ice Revenue		$	185,725		
Program Misc. Revenue		$	529,772		
	Total Revenues			**$**	**1,056,476**
Expenses					
Cost of Goods Sold		$	214,998		
Payroll and Expenses		$	378,129		
Management Contract		$	42,000		
Travel and Entertainment		$	2,378		
Repairs		$	39,500		
Utilities		$	227,454		
Marketing		$	7,000		
Program Expenses		$	3,994		
Building and Maintenance		$	34,800		
Supplies		$	45,027		
Other Misc.		$	51,642		
	Total Expenses			**$**	**1,046,922**
	Net Income			**$**	**9,554**

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Third Program Year Action Plan: 2011-2012 of 2009-2013 Consolidated Plan

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Approve the recommendations for 2011-2012 expenditures for Community Development Block Grant, HOME Investment Partnerships and Emergency Shelter Grant programs, and authorize the required 30 day public comment period.

Background: On December 7, 2010, the City Council approved allocation categories for Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME) and Emergency Shelter Grant (ESG) programs. CDBG allocations for Women's Services, Youth Recreation and Enrichment and Summer Youth Employment and all ESG program allocations required the issuance of Requests for Proposals (RFPs) to select service providers. In addition, Community Housing Development Organizations (CHDOs) were invited to apply for HOME funds designated for CHDO development.

Analysis: Staff issued the RFPs and applications and conducted a preliminary review of responses. The documents were forwarded to the City Council-appointed Grants Review Committee (GRC) for review and recommendations. The GRC held one public hearing during which all proposers who met the minimum threshold for CDBG and HOME funds were invited to make presentations on their proposals.

ESG proposals were reviewed by the Continuum of Care Coordinating Team which is made up of service providers, government and nonprofit entities that have experience with homeless programming. Its recommendations were submitted to the GRC during the public hearing and accepted.

The GRC considered all written and oral information presented and received, and submitted funding recommendations to the City Manager.

Community Development Block Grant

Women's Shelter Services: $300,000
Purpose: to provide temporary shelter, counseling and other support services for an average of 350 women and children who are fleeing domestic violence situations.

Agency	2010-11 Allocation	2011-2012 Request	GRC & Staff
Catholic Charities	$123,321	$145,835	$136,500
YWCA	$145,712	$175,024	$163,500

Summer Youth Employment: $200,000
Purpose: to provide exposure to the responsibilities and rewards of positive work experiences. Specific outcomes include instilling positive work habits, improving employability skills, providing income, and providing lessons on money-management.

Agency	2010-11 Allocation	2011-2012 Request	GRC & Staff
YMCA	$163,186	$170,780	$170,780

Note: The YMCA is the only agency which applied for this program. The GRC recommended transferring the balance available for Summer Youth Employment ($29,220) to Youth Recreation and Enrichment.

Youth Recreation and Enrichment: $145,000 + $29,220 = $174,220
Purpose: to provide constructive and developmentally appropriate enrichment and recreational activities for middle school students in grades six through eight in a safe and supervised setting during non-school hours.

Agency	2010-11 Allocation	2011-2012 Request	GRC & Staff
Big Brothers, Big Sisters	$8,000	$0	$0
Boys & Girls Clubs	NA	$91,644	$25,000
Rainbows United	NA	$41,220	$38,472
Wichita Dream Center	NA	$8,895	$6,495
YMCA	$92,000	$134,574	$104,253
Hope Street	NA	$52,662	$0
Urban League	NA	$30,000	$0
TOTAL	$100,000	**$358,995**	**$174,220**

Note: The recommendations for Youth Recreation and Enrichment reflect the GRC's desire to give three new agencies an opportunity to provide services however they also voted to request that should the new agencies fail to accept the funding and/or fail to perform during the year, that any remaining funds will be transferred to the YMCA.

Program Administration: $616,976
Purpose: HUD allows up to 20% of the entitlement grant to be used for Program Administration, which includes reasonable costs associated with general management, oversight, coordination, monitoring and evaluation.

Category	2010/2011	2011
Indirect Costs	$57,749	$142,213
Program Management	$351,217	$351,217
Fair Housing Initiatives	$10,000	$10,000
Historic Preservation Planning	$97,161	$87,000
Mandated Consolidated Plan Activities	$25,710	$25,710
TOTAL	**$541,837**	**$616,140**

HOME Investment Partnerships Program

Applications were solicited from Community Housing Development Organizations (CHDOs) to present plans to develop affordable housing. Amount projected: $300,000

Agency	2010-11 Allocation	2011-2012 Request	GRC & Staff
Mennonite Housing Services	$146,890	$175,000	$176,144
Power CDC	$128,141	$161,760	$162,905
TOTAL	**$275,031**	**$336,760**	**$339,339,049**

The total allocation represents $300,000 from the anticipated new allocation from HUD, plus a re-allocation of $39,049 in prior year unspent CHDO funds from Community Housing Services. Community Housing Services (CHS) did not submit an application for 2011-2012 funding. On February 9, 2011, the Board of Directors of CHS voted to dissolve the agency.

Emergency Shelter Grant (ESG) Funds

ESG funds may be used for essential services, maintenance and operations and homeless prevention. Amount projected: $125,133

Agency	Essential Services	Operations	Homeless Prevention	Administration	TOTAL
Anthony Family Shelter	$6,277	$18,457			$24,734
Harbor House		$8,869			$8,869
Center of Hope			$20,000		$20,000
Inter-Faith Inn	$869	$19,451			$20,320
Salvation Army		$16,245			$16,245
UMOD	$25,140				$25,139
YWCA		$3,567			$3,567
City of Wichita				$6,256	$6,256
Total	**$32,286**	**$65,591**	**$20,000**	**$6,256**	**$125,133**
Note: Maximum per Category	$37,539 (Maximum is 30% of the allocation)		$37,539 (Maximum is 30% of the allocation)	$6,256 (Maximum is 5% of the allocation)	

Financial Considerations: City staff has projected the following allocations for 2011-2012, which are the same as 2010-2011: CDBG - $2,848,360; HOME - $1,833,537 and ESG - $125,133. However it should be noted that funding reductions have been proposed for CDBG and HOME programs in the federal budget deliberations. Final allocation recommendations based on federal budget decisions will be provided as soon as they are available.

Goal Impact: The HUD Consolidated Plan Process supports the Dynamic Core Area and Vibrant Neighborhoods, Economic Vitality and Affordable Living and Quality of Life goals.

Legal Considerations: All proposed City Council actions and program activities are consistent with HUD regulations and requirements.

Recommendations/Actions: It is recommended that the City Council approve the recommendations for 2011-2012 expenditures for Community Development Block Grant, HOME Investment Partnerships and Emergency Shelter Grant programs, and authorize the required 30 day public comment period.

Attachments: Updated spreadsheet for 2011-2012 recommended allocations.

2011-2012 CONSOLIDATED PLAN ALLOCATION PROPOSED RECOMMENDATIONS February 23, 2011

CDBG - CAPITAL

	COMMUNITY DEVELOPMENT BLOCK GRANT Capital Projects	2010-2011 ALLOCATIONS	2011-2012 PROPOSAL REQUEST	2011-2012 GRC/STAFF RECOMMENDATION*	2011-2012 COUNCIL ALLOCATION
	Sidewalk Repair	$186,519	N/A	$213,809	
	Total - Capital Projects	**$186,519**	**$0**	**$213,809**	

CDBG - HOUSING

	COMMUNITY DEVELOPMENT BLOCK GRANT Housing Projects	2010-2011 ALLOCATIONS	2011-2012 PROPOSAL REQUEST	2011-2012 GRC/STAFF RECOMMENDATION*	2011-2012 COUNCIL ALLOCATION
	Office of Central Inspection Demolition and Clearance of Dangerous and Unsafe Buildings	$171,000	N/A	$171,000	
	Neighborhood Clean-ups	$50,000	N/A	$50,000	
	Housing and Community Services - NIS Administration, which is responsible for: CDBG-funded home repairs $664,467, HOME Deferred home repairs $35,000, Revolving Loan Program, Historic Revolving, Historic Deferred, Home Improvement Loan Program, and Inspection of all HOME-funded homebuyer properties	$482,173	N/A	$482,173	
	- Home Repair	$664,467	N/A	$664,467	
	- Rental Housing Loan Program	$0	N/A	$0	
	Total - Housing Projects	**$1,367,640**	**$0**	**$1,367,640**	

CDBG - NEIGHBORHOOD INITIATIVES

	COMMUNITY DEVELOPMENT BLOCK GRANT Neighborhood Stabilization	2010-2011 ALLOCATIONS	2011-2012 PROPOSAL REQUEST	2011-2012 GRC/STAFF RECOMMENDATION*	2011-2012 COUNCIL ALLOCATION
	Funds Available for Reallocation	**$0**	**N/A**	**$0**	
	Total - Neighborhood Initiatives	**$0**			

**2011-12 Recommendation is based on staff analysis, Grants Review Committee recommendations and actual expenditure history.*

2011-2012 CONSOLIDATED PLAN ALLOCATION PROPOSED RECOMMENDATIONS February 23, 2011

CDBG - PUBLIC SERVICES

	COMMUNITY DEVELOPMENT BLOCK GRANT Public Services - CAP is $1,163,310	2010-2011 ALLOCATIONS	2011-2012 PROPOSAL REQUEST	2011-2012 GRC/STAFF RECOMMENDATION*	2011-2012 COUNCIL ALLOCATION
	City Manager's Office - Neighborhood Assistance Program (DAB)	$343,059	N/A	$305,000	
	Housing and Community Services - Housing First Project Coordinator	$63,605	N/A	$50,000	
RFP	**Women's Services**	**$269,033**	**$320,859**	**$300,000**	
	- Catholic Charities, Inc. - Harbor House	$123,321	$145,835	$136,500	
	- YWCA of Wichita - Women's Crisis Center/Safehouse	$145,712	$175,024	$163,500	
RFP	**Youth Recreation and Enrichment**	**$100,000**	**$395,201**	**$174,220**	
	-YMCA - Middle School After School	$92,000	$170,780	$104,253	
	- BBBS Leaders, Achievers, and Winners (LAW) Camp	$8,000	$0	$0	
	- Boys & Girls Clubs	$0	$91,644	$25,000	
	- Hope Street	$0	$52,662	$0	
	- Rainbows United	$0	$41,220	$38,472	
	- Urban League	$0	$30,000	$0	
	- Wichita Dream Center	$0	$8,895	$6,495	
RFP	**Summer Youth Employment**	**$213,186**	**$170,780**	**$170,780**	
	- Saint Mark United Methodist - Life in Action	$104,000	$0	$0	
	- YMCA - Job Prep	$109,186	$170,780	$170,780	
	Total - Public Services	**$1,357,916**	**$815,620**	**$961,528**	

CDBG - PROGRAM ADMINISTRATION

	COMMUNITY DEVELOPMENT BLOCK GRANT Program Administration - CAP is $616,976	2010-2011 ALLOCATIONS	2011-2012 PROPOSAL REQUEST	2011-2012 GRC/STAFF RECOMMENDATION*	2011-2012 COUNCIL ALLOCATION
	Housing and Community Services - CDBG Indirect Costs	$57,749	N/A	$142,213	
	- CDBG Program Management	$351,217	N/A	$351,217	
	- Fair Housing Initiatives	$10,000	N/A	$10,000	
	Planning Department	**$122,871**	**N/A**	**$112,710**	
	- Historic Preservation Planning	$97,161	N/A	$87,000	
	- Mandated Consolidated Plan Activities	$25,710	N/A	$25,710	
	Total - Planning and Admin.	**$541,837**	**$0**	**$616,140**	
	GRAND TOTAL - CDBG	**$3,453,912**	**$815,620**	**$3,159,117**	

**2011-12 Recommendation is based on staff analysis, Grants Review Committee recommendations and actual expenditure history.*

2011-2012 CONSOLIDATED PLAN ALLOCATION PROPOSED RECOMMENDATIONS February 23, 2011

HOME PROJECTS

	HOME INVESTMENT PARTNERSHIPS PROGRAM Projects	2010-2011 ALLOCATIONS	2011-2012 PROPOSAL REQUEST	2011-2012 GRC/STAFF RECOMMENDATION*	2011-2012 COUNCIL ALLOCATION
	Housing and Community Services - HOME Investment Partnership Administration (Includes $10,716 for City Indirect Costs)	$182,679	N/A	$182,679	
	- HOME Operating Funds for CHDO's	$50,000	N/A	$60,000	
	- HOMEownership 80 Program	$590,153	N/A	$649,111	
	- Boarded-up House Program	$293,927	N/A	$200,000	
	- Housing Development Loan Program	$400,000	N/A	$400,000	
	- Deferred Loan Program	$35,000	N/A	$35,000	
	Total HOME Projects	**$1,551,759**	**$0**	**$1,526,790**	

	HOME INVESTMENT PARTNERSHIPS PROGRAM CHDO Set Aside Projects	2010-2011 ALLOCATIONS	2011-2012 PROPOSAL REQUEST	2011-2012 GRC/STAFF RECOMMENDATION*	2011-2012 COUNCIL ALLOCATION
	CHDO Set Aside	**$275,031**	**$336,760 ****	**$339,049 ****	
	Mennonite Housing Rehab Services (MHRS) - Single Family Home Development	$146,890	$175,000	$176,144	
	Power CDC - Single Family Home Development	$128,141	$161,760	$162,905	
	Total CHDO Set Aside Projects	**$275,031**	**$336,760**	**$339,049**	
	Subtotal - HOME & CHDO Set Aside Projects	**$1,826,790**	**$336,760**	**$1,865,839**	
	GRAND TOTAL - HOME	**$1,826,790**	**$336,760**	**$1,865,839**	

**2011-12 Recommendation is based on staff analysis, Grants Review Committee recommendations and actual expenditure history.*

***This amount includes $39,049.22 re-allocated from prior year unspent CHDO funds*

ESG PROJECTS

	EMERGENCY SHELTER GRANT	2010-2011 ALLOCATIONS	2011-2012 PROPOSAL REQUEST	2011-2012 GRC/STAFF RECOMMENDATION*	2011-2012 COUNCIL ALLOCATION
	Emergency Shelter Grant - Final Allocation	**$125,133**	**$125,133**	**$125,133**	
RFP	**Essential Services - Maximum Allocation (30%)**	**$37,540**	**$47,535**	**$32,286**	
	- Catholic Charities - Anthony Family Shelter	$6,238	$6,277	$6,277	
	- Inter-Faith Ministries - Inter-Faith Inn	$0	$4,258	$869	
	- Inter-Faith Ministries - Safe Haven	$1,046	$2,000	$0	
	- Salvation Army - Emergency Lodge	$0	$0	$0	
	- United Methodist Open Door	$30,256	$35,000	$25,140	
RFP	**Maintenance and Operations**	**$81,463**	**$87,184**	**$66,591**	
	- Catholic Charities - Anthony Family Shelter	$23,530	$23,491	$18,457	
	- Catholic Charities - Harbor House	$10,678	$10,678	$8,870	
	- Inter-Faith Ministries - Inter-Faith Inn	$23,410	$21,924	$19,451	
	- Inter-Faith Ministries - Safe Haven	$0	$6,755	$0	
	- Salvation Army - Emergency Lodge	$19,552	$20,000	$16,246	
	- YWCA - Women's Crisis Center	$4,293	$4,336	$3,567	
RFP	**Homeless Prevention - Maximum Allocation (30%)**	$0	**$20,000**	**$20,000**	
	- Center of Hope - Rent Assistance	$0	$20,000	$20,000	
	Administration - Maximum Allocation (5%)	**$6,130**	**$6,256**	**$6,256**	
	- Housing & Community Services Department - ESG Administration	$6,130	N/A	$4,880	
	- City Indirect Cost	$0	N/A	$1,376	
	GRAND TOTAL - ESG	**$125,133**	**$154,719**	**$125,133**	

**2011-12 Recommendation based on citizen feedback, staff analysis, and Grant Review Committee recommendations.*

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Budget Adjustment for Sidewalk Improvements

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Approve the budget adjustment for the Community Development Block Grant-Recovery (CDBG-R) and authorize the necessary signatures.

Background: On June 2, 2009, the City Council approved a substantial amendment to the 2004-2008 Consolidated Plan in order to receive funds from the American Recovery and Reinvestment Act of 2009 (ARRA). The Substantial Amendment for the CDBG-R program allocated $487,713 for comprehensive sidewalk repairs in CDBG-eligible areas which were identified by the Public Works Department as having a high number of complaints and poor sidewalk conditions. The objective was to create a visible impact in the entire area. The Substantial Amendment also allocated $200,000 CDBG-R funds for a façade improvement program for businesses located in the local investment areas. Both uses were designed to achieve the ARRA goals of investing in infrastructure that will provide long-term economic benefits and assisting those most impacted by the recession.

Analysis: In the façade improvement program, eight projects are underway and expenditures are expected to be less than the budgeted amount. In the sidewalk program, 131, 973 sq ft of sidewalk has been replaced utilizing all funds allocated for this purpose. This request is to move the balance of façade improvement funds to the sidewalk program to continue improvements to sidewalks. The amount of the request is $70,000.

Financial Considerations: All funds for this transaction are from the City's ARRA allocation of CDBG-R funds. No City general funds are involved. All ARRA funds have to be expended by September 30, 2012.

Goal Impact: Approval of this funding will impact the Economic Vitality & Affordable Living goal.

Legal Considerations: The Law Department has reviewed and approved the Memorandum of Understanding as to form.

Recommendations/Actions: It is recommended that the City Council approve the budget adjustment for the Community Development Block Grant-Recover (CDBG-R) and authorize the necessary signatures.

Attachments: Memorandum of Understanding

THE CITY OF WICHITA

DATE: February 7, 2011

TO: James L. Armour, City Engineer - Co-Director of Public Works & Utilities

FROM: Mary K. Vaughn, Director of Housing & Community Services

SUBJECT: Renewal and Supplementation of September 18, 2009
Memorandum of Understanding
Hazardous Sidewalk Replacement with Community Development Block Grant-R

This Memorandum of Understanding (MOU) serves as the formal basis for renewal of the following performance requirements by the Department of Public Works and the addition of supplemental funding using funds provided under the American Recovery and Reinvestment Act of 2009, as amended.

It is mutually agreed between the Director of Housing & Community Services and the Co-Director of Public Works & Utilities that the Department of Public Works will furnish all services necessary to carry out the additional Hazardous Sidewalk Replacement project (Phase 4) in the City's Neighborhood Revitalization Area specified in Attachment A, Performance Criteria.

In addition to the funds previously allocated, the Department of Public Works will undertake the additional work elements identified for this project and stay within the $70,000 budget using Community Development Block Grant – R (CDBG-R) funding as stated in Attachment B.

During the administration of activities covered by this Memorandum, the Department of Public Works agrees to comply with all applicable laws, regulations and policies of the United States, the State of Kansas and the City of Wichita, including, but not limited to, the following:

A. American Recovery and Reinvestment Act of 2009
   a. Section 1512
   b. Section 1605

2. Community Development Block Grant
   a. 24 CFR Part 570
   b. City of Wichita Administrative Regulation No. 63

3. Equal Opportunity
   a. Title VI, Civil Rights Act of 1964.
   b. Section 109, Housing and Community Development Act of 1974, as amended.
   c. Executive Order 11246, as amended.
   d. Section 504 of the Rehabilitation Act of 1973, as amended and The Fair Housing Act. Accessibility Notice (Attachment E)
   e. City of Wichita Administrative Regulation No. 23.

4. Section 3
   a. Section 3, Housing and Urban Development Act of 1968, as amended (Attachment F).
   b. City of Wichita Administrative Regulation No 1.5

5. Grant Administration
   A. City of Wichita Administrative Regulation No. 2.4

6. Historic Preservation
   a. National Historic Preservation Act of 1966, as amended.
   b. National Environmental Policy Act of 1969.
   c. Preservation of Historical and Archaeological Data Act of 1974, amended.
   d. 24 CFR Part 58.

7. Other
   a. Federal Labor Standards.
   b. Clean Air Act, as amended.
   c. Lead-Based Paint Poisoning Prevention Act, as amended (note: requires certifications be retained in project files).
   d. 24 CFR Part 35 - Lead-based Paint Poisoning Prevention in Certain Residential Structures.
   e. 49 CFR Part 24 - Uniform Relocation Assistance and Real Property Acquisition Policies Act.
   f. City of Wichita Administrative Regulation No. 1.2
   g. City of Wichita Relocation and Anti-displacement Plan (one-for-one housing replacement).
   h. HUD Expenditure Guidelines.

Department of Housing & Community Services will review all changes, modifications, deletions or additions to the Memorandum of Understanding prior to being sent to the City Manager or City Council.

Any significant change in scope and intent of this Memorandum of Understanding shall be considered and approved or disapproved by all parties. A significant change is defined as a change in program intent, program beneficiaries, basic program guidelines, and any budget or funding change over $10,000. Any change approved by the City Council shall have the full force and effect as all other provisions of this Memorandum of Understanding as though originally fully set out herein and shall be codified by a formal amendment.

Changes or amendments to this Memorandum of Understanding not submitted to the City Council for approval must be in writing and have the written approval of all signatories of this agreement.

Approval by the Director of Housing & Community Services and the City Manager constitutes a directive to implement this project.

The Memorandum of Understanding, as renewed and supplemented hereby, shall continue in effect until September 30, 2011.

APPROVED: ***DATE***

_____ _____

Mary K. Vaughn
Director of Housing & Community Services

_____ _____

James L. Armour
City Engineer – Co-Director of Public Works & Utilities

_____ _____

Robert Layton
City Manager

APPROVED AS TO FORM:

_____ _____

Gary E. Rebenstorf
City Attorney

Attachment A

Community Development Block Grant-R
PERFORMANCE CRITERIA

The Public Works Department shall utilize additional CDBG-R funds in the amount of $70,000 to perform all services necessary to complete the removal and replacement of hazardous sidewalks, as funding permits, in the City's Neighborhood Revitalization Areas (Attachment D).

This activity is eligible under 24 CFR 570.201(c), public facilities and improvements meeting the HUD National Objective on a Low Mod Area Benefit under 24 CFR 570.208(1)(i). (Attachment D).

SCOPE OF SERVICES:

1. The Department of Public Works will provide project oversight and coordination within the project budget and provide the Department of Housing & Community Services with all contracts between the City and subrecipients for review before being submitted to Law or the City Manager.

2. All projects funded with CDBG-R funds will require an Environmental Review by the Metropolitan Area Planning Department. The Department of Public Works will request such a review and ensure that it is completed prior to any expenditure of funds. Any changes in the scope or alternate locations of work to be performed will require an Environmental Review update. All requests for Environmental Review must include the following information:

    - Requesting department
    - Funding source
    - Description of work to be performed
    - Address or legal description of property

3. The Department of Public Works will develop specifications and Purchasing will bid this project in separate phases to provide and encourage Emerging Business Enterprises (EBE) to participate.

4. The Department of Public Works will develop specifications which include Federal Labor Standards, opportunities for EBE participation and Section 3 requirements. Bids will be solicited through Purchasing. The specifications shall require the contractor to supply all equipment, material, and services necessary to complete the job, including labor, and will warrant the work for a period of time commensurate with the type of improvement and industry standards. Prior to sending bid specifications, Public Works will provide Housing & Community Services with a copy of the bid specifications to ensure all necessary federal forms are included.

    A. Federal Labor Standards - Housing & Community Services Department will obtain a wage decision from HUD to apply to this project. The wage decision provided by HUD must be included in the bid specifications.

B. Emerging Business Enterprises – The Purchasing Department shall enhance opportunities for qualified Emerging Business Enterprises by increasing their representation in the competitive base of contractors from which the City regularly purchases goods and services and ensure that all suppliers have equal access to the City's purchasing opportunities.

In order to meet this obligation Purchasing will bid this project in phases, as determined by the Department of Public Works specifications, to provide additional opportunities for EBEs. The Purchasing Department must demonstrate affirmative actions to encourage EBEs participation per 24 CFR 570.506(g)(6) and report to the Department of Housing & Community Services the level of participation using Attachment C.

C. Section 1605 of the Recovery Act – Section 1605 requires that all iron, steel and manufactured goods used in construction, alteration, repair, or maintenance of a public building or public work project assisted with funds under the Recovery Act must be produced in the United States, unless the Secretary finds that: the requirement is inconsistent with public interest; those goods are not reasonably available or produced in sufficient quantity in the U.S.; or the use of the goods will increase the project cost by more than 25 percent.

D. Section 3 of the HUD Act of 1968 – Department of Public Works must comply with 24 CFR Part 135, Section 3 of the HUD Act of 1968, as amended, which requires that, to the greatest extent feasible, employment and other economic opportunities shall be directed to low and very low income persons, and to business concerns which provide economic opportunities to such persons.

Contractors and subcontractors with contracts over $100,000 shall maintain information as indicated on HUD form 2516 (Attachment C) and submit such information annually to the Department of Public Works and on completion of the project or by September 30, 2011, whichever comes first. The Department of Public Works shall provide a copy of all HUD-2516 forms submitted to Housing & Community Services.

Section 3 Goals

The City of Wichita in accordance with 24 CFR Part 135, has established goals for CDBG assisted projects. All Section 3 covered contracts shall include the Section 3 clause as shown in Attachment F. Consistent with existing Federal, State and local laws and regulations, the City of Wichita has set the following goals to comply with the Section 3 requirements:

- Committing to employ Section 3 residents at a rate of 30% of the aggregate of new hires for housing and community development assisted projects;
- Committing to contract a minimum of 10% of the total dollar amount of all other Section 3 covered contracts, such as community development infrastructure improvements or professional services;
- Committing to a minimum of 3% of the total dollar amount of all other Section 3 covered contracts.

Section 3 applies to training, employment, contracting and other economic opportunities

arising in connection with the expenditure of CDBG funds for the following activities:

- Housing construction
- Housing rehabilitation
- Other public construction

5. The Department of Public Works will schedule a pre-bid and pre-construction conference to review and explain applicable EEO/AA, Federal Labor Standards and Section 3 requirements. The Department of Public Works must also document the affirmative steps to enhance opportunities for EBEs. Such affirmative steps may include, but not limited to, technical assistance that is open to all businesses.

6. The Department of Public Works will verify satisfaction through Housing & Community Services that the contractor and its subcontractors have provided all necessary documentation and complied with all HUD regulations, before making final payment.

7. The Department of Public Works will ensure construction is completed according to the extent funds are available. Substitutions or additions can be made as long as the budget contained herein is not exceeded and the substitutions or additions meet all CDBG project eligibility requirements. Substitutions or additions will require prior written approval from Housing & Community Services.

8. The Department of Public Works will ensure that all of the contractor's necessary paperwork and documentation for CDBG requirements and Davis-Bacon compliance has been submitted to Housing & Community Services before final payment is made.

9. Any failure of the subrecipients to live up to the terms of their contract are to be immediately reported to Housing & Community Services with the following information: Agency Name, Address, Program Name, Date of Infraction, Detailed report of infraction(s), Actions taken or planned to resolve the violation.

BUDGET:

The total budget amount for the extension of this project (i.e., Phase 4) shall not exceed $70,000 available from CDBG-R as specified in the budget detail and explanation (Attachment B). It is understood and agreed by and between the Director of Housing & Community Services and the Co-Director of Public Works & Utilities that if the cost of the work to be performed is greater than the amount allocated, work will be accomplished to the extent that funds are available.

All payroll reports will document each project's organizational cost account (OCA) number and the total number of hours worked each day for each OCA as required by the Office of Management and Budget's OMB Circular No. A-87. Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by the responsible official(s) of the governmental unit.

TIMETABLE:

Project Phasing	Phase 1	Phase 2	Phase 3	Phase 4
Completion of Specification	September 17, 2009	November 12, 2009	January 7, 2010	February 17, 2011
Advertise for Bids	September 30, 2009	November 25, 2009	January 20, 2010	March 2, 2011
Pre-Bid Conference	October 6, 2009	December 1, 2009	January 26, 2010	March 8, 2011
Bid Opening	October 9, 2009	December 4, 2009	January 29, 2010	March 11, 2011
Contract Award Date	October 13, 2009	December 8, 2009	February 2, 2010	March 15, 2011
Pre-Construction Meeting	October 29, 2009	December 21, 2009	February 18, 2010	March 31, 2011
Work Order (Construction Start Date)	November 2, 2009	December 28, 2009	February 22, 2010	April 4, 2011
Construction Completion Date	March 26, 2010	May 28, 2010	July 30, 2010	June 30, 2011

OTHER PROGRAM REQUIREMENTS:

All procurement will be accomplished according to City of Wichita and the U.S. Department of Housing and Urban Development (HUD) purchasing policies and procedures in accordance with CFR Part 85.

REPORTS:

All subrecipients of CDBG-R must comply with the reporting requirements established for CDBG-R funding.

On a monthly basis the Department of Public Works will report the following information to the Housing & Community Services Department:

- The number of new jobs created as a result of this project
- The number of jobs retained as a result of this project
- Specific addresses, or address ranges as long as the replaced sidewalks were contiguous
- Project costs
- An evaluation of the project's completion status

Project data are cumulative and should be reported as such.

Upon award of the contract, the Department of Public Works will furnish the Department of Housing & Community Services with a Contract and Subcontract Activity Report (Attachment C) identifying all activity on the project and the Emerging Business Enterprise involvement with such contracts.

Upon completion of construction, and before September 30, 2011 the Department of Public Works will furnish Housing & Community Services a final list of work completed.

CDBG-R EXPENDITURE STANDARDS

Ninety days into the project Housing & Community Services will re-evaluate untimely projects. If the re-evaluation indicates that CDBG-R funds are not being expended in accordance with the intent of this agreement Housing & Community Services may take corrective action by recapturing project funds from the project and reallocating those funds to another eligible activity. Projects with continuing timeliness issues will be evaluated monthly and budget reduction adjustments will be made as necessary.

OTHER REQUIREMENTS

All procurement will be accomplished according to City of Wichita and HUD purchasing policies and procedures in accordance with CFR Part 85.

The Department of Public Works shall record all program transactions into the City's financial system according to procedures established by the Controller's Office.

The Department of Public Works shall establish and maintain accounting records specifically for the CDBG-R funds. Original documentation supporting all expenditures and other program records will be retained for five years after the final audit of expenditures made under this agreement. Records shall also be maintained documenting performance indicated in monthly reports and are subject to review by City staff.

All CDBG-R funded projects will be monitored at least annually to determine if CDBG-R funded activities are being carried out in accordance with the applicable Code of Federal Regulations.

Attachment B

PHASE 4 BUDGET DETAIL

FUND	DEPT./DIVISION	PROJECT	PROJECT-OCA
Community Development Block Grant-R	Housing and Community Services – Community Investments	Hazardous Sidewalk Replacement	

Account Classification			Budget
PERSONAL SERVICES			
01	110	Salaries	
	1100	Bi-Weekly Wages	3,724
	1101	Longevity	
	1205	Auto Allowance	
	1208	Cellular Phone Allowance	
	140	Employee Benefits	1403
	1400	FICA	
	1401	Employees Pension	
	1403	Worker's Compensation	
	1404	Unemployment Compensation	
	1405	Group Health Insurance	
	1406	Group Life Insurance	
TOTAL			**5,127**
CONTRACTUAL SERVICES			
02	2200	PBX – Line Charges	
	2201	PBX – Instrument Charges	
	2203	Long Distance Service	
	2207	Postage – Regular	
	2301	Meals/Lodging Allowance	
	2302	Out of Town Registration	
	2304	Training Consultants	
	2308	Transportation Out of Town	
	2505	Contractor	60,700
	2600	Data Center Charges	
	2902	Advertising	200
	2917	Printing & Photocopying	
	2999	Other Contractuals	
TOTAL			**60,900**
OTHER			
05	5308	Overhead	3,973
TOTAL			**3,973**
GRAND TOTAL			**70,000**

Contract and Subcontract Activity

U.S. Department of Housing and Urban Development

OMB Approval No.: 2535-0117 (exp. 11/30/2009)

Public Reporting Burden for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

Executive Order 12421 dated July 14, 1983, directs the Minority Business Development Plans shall be developed by each Federal Agency and that these annual plans shall establish minority business development objectives. The information is used by HUD to monitor and evaluate MBE activities against the total program activity and the designated minority business enterprise (MBE) goals. The Department requires the information to provide guidance and oversight for programs for the development of minority business enterprise concerning Minority Business Development. If the information is not collected HUD would not be able to establish meaningful MBE goals nor evaluate MBE performance against these goals.
While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.

Privacy Act Notice - The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 el seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. It will not be disclosed or released outside the United States Department of Housing and Urban Development without your consent, except as required or permitted by law.

1. Grantee/Project Owner/Developer/Sponsor/Builder/Agency

Check if: PHA ☐ IHA ☐

2. Location (City, State, ZIP Code)

3a. Name of Contact Person

3b. Phone Number (Including Area Code)

4. Reporting Period ☐ Oct. 1 - Sept. 30 (Annual-FY)

5. Program Code (Not applicable for CPD programs.) See explanation of codes at bottom of page. Use a separate sheet for each program code. ☐

6. Date Submitted to Field Office

Grant/Project Number or HUD Case Number or other identification of property, subdivision, dwelling unit, etc. 7a.	Amount of Contract or Subcontract 7b.	Type of Trade Code (See below) 7c.	Contractor or Subcontractor Business Racial/Ethnic Code (See below) 7d.	Woman Owned Business (Yes or No) 7e.	Prime Contractor Identification (ID) Number 7f.	Sec. 3 7g.	Subcontractor Identification (ID) Number 7h.	Sec. 3 7i.	Contractor/Subcontractor Name and Address 7j. Name	Street	City	State	Zip Code

CPD:
1 = New Construction
2 = Education/Training
3 = Other

7c: Type of Trade Codes:

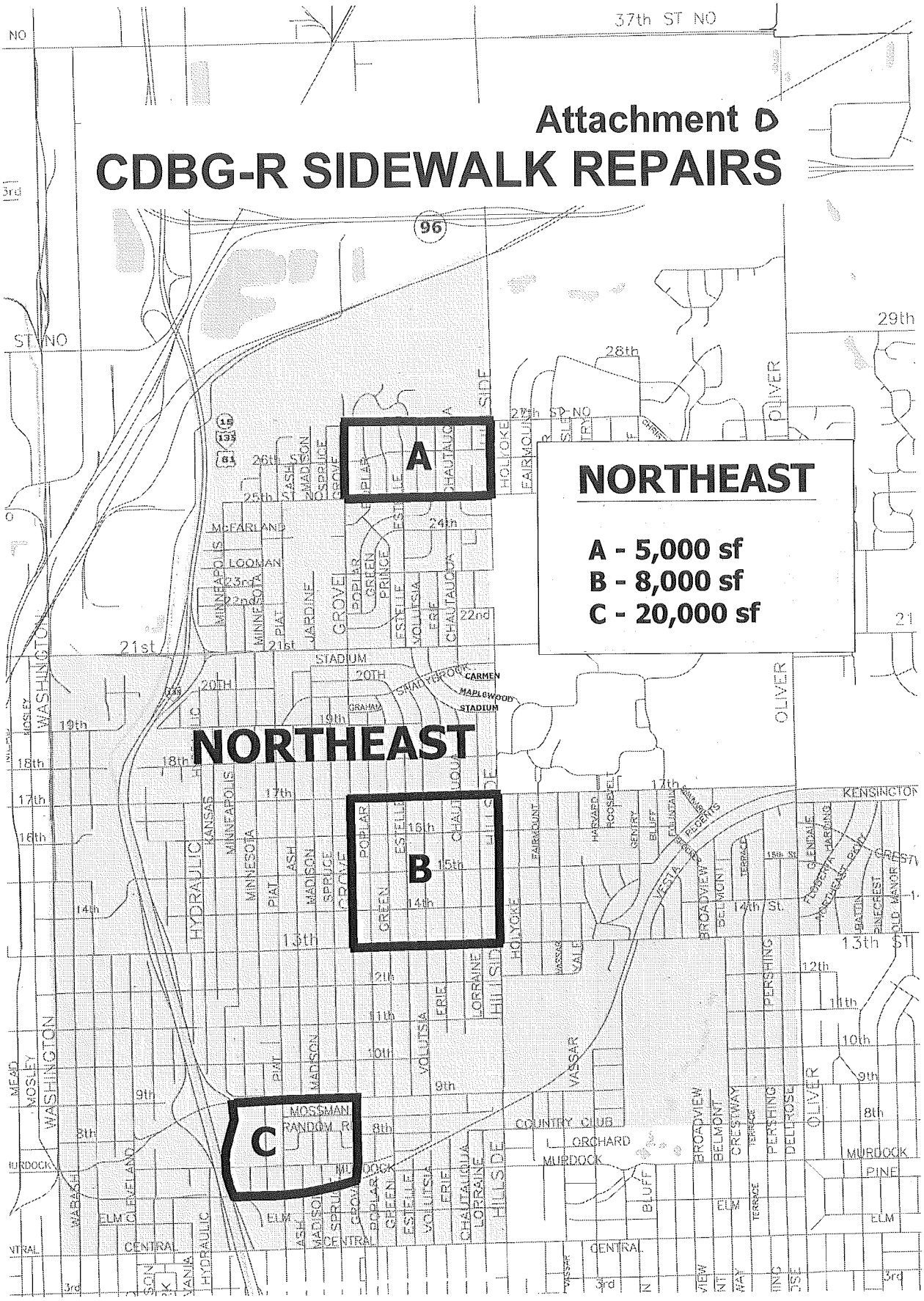
Housing/Public Housing:
1 = New Construction
2 = Substantial Rehab.
3 = Repair
4 = Service
5 = Project Mangt.
6 = Professional
7 = Tenant Services
8 = Education/Training
9 = Arch./Engrg. Appraisal
0 = Other

7d: Racial/Ethnic Codes:
1 = White Americans
2 = Black Americans
3 = Native Americans
4 = Hispanic Americans
5 = Asian/Pacific Americans
6 = Hasidic Jews

5: Program Codes (Complete for Housing and Public and Indian Housing programs only):
1 = All insured, including Section 8
2 = Flexible Subsidy
3 = Section 8 Noninsured, Non-HFDA
4 = Insured (Management
5 = Section 202
6 = HUD-Held (Management)
7 = Public/Indian Housing

Previous editions are obsolete.

form HUD-2516 (8/98)


Attachment D
CDBG-R SIDEWALK REPAIRS
NORTHEAST
A - 5,000 sf
B - 8,000 sf
C - 20,000 sf
A
B
C
NORTHEAST
37th ST NO
29th
28th
27th ST NO
26th
25th
24th
23rd
22nd
21st
20TH
19th
18th
17th
16th
15th
14th
13th
12th
11th
10th
9th
8th
STADIUM
GRAHAM
CARMEN
MAPLEWOOD
STADIUM
KENSINGTON
MURDOCK
PINE
ELM
CENTRAL
COUNTRY CLUB
ORCHARD
MURDOCK
MOSSMAN
RANDOM
WASHINGTON
HYDRAULIC
MINNEAPOLIS
MINNESOTA
PIAT
ASH
MADISON
SPRUCE
GROVE
POPLAR
GREEN
PRINCE
ESTELLE
VOLUTSIA
ERIE
CHAUTAUQUA
LORRAINE
HILLSIDE
HOLYOKE
FAIRMOUNT
VASSAR
BROADVIEW
BELMONT
CRESTWAY
PERSHING
DELMOSE
OLIVER
MOSLEY
MEAD
WABASH
McFARLAND
LOOMAN
JARDINE
KANSAS
HARVARD
ROOSEVELT
GENTRY
BLUFF
COLUMBIA
REGENTS
VESTA
TERRACE
GLENDALE
ROBERT MARSING
BATON
PINECREST
OLD MANOR

Attachment E

U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
All CPD Office Directors
All FHEO Field Offices
All CDBG Grantees

Notice: CPD-05-10

Issued: November 3, 2005
Expires: November 3, 2006

SUBJECT: Accessibility for Persons with Disabilities to Non-Housing Programs funded by Community Development Block Grant Funds -- Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, and the Architectural Barriers Act

I. Purpose

The purpose of this Notice is to remind recipients of Federal funds under the Community Development Block Grant (CDBG) Program of their obligation to comply with Section 504 of the Rehabilitation Act of 1973, HUD's implementing regulations (24 CFR Part 8), the Americans with Disabilities Act, (ADA) and its implementing regulations, (28 CFR Parts 35, 36), and the Architectural Barriers Act (ABA) and its implementing regulations (24 CFR Parts 40, 41) in connection with recipients' non-housing programs. This Notice describes key compliance elements for non-housing programs and facilities assisted under the CDBG programs. However, recipients should review the specific provisions of the ADA, Section 504, the ABA, and their implementing regulations in order to assure that their programs are administered in full compliance.

Applicability

This Notice applies to all non-housing programs and facilities assisted with Community Development Block Grant Funds (e.g. public facilities and public improvements, commercial buildings, office buildings, and other non-residential buildings) and facilities in which CDBG activities are undertaken (e.g., public services). A separate Notice is being issued concerning Federal accessibility requirements for housing programs assisted by recipients of CDBG and HOME program funds.

II. Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973, as amended, provides "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination

under any program or activity receiving Federal financial assistance...". HUD's regulations implementing the Section 504 requirements can be found at 24 CFR Part 8.

Part 8 requires that recipients ensure that their programs are accessible to and usable by persons with disabilities. Part 8 also prohibits recipients from employment discrimination based upon disability.

The Section 504 regulations define "recipient" as any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution organization, or other entity or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance (24 CFR 8.3). For the purposes of Part 8, recipients include States and localities that are grantees and subgrantees under the CDBG program, their subrecipients, community-based development organizations, businesses, and any other entity that receives CDBG assistance, but not low and moderate income beneficiaries of the program. CDBG grantees are responsible for establishing policies and practices that they will use to monitor compliance of all covered programs, activities, or work performed by their subrecipients, contractors, subcontractors, management agents, etc.

Non-housing Programs

New Construction – 24 CFR Part 8 requires that new non-housing facilities constructed by recipients of Federal financial assistance shall be designed and constructed to be readily accessible to and usable by persons with disabilities (24 CFR 8.21(a)).

Alterations to facilities -- Part 8 requires to the maximum extent feasible that recipients make alterations to existing non-housing facilities to ensure that such facilities are readily accessible to and usable by individuals with disabilities. An element of an existing non-housing facility need not be made accessible if doing so would impose undue financial and administrative burdens on the operation of the recipients program or activity (24 CFR 8.21 (b)).

Existing non-housing facilities - A recipient is obligated to operate each non-housing program or activity so that, when viewed in its entirety, the program or activity is readily accessible to and usable by persons with disabilities (24 CFR 8.21 (c)).

Recipients are not necessarily required to make each of their existing non-housing facilities accessible to and usable by persons with disabilities if when viewed in its entirety, the program or activity is readily accessible to and usable by persons with disabilities 24 CFR 8.21(c)(1)). Recipients are also not required to take any action that they can demonstrate would result in a fundamental alteration in the nature of its program or activity or cause an undue administrative and financial burden. However, recipients are still required to take other actions that would not result in such alterations, but would nevertheless ensure that persons with disabilities receive the benefits and services of the program (24 CFR 8.21(c)(iii)).

Historic Preservation - Recipients are not required to take any actions that would result in a substantial impairment of significant historic features of an historic property. However, in such cases where a physical alteration is not required, the recipient is still obligated to use alternative means to achieve program accessibility, including using audio-visual materials and devices to depict those portions of a historic property that cannot be made accessible, assigning persons to guide persons with disabilities into or through portions of historic properties that cannot be made accessible, or otherwise adopting other innovative methods so that individuals with disabilities can still benefit from the program (24 CFR 8.21(c)(2)(ii)).

Accessibility Standards

Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) is deemed to comply with the accessibility requirements for nonhousing facilities. Recipients may depart from particular technical and scoping requirements of UFAS where substantially equivalent or greater accessibility and usability is provided (24 CFR 8.32). For copies of UFAS, contact the HUD Distribution Center at 1-800-767-7468; hearing-impaired, or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

Where a property is subject to more than one law or accessibility standard, it is necessary to comply with all applicable requirements. In some cases, it may be possible to do this by complying with the stricter requirement; however, it is also important to ensure that meeting the stricter requirement also meets both the scoping and technical requirements of overlapping laws or standards.

Employment

Section 504 also prohibits discrimination based upon disability in employment (see 24 CFR Part 8, Subpart B).

III. The Americans With Disabilities Act of 1990

The Americans With Disabilities Act of 1990 (ADA) guarantees equal opportunities for persons with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. Unlike Section 504 which applies only to programs and activities receiving Federal financial assistance, the ADA applies even if no Federal financial assistance is given.

The U.S. Department of Justice enforces Titles I, II, and III of the ADA. HUD shares enforcement responsibility with the Department of Justice for Title II, and is designated the lead Federal agency for all programs, service and regulatory activities relating to state and local public housing and housing assistance and referral. The Equal Employment Opportunity Commission investigates administrative complaints involving Title I. For further information regarding The U.S. Department of Justice enforcement of Title II of the ADA, please visit http://www.ADA.gov.

Title I prohibits discrimination in employment based upon disability. The regulations implementing Title I are found at 29 CFR Part 1630. The Equal Employment Opportunity Commission (EEOC) offers technical assistance on the ADA provisions applying to employment. These can be obtained at the EEOC web site www.eeoc.gov, or by calling 800-669-3362 (voice) and 800-800-3302 (TTY).

Title II prohibits discrimination based on disability by State and local governments. Title II essentially extended the Section 504 requirements to services, programs, and activities provided by States, local governments and other entities that do not receive Federal financial assistance from HUD or another Federal agency. CDBG grantees are covered by both Title II and Section 504. The Department of Justice Title II regulations are found at 28 CFR Part 35.

Title II also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. (28 CFR 35.151 (a) & (b)) Facilities constructed or altered in conformance with either UFAS or the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR Part 36) shall be deemed to comply with the Title II Accessibility requirements, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(j) of ADAAG shall not apply. (28CFR 35.151(c))

Title II specifically requires that all newly constructed or altered streets, roads, and highways and pedestrian walkways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level or pedestrian walkway and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections. Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways. (28CFR 35.151(e))

The Title II regulations required that by January 26, 1993, public entities (State or local governments) conduct a self-evaluation to review their current policies and practices to identify and correct any requirements that were not consistent with the regulation. Public entities that employed more than 50 persons were required to maintain their self-evaluations on file and make it available for three years. If a public entity had already completed a self-evaluation under Section 504 of the Rehabilitation Act, then the ADA only required it to do a self-evaluation of those policies and practices that were not included in the previous self-evaluation. (28 CFR 35.105)

The Department of Justice offers technical assistance on Title II through its web page at **www.usdoj.gov/crt/ada/taprog.htm,** and through its ADA Information Line, at **202 514-0301 (voice and 202-514-0383 (TTY).** The Department of Justice's technical assistance materials include among others, the Title II Technical Assistance Manual with Yearly Supplements, the ADA guide for Small Towns, and an ADA Guide entitled The ADA and City Governments: Common Problems.

Title III prohibits discrimination based upon disability in places of public accommodation (businesses and non-profit agencies that serve the public) and "commercial" facilities (other businesses). It applies regardless of whether the public accommodation or commercial facility is

operated by a private or public entity, or by a for profit or not for profit business. The Department of Justice Title III regulations are found at 28 CFR Part 36. The Department of Justice also offers technical assistance concerning Title III through the web page cited above and the ADA Hotline cited above.

Justice also offers technical assistance concerning Title III through the web page cited above and the ADA Hotline cited above.

IV. The Architectural Barriers Act of 1968

The Architectural Barriers Act of 1968 (ABA) (42 U.S.C. 4151-4157) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards (UFAS) (24 CFR 570.614). In practice, buildings built to meet the requirements of Section 504 and the ADA will conform to the requirements of the ABA.

Self Evaluations

The Section 504 regulations required recipients of Federal financial assistance to conduct a self-evaluation of their policies and practices to determine if they were consistent with the law's requirements. This self evaluation was to have been completed no later than July 11, 1989. Title II of the ADA imposed this requirement on all covered public entities. The ADA regulations required that ADA self evaluations be completed by January 26, 1993, although those public entities that had already performed a Section 504 self evaluation were only required to perform a self-evaluation on those policies and practices that had not been included in the Section 504 review.

The regulatory deadlines are long past. Nonetheless, recipients who have not completed a self-evaluation are encouraged to conduct a self-evaluation to be in compliance with this requirement under these regulatory provisions.

Involving persons with disabilities in the self-evaluation process is very beneficial. This will assure the most meaningful result for both the recipient and for persons with disabilities who participate in the recipient's programs and activities. It is important to involve persons and/or organizations representing persons with disabilities, and agencies or other experts who work regularly with accessibility standards.

Important steps in conducting a self-evaluation and implementing its results include the following:

- Evaluate current policies and practices and analyze them to determine if they adversely affect the full participation of individuals with disabilities in its programs, activities and services. Be mindful of the fact that a policy or practice may appear neutral on its face,

but may have a discriminatory effect on individuals with disabilities.

- Modify any policies and practices that are not or may not be in compliance with the regulations at Section 504 or Title II and Title III of the ADA.

- Take appropriate corrective steps to remedy those policies and practices which either are discriminatory or have a discriminatory effect. Develop policies and procedures by which persons with disabilities may request a modification of a physical barrier or a rule or practice that has the effect of limiting or excluding a person with a disability from the benefits of the program.
- Document the self-evaluation process and activities. The Department recommends that all recipients keep the self-evaluation on file for at least three years, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps, as an aid to meeting the requirement at 24 CFR Part 8.55.

The Department also recommends that recipients periodically update the self-evaluation, particularly, for example, if there have been changes in the programs and services of the agency. In addition, public entities covered by Title II of the ADA should review any policies and practices that were not included in their Section 504 self-evaluation and should modify discriminatory policies and practices accordingly.

V. HUD Resources Available Concerning Section 504

Further information concerning compliance with Section 504 may be obtained through the HUD web page **(http://www.hud.gov/offices/fheo/disabilities/sect504.cfm).** Additional assistance and information may be obtained by contacting the local HUD Office of Community Planning and Development and the Office of Fair Housing and Equal Opportunity. Below is a list of the phone numbers for these offices.

ATTACHMENT F

TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER I--OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 135--ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS--Table of Contents

Subpart B--Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

Sec. 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Section 3 Compliance - Instructions

Section 3 Compliance is a Federal requirement and final payment cannot be made until pages 1 and 2 of attached "Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects", [HUD form 60002 (4/98)] have been completed and submitted to Community Investments, Housing & Community Services, 332 N Riverview, Wichita, KS 67203 (462-3723).

1. Section 3 applies to all housing rehabilitation, housing construction and other public construction contracts in excess of $100,000.

2. Section 3 resident means:
   a. a public housing resident; or
   b. an individual who resides in the metropolitan area in which the section 3 assistance is expended (City of Wichita) who is:
      i. low income (80% of median income).
      ii. very low income (50% of median income).
      iii. 30% of median income

3. Section 3 business concern means a business concern:
   a. that 51 percent or more of the business is owned by section 3 residents; or
   b. whose permanent, full time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
   c. that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications of a section 3 business concern (a. and b. above).

4. Contractor/Subcontractor may demonstrate compliance by:
   a. Committing to employ section 3 residents as 30 percent of the aggregate number of new hires.
   b. Committing to contract with section 3 business concerns as 10 percent of the total dollar amount of all Section 3 covered contracts for work arising in connection with housing rehabilitation, housing construction and other public construction.

Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract.

5. Record keeping/reporting:
   Reports on HUD Form 60002 are to be submitted at the completion of the project or annually as of June 30th.

Examples of records Contractors/Subcontractors should maintain to show activity and results under Section 3.

1. Copies of advertisements for training and employment opportunities;

2. Lists of Section 3 residents who inquired about or actually applied for training or employment opportunities;

3. Copies of any procurement procedures conducted by the recipient;

4. Any evidence that, to the greatest extent feasible, steps have been taken to include Section 3 business concerns in opportunities arising from Section 3 - related activities;

5. Copies of strategies designed to implement Section 3, including records of solicitation mailing lists and direct solicitations of bids or proposals;

6. Records of bid evaluations and selections;

7. Copies of notifications of awards to grantees and contractors;

8. Documentation of pre-construction conferences;

9. Copies of letters to community organizations related to Section 3 recruiting or business development;

10. Photographs of signs or notices posted for Section 3 recruiting or business development;

11. Record of income levels of persons hired;

12. Documentation and correspondence concerning Section 3-related complaints; and

13. Records of contact made with unions or contractor's associations.

Fiscal Year 2010 Median Income Family Limits
Wichita, Kansas

PROGRAM	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
30% of Median	$13,400	$15,300	$17,200	$19,100	$20,650	$22,200	$23,700	$25,250
50% of Median	$22,300	$25,500	$28,300	$31,850	$34,400	$36,950	$39,500	$42,050
80% of Median	$35,700	$40,800	$45,900	$50,950	$55,050	$59,150	$63,200	$67,300

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council Members

SUBJECT: St Francis Street Improvement, between Douglas and 2nd Street (District VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve a design concept and design budget.

Background: The Capital Improvement Program (CIP) adopted by the City Council includes funding to improve St. Francis between Douglas and 2nd Street. The project was originally programmed in the CIP to include limited pavement and sidewalk rehabilitation, pavement marking, signalization and signage for conversion of St. Francis to two-way traffic. The Downtown Master Plan has identified this section of St. Francis as a critical development area and recommended full reconstruction, including amenities prescribed by the Downtown Wichita Streetscape Design Guidelines. On February 16, 2011, the Design Council recommended approval of an option that meets the "Acceptable" requirements of the Streetscape Design Guidelines. However, the project will be returned to the Design Council for design freeze approval. On March 1, 2011, a neighborhood meeting was held to discuss project options. Staff will present the project options to the District Advisory Board on March 7, 2011.

Analysis: The proposed project would reconstruct St. Francis, converting it to two-way traffic, and include improvements to both 1st and 2nd Streets, between St. Francis and Santa Fe. In addition to the street and sidewalk improvements, the project will also include lighting, signalization, landscaped sidewalks, benches, trash receptacles and bike racks.

Financial Considerations: On August 24, 2101, the City Council approved $39,920 for the preparation of design concepts by Professional Engineering Consultants (PEC). The proposed supplemental design contract for $214,000 is to complete construction plans, resulting in a total design fee of $253,920 and a proposed total design budget of $297,500, which includes funding for in-house design costs and finance administrative charges. The funding source is General Obligation Bonds included in the 2009-2018 CIP. The project will be returned to the City Council at a future date for approval of construction funding, which will need to be increased in the proposed 2011-2020 CIP. The current funding available in the 2009-2010 CIP is $880,000 and the estimated project cost to fully meet the requirements of the Streetscape Design Guidelines is approximately $2,000,000. The additional funding is available in the Proposed 2011-2020 CIP.

Goal Impact: This project is in conformance with the Downtown Master Plan and addresses the Core Area and Neighborhood goal.

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

Recommendation/Action: It is recommended that the City Council approve the design concept, approve the design budget and place the amending ordinance on first reading.

Attachments: CIP sheet and amending ordinance.

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE
To Initiate Project
To Revise Project X

1. Prepare in triplicate
2. Send original & 2 copies to budget
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department
6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location
Public Works & Utilities	Eng & Arch	2/18/2011	St. Francis Douglas-2nd

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
		2011	

9. Estimated Start Date	10. Estimated Completion Date	11. Project Revised
As Required	As Required	

12. Project Cost Estimate

ITEM	GO	SA *	TOTAL
Right of Way			
Paving, grading & const.	$297,500		$297,500
Bridge & Culverts			
Drainage			
Sanitary Sewer			
Sidewalk			
Water			
Neighborhood Improvements			
Totals	$297,500		$297,500
Total CIP Amount Budgeted			
Total Prelim. Estimate			

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

472 81920

13. Recommendation: Approve the design project and place the amending ordinance on 1st reading

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

132019

Published in the Wichita Eagle on March 25, 2011

ORDINANCE NO. 48-974

AN ORDINANCE AMENDING ORDINANCE NO. **48-815** OF THE CITY OF WICHITA, KANSAS DECLARING **ST. FRANCIS, BETWEEN DOUGLAS AND 2ND STREET (472-84920)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

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

SECTION 1. Section 3 or Ordinance **48-815** is hereby amended to read as follows:

"SECTION 3. The cost of the above described improvements is estimated to be **Two Hundred Ninety-Seven Thousand Five Hundred Dollars ($297,500)** exclusive of the cost of interest on borrowed money with the total paid by the City of Wichita. Said City cost, when ascertained, shall be borne by the City of Wichita at large by the issuance of General Obligation bonds under the authority of K.S.A. 12-689."

SECTION 2. The original of SECTION 3 of Ordinance No. **48-815** is hereby repealed.

SECTION 3. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official city paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 22nd day of March, 2011.

_____
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
March 8, 2011

TO: Mayor and City Council

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

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendations: Adopt the resolution.

Background: On January 25, 2011, a report was submitted with respect to the dangerous and unsafe conditions on the properties listed below. The City Council adopted a resolution providing for a public hearing to be held on the condemnation actions at 9:30 a.m. or soon thereafter, on March 8, 2011.

Analysis: On January 10, 2011, the Board of Code Standards and Appeals (BCSA) held hearings on the properties listed below

Property Address	Council District
a. 2139 East Shadybrook	I
b. 2961 / 2965 South Rutan (duplex)	III
c. 2524 West 36th Street North	VI

Detailed information/analyses concerning these properties are 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 blighted and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: Pursuant to State Statute, the Resolutions were duly published twice on January 28, 2011 and February 4, 2011. A copy of each resolution was sent by certified mail or given personal service delivery to the owners and lien holders of record of the described properties.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the resolutions declaring the buildings to be dangerous and unsafe structures, and accept the BCSA recommended actions to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structures. Any extensions of time granted to repair any structures would be contingent on the following: (1) All taxes have been paid to date as of March 8, 2011; (2) the structures have been secured as of March 8, 2011, and will continue to be kept secured; and (3) the premises are mowed and free of debris as of March 8, 2011, 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 summaries, and resolutions.

DATE: February 18, 2011

CDM SUMMARY

COUNCIL DISTRICT # I

ADDRESS: 2139 E. SHADYBROOK

LEGAL DESCRIPTION: LOT 3, BLOCK 3, BUILDERS SECOND ADDITION TO THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 33 x 25 feet in size. Vacant for at least 10 months, this structure has a shifting concrete foundation; cracking brick siding; and the front porch is deteriorated.

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: February 18, 2011

BCSA GROUP # 6

ADDRESS: 2139 E. SHADYBROOK

ACTIVE FIELD FILE STARTED: July 9, 2009

NOTICE(S) ISSUED: Since July 9, 2009, a notice of improvement and several violation notices have been issued. In July 2009, a Neighborhood Nuisance Enforcement case was initiated resulting in owner compliance. In November 2009, Central Inspection staff completed an emergency board-up on this property at a cost of $794.76. In May 2010, a Neighborhood Nuisance Enforcement case was initiated resulting in City of Wichita contractor abatement.

PRE-CONDEMNATION LETTER: July 1, 2010

TAX INFORMATION: The 2009 and 2010 taxes are delinquent in the amount of $1,713.82, which includes a special assessment and interest.

COST ASSESSMENTS/DATES: There is a 2010 special assessment for board-up in the amount of $821.11 and a 2011 special assessment for lot cleanup in the amount of $777.66, both include interest.

PREMISE CONDITIONS: Tires, television and storm windows.

VACANT NEGLECTED BUILDING REPORT: None

NUISANCE ABATEMENT REPORT: Lot cleanup on September 28, 2010, in the amount of $700.60.

POLICE REPORT: From November 1990 through June 2009, there have been twenty-five reported police incidents at this location including drive under the influence, burglary residence, intimidation domestic violence, pedestrian violation, sudden death witnessed, miscellaneous officers, battery (2), battery domestic violence (4), fighting domestic violence (2), and miscellaneous report (11).

FORMAL CONDEMNATION ACTION INITIATED: November 5, 2010

RECENT DEVELOPMENTS: No repairs have been made and the structure is secure.

HISTORIC PRESERVATION REPORT: No impact

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the January 10, 2011, BCSA hearing there was no party in attendance representing this property.

The active case was started on this property on July 9, 2009. A Nuisance case in 2009 resulted in the owner complying with the notice. An emergency board-up was also performed by OCI in 2009 at a cost of $794.76. In May of 2010 another Nuisance case was initiated, resulting in contractor abatement.

Board Member Hartwell made a motion to refer the property to the City Council with a recommendation of condemnation, with ten days to begin demolition and ten days to finish wrecking the structure. Board Member Banuelos seconded the motion. The motion passed.

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

DATE: February 18, 2011

CDM SUMMARY

COUNCIL DISTRICT # III

ADDRESS: 2961 / 2965 S. RUTAN

LEGAL DESCRIPTION: LOT 6, BLOCK D, PLANEVIEW SUBDIVISION NO. 2, BEING A SUBDIVISION IN SECTION 2, TOWNSHIP 28 SOUTH, RANGE 1 EAST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 24 x 57 feet in size. Vacant for at least 1 year, this structure has a deteriorated concrete block foundation with missing concrete blocks; missing asbestos siding shingles; deteriorated rear and front porches; rotted wood trim; and the 8 x 10 and 10 x 12 foot metal accessory structures are dilapidated.

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: February 18, 2011

BCSA GROUP # 6

ADDRESS: 2961 / 2965 S. RUTAN

ACTIVE FIELD FILE STARTED: May 25, 2004

NOTICE(S) ISSUED: Since May 25, 2004, several notice of improvements and numerous violation notices have been issued. In June 2010, a Neighborhood Nuisance Enforcement case was initiated on this property resulting in City of Wichita contractor abatement.

PRE-CONDEMNATION LETTER: August 23, 2010

TAX INFORMATION: The 2006, 2007, 2008, 2009 and 2010 taxes are delinquent in the amount of $1,786.30, which includes interest.

COST ASSESSMENTS/DATES: There is a 2011 special assessment for lot cleanup in the amount of $850.43, which includes interest.

PREMISE CONDITIONS: Fair

VACANT NEGLECTED BUILDING REPORT: None

NUISANCE ABATEMENT REPORT: Lot cleanup on September 30, 2010, in the amount of $766.75, which is pending assessment.

POLICE REPORT: From December 1992 through July 2004 there have been four reported police incidents at this location including disturb the peace phone calls, destruction to auto, larceny b all other and auto theft not recovered.

FORMAL CONDEMNATION ACTION INITIATED: November 5, 2010

RECENT DEVELOPMENTS: No repairs have been made and the structure is secure.

HISTORIC PRESERVATION REPORT: No impact

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the January 10, 2011, BCSA hearing there was no representative present for this property.

Board Member Coonrod made a motion to submit the property to the City Council, recommending condemnation, with ten days to begin razing the structure and ten days to complete the demolition. Board Member Willenberg seconded the motion. The motion carried.

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

DATE: February 18, 2011

CDM SUMMARY

COUNCIL DISTRICT # VI

ADDRESS: 2524 W 36TH N

LEGAL DESCRIPTION: LOT 8, BLOCK B, MERIDIAN GARDENS SECOND ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A double wide manufactured home about 30 x 70 feet in size. Vacant for at least 3 years; this structure has shifting block supports; deteriorated composition roof; deteriorated front porch; deteriorated wood trim; and the 24 x 24 detached garage, 8 x 10 metal accessory structure, 8 x 8 metal accesory structure and 10 x 10 concrete safe room are deteriorated.

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: February 18, 2011

BCSA GROUP # 6

ADDRESS: 2524 W 36TH N

ACTIVE FIELD FILE STARTED: January 17, 2008

NOTICE(S) ISSUED: Since January 17, 2008, notice of improvements and violation notices have been issued. In April 2008, a Residential Zoning case was started on this property and remains open. In December 2009, a Neighborhood Nuisance Enforcement case was started and remains open. In May 2010, a Tall Grass and Weeds case was initiated, the front yard was abated by City of Wichita contractor, however; the rear yard was not mowed due to a closed and locked gate this case remains open.

PRE-CONDEMNATION LETTER: May 12, 2010

TAX INFORMATION: The 2006, 2007, 2008, 2009 and 2010 taxes are delinquent in the amount of $1,331.42, which in includes interest.

COST ASSESSMENTS/DATES: There is a 2011 special assessment for weed mowing in the amount of $123.00.

PREMISE CONDITIONS: Tree waste and bulky waste.

VACANT NEGLECTED BUILDING REPORT: None

NUISANCE ABATEMENT REPORT: Weed mowing on June 1, 2010, in the amount of $123.00.

POLICE REPORT: One reported police incident of checks on January 7, 2005.

FORMAL CONDEMNATION ACTION INITIATED: November 5, 2010

RECENT DEVELOPMENTS: No repairs have been made. The main structure is secure. One of the accessory structures is unsecure with an open overhead door.

HISTORIC PRESERVATION REPORT: No impact

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the January 10, 2011, BCSA hearing no one attended the hearing on behalf of this property.

The case on this property has been active since January of 2008. Numerous notices have been issued. A Residential Zoning case was initiated in 2008 and remains open, as well as a Neighborhood Nuisance case, which was initiated in 2009 and remains open.

Board Member Coonrod made a motion to send the property to the City Council with a recommendation of condemnation, with ten days to start demolition and ten days to complete removal of the structure. Board Member Crotts 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.

March 8, 2011
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	Prop. Tax Status	Assmnts / Pending Assmnts	Pending Incurred Costs
2139 E. Shadybrook	I	1 yr. 7 mos.	11/05/10	1/10/11: 10/10	No	Secure	Tires, television and storm windows.	The 2009 and 2010 taxes are delinquent in the amount of $1,713.82, which includes a special assessment and interest.	There is a 2010 special assessment for board-up in the amount of $821.11 and a 2011 special assessment for lot cleanup in the amount of $777.66, both include interest.	None
2961 / 2965 S. Rutan (duplex)	III	6 yrs. 9 mos.	11/05/10	1/10/11: 10/10	No	Secure	Fair	The 2006, 2007, 2008, 2009 and 2010 taxes are delinquent in the amount of $1,786.30, which includes interest.	There is a 2011 special assessment for lot cleanup in the amount of $850.43, which includes interest.	Lot cleanup on September 30, 2010, in the amount of $766.75, which is pending assessment.
2524 W. 36th N.	VI	3 yrs. 1 mo.	11/05/10	1/10/11: 10/10	No	The main structure is secure. One of the accessory structures is unsecure with an open overhead door.	Tree waste and bulky waste	The 2006, 2007, 2008, 2009 and 2010 taxes are delinquent in the amount of $1,331.42, which in includes interest.	There is a 2011 special assessment for weed mowing in the amount of $123.00.	None

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: CON2010-00047 – Conditional Use to permit a Heliport on property zoned LI Limited Industrial; generally located at the southeast corner of 119th Street West and Kellogg (11771 West Kellogg) (District IV)

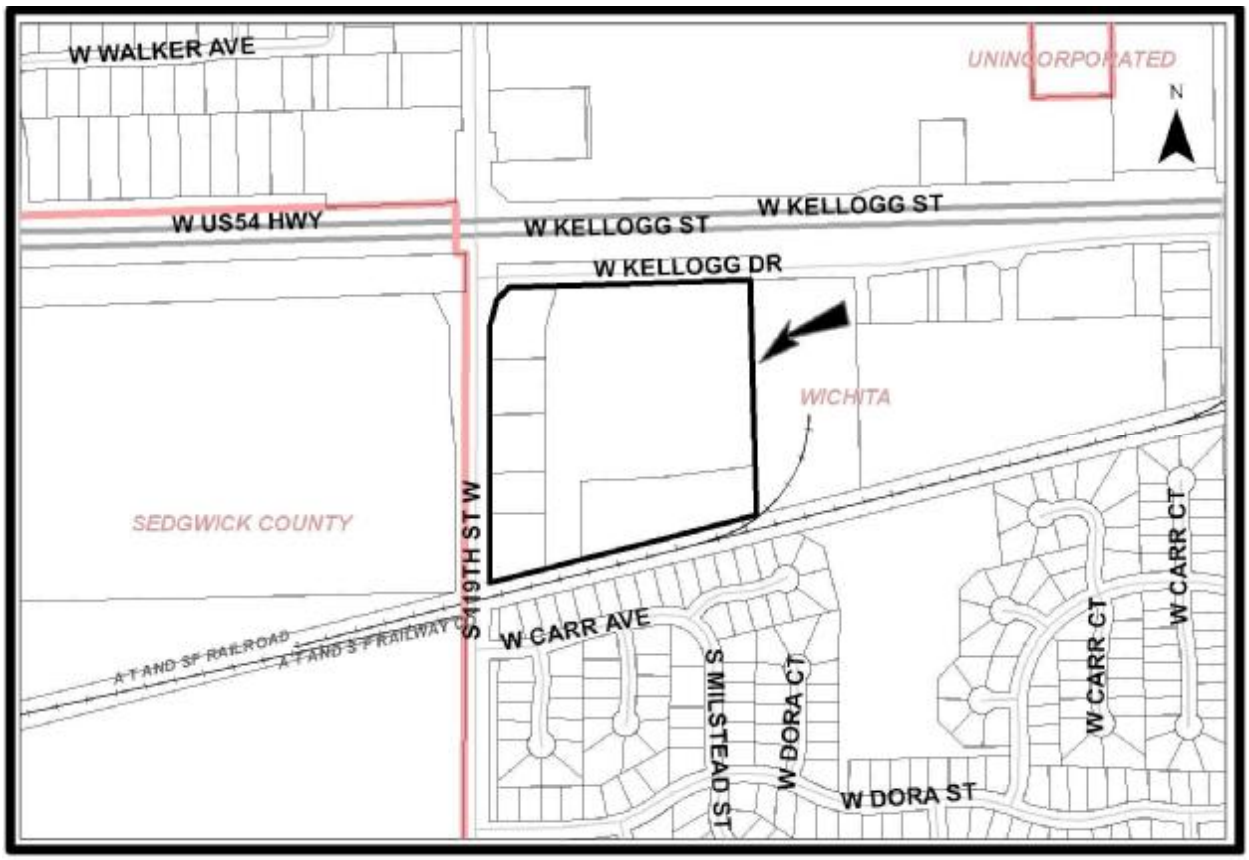
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

DAB Recommendation: DAB IV, Approve, vote (unanimous); DAB V to hear the application on March 7, 2011.

MAPC Recommendation: Deny (6-6-1).

MAPD Staff Recommendation: Approve.



Background: The applicant initially was seeking Conditional Use approval for a "heliport" on 21 platted acres located at the southeast corner of Kellogg and 119th Street West. The application area was later reduced to approximately 4.81 acres (revised site plan attached). The property is zoned LI Limited Industrial ("LI") and a majority of the original site, 13.01 acres (Lot 6, Mel Hambelton Addition), is developed as the Mel Hambelton Ford dealership. The extreme western portion (approximately 4.81 acres) of the original site has become the revised application area, which has an average approximate north-south length of 1,058 feet with an east-west width of 206.44 feet and is undeveloped, but platted as Lots 1-5, Mel Hambelton Addition. The proposed "heliport" would be operated as a "prior permission required" private heliport, meaning that the heliport would be limited to use by only those aircraft given permission by the property owner to land or take-off (as defined by the Federal Aviation Agency). The heliport would not be open to general aviation use.

The applicant's revised site plan shows three distinct areas. The first area is a smaller rectangle of 110 by 122 feet (on Lot 6) whose center appears to be located approximately 350 feet south of the site's north property line and 261 feet east of 119th Street's eastern right-of-way. This smaller rectangle is a proposed landing and take-off area to be used especially during Mel Hambelton promotional events, and when not used as a heliport is used to display vehicles. The cars that typically occupy that paved space can be moved and fencing can be put up using existing light poles located in the display lot to isolate the landing pad. At its closest point, this landing and take-off area is located within approximately 735 feet of the northern property line of lots located in the residential subdivision, Lark Addition, located south of the application area. When taking off from the smaller rectangle, the helicopter would head into the wind, side-slip to the west to the area identified on the site plan as a second, larger rectangle and use the greater length of the larger rectangle as the helicopter's transition area to increase height and speed. Helicopter pilots typically prefer to gradually increase their height as they move forward at take-off, similar to a plane, rather than use a maximum performance, straight up and down take-off. It is the same, only in reverse for a landing.

The second area identified on the site plan is the larger previously mentioned rectangle of some 200 by 700 feet (Lots 1-3 and approximately the northern 30 feet of Lot 4, Mel Hambelton Addition) located immediately west of the previously described smaller rectangle. This 200 by 700-foot rectangle can be used as the previously described transition area for take-off and landing as well as another landing area. The northern boundary of this second rectangle coincides with the southern boundary of Kellogg Drive right-of-way. The southern boundary of this second rectangle is located, at its closest point, approximately 315 feet north of the application's southern property line or 415 feet from the residential subdivision, Lark Addition, that is located an additional 100 feet south of the application area across a rail banked railroad right-of-way. On the northern end of this second rectangle, closest to the frontage road, there are two artificial rock mounds used to display vehicles. This second rectangle also has a structure located along its west side.

The third rectangle shown on the site plan is located south of the second rectangle, and is identified as the "over-fly safety zone." On the site plan, the over-fly safety zone does not have any dimensions, but scales out at 200 feet (east to west) and 220 feet (north to south). That north-south length places the southern boundary of the over-fly safety zone within approximately110 feet of the applicant's southern property line or 210 feet from the northern boundary of the residential lots located south of the rail banked railroad right-of-way.

Initially, the applicant's representatives indicated they would like to have the potential to land on the entire 21-acre site, and that there was the prospect that a structural evaluation of the existing Mel Hambelton building would be undertaken to see if it could support or be modified to support helicopter flight activities. When the application was later reduced to the approximately 4.81 acres under consideration, the option of landing on the existing building was eliminated. At that same meeting, the applicant's representatives indicated: the helicopter operator was FAA certified as an air carrier; the air space over the application area was under the control of the Wichita Mid-Continent Airport control

tower; the helicopter operator has a one year contract (with mutual agreement for one-year extensions) to provide air carrier services for Mel Hambelton, including all promotional events; the number of flights (take off and landing) could be as high as six per hour with a day and one-half being the typical number of flight days per week; flights could occur both during the day or night; they will not fly over the residences located to the south unless safety considerations force them to and the helicopter operator is currently based at Mid-Continent Airport.

Heliports are permitted by the Unified Zoning Code in the LI zoning district by Conditional Use approval. Chapter 9.24 of Code of Ordinances of the City of Wichita contains some development standards for heliports: no heliport, other than a temporary heliport may be located within 750 feet of a church, school or residence as measured from the center of the touchdown pad of the heliport to the property line of the church, school or residence. If the heliport is located on a building, the distance shall be calculated as the sum of the number of feet the heliport is located above the ground and the number of feet from a point at ground level where a vertical line from the center of the touchdown pad of the heliport strikes the ground of the property line of the church, school or residence. No heliport, other than temporary, can be located within 2,000 feet of any other heliport. A primary surface is to be identified and is to be free of obstructions. Approach surfaces are to begin at the end of the primary surface and extend outward and upward for a horizontal distance of 4,000 feet with a 500-foot width. Transitional surfaces shall extend outward and upward from the lateral boundaries of the heliport primary surface and the approach surface at a slope of two-to-one for a distance of 250 feet measured horizontally from the centerline of the primary and approach surfaces. The design of the heliport is to comply with the U.S. Department of Transportation, Federal Aviation Administration's "Heliport Design-Advisory Circular 150/5390-2A," as amended. A helicopter is not allowed to remain upon a structure for more than 48 hours. No helicopter shall land at a heliport within the city limits unless the pilot is registered as a licensed FAA pilot. The code requires the licensee to carry $200,000 of public liability and $100,000 comprehensive property damage per accident insurance.

It appears that the physical location of the principal landing area (the 110 by 122-foot rectangle and the center of the 700 by 200 foot rectangle) is estimated to be five to 15 feet short of the 750-foot separation distance required by the code and, if approved, the center of any landing zones will need to be moved northward.

Planning staff has been advised by Wichita Mid-Continent Airport staff that the proposed heliport does not pose any risk or hazard with their flight operations. It is also planning staff's understanding that promotional heliport activities have previously occurred on several occasions on the site under the City's temporary heliport licensing authority. At the time this report was written, the Office of Central Inspection had not received any calls concerning these earlier flights; however, planning staff has received one letter of opposition (attached) and one phone call. The letter speaks for itself. The phone caller indicated that the helicopter noise caused him uneasiness as it reminded him of his time in the military.

The application area is located adjacent to a nationally significant highway and part of a more intensely developing transportation corridor. Surrounding property has zoned a variety of zoning and uses: to the north is Resthaven Cemetery zoned LI; to the northwest are medical/dental offices zoned GC; to the east is a warehouse-office zoned LI; to the south are over 100 single-family residences, zoned SF-5 Single-family Residential ("SF-5") and to the west is undeveloped land zoned SF-20 Single-family Residential ("SF-20").

Staff is not aware of any existing non-airport based private heliports in the city other than those located at hospitals. Issues one would expect to be of concern would be safety of flight operations and noise. The city's existing ordinance dealing with helicopters summarized above indicates that 750 feet of separation from churches, schools or residences is adequate to address those issues.

Analysis: This application was originally heard by the Metropolitan Area Planning Commission (MAPC) on December 16, 2010, at which time the MAPC deferred the case to its January 20, 2011, meeting. (December 16, 2010, MAPC Minutes attached.) At the December 16, 2010, MAPC meeting, the applicant was not present and DAB IV was not scheduled to hear the application until after the December 16, 2010, MAPC meeting. Neighboring property owners opposed to the proposal were present at the first MAPC meeting. (Nona William's, Howard Moore's and Blasi Campground letters attached.) The MAPC deferred action until DAB IV had a chance to make a recommendation, and to give staff time to communicate the MAPCs and the opposition's comments to the applicant to see if the proposal could be adjusted to address the stated concerns.

The applicant was present at the January 5, 2011, DAB IV meeting, and agreed to: reduce the application area to the 4.81 acres discussed earlier; operate only during daylight hours; avoid flying over houses unless safety issues required such a flight path and to eliminate the use of strobe lights in and around the landing area. (December 16, 2010 letter from DWTA, Premier Aviation Services attached). At the DAB meeting, a number of neighbors spoke in opposition citing concerns with: noise, safety, fear that the use could limit future development options on nearby undeveloped ground and impact on the serenity of Resthaven Cemetery. Nearby residences explained how noise from the helicopter had, in the past, awakened them, and indicated that many of them were third shift workers who sleep during the day. A representative of the Blasi Campground explained how noise is one of the factors used to evaluate campgrounds and negative noise ratings from customers could reduce the attractiveness, and ultimately, the success of their facility. District Advisory Board IV voted 7-0 to recommend approval of the request as modified by the applicant. (January 25, 2011, DAB IV memo attached.)

At the second MAPC meeting held on January 20, 2011, two representatives of the applicant were present. Neighbors in opposition were also present. Neighboring property owners made comments similar to those expressed at the first MAPC meeting. After closing the public hearing, the MAPC made a motion to approve the request that failed on a 6-6-1 vote. (January 20, 2011, MAPC Minutes attached.) Metropolitan Area Planning Commission bylaws state that a tie vote is to be counted as a denial.

The applicant has appealed the MAPCs denial to the City Council. By code, the City Council has final authority on Conditional Use applications when an appeal has been filed. (February 1, 2011 appeal letter attached.)

The application area is located on the border between Council Districts IV and V. Owners of property located in District V requested that DAB V be given an opportunity to comment on the case; therefore, DAB V will hear the request on March 7, 2011, and their recommendation will be verbally provided when the Director of Planning presents the case to the City Council.

Protest petitions equaling 32.14 percent have been filed. (Protest map attached.) Protests exceeding 20 percent trigger a three-fourths majority vote by the City Council to override the neighbors' protest and approve the application.

Financial Considerations: There are not any City financial considerations associated with this application.

Goal Impact: If approved, the activity will support the City's goal to Promote Economic Vitality.

Legal Considerations: When the MAPC recommends denial an ordinance is not included with the packet.

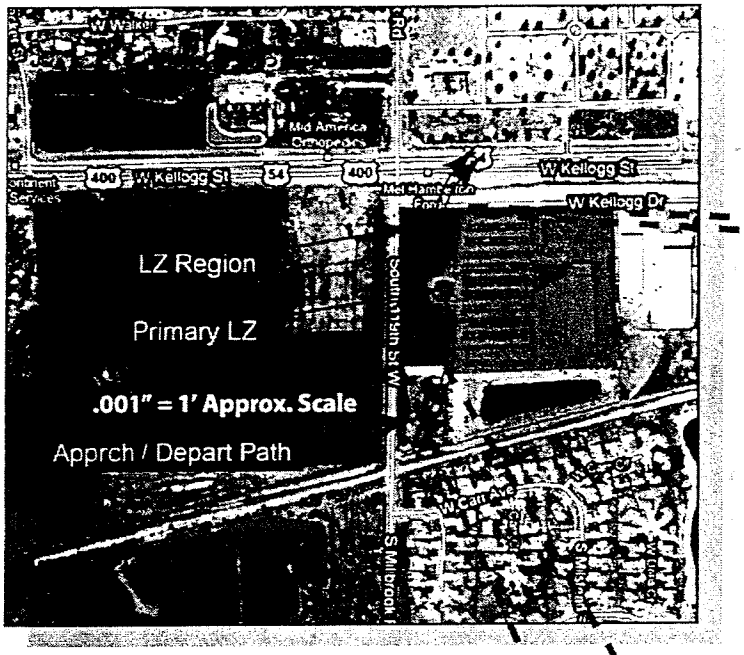
Recommendation/Actions: 1) Adopt the findings of the MAPC and deny the requested Conditional Use (simple majority vote required); or 2) Override the recommendation of the MAPC by adopting alternate findings found in the staff report, and approve the requested Conditional Use, subject to conditions of approval found in the staff report (three-fourths majority vote required) or 3) Return the application to the MAPC for further consideration (simple majority vote required).

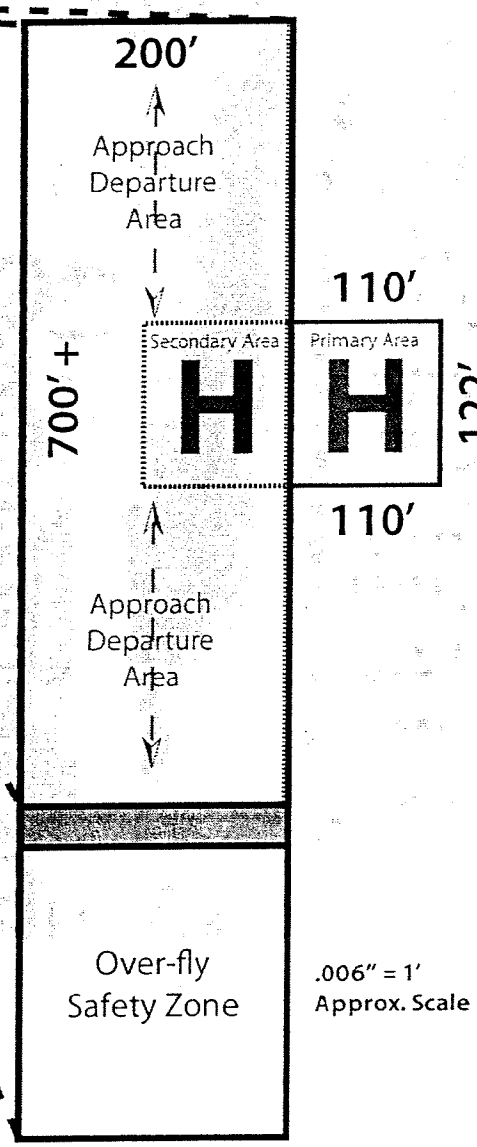
Attachments: Revised site plan; December 16, 2010, MAPC Minutes; Nona Williams letter; Howard R. Moore letter; Blasi Campground letter; December 16, 2010 DWTA letter; January 25, 2011 DAB IV memo; January 20, 2011, Minutes; February 1, 2011, appeal letter and protest map.

MEL HAMBELTON PRIVATE HELIPORT

Helicopter Service / Flight Into and Out of Mel Hambelton Ford

FAA Designation [PPR]
"Prior Permission Required"
NOT for General Aviation Use





N

A. Operation Overview

[1] Dependant upon winds, arrive and depart orientated North and South from Primary LZ on Far West Side of Dealership.

[2] ALL LZ locales will meet / exceed all FAA Notice recommendations on PPR Helipad Design.

[3] Wind indicators abound and provide excellent windage to pilot and ground safety team.

[4] All field with all hazards clearly visable.

[5] All flight operations coordinated with Wichita Mid-Continent Airport Control Tower

[6] All night operations will be performed with landing area clearly illuminated and wind direction indication clearly identified.

[7] Additional landings may occur in other secure locations on dealership property, but will retain all safety features required.

[8] Roof-Top helipad location possible, again will retain all safety features required.

NOTE: Aircraft arrival and departure flight paths will avoid all Housing
(with the exception if flight path is dictated in the interst of safety)

REVISED SITE PLAN

EXCERPT OF THE DECEMBER 16, 2010 METROPOLITAN AREA PLANNING COMMISSION HEARING

Case No.: CON2010-47 - Lisa Hambelton (property owner) / Phil Nightingale or Jeff Horning (agents) request Conditional Use to permit a heliport on property zoned LI Limited Industrial on property described as;

Lots 1, 2, 3, 4, 5 and 6, Block A and Reserve A, Mel Hambelton Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is seeking Conditional Use approval for a "heliport" on 21 platted acres located at the southeast corner of West Kellogg and 119th Street South. The property is zoned LI Limited Industrial ("LI") and a majority of the site, 13.01 acres, (Lot 6, Mel Hambelton Addition) is developed as the Mel Hambelton Ford dealership. The extreme western portion of the site, 4.81 acres has an average approximate north-south length of 1,058 feet with an east-west width of 206.44 feet, and is undeveloped but platted as Lots 1-5, Mel Hambelton Addition. The applicant is seeking approval of a "heliport" in order to install what is defined by the Federal Aviation Administration (FAA) as a "prior permission required" private heliport, meaning that the heliport would be limited to use by only those aircraft given permission by the property owner to land or take-off. The heliport would not be open to general aviation use.

The applicant has submitted a site plan that shows three distinct areas. The first area is a smaller rectangle of 110 by 122 feet (on Lot 6) whose center appears to be located approximately 350 feet south of the site's north property line and 261 feet east of 119th Street's eastern right-of-way. This smaller rectangle is a proposed landing and take-off area to be used especially during Mel Hambelton promotional events, and when not used as a heliport is used to display vehicles. The cars that typically occupy that paved space can be moved and fencing can be put up using existing light poles located in the display lot to isolate the landing pad. At its closest point, this landing and take-off area is located within approximately 735 feet of the northern property line of lots located in the residential subdivision, Lark Addition, located south of the application area. When taking off from the smaller rectangle, the helicopter would head into the wind, side-slip to the west to the area identified on the site plan as a second, larger rectangle and use the greater length of the larger rectangle as the helicopter's transition area to increase height and speed. Helicopter pilots typically prefer to gradually increase their height as they move forward at take-off, similar to a plane, rather than use a maximum performance, straight up and down take-off. It is the same, only in reverse for a landing.

The second area identified on the site plan is the larger previously mentioned rectangle of some 200 by 700 feet (Lots 1-3 and approximately the northern 30 feet of Lot 4, Mel Hambelton Addition) located immediately west of the previously described smaller rectangle. This 200 by 700-foot rectangle can be used as the previously described transition area for take-off and landing as well as another landing area. The northern boundary of this second rectangle coincides with the southern boundary of Kellogg Drive right-of-way. The southern boundary of this second rectangle is located, at its closed point, approximately 315 feet north of the application's southern property line or 415 feet from the residential subdivision, Lark Addition, that is located an additional 100 feet south of the application area across a rail banked railroad

right-of-way. On the northern end of this second rectangle, closest to the frontage road, there are two artificial rock mounds used to display vehicles. This second rectangle also has a structure located along its west side.

The third rectangle shown on the site plan is located south of the second rectangle, and is identified as the "over-fly safety zone." On the site plan the over-fly safety zone does not have any dimensions but scales out at 200 feet (east to west) and 220 feet (north to south). That north-south length places the southern boundary of the over-fly safety zone with approximately110 feet of the applicant's southern property line or 210 feet from the northern boundary of the residential lots located south of the rail banked railroad right-of-way.

In a discussion that occurred during a Development Review meeting on November 10, 2010, the applicant's representatives indicated they would like to have the potential to land on the entire 21-acre site, and that there was the prospect that a structural evaluation of the existing Mel Hambelton building would be undertaken to see if it could support or be modified to support helicopter flight activities. At that same meeting the applicant's representatives indicated: the helicopter operator was FAA certified as an air carrier; the air space over the application area was under the control of the Wichita Mid-Continent Airport control tower; the helicopter operator has a one year contract (with mutual agreement for one-year extensions) to provide air carrier services for Mel Hambelton, including all promotional events; the number of flights (take off and landing) could be as high as six per hour with a day and one-half being the typical number of flight days per week; flights could occur both during the day or night; they will not fly over the residences located to the south unless safety considerations force them to and the helicopter operator is currently based at Mid-Continent Airport.

Heliports are permitted by the Unified Zoning Code in the LI zoning district by Conditional Use approval. Chapter 9.24 of Code of Ordinances of the City of Wichita contains some development standards for heliports: no heliport, other than a temporary heliport may be located within 750 feet of a church, school or residence as measured from the center of the touchdown pad of the heliport to the property line of the church, school or residence. If the heliport is located on a building the distance shall be calculated as the sum of the number of feet the heliport is located above the ground and the number of feet from a point at ground level where a vertical line from the center of the touchdown pad of the heliport strikes the ground of the property line of the church, school or residence. No heliport, other than temporary can be located within 2,000 feet of any other heliport. A primary surface is to be identified and is to be free of obstructions. Approach surfaces are to begin at the end of the primary surface and extend outward and upward for a horizontal distance of 4,000 feet with a 500-foot width. Transitional surfaces shall extend outward and upward from the lateral boundaries of the heliport primary surface and the approach surface at a slope of two-to-one for a distance of 250 feet measured horizontally from the centerline of the primary and approach surfaces. The design of the heliport is to comply with the U.S. Department of Transportation, Federal Aviation Administration, "Heliport Design-Advisory Circular 150/5390-2A," as amended. A helicopter is not allowed to remain upon a structure for more than 48 hours. No helicopter shall land at a heliport within the city limits unless the pilot is registered as a licensed FAA pilot. The code requires the licensee to carry $200,000 of public liability and $100,000 comprehensive property damage per accident insurance.

It appears that the physical location of the principal landing area (the 110 by 122-foot rectangle and the center of the 700 by 200 foot rectangle) is estimated to be five to 15 feet short of the 750-foot separation distance required by the code and, if approved, the center of any landing zones will need to be moved northward.

Planning staff has been advised by Wichita Mid-Continent Airport staff that the proposed heliport does not pose any risk or hazard with their flight operations. It is also planning staff's understanding that promotional heliport activities have previously occurred on several occasions on the site under the City's temporary heliport licensing authority. At the time this report was written, the Office of Central Inspection had not received any calls concerning these earlier flights; however, planning staff has received one letter of opposition (attached) and one phone call. The letter speaks for itself. The phone caller indicated that the helicopter noise caused him uneasiness as it reminded him of his time in the military.

The application area is located adjacent to a nationally significant highway and part of a more intensely developing transportation corridor. Surrounding property has zoned a variety of zoning and uses: to the north is Resthaven Cemetery zoned LI; to the northwest are medical/dental offices zoned GC; to the east is a warehouse-office zoned LI; to the south are over 100 single-family residences, zoned SF-5 Single-family Residential ("SF-5") and to the west is undeveloped land zoned SF-20 Single-family Residential ("SF-20").

Staff is not aware of any existing non-airport based private heliports in the city other than those located at hospitals. Issues one would expect to be of concern would be safety of flight operations and noise. The city's existing ordinance dealing with helicopters summarized above indicates that 750 feet of separation from churches, schools or residences is adequate to address those issues.

CASE HISTORY: The Mel Hambelton Addition was recorded in June, 2006.

ADJACENT ZONING AND LAND USE:

NORTH:	LI	Limited Industrial; cemetery
SOUTH:	SF-5	Single-family Residential; single-family residential
EAST:	LI	Limited Industrial; office/warehouse
WEST:	SF-20	Single-family Residential; pasture land

PUBLIC SERVICES: The site is already developed as an automobile dealership; therefore, municipal waste water and water services are in place to support the proposed heliport. Access to the site will be from West Kellogg Drive and/or West 119th Street South. The intersection of West Kellogg and 119th Street carries an average daily volume of 59,576 vehicles. Fire Station 17 at 10651 West Maple is the closest city fire station to the application area and would likely be the first responder to any emergency events at the application area. Utility poles are located along the east side of 119th Street.

CONFORMANCE TO PLANS/POLICIES: The Transportation/Utilities Locational Guidelines of the Comprehensive Plan does not specifically address heliports. The plan does state that airports should be sited away from large water bodies, landfills and concentrations of people. The location clearly complies with the first two criteria. There are homes located at least 750 feet south from the center of a relocated north landing pad and an estimated 600 feet from the center of the intersection of Kellogg and 119th Street.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the following conditions:

A. The Conditional Use permits the operation of a prior permission required, as defined by the Federal Aviation Administration (FAA), heliport. The site shall be developed, maintained and operated in conformance with: the approved site plan; Chapter 9.24 of the Code of Ordinances of the City of Wichita dealing with heliports; applicable noise and lighting ordinances and all applicable local, state or federal rules or regulations.
B. Prior to commencing operations, proof of Federal Aviation Administration approval shall be provided to the Planning Department, if applicable.
C. Only the areas and activities identified on the approved site plan shall permit heliport activities. Use of the remainder of the 21-acre site for heliport activities will require adjustment or amendment to the approved site plan. General aviation activity is prohibited.
D. Flight operations are restricted to daylight hours. Except as required for safety reasons, landing and take-off approaches are prohibited over residential developments.
E. Except for lighting on the aircraft, strobe lights are prohibited. Any lighting used for heliport operations shall be screened or shielded so that it does not create a traffic hazard or be a nuisance to adjoining property owners.
F. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area is located adjacent to a nationally significant highway and part of a more intensely developing transportation corridor. Surrounding property has a variety of zoning and uses: to the north is Resthaven Cemetery zoned LI; to the northwest are medical/dental offices zoned GC; to the east is a warehouse-office zoned LI; to the south are over 100 single-family residences, zoned SF-5 and to the west is undeveloped land zoned SF-20.

2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned LI. The LI district permits an extensive range of non-residential uses allowed by right so the site could be developed with economically viable uses as currently zoned.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will introduce a use that is not currently permitted in the immediate area. Although it is approximately 2.18 miles from the application area, as the crow flies, to Wichita Mid-Continent Airport, approval of the request will bring helicopter noise and potential for flight failure closer to neighboring properties. The use and enjoyment of the residential and cemetery properties could be detrimentally impacted by the noise and potential for flight failure; however, the recommended conditions of approval are designed to mitigate anticipated impacts.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: If denied, presumably the applicant would be denied an unusual promotional tool for their dealership and vehicle sales and the aircraft operator could miss out on a business opportunity.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Transportation/Utilities Locational Guidelines of the Comprehensive Plan does not specifically address heliports. The plan does state that airports should be sited away from large water bodies, landfills and concentrations of people. The location clearly complies with the first two criteria. There are homes located at least 750 feet south from the center of a relocated north landing pad and an estimated 600 feet from the center of the intersection of Kellogg and 119th Street.

6. Impact of the proposed development on community facilities: It is anticipated that any increase in traffic due to heliport activities will be minimal and existing traffic, sewer and water infrastructure are adequate. Given the heliport's proximity to Kellogg, it is possible that flight operations could be a distraction to drivers on Kellogg. In the event of a flight failure, Fire Station 17 is the likely first responder, and may require backup for additional foam fire suppressant from McConnell Air Force Base or Mid-Continent Airport.

7. Neighborhood support or opposition. At the time this report was written, the Office of Central Inspection had not received any calls concerning these earlier flights; however, planning staff has received one letter of opposition and one phone call. The letter speaks for itself. The phone caller indicated that the helicopter noise caused him uneasiness as it reminded him of his time in the military.

DALE MILLER, Planning Staff presented the Staff Report.

FARNEY commented that the land west of the site is platted for residential. He asked when that is developed, will the conditional use stay in effect or will it become null and void.

MILLER said the conditional use will remain in effect. He added that he believes the license required for the heliport, and he deferred to legal staff, is good for five years; however, if the use becomes non-conforming it may end their ability to renew the license. He also mentioned that no residences may be located within a 750 foot radius of the heliport pad site. He referred to the aerial map of the location, which showed two residences to the south within the radius. He said

the applicant will need to move the proposed heliport further to the north to accommodate that requirement.

FARNEY also expressed concern about the proximity of the heliport to a public right-of-way and added that the believed 119th Street was scheduled to be widened in the future.

MILLER said he does not believe that is an issue, as far as the licensing requirement is concerned.

SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY said 119th Street is scheduled to be widened north of Kellogg up to Auburn Hills and that the City is currently in the process of purchasing right-of-way and easements. She confirmed that the required license for the heliport is valid for five years; however, she said at the time of renewal staff would look at any non-conforming uses and that could be grounds to deny the license if the property to the west becomes developed.

SHERMAN asked for clarification as to how an approval of this request would impact the landowner to the west of the heliport.

MILLER said approval of this request would not restrict the property owner to the west's ability to develop their land.

DICKGRAFE said that staff would look at the issue at the time of license renewal. She reiterated that it could be grounds for denial of the license or the applicant could be asked to move the heliport to another location on their property. She said if staff needs to readjust the location of the heliport, the applicant could in theory come back for another conditional use.

MILLER clarified that the application was limited to only the areas shown on the site plan. He commented that the applicant indicated at the Development Review Meeting that they may want to move the heliport to the top of the building at some point in the future, but they did not submit a site plan showing that.

FARNEY clarified then by approving this application, the Commission is not limiting any land use rights to the west. He asked suppose the property owner to the west wants to install a communication tower. Wouldn't that be a conflict?

MILLER said approval of this application is not going to prohibit the ability of the property owner to the west to develop anything that they are legally allowed to do on the property. He said if they applied for a communication tower and that was considered a flight hazard that would be evaluated at the time of permit. He said that factor is not any different than any other factors that the Commission would consider when evaluating an administrative permit or conditional use request.

HENTZEN asked if the property owner to west was notified of this request.

MILLER said yes and added that he received three phone calls and two letters concerning the application.

HENTZEN said it looks like the Commission is restricting the land to the west by approving this request.

HILLMAN asked if there were specific hours of operation.

MILLER said the official sunrise and sunset time each day.

SHERMAN said so if someone builds a residence or residences within the 750 buffer that would automatically make the heliport license null and void.

DICKGRAFE said no the City would have to take some kind of action such as revoke the license due to non-compliance or refuse to renew it when it comes up for renewal.

FOSTER asked how the provisions of page three of the Staff Report apply.

MILLER commented that the clearances referred to on page three are part of the license requirements.

FOSTER asked if the Planning Commission can limit the license period and make it different than the five years.

DICKGRAFE responded that the Planning Commission cannot nullify an existing City ordinance such as the time period of the license.

DIRECTOR SCHLEGEL added that the Commission could; however, put a time limit on the conditional use permit.

SHERMAN said so as part of the conditional use request the Commission could add a condition that if a structure is erected within the 750 foot buffer zone, the conditional use would be withdrawn or the Commission could put a time limit on the conditional use. He said his concern was that he felt it was weird to allow the heliport to be built and then allow structures to be built within the 750 buffer zone and still allow the folks to operate the heliport.

MCKAY asked staff to review two different maps of the site and surrounding area in the slide presentation. The zoning map which indicated the area to the west of the site was currently zoned SF-20 single-family residential, and the 2030 Wichita Function Land Use Map which showed the area as appropriate for regional commercial development. He commented so the single family issue could not be applicable in the future.

MILLER agreed and added that the 2030 Wichita Function Land Use Map means if the property owner to the west were to ask for more intense zoning, staff would look favorably on the request.

CHAIR MILLER STEVENS invited the applicant to speak, but no one responded.

MILLER indicated that neither the applicant nor their agent were present at the meeting.

ROGER RUNFT, 11847 CARR COURT said he lives within sight of the Mel Hambelton Auto Dealership, and is quite aware of the activity at the location. He said he was present as a board member of the Grandview Homeowner's Association which encompassed the 203 homes located south of the abandoned railroad right-of-way and Mel Hambelton. He commented that the Grandview neighborhood was developed in 1995-96-97. He said the auto dealership was developed in 2005/2006. He said when they purchased their home; they did research and realized the area was close to light industrial development along the Kellogg corridor, and thought that would be okay because business hours would probably be during the daytime from 8:00 a.m. to 5:00 p.m. He said once the dealership moved in and they found out what goes on at a car dealership many issues arose for the neighbors including lighting, noise, smells from the diesel fuel of the massive trucks that transport cars to the dealership and the most recent issue which was operation of the public announcement (PA) system from 9:00 a.m. to 9:00 p.m., six days a week. In addition, he said when the dealership is not open; they play music on their PA system. He said they have contacted the Office of Central Inspection (OCI) regarding turning it down. He mentioned a promotional event that included a helicopter that occurred a month ago, and said even though it was a temporary permit, there was extreme noise all day long when people were out in their backyards trying to enjoy a Saturday. He said the homeowner's association is aware of the City's Noise ordinance, and although most noises do not meet that threshold, he said the on-going droning 12 hours a day can be very annoying. He said they believe a helicopter far exceeds the noise ordinance. In addition, he said when the wind comes out of the north it just exacerbates the noise. He added that his home is located within 300 feet of the building and that an industrial compressor kicks on and off 24 hours a day which creates constant noises. He said they have called the dealership and talked to them in an effort to be good neighbors and work out issues. He said this conditional use permit request is a whole other issue. He said a temporary promotional event is one thing but this permit would allow the dealership to have a private airport and invite as many people as he wants to come and go from the site up until 9:00 p.m. at night in the summer when it is still light outside. He said the neighbors are concerned about the noise issue and are not attempting to thwart a business promotional opportunity. He said once the helipad is there basically it is a private airport and they can give Christmas light tours and have the ability to do whatever they want to do after the fact. He said promotions once or twice a year would be okay, but they received numerous complaints all day Saturday, the day of the last promotional event. He said noise drifted at least ½ mile.

MOTION: To grant the speaker two additional minutes.

HILLMAN moved, **HENTZEN** seconded the motion, and it carried (12-0)

He continued by saying that the December 4, 2010, District Advisory Board (DAB) meeting was cancelled and rescheduled to January 5, 2011, so they have not been able to address the DAB regarding this issue. In addition, he said he understands that they have 14 days after the Planning Commission decision to file petitions protesting the request, which that time ends even before the DAB will meet to discuss the issue. He requested that the Planning not make a

decision on the request until after the January 5, 2011 DAB meeting. He concluded by adding that just from being present at this meeting and hearing the conversation, he had a better understanding of how the widening of 119th Street will impact this request. He mentioned the huge utility poles going up along Pawnee and how construction of the flyover along Kellogg will preclude aircraft from operating to the north. He said in his personal opinion this would be another reason not to get into this and allow a five year permit and then end up taking it all off the table. He said he does not know what is going to develop to the west, but several of the residences to the south are already within the 750 foot radius of the helipad.

HILLMAN asked if all the homes located to the south were part of the Grandview Neighborhood Association.

RUNFT said most of the homes belong to the Neighborhood Association, except for about 29-30 homes further to the east.

HILLMAN said he would support a deferral until DAB IV met and the neighbors had additional time to negotiate with the dealership.

MCKAY clarified that **MR. RUNFT** was present as a spokesman for the homeownership board.

RUNFT said he was present as both a private citizen and as a representative of the board.

MARY WESTBROOK said her mother owns the **BLASI CAMPGROUND** directly east of the dealership on Kellogg. She said they too are concerned about the noise issue. She provided Commissioners a handout summarizing their objections to the proposed application. She referenced the City of Wichita Noise Ordinance (7.41.010) and commented that a helicopter will exceed the 60 decibel noise level permitted for commercial enterprises. She referenced items 2, 3, and 5 in the "Golden Rules"; namely, suitability of the subject property for the uses to which it has been restricted; extent to which removal of the restriction will detrimentally affect nearby property; and relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant. She said this area is not suitable for a heliport because of the neighborhood, heavy traffic in the area and campground to the east. She said if this application is approved it will definitely have a detrimental effect on their business. She said a heliport near a busy highway does not protect the health and safety of anyone. She added that several months ago she saw the helicopter having difficulty getting up and over the highway. She said approval of this application would be detrimental to their business and the safety of campers. She said they do not even allow motor bikes in the campground because of the noise. She said there are 2 major camp books that rate campgrounds and added that noise is one of the items that could negatively affect their ratings. She said many campers rely on these books and their reviews. In addition, she said as campers travel across the United Stated the put their reviews on the Internet. She gave examples from the WEB site RVParkReviews.com regarding their campground which specifically mentioned how quiet it was and how other campgrounds were noisy, specifically citing helicopter noise as an issue. She said once an opinion is posted on the Internet, it cannot be changed so this application will affect who will come to stay at their campground. She concluded by saying that they were opposed to the zoning change for the heliport.

MOTION: To defer the item until the January 20, 2011, Planning Commission Meeting.

HILLMAN moved, **JOHNSON** seconded the motion.

MCKAY said he had a real problem that the entire 21 acres is being included in the conditional use request.

DIRECTOR SCHLEGEL clarified that the permit would only include the areas identified on the site plan.

MCKAY asked if staff could contact the applicant and see if they would consider amending their application to just the area to be used for the heliport; not the entire 21-acre auto dealership site.

HILLMAN suggested that the agency could drive two miles to the airport.

DOWNING asked if the Commission recommends approval of the conditional use request with a designated lifetime, say two to three years, at the end of that period does the applicant have to come back and re-apply and pay all the fees again or could a simple extension be granted.

MILLER said it was his opinion that the applicant will have to re-file because all the necessary legal notifications would need to be done over again.

DICKGRAFE agreed, and said that would be her legal opinion as well.

VAN FLEET commented that he would support the motion to defer the item and added that he can't recall another time that a matter was being heard by the Planning Commission where neither the applicant nor the agent were present.

SHERMAN asked if the motion includes **COMMISSIONER MCKAY'S** suggestion.

DIRECTOR SCHLEGEL responded that the motion was to defer the item until January 20, 2011.

FOSTER said he has concerns regarding existing residential traffic in the area and improvements to 119th Street and Kellogg. He said that intersection is pretty tricky to navigate and helicopters will only distract drivers by drawing their attention. There was brief discussion concerning traffic counts.

MILLER indicated the intersection carries a daily volume count of 59,576 vehicles.

FARNEY commented this use was not general aviation and it was not commercial.

DICKGRAFE referred to page two of the Staff Report where staff tied the activities to the parcel and promotional activities.

MILLER said the applicant will require Federal Aviation Administration (FAA) approval for the heliport, and added that only people invited to land there by the applicant could use the heliport; however, that is a distinction that prior approval is required and that the heliport is not open to anyone.

It was the general consensus of the Commission that they had serious questions regarding the application.

The **MOTION** carried (11-0-1). **KLAUSMEYER** Abstained.

Nona Williams
11814 W. Carr
Wichita, Kansas 67209

Below I have outlined a few of the reasons why I am protesting Lisa Hamilton to use the southeast corner of 119th and Kellogg as a heliport pad. Case No. CON2010-00047.

1. What is Ms. Hamilton transporting that she cannot use the existing airport that is 2 miles east of the corner of 119th and Kellogg? At Wichita Mid-Continent, Air Traffic Control can monitor and direct air traffic in order to avoid in-air collisions. I am not an air traffic controller, but with a heliport pad at a different location can a helicopter be properly monitored to avoid these mishaps and save lives both in the air and on the ground?

2. Speaking of hazards. Allowing a heliport at that location creates a traffic hazard should the City Conditional Use Request pass. How many wrecks will we now have at the corner of 119th & Kellogg and the surrounding areas as the helicopter comes in for a landing. It is only natural for people in their vehicles, on their motorcycles and on their bikes to crane their necks to see where that noise is coming from and what is going on while they are in the midst of driving. The next thing we know there is a crash and someone is injured or killed. How many lives will be lost just because Ms. Hamilton is allowed to land her helicopter at Mel Hamilton Ford?

3. As a homeowner adjacent to Mel Hamilton Ford. I live in the Grandview Subdivision and my property backs up to the city easement which backs up to the Ford Property. I get to listen to their pages and announcements day and night, including the Christmas music that is played 24/7 during the holiday season. If Ms. Hamilton's request is approved the neighborhood will then have the pleasure of listening to a helicopter land right behind my house along with the subsequent vehicle crashes and emergency sirens which will ensue shortly thereafter.

4. My property and neighborhood has already been devalued by the existence of a car lot on the corner of 119th and Kellogg, which it was zoned light commercial when I moved in. It was a risk I took. However, I did not realize how much grief it would cause me. Nor did I realize how much my property value would decline because of it. If Ms. Hamilton were to be allowed a heliport, my property value along with those of my neighbors would plunge again.

5. One last note. If the Conditional Use Request does pass, what happens when an attempt to land the helicopter takes out a power line or several? It would consume some of the City of Wichita resources to come out and repair those power lines. This also causes distress to the surrounding neighborhoods without power. If the power lines were to be knocked out on a repeated basis, would that mean an increase in taxes due to the cost the City of Wichita is expending for these repairs? Would these taxes be passed down to the homes owners?

I am hoping through these concerns and questions that I have brought forth that Ms. Hamilton's request for a Heliport be denied. I see no reason for it other than to distress other homeowners and businesses in the area. If she needs to transport something by air, then please ask her to do so safely through the use of Wichita Mid-Continent Airport as the other businesses in town do.

Sincerely,

Nona Williams
11814 W. Carr
Wichita, Kansas 67209

1500 S. Wheatridge Street

Wichita, KS 67235-1037

December 11, 2010

Metropolitan Area Planning Commission

Wichita City Hall, 10th Floor

455 N. Main St.

Wichita, KS 67201-1688

RE: **Case No. CON2010-00047**

To Whom It May Concern:

This letter is to protest the proposed Heliport on property zoned LT Limited Industrial @ the Southeast corner of West Kellogg Street and 119th Street West. Our property is located just northwest of this intersection of West Kellogg and 11j9th Street West.

We already have lights shining in our South windows @ night due to the recent addition of the high rise ramp @ Mel Hamilton. The addition of a Heliport would also cause untold noise levels as well as potential safety risks to our residential area.

The traffic noise from the intersection of Kellogg and 119th Street West is enough. We built our house in 1967 in what was a residential area. We don't need a Heliport added on the property owned by Hamilton Ford.

Thank you in advance for considering this letter as opposition to this proposed action.

Sincerely,

Howard R. Moore

BLASI CAMPGROUND

11409 W. Kellogg * Wichita, Kansas 67209 * 316-722-2681

December 16, 2010

Metropolitan Area Planning Commission
Wichita City Hall, 10th Floor
455 N. Main Street
Wichita, Kansas 67202-1688

Case Number: CON2010-00047

Committee Members,

Blasi Campground protests the request by Mel Hambelton Ford to allow a heliport on their property zoned LI Limited Industrial at the corner of West Kellogg Street and S. 119th Street West.

City of Wichita Ordinance Sec 7.41.010 states that loud and unnecessary noise is prohibited which "creates a nuisance or injuries or endangers the comfort, repose, health or safety of others, or which interferes with the use or enjoyment of property of any person of reasonable sensibilities residing in or occupying the area unless the making and continuing of such noise is necessary for the protection and preservation of property or the health and safety of some individual." Section 7.41.020 classifies the noise levels. Section 7.41.030 states that "a noise measured or registered as provided herein from any source not exempt by this chapter at a level which is equal to or in excess of the db(A) established for the time period and zones listed below or that exceeds the background level by 5 db(A), whichever is greater, is declared to be excessive, unusual, loud and unnecessary, for the purposes of Section 7.41.010." ~~A copy of this table and the ordinances is attached as "A"~~. According to this table, the noise level from 8 am to 10 pm for commercial property, which Blasi Campground is zoned, is 60 db(A). The average noise level for a helicopter is anywhere from 80 db105 db.

According to "The Golden Rules" administered by the Wichita City Council, the Metropolitan Area Planning Commission should consider in deliberations of zoning changes, this proposed zoning change fails to meet at least 4 of the requirements. A copy of these rules, obtained from the Wichita.gov website, is attached as "B".

Rule #2: <u>The suitability of the subject property for the uses to which it has been restricted</u>: Are these uses suitable given surrounding zoning and site criteria? It is not suitable for a heliport. There are neighborhoods to the north, south and west of the proposed site, heavy traffic on Kellogg, and Blasi Campground to the east. Noise and safety are concerns.

Rule #3: <u>Extent to which removal of the restrictions will detrimentally affect nearby property</u>: Can the uses allowed in the requested district be good neighbors to existing development? NO! Once again, there are neighborhoods to the north, south, and west of the proposed site, heavy traffic on Kellogg, and Blasi Campground to the east. Noise and safety are concerns, as is the detrimental effect this would have on our business.

Rule #5: <u>Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant</u>: The protection of public health, safety, and welfare is the basis for zoning. A heliport, basically in a neighborhood, next to a busy highway, and next to a campground, does not protect the public health, safety, or welfare of anyone. According to helicopterlawyers.com, "the helicopter accident rate is 7.5 per 100,000 hours flying whereas the airplane accident rate is .175 per 100,000 flying hours." Noise and safety are concerns.

Note: Several months ago when Mel Hambelton Ford was giving helicopter rides, without a heliport, on a very windy day, I personally witnessed the helicopter flying north and barely clearing the traffic on Kellogg.

Rule #8: <u>Opposition or support of neighborhood residents</u>: This is not only opposed by Blasi Campground but would be detrimental to our business.

Our brochure reads "Our utmost concern is the Health and Safety of Blasi Park Campers. Let us all have a good time." It also states "motorbike and/or motorcycle riding is restricted". This is due to the noise they create. Having a helicopter flying over and around Blasi Campground compromises all of these issues. A copy of this brochure is attached as "C".

In the campground business, reviews are critical to our success. There are two major camping books, with over three hundred thousand subscribers each, that rate our business and post the reviews in their books and online. Using a point system, we are rated on location, cleanliness, amenities, and how quiet the park is. A copy of this rating system is attached as "D".

The internet is also crucial to our success. There are numerous review sites that let other campers know how others feel about a particular campground.

The following reviews were posted on RVParkReviews.com regarding Blasi Campground. As you can see, having a quiet location is vital in the camping world.

- Fairly level with concrete pads and quiet campground that GPS has trouble finding and is difficult the first time. Pretty good Wi-Fi. Gravel interior roads. Staff was very helpful and nice. Good campground for an overnight stay. We camped here in a Fifth Wheel.
  The user that posted this review has 20 other reviews online. Click here to see them.

- This is a nice, quiet campground with concrete pads and gravel roads. Next to Hwy 54 but did not notice any traffic noise. This is a clean campground and staff was very helpful and nice. The campground is located on the west edge of Wichita but is still convenient to Wal-Mart, Sam's and lots of good restaurants. This is an excellent campground for an overnight or extended stay. Reasonable monthly rates. We camped here in a Motorhome.
  The user that posted this review has 7 other reviews online. Click here to see them.

The following reviews were posted on RVParkReviews.com by campers regarding helicopter noise at other campgrounds.

- Wooded sites with lots of room between them. Varying lengths on sites. Divided into A sites for long rigs, and B sites for shorter ones. Good water and septic dump. Only negative was the noise from road construction and helicopters one and two miles away at the entrance. So we moved to Savage CG afterward. Then there is Denali: fabulous. Get there early with a big rig, or maybe you suffer! We camped here in a Fifth Wheel.
  The user that posted this review has 30 other reviews online. Click here to see them.

- This is one of the nicest RV parks I have ever stayed at! Everything was beautiful and well kept. Lots of room between sites. The only thing I didn't like was the helicopters that flew over frequently but this is out of the parks control and wasn't that big of a deal. If you are looking for a place to stay this is definitely a premier RV park. We camped here in a Motorhome.
  The user that posted this review has 4 other reviews online. Click here to see them.

- I camped here with my 1 year old daughter recently. Registration was easy, we just pulled up and someone greeted us immediately. We were shown to our site (full-hookup) which was mostly level. I did have to level our motorhome some. Most of the sites were paved. They had cabins, RV's, boats and golf carts to rent if you wanted. My daughter used the playground A LOT and it was very nice. They had a jumping pillow which looked very fun, although my daughter found playing in the sand around it more fun. They had an outdoor swimming pool with a water slide and a little "cafe" in with the gift shop. The "cafe" just sold pizza and ice cream, and maybe some homemade fudge if I recall. Truly my only complaints with the park were that the Branson Tour Helicopters went flying overhead every 15-20 minutes: it was very loud and annoying. But that is certainly not anything the park can do something about. We also had a pretty, shaded site, but the trees were so close we could not undo our awning. But I'll take shady on a hot summer day, over the awning any day. The staff were all very friendly. You put your trash out in the morning for them to take care of. There were laundry facilities and plenty of restrooms and showerhouses, but we didn't use them so I can't tell you what they were like. We throughly enjoyed our stay at the Branson KOA campground and would camp here again. We camped here in a Motorhome.
  The user that posted this review has 3 other reviews online. Click here to see them.

- I won't go back
  By A Yahoo! Contributor, 10/15/08
  Too much noise from helicoptors coming and going across the road. Sattilite TV was useless (4 sorry Channels). Internet (when it works) was about 6 mb download speed but dropps all the way down to less than 56k a lot of the time. Could be a very good campground if the helicopter fly overs were eliminated and a well stocked capground store was established. Oh Yeah and get rid of their internet ISP for one that works.

Once a review is posted, whether positive or negative, it has an impact on people's decisions on where they are going to stay. The review does not go away. Having a quiet campground is imperative to our success.

Once again, I would like to state that Blasi Campground opposes the approval of a zoning change to allow a heliport at Mel Hambelton Ford. One business does not have the right to cause detriment to another, which is what this zoning change would do. I respectfully request that you deny this zoning change.

Mary Westbrook

Mary Westbrook
Manager

"B"

THE GOLDEN RULES

1. The zoning, uses and character of the neighborhood: Factual description of the application area and surrounding property as to existing zoning, land uses, general condition, age of structure, etc.

2. The suitability of the subject property for the uses to which it has been restricted: How is the property currently zoned and what uses are allowed on the property? Are these uses suitable given surrounding zoning and site criteria? Are the current allowed uses the only ones which might be appropriate for this property?

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Can the uses allowed in the requested district be good neighbors to existing development? This is a subjective question. The focus should be on facts, not fears, and should be based on issues that zoning can address (e.g. allowed uses, minimum lot size, height, setbacks, traffic, etc.)

4. Length of time subject property has remained vacant as zoned: Factual information, but its importance may be somewhat subjective. A property might be vacant because the current zoning is unsuitable, but they may be other reasons not related to zoning. Some examples might be a glut of available property of the same zoning district, financing problems, speculation, lack of available services or other development problems.

5. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The protection of public health, safety and welfare is the basis for zoning. The relationship between the property owner's right to use and obtain value from their property and the City's responsibility to its citizens should be weighed.

6. Conformance of the requested change to the adopted or recognized Comprehensive Plan: Does the request agree with the adopted plan recommendations? If not, is the plan out-of-date or are there mitigating circumstances which speak to the nonconformity?

7. Impact of the proposed development on community facilities: Are water and sewer available for extension? How are roads impacted? Can other community facilities (e.g. police, fire, parks, libraries, schools) handle the increased development? Should be based on factual information referencing standards used to make the determination.

8. Opposition or support of neighborhood residents: This is just one of the factors to be considered and by itself is not sufficient reason to approve or deny a request.

9. Recommendation of professional staff: Should be based on the preceding eight factors, adopted plans and policies, other technical reports (e.g. Capital Improvement Programs, facility master plans, etc.) which speak to the topic and staff's best professional judgement.

BLASI CAMPGROUNDS

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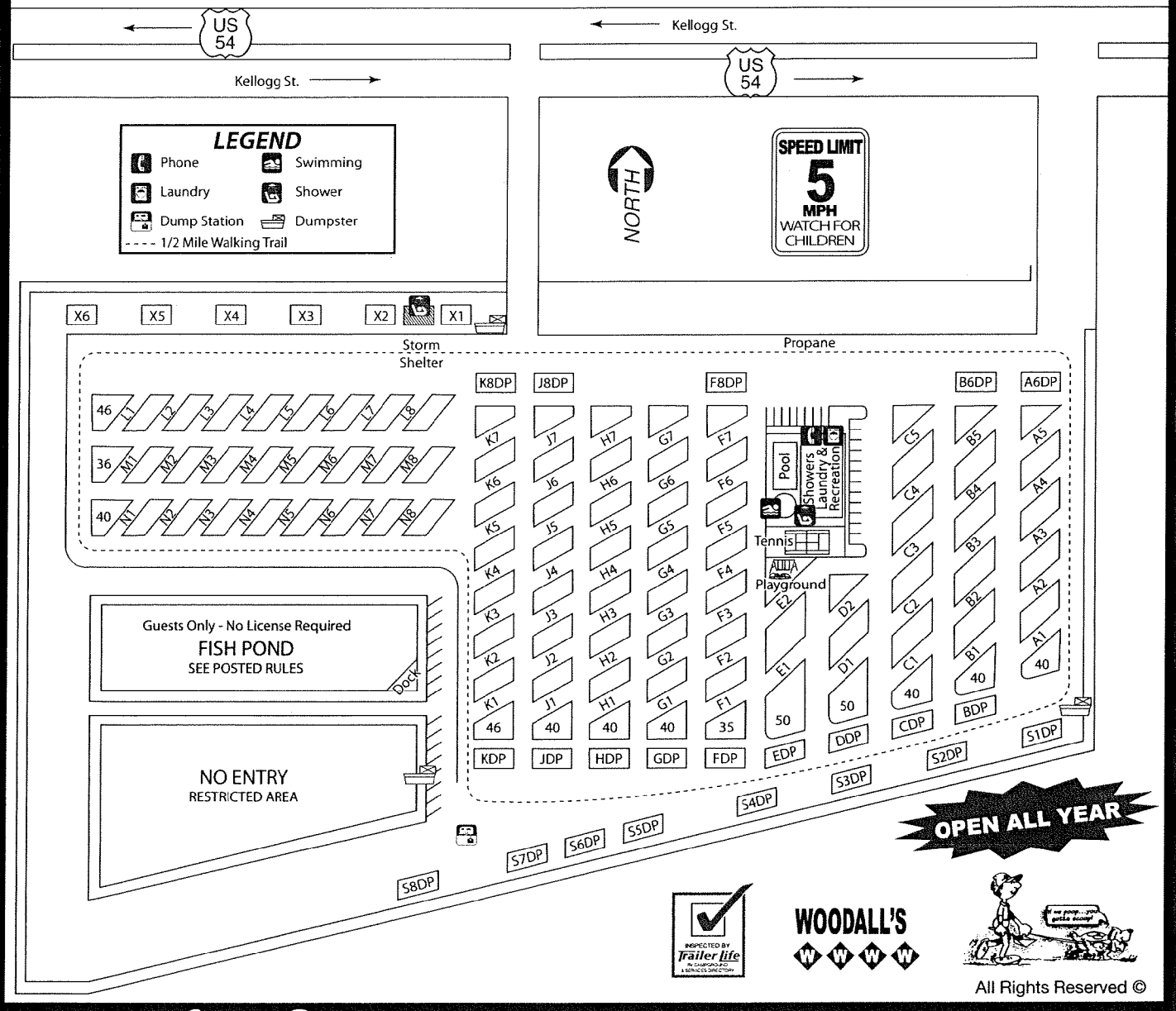
(Hwy. 54)
Wichita, KS 67209

(316) 722-2681



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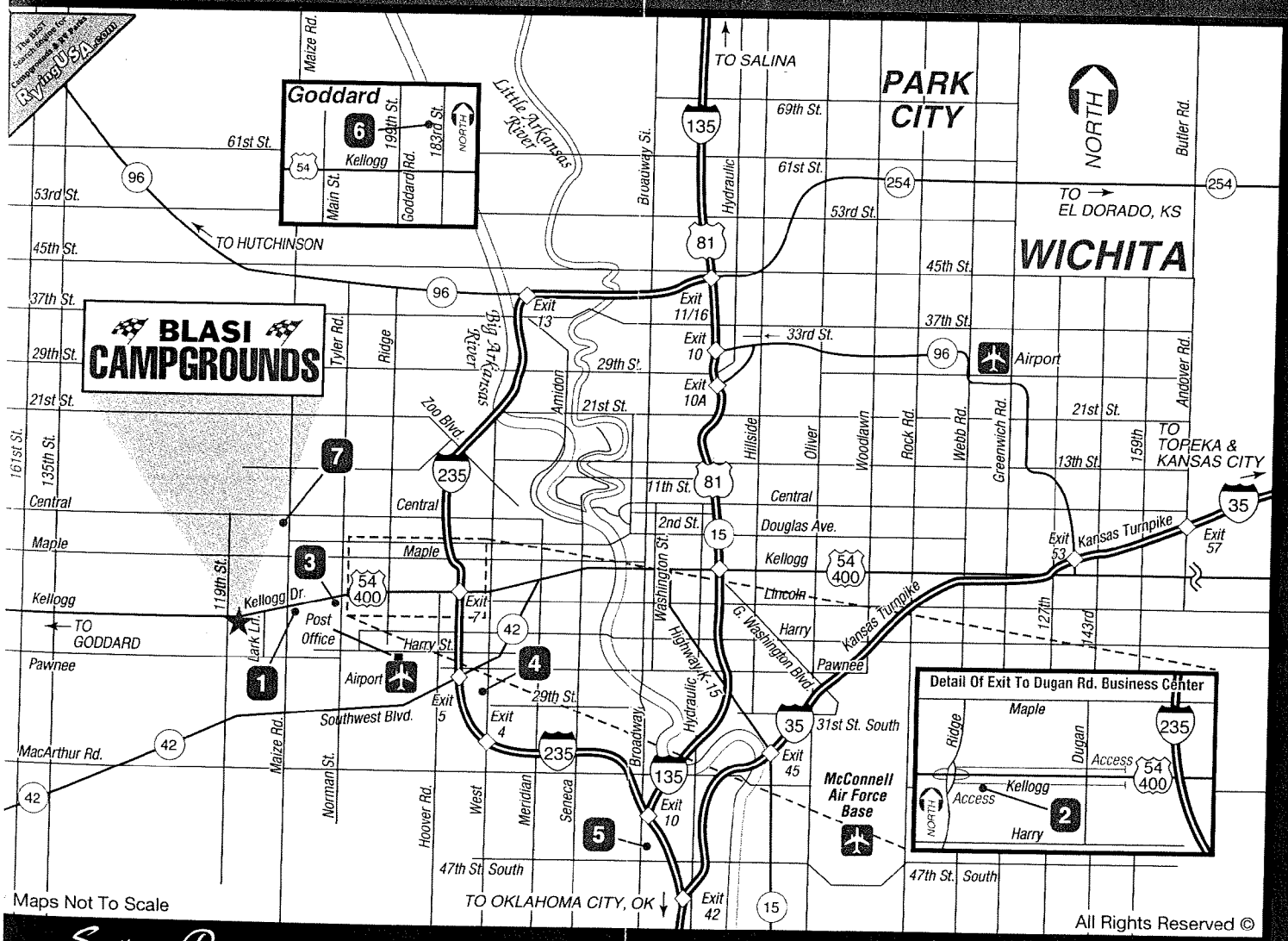

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VISUAL APPEARANCE/ ENVIRONMENTAL QUALITY

A full point should be awarded in a category only if the amenity is outstanding. If not best in each category, rate down 1/2 point.

	0 POINTS	1/2 POINT	1 POINT
_____	**FUNCTION & IDENTIFICATION OF SIGNAGE:**		
	No sign or sign difficult to identify, poorly maintained, faded, or not able to be seen at night.	Entrance is clearly identified. Sign is well-maintained, easily seen at night, illuminated by street lights or reflective material.	Entrance is clearly identified. Well-maintained professional quality sign illuminated with flood lights or back lights.
▲ _____	**APPEARANCE OF ENTRANCE AREA:**		
	Park entrance is not landscaped, or landscaping is minimal and/or poorly maintained with some litter or debris.	Park entrance is reasonably landscaped with a ground cover (grass, decorative rock or bark) plus one of the following: trees, shrubs, flowers, landscaping timbers, or ornamental vegetation appropriate to climate, free of litter and roadside debris and well-maintained.	Park entrance is invitingly landscaped with a ground cover (grass, decorative rock or bark) plus at least two of the following: trees, shrubs, flowers, landscaping timbers, or ornamental vegetation appropriate to climate, free of litter and roadside debris and carefully manicured.
▲ _____	**APPEARANCE OF PARK GROUNDS:**		
	Common areas of park not landscaped or poorly landscaped. Overgrown with weeds or other vegetation or left unmaintained.	Landscaping of common areas is consistent throughout the park, includes a ground cover (grass, gravel, decorative rock or bark), and a **limited quantity** of trees, shrubs, flowers, landscaping timbers, or ornamental vegetation appropriate to climate. Landscaping is well-maintained (grass mowed, leaves raked, trees trimmed). Parks in a natural forest setting without additional landscaping qualify for a maximum of 1/2 point.	Landscaping of common areas is consistent throughout the park, includes a ground cover (grass, gravel, decorative rock or bark), and a **significant quantity** of trees, shrubs, flowers, landscaping timbers, or ornamental vegetation appropriate to climate. Landscaping is carefully manicured (grass mowed, edged and weeded, leaves raked, trees trimmed, *no grass, weeds or ground cover creeping onto roads or pavement).*
▲ _____	**APPEARANCE OF SITES:**		
	Sites not landscaped, poorly landscaped, or unmaintained (overgrown with weeds or other vegetation).	Site landscaping is consistent throughout the park in all overnight-type sites and includes a ground cover (grass, gravel, pavement, decorative rock or bark) plus one of the following: trees, shrubs, flowers, landscaping timbers, privacy screens, or ornamental vegetation appropriate to climate. Landscaping is well maintained (grass mowed, leaves raked, trees trimmed). Sites located in a natural forest setting without additional landscaping qualify for a maximum of 1/2 point.	Site landscaping is consistent throughout the park in all overnight-type sites and includes a ground cover (grass, gravel, pavement, decorative rock or bark) and **at least two of the following**: *trees, shrubs, flowers, landscaping timbers, privacy screens, or ornamental vegetation appropriate to climate.* Landscaping is carefully manicured (trees and plants trimmed and pruned, grass is mowed, edged and weeded, leaves raked; *no grass, weeds or ground cover growing or creeping onto RV parking area).*
▲ _____	**LITTER AND DEBRIS AROUND PARK GROUNDS AND SITES:**		
	Park grounds area around buildings and/or sites (including fire pits) are littered with refuse, clutter, or debris.	Park grounds area around buildings and/or sites (including fire pits) are reasonably free of refuse, clutter, or debris.	Park grounds area around buildings and/or sites (including fire pits) and RV's are free of all refuse, clutter and debris.
▲ _____	**OVERALL EXTERIOR BUILDING MAINTENANCE:**		
	Buildings require major repair, painting, web removal, cleaning or maintenance.	Buildings require some minor repair or painting, web removal, cleaning or maintenance.	All buildings painted and in good repair. Clean in appearance and free of all webs.
▲ _____	**TRASH DISPOSAL:**		
	No trash receptacles or trash receptacles overflowing. Receptacles not regularly emptied.	Trash receptacles of ample capacity, well maintained, regularly emptied, located more than 500' from 50% of overnight sites.	Trash pickup at site daily and/or receptacles of ample capacity, well-maintained, regularly emptied, located less than 500' from 50% of overnight sites.
_____	**NOISE:**		
	Park is located in flight plan of nearby major airport or active military airstrip, borders an active railroad track, interstate or heavily traveled major highway or industrial or commercial area which results in frequent, major noise pollution.	Park is close enough to an airport, active railroad track, interstate or heavily traveled major highway or industrial or commercial area which results in occasional, moderate noise pollution.	Park is distant enough from airports, active railroad tracks, interstate or other heavily traveled major highways, industrial or commercial areas and is relatively free from the noise such facilities generate.
_____	**PARK SETTING:**		
	Park and sites have no natural or manmade visual barriers from commercial, industrial, or residential surroundings on all four sides.	Park and sites are shielded from commercial, industrial or residential surroundings by a manmade or natural visual barrier on at least two sides.	Park and sites are shielded from commercial, industrial or residential surroundings by a manmade or natural visual barrier on all four sides.
_____	**SITE LAYOUT:**		
	Majority of sites have side-by-side hookups or distance between majority of RV parking space centers is less than 20'.	Less than 50% of sites have side-by-side hookups. Distance between majority of parking space centers is minimum of 20'.	No side-by-side hookups. Majority of sites with a minimum of 30' between parking space centers (from center of parking site to center of adjacent parking site.)
_____	**TOTAL RATING**		

MUST HAVE 1/2 POINT IN THESE AREAS ▲ AND 5 POINTS OVERALL TO QUALIFY FOR GOOD SAM PARK MEMBERSHIP.

DWTA

Premier Aviation Services

Date: December 16, 2010

To: Mr. Dale Miller - Wichita City Planning Department
Cc: Robert Thompson - Chief, Wichita Fire Department

From: DWTA Premier Aviation Services

Re: Heliport License / Mel Hambelton Ford

Dear Sirs,

The following is respectfully submitted as an addendum to the previously submitted request for the establishment of a Prior Permission Required (PPR) Heliport [a heliport developed for exclusive use of the owner and persons authorized by the owner] to be located at Mel Hambelton Ford (address on application).

Modifications in Support of Heliport Approval •

1. **Landing location to be limited to area identified on initial Site Plan** (this area is 110' x 122' - the 750' area is for approach and take-off)
2. **All take-off and landing operations will be performed during daylight hours only**
3. **Flight path shall make every effort to remain clear of housing / temporary housing to reduce noise and potential disturbance (unless:** 1. FAA flight control requests headings and or altitudes which the pilot shall follow, or 2. For reasons of flight safety)
4. **No "strobe lights" shall be utilized in or around the landing area in conjunction with helicopter operations**

As with the original application, all FAA notifications and heliport design recommendations have been made and followed respectively, and all Wichita City Ordinances have been adhered to as well in the design and location determination.

Your time and assistance as always is greatly appreciated.

With Best,

The DWTA Flight Team

DWTA, Premier Aviation Services
[DawnWolf Technologies, Inc. - dba DWTA Premier Aviation Services]

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EXCERPT MINUTES OF THE JANUARY 20, 2011 METROPOLITAN AREA PLANNING COMMISSION MEETING

COMMISSIONER KLAUSMEYER recused himself from this item because he said he owns property near the site and left the bench.

> **Case No.: CON2010-47** – Lisa Hambelton (property owner) / Phil Nightingale or Jeff Horning (agents) request a Conditional Use to permit a Heliport on property zoned LI Limited Industrial on property described as:
> Lots 1, 2, 3, 4, 5 and 6, Block A and Reserve A, Mel Hambelton Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: This application was originally heard by the Metropolitan Area Planning Commission (MAPC) on December 16, 2010, at which time the MAPC deferred the case to its January 20, 2011, meeting. On January 5, 2011, District Advisory Board IV reviewed the case. A number of neighbors spoke in opposition citing concerns with: noise, safety, feat that the use could limit future development options on nearby undeveloped ground and impact on the serenity of Resthaven Cemetery. Nearby residences explained how noise from the helicopter had, in the past, awakened them, and indicated that many of them were third shift workers who sleep during the day. A representative of the Blasi Campground explained how noise is one of the factors used to evaluate campgrounds and negative noise ratings from customers could reduce the attractiveness, and ultimately, the success of their facility.

To address these comments, the applicant indicated that there might be steps he could take from a flight and rotor setting standpoint to minimize noise. The applicant submitted a revised site plan that depicts a secondary landing area located immediately west of the original primary landing area. The applicant also submitted a letter indicating that he agreed to: limit the application area to only the area covered by the site plan instead of the original 21 acre site, limit flight operations to daylight hours, to make every effort for his flight path to remain clear of housing and to not use strobe lights in or around the landing area.

The applicant is seeking Conditional Use approval for a "heliport" on 21 platted acres located at the southeast corner of West Kellogg and 119th Street South. The property is zoned LI Limited Industrial ("LI") and a majority of the site, 13.01 acres, (Lot 6, Mel Hambelton Addition) is developed as the Mel Hambelton Ford dealership. The extreme western portion of the site, 4.81 acres has an average approximate north-south length of 1,058 feet with an east-west width of 206.44 feet, and is undeveloped but platted as Lots 1-5, Mel Hambelton Addition. The applicant is seeking approval of a "heliport" in order to install what is defined by the Federal Aviation Administration (FAA) as a "prior permission required" private heliport, meaning that the heliport would be limited to use by only those aircraft given permission by the property owner to land or take-off. The heliport would not be open to general aviation use.

The applicant has submitted a site plan that shows three distinct areas. The first area is a smaller rectangle of 110 by 122 feet (on Lot 6) whose center appears to be located approximately 350 feet south of the site's north property line and 261 feet east of 119th Street's eastern right-of-way. This smaller rectangle is a proposed landing and take-off area to be used especially during Mel

Hambelton promotional events, and when not used as a heliport is used to display vehicles. The cars that typically occupy that paved space can be moved and fencing can be put up using existing light poles located in the display lot to isolate the landing pad. At its closest point, this landing and take-off area is located within approximately 735 feet of the northern property line of lots located in the residential subdivision, Lark Addition, located south of the application area. When taking off from the smaller rectangle, the helicopter would head into the wind, side-slip to the west to the area identified on the site plan as a second, larger rectangle and use the greater length of the larger rectangle as the helicopter's transition area to increase height and speed. Helicopter pilots typically prefer to gradually increase their height as they move forward at take-off, similar to a plane, rather than use a maximum performance, straight up and down take-off. It is the same, only in reverse for a landing.

The second area identified on the site plan is the larger previously mentioned rectangle of some 200 by 700 feet (Lots 1-3 and approximately the northern 30 feet of Lot 4, Mel Hambelton Addition) located immediately west of the previously described smaller rectangle. This 200 by 700-foot rectangle can be used as the previously described transition area for take-off and landing as well as another landing area. The northern boundary of this second rectangle coincides with the southern boundary of Kellogg Drive right-of-way. The southern boundary of this second rectangle is located, at its closed point, approximately 315 feet north of the application's southern property line or 415 feet from the residential subdivision, Lark Addition, that is located an additional 100 feet south of the application area across a rail banked railroad right-of-way. On the northern end of this second rectangle, closest to the frontage road, there are two artificial rock mounds used to display vehicles. This second rectangle also has a structure located along its west side.

The third rectangle shown on the site plan is located south of the second rectangle, and is identified as the "over-fly safety zone." On the site plan the over-fly safety zone does not have any dimensions but scales out at 200 feet (east to west) and 220 feet (north to south). That north-south length places the southern boundary of the over-fly safety zone with approximately110 feet of the applicant's southern property line or 210 feet from the northern boundary of the residential lots located south of the rail banked railroad right-of-way.

In a discussion that occurred during a Development Review meeting on November 10, 2010, the applicant's representatives indicated they would like to have the potential to land on the entire 21-acre site, and that there was the prospect that a structural evaluation of the existing Mel Hambelton building would be undertaken to see if it could support or be modified to support helicopter flight activities. At that same meeting the applicant's representatives indicated: the helicopter operator was FAA certified as an air carrier; the air space over the application area was under the control of the Wichita Mid-Continent Airport control tower; the helicopter operator has a one year contract (with mutual agreement for one-year extensions) to provide air carrier services for Mel Hambelton, including all promotional events; the number of flights (take off and landing) could be as high as six per hour with a day and one-half being the typical number of flight days per week; flights could occur both during the day or night; they will not fly over the residences located to the south unless safety considerations force them to and the helicopter operator is currently based at Mid-Continent Airport.

Heliports are permitted by the Unified Zoning Code in the LI zoning district by Conditional Use approval. Chapter 9.24 of Code of Ordinances of the City of Wichita contains some development standards for heliports: no heliport, other than a temporary heliport may be located within 750 feet of a church, school or residence as measured from the center of the touchdown pad of the heliport to the property line of the church, school or residence. If the heliport is located on a building the distance shall be calculated as the sum of the number of feet the heliport is located above the ground and the number of feet from a point at ground level where a vertical line from the center of the touchdown pad of the heliport strikes the ground of the property line of the church, school or residence. No heliport, other than temporary can be located within 2,000 feet of any other heliport. A primary surface is to be identified and is to be free of obstructions. Approach surfaces are to begin at the end of the primary surface and extend outward and upward for a horizontal distance of 4,000 feet with a 500-foot width. Transitional surfaces shall extend outward and upward from the lateral boundaries of the heliport primary surface and the approach surface at a slope of two-to-one for a distance of 250 feet measured horizontally from the centerline of the primary and approach surfaces. The design of the heliport is to comply with the U.S. Department of Transportation, Federal Aviation Administration, "Heliport Design-Advisory Circular 150/5390-2A," as amended. A helicopter is not allowed to remain upon a structure for more than 48 hours. No helicopter shall land at a heliport within the city limits unless the pilot is registered as a licensed FAA pilot. The code requires the licensee to carry $200,000 of public liability and $100,000 comprehensive property damage per accident insurance.

It appears that the physical location of the principal landing area (the 110 by 122-foot rectangle and the center of the 700 by 200 foot rectangle) is estimated to be five to 15 feet short of the 750-foot separation distance required by the code and, if approved, the center of any landing zones will need to be moved northward.

Planning staff has been advised by Wichita Mid-Continent Airport staff that the proposed heliport does not pose any risk or hazard with their flight operations. It is also planning staff's understanding that promotional heliport activities have previously occurred on several occasions on the site under the City's temporary heliport licensing authority. At the time this report was written, the Office of Central Inspection had not received any calls concerning these earlier flights; however, planning staff has received one letter of opposition (attached) and one phone call. The letter speaks for itself. The phone caller indicated that the helicopter noise caused him uneasiness as it reminded him of his time in the military.

The application area is located adjacent to a nationally significant highway and part of a more intensely developing transportation corridor. Surrounding property has zoned a variety of zoning and uses: to the north is Resthaven Cemetery zoned LI; to the northwest are medical/dental offices zoned GC; to the east is a warehouse-office zoned LI; to the south are over 100 single-family residences, zoned SF-5 Single-family Residential ("SF-5") and to the west is undeveloped land zoned SF-20 Single-family Residential ("SF-20").

Staff is not aware of any existing non-airport based private heliports in the city other than those located at hospitals. Issues one would expect to be of concern would be safety of flight operations and noise. The city's existing ordinance dealing with helicopters summarized above

indicates that 750 feet of separation from churches, schools or residences is adequate to address those issues.

CASE HISTORY: The Mel Hambelton Addition was recorded in June, 2006.

ADJACENT ZONING AND LAND USE:

NORTH:	LI	Limited Industrial; cemetery
SOUTH:	SF-5	Single-family Residential; single-family residential
EAST:	LI	Limited Industrial; office/warehouse
WEST:	SF-20	Single-family Residential; pasture land

PUBLIC SERVICES: The site is already developed as an automobile dealership; therefore, municipal waste water and water services are in place to support the proposed heliport. Access to the site will be from West Kellogg Drive and/or West 119th Street South. The intersection of West Kellogg and 119th Street carries an average daily volume of 59,576 vehicles. Fire Station 17 at 10651 West Maple is the closest city fire station to the application area and would likely be the first responder to any emergency events at the application area. Utility poles are located along the east side of 119th Street.

CONFORMANCE TO PLANS/POLICIES: The Transportation/Utilities Locational Guidelines of the Comprehensive Plan does not specifically address heliports. The plan does state that airports should be sited away from large water bodies, landfills and concentrations of people. The location clearly complies with the first two criteria. There are homes located at least 750 feet south from the center of a relocated north landing pad and an estimated 600 feet from the center of the intersection of Kellogg and 119th Street.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the following conditions:

A. The Conditional Use permits the operation of a prior permission required, as defined by the Federal Aviation Administration (FAA), heliport. The site shall be developed, maintained and operated in conformance with: the approved site plan; Chapter 9.24 of the Code of Ordinances of the City of Wichita dealing with heliports; applicable noise and lighting ordinances and all applicable local, state or federal rules or regulations.
B. Prior to commencing operations, proof of Federal Aviation Administration approval shall be provided to the Planning Department, if applicable.
C. Only the areas and activities identified on the approved site plan shall permit heliport activities. Use of the remainder of the 21-acre site for heliport activities will require adjustment or amendment to the approved site plan. General aviation activity is prohibited.
D. Flight operations are restricted to daylight hours. Except as required for safety reasons, landing and take-off approaches are prohibited over residential developments.
E. Except for lighting on the aircraft, strobe lights are prohibited. Any lighting used for heliport operations shall be screened or shielded so that it does not create a traffic hazard or be a nuisance to adjoining property owners.

F. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area is located adjacent to a nationally significant highway and part of a more intensely developing transportation corridor. Surrounding property has a variety of zoning and uses: to the north is Resthaven Cemetery zoned LI; to the northwest are medical/dental offices zoned GC; to the east is a warehouse-office zoned LI; to the south are over 100 single-family residences, zoned SF-5 and to the west is undeveloped land zoned SF-20.

2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned LI. The LI district permits an extensive range of non-residential uses allowed by right so the site could be developed with economically viable uses as currently zoned.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will introduce a use that is not currently permitted in the immediate area. Although it is approximately 2.18 miles from the application area, as the crow flies, to Wichita Mid-Continent Airport, approval of the request will bring helicopter noise and potential for flight failure closer to neighboring properties. The use and enjoyment of the residential and cemetery properties could be detrimentally impacted by the noise and potential for flight failure; however, the recommended conditions of approval are designed to mitigate anticipated impacts.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: If denied, presumably the applicant would be denied an unusual promotional tool for their dealership and vehicle sales and the aircraft operator could miss out on a business opportunity.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Transportation/Utilities Locational Guidelines of the Comprehensive Plan does not specifically address heliports. The plan does state that airports should be sited away from large water bodies, landfills and concentrations of people. The location clearly complies with the first two criteria. There are homes located at least 750 feet south from the center of a relocated north landing pad and an estimated 600 feet from the center of the intersection of Kellogg and 119th Street.

6. Impact of the proposed development on community facilities: It is anticipated that any increase in traffic due to heliport activities will be minimal and existing traffic, sewer and water infrastructure are adequate. Given the heliport's proximity to Kellogg, it is possible that flight operations could be a distraction to drivers on Kellogg. In the event of a flight failure, Fire Station 17 is the likely first responder, and may require backup for

additional foam fire suppressant from McConnell Air Force Base or Mid-Continent Airport.

7. Neighborhood support or opposition. At the time this report was written, the Office of Central Inspection had not received any calls concerning these earlier flights; however, planning staff has received one letter of opposition and one phone call. The letter speaks for itself. The phone caller indicated that the helicopter noise caused him uneasiness as it reminded him of his time in the military.

DALE MILLER, Planning Staff presented the Staff Report. He commented that several people spoke in opposition to the proposal at the District Advisory Board (DAB) IV meeting. He said they cited reasons that had been discussed at the January 6, 2011, Planning Commission meeting, such as noise and safety. He said a comment was made that a lot of third shift people live in the subdivision to the south of the Mel Hambelton dealership, and were awakened during the day on the previous occasions when the applicant had a temporary permit for the helicopter.

MILLER STEVENS asked about the future road construction along 119th Street and if those changes had been taken into account.

MILLER said City staff informed him that they have enough right-of-way along 119th Street to do the project

HENTZEN asked for clarification of the application and the DAB vote.

MILLER explained that there would be two landing zones; one on the paved area and one on the grassy area. He said the DAB voted to approve the application.

HENTZEN asked about the configuration of the future 119th and Kellogg interchange.

MILLER said Traffic Engineering told him it would be identical to the interchange at Maize Road and Kellogg.

JOHNSON asked about the property immediately to the west of the site which he understood was currently zoned SF-20 Single-Family Residential. He asked if this application is approved, will it stop them from developing housing.

MILLER said approving this application does not mean the property owner to the west could not build houses within750 feet of the heliport; however, theoretically, if the owner to the west does construct residences, it could be grounds to revoke the heliport license.

FARNEY referred to item D of the Staff Report which stated that flying over residential properties was prohibited. He asked how that provision was enforced.

MILLER said if the helicopter flies over the residential area, a neighbor would have to call the Office of Central Inspection (OCI) to register a complaint. He added that OCI staff would have to observe the helicopter going over houses to issue a citation.

HILLMAN asked about the height of the lighting at the intersection of Kellogg and 119th Street, and if that would be a problem with landings and take offs. He also asked about Federal Aviation Administration (FAA) approval and the licensing requirements.

MILLER commented that lighting should not be a problem with the flight pattern for landings and take offs as shown in the attachment to the Staff Report.

SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY said one of the licensing requirements was that the FAA has no objection to the approach and take off routes and other air space determinations.

DAWN ZON and ADAM HENDERSON, DAWNWOLF TECHNOLOGIES, INC. – dba DWTA PREMIER AVIATION SERVICES were present to answer questions.

CHAIR MILLER STEVENS asked if they had any additional comments and if they were in agreement with the conditions outlined in the Staff Report.

ZON said they are in agreement with the conditions listed in the Staff Report.

ED ROBERTS, REAL ESTATE RESOURCES said he was present to represent Paul and Amy Curtis who owned 60 acres of property west of Mel Hambelton at 119th and Kellogg. He said they are in opposition to the proposal because of the noise factor and how it may impact future plans for development of their land. He mentioned the possibility of high-rise buildings on the property. He said if this is approved, the Curtis' may not be able to develop the property the way they want to.

HILLMLAN asked staff if approval of the request would impinge on the property owner to the west's ability to develop their property with residential housing or would residential development within 750 feet of the heliport impinge on the heliport's licensing. He asked which took precedence.

DICKGRAFE said if the property to the west is developed with residences then the heliport's license could be denied in the future. She said there is also the possibility that the property to the west could be rezoned for commercial development and if that were the case, height compatibility regulations would apply.

HILLMAN asked if approval of the heliport would hinder development of the property to the west.

FOSTER (In @1:57 p.m.)

DICKGRAFE said any rezoning would come back before the Planning Commission, and any existing circumstances would be a factor in that decision. She said she supposed if there was a heliport it could potentially be a factor in development of the property to the west.

HILLMAN said then it could be a limiting factor.

DICKGRAFE responded yes.

CINDY GORDON, 1819 SOUTH COVINGTON COURT, PRESIDENT, GRANDVIEW HOMEOWNERS ASSOCIATION (the housing development just south of Mel Hambelton.) She said they understand only 15 of the 204 homes in the area have a voice against this application; however, she said she was present to represent all 204 homeowners. She said their biggest issue is the noise generated by the helicopters. She said many of the residents work third shift. She said she is the one who gets the complaints, e-mails and phone calls when Mel Hambelton has an event. She said the noise is even louder across the pond. She said as it is they have to listen to the generator and air compressor at Mel Hambelton. She said another factor is the safety issue with people slowing down while driving along 119th Street and Kellogg and not paying attention. She said she has two small children and there are school busses in the area. She said people may be watching the helicopter and not be paying attention to their driving. She suggested that the helicopter be kept at the airport.

ROGER RUNFT, 11847 CARR COURT said he spoke to the Commission last month. He said he would like the opportunity to hear from the applicant and find out the underlying reasons and purposes of the application. He said he spoke with Mr. Zon, DWTA Premier Aviation Services, at the DAB meeting regarding the issues of the private homeowners in the area. He said his residence is just 200 feet outside the 1000 foot radius of the application area and they understood that it was zoned as a commercial industrial area when they purchased their home. He mentioned certain noises the neighborhood experiences from the Mel Hambelton property and how they have contacted OCI and talked over different solutions. But, he said this application is completely outside the context of that and he can't find any underlying reason to consider this. He said the Commission still has not heard from the applicants since they elected not to speak at this meeting. He said he would like to know why they want this. He said Mr. Zon is a private businessman who operates helicopters to make money by giving people helicopter rides and tours. He said he believes the driving force behind this application is so Mr. Zon can seek business. He said if the helicopter rides were just for Mel Hambelton's promotions, they could do that with temporary permits. He said the applicant's believe it is inconvenient to pay for the permits, which must be done two to three weeks in advance of the promotion date because the weather could change and they might not be able to hold the event. He said they are talking about doing a minimum of six events a month, whenever they please, which would include every Saturday and two to three more days on top of that from sun up until sun down. He briefly reviewed the issues which included safety, telephone and light poles, and future construction along 119th Street and Kellogg. He concluded by saying that this use was not conducive to this area and suggested that it be left at the airport where this equipment is utilized and where they can advertise the helicopter service. He said he sees no reason why this would benefit anyone whatsoever.

STAN BLASI, 11409 WEST KELLOGG, BLASI CAMPGROUND said he was present to speak in opposition to approval of this application. He said the campground is located about 500 feet east of Mel Hambelton. He said they house between 75-100 campers a day between the months of May through November. He said if this application is approved it will be a detriment

to their business. He added that he did not feel the safety issue had been adequately addressed. He said there is extremely heavy traffic in the area; major road construction will be taking place in the near future and the noise will be a disruption to the homes to the south. He said he googled helicopter crashes and he said there is the potential for a very serious situation if one of these helicopter rides goes wrong. He said he does not feel the issues have been addressed enough to decide the case. He said there is an airport within a reasonable distance of Mel Hambelton. He said he does not believe this application should be approved.

CHAIR MILLER STEVENS asked if the applicant or agent had any rebuttal.

ZON declined to speak.

JOHNSON clarified that DAB IV approved the application unanimously.

FOSTER asked legal staff if he should abstain from voting since he did not hear the full proceedings.

DICKGRAFE said if he has reviewed the materials and understands the issues and facts, he could vote on the matter.

HENTZEN asked how many DAB members were present at the DAB IV meeting.

MILLER said he believed six, but it might have been seven.

> **MOTION:** To approve subject to staff recommendation.
>
> **MCKAY** moved, **HILLMAN** seconded the motion, and it failed (6-6-1). **MILLER STEVENS, FARNEY, FOSTER, HENTZEN, JOHNSON** and **VAN FLEET** – No. **KLAUSMEYER** – Abstained.

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: Wichita City Council

MAPC Members

FROM: Kelli Glassman, Neighborhood Assistant, District IV

SUBJECT: CON2010-00047

DATE: January 25, 2011

On Wednesday, January 5, 2011, the *District Advisory Board (DAB) for Council District 4* considered this case for a conditional use to permit a heliport on the Southeast corner of West Kellogg and 119th Street South for private use by the site owner, Mel Hambelton Ford. The DAB Members were provided the public notice and MAPD staff comments for review.

The citizens present expressed concern over noise and frequency of heliport use. The Board suggested that the neighborhood citizens meet with the applicant to try to resolve this issue.

DAB members voted 7-0 to recommend approval of the ordinance.

Please review this information when this request is considered.

DWTA

Premier Aviation Services

Date: February 1, 2011

To: Mr. Dale Miller
Current Plans Manager, Current Plans Division
Wichita-Sedgwick County Metropolitan Area Planning Department

Cc: Mr. Phil Nightingale / Mr. Jeff Horning
General Manager and General Sales Manager Respectively
Mel Hambelton Ford

From: DWTA Premier Aviation Services

Re: **CON2010-00047** - City Conditional Use to permit a heliport on property generally located southeast of the intersection of West Kellogg and 119th Street (11771 West Kellogg).

Dear Sir,

This letter is respectfully submitted as a **FORMAL APPEAL** to the decision made by the Wichita-Sedgwick County Metropolitan Area Planning Commission (MAPC) in consideration of the above captioned request [CON2010-00047].

This appeal is founded upon [2] crucial factors; **FIRST** - Vital information was unfortunately not imparted to the MAPC Commission which would have resulted in a complete impact in judgment; **SECOND** - Highly prejudicial, inaccurate, and false information was imparted without a factual rebuttal.

Had the enclosed been presented and offered for additional fact, it is our belief the MAPC Commission would have voted in favor of the above captioned request post a brief discussion with representatives from the petitioner [as did the District Advisory Board (DAB) at their January 5th 2011 meeting - unanimously].

It is with the greatest respect that we humbly request this appeal be granted and that we have the opportunity to once again address the MAPC Commission and provide fact which will lead to a reversal of their previous decision.

Additional Facts in Evidence

1. **Frequency of Operations** • Mel Hambelton Ford (MHF), Client of DWTA Premier Aviation Services (FAA/DOT Certified Commercial Helicopter Air Carrier) has contractually acquired a total of **ONLY 7 Flight hours per Month**. Note: HELIPORT IS RESTRICTED FROM GENERAL AVIATION ACCESS. [ONLY available to and for Mel Hambelton Ford]

   *Simply put, this means that the aircraft shall be operated directly for Mel Hambelton Ford a **TOTAL of ONLY 7 hours per month**. A significant portion of this time is typically spent away from the actual dealership location. In addition, no event has ever been scheduled where the aircraft operated in and or around the MHF dealership for more than 2 to 3 hours in any single day.*

[con't]

Proprietary and Confidential - Copyright Dawn Aviation Technologies Inc. © 2011 All Rights Reserved

2. **Safety**

Accusations(s) - Accusations seemed to focus upon traffic slowing to "look up at the helicopter" and to Web Searching helicopter accidents and how very tragic they are.

Reply - No evidence exists that provides relevance between the proposed heliport and these accusations with the obvious exception that we are flying a helicopter. Notwithstanding this, reply as follows;

a) Aircraft land and takeoff from Wichita Mid-Continent Airport (which is 2 miles from this locale) with a much greater frequency and noise level than any helicopter, directly over Highway 54 (Kellogg Ave.). This has never been reported as causing a traffic accident.

b) Like any other accident, aviation accidents occur. Many more automotive accidents occur, but this does not cause laws to be passed which inhibit our ability to drive. Rather, laws are passed to make driving safer. In the same manner, the Department of Transportation and the Federal Aviation Administration provide guidance which is followed without exception.

c) The helicopter operator is Certified by BOTH the Department of Transportation and the Federal Aviation Administration as an Air Carrier (not unlike the Airlines). This means the HIGHEST LEVELS OF SAFETY and PERFORMANCE are adhered to AT ALL TIMES. The FAA has reviewed the proposed heliport and has found NO ISSUES.

3. **Helicopter Operations are Outside the Scope of Being an Automotive Dealer**

Accusations(s) - The statement / question has been posed as to the purpose and reason for Mel Hambelton Ford wishing to utilize Helicopter Services. In other words, they seem to be asking why a business makes the decision(s) it does.

Reply - The manner and methods employed by a business within the guidelines of local, state and national agency are up to the business. Here, Mel Hambelton Ford wishes to support aviation within the Aviation Capital of the World. They have chosen to utilize this tool of course for business generation, but even more importantly in conjunction with avenues of support for the community in which they reside. This "issue" has no merit nor bearing in this evaluation.

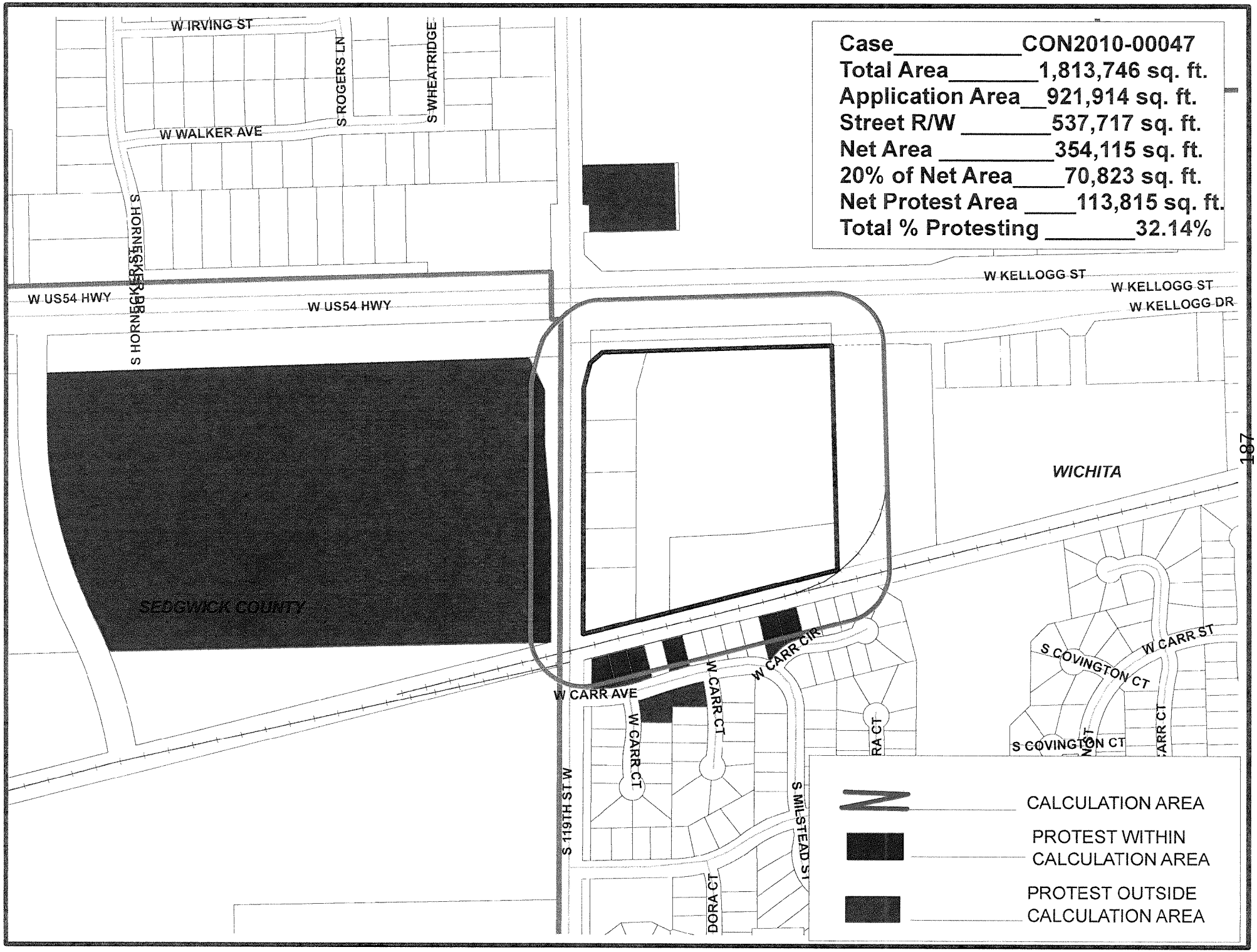
Summary

The preceding information is intended to be brief and succinct. The petitioner looks forward to another opportunity to speak directly with the voting members of the MAPC to clarify any additional areas of misunderstanding and or confusion (as we did with the DAB) as we are confident that once full clarity exists the vote will be positive.

The granting of our request for a conditional use application for PPR heliport operations will be sure to support our entire community in a rededication to the aviation element that was largely responsible for the great city we live in today.

With the greatest sincerity and appreciation.

Mel Hambelton Ford, Phil Nightingale - General Manager


Case CON2010-00047
Total Area 1,813,746 sq. ft.
Application Area 921,914 sq. ft.
Street R/W 537,717 sq. ft.
Net Area 354,115 sq. ft.
20% of Net Area 70,823 sq. ft.
Net Protest Area 113,815 sq. ft.
Total % Protesting 32.14%
W IRVING ST
S ROGERS LN
S WHEATRIDGE
W WALKER AVE
S HORNECKER
W US54 HWY
W US54 HWY
W KELLOGG ST
W KELLOGG ST
W KELLOGG DR
WICHITA
SEDGWICK COUNTY
W CARR CIR
W CARR AVE
W CARR CT
W CARR CT
S 119TH ST W
S MILSTEAD ST
DORA CT
S COVINGTON CT
W CARR ST
S COVINGTON CT
CALCULATION AREA
PROTEST WITHIN CALCULATION AREA
PROTEST OUTSIDE CALCULATION AREA

Agenda Item No. V-1

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

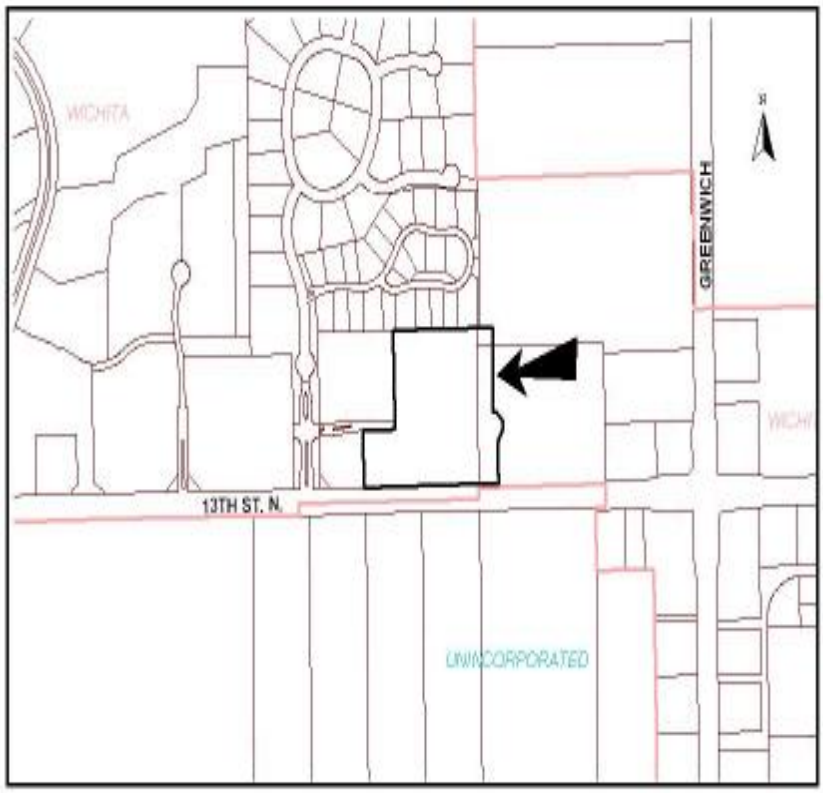
SUBJECT: ZON2007-00014 – Ordinance for a Zone Change request from SF-5 Single-family Residential and GI General Industrial to LI Limited Industrial located on the north side of 13th Street, west of Greenwich. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

MAPD Staff Recommendation: Approve.

MAPC Recommendation: Approve. (9-0)



Background: The Ordinance is associated with a portion of the Greenwich Office Park 2nd Addition (SUB 2010-00051), which was approved by the City Council on January 11, 2011. The zone change request was approved by the City Council on August 11, 2010.

Analysis: The Agenda Report associated with the plat submitted to the City Council January 11, 2011 inadvertently omitted the Zoning Ordinance.

Financial Considerations: There are no financial considerations in regards to the Ordinance.

Goal Impact: Approval of the Ordinance will promote Economic Vitality.

Legal Considerations: The Ordinance has been approved as to form by the City's Law Department.

Recommendations/Actions: It is recommended that the City Council authorize the Mayor to sign the Ordinance and place the Ordinance on first reading.

Attachments: Ordinance

(OCA150004)

Published in The Wichita Eagle on March 25, 2011

ORDINANCE NO. 48-972

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

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

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON 2007-00014

Zone change request from SF-5 Single-family Residential and GI General Industrial to LI Limited Industrial, on property described as:

A tract of land lying within a portion of Greenwich Office Park 2nd Addition, an addition to Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:

BEGINNING at 23.00 feet west of the southeast corner of Lot 1, Block 1, said thence N00°54'24"W, 645.00 feet to the north line of said addition; thence along said north line, N88°53'46"E, 90.00 feet to the northeast corner of said addition; thence along the east line of said addition for the next four courses S00°54'24"E, 340.51 feet to a point on a non-tangent curve to the right; thence along the said curve 143.74 feet to a point on a curve to the left, said curve to the right having a central angle of 127°41'02", a radius of 64.500 feet, and a long chord distance of 115.79 feet, bearing S26°08'52"E; thence along the said curve 51.46 feet, said curve having a central angle of 38°47'53", a radius of 76.00 feet, and a long chord distance of 50.49 feet, bearing S18°17'43"W; thence S01°06'14"E, 151.97 feet to the southeast corner of said addition; thence along the south line of said addition, S88°53'46"W, 123.29 feet to the POINT OF BEGINNING.

CONTAINING: 70,459 square feet or 1.62 acres of land, more or less.

Generally located on the north side of 13th Street, west of Greenwich Road.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 22nd day of March, 2011.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

Agenda Item No. _____

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

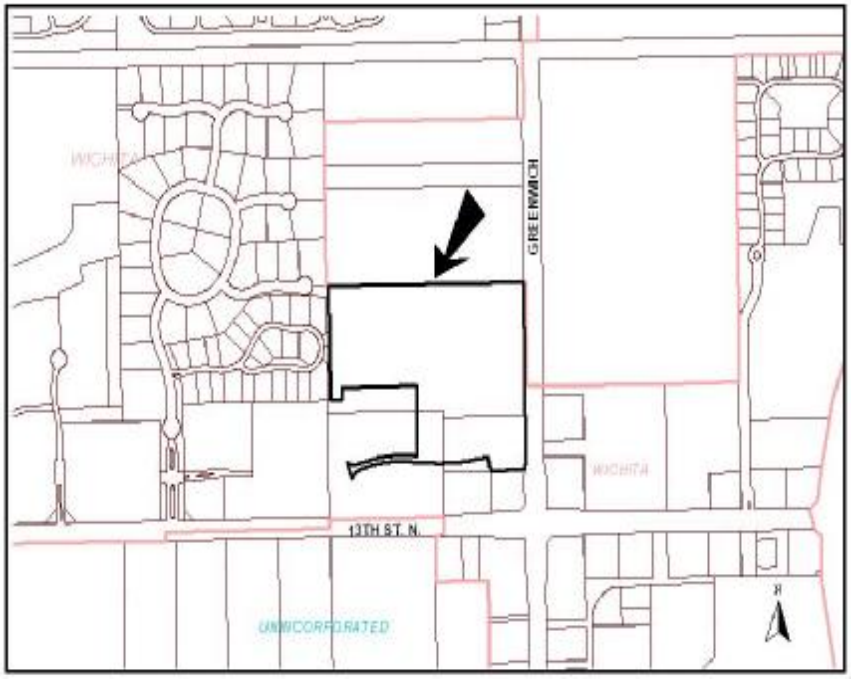
SUBJECT: SUB2010-00060 -- Plat of Berkeley Square First Addition located north of 13th Street North and on the west side of Greenwich Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (12-0)



Background: The site, consisting of four lots on 23.34 acres, is unplatted property located within Wichita's city limits. A zone change (ZON 2007-00014) has been approved from SF-5 Single-family Residential, GI General Industrial and LC Limited Commercial to LI Limited Industrial.

Analysis: The applicant has submitted 100 percent Petitions and a Certificate of Petitions for sanitary sewer, municipal water, drainage and paving improvements. A 15-foot street, drainage and utility easement was platted adjoining a narrow street right-of-way with a Restrictive Covenant restricting the use of this easement. The Restrictive Covenant also provides for the ownership and maintenance of the reserves.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

Financial Considerations: There are no financial considerations associated with the plat.

Goal Impact: Approval of the plat will Ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The Certificate of Petitions and Restrictive Covenant have been approved as to form by the City's Law Department and will be recorded by the Register of Deeds.

The Ordinance has been approved as to form by the City's Law Department.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and place the Ordinance on first reading.

Attachments: Certificate of Petitions
Restrictive Covenant
Ordinance
Resolutions

(OCA150004)

Published in The Wichita Eagle on March 25, 2011

ORDINANCE NO. 48-975

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

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

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON 2007-00014

Zone change request from SF-5 Single-family Residential, GI General Industrial and LC Limited Commercial to LI Limited Industrial, on property described as:

Lots 1 through 4, Block 1 and Reserves A, B and C, Berkeley Square First Addition, Wichita, Sedgwick County, Kansas.

Generally located north of 13th Street North on the west side of Greenwich Road.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 22 day of March, 2011.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

132019

First Published in the Wichita Eagle on March 11, 2011

RESOLUTION NO. 11-036

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90513 (NORTH OF 13TH, WEST OF GREENWICH) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90513 (NORTH OF 13TH, WEST OF GREENWICH) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Water Distribution System Number 448-90513 (north of 13th, west of Greenwich).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Hundred Fourteen Thousand Dollars ($114,000) exclusive of the cost of interest on borrowed money, with 35 percent payable by the City of Wichita Water Utility; and 65 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after February 1, 2011, exclusive of the costs of temporary financing.

That, in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing water main, such benefit fee to be in the amount of Thirty Eight Thousand Two Hundred Forty-Six Dollars ($38,246).

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

BERKELEY SQUARE FIRST ADDITION
Lots 1 through 4, Block 1

UNPLATTED TRACT

A tract of land lying within the Southeast Quarter of the Southeast Quarter, of Section 9, Township 27 South, Range 2 East, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:

BEGINNING at the southwest corner of Lot 2, Block 1, Home Bank & Trust Company Addition, to Wichita, Sedgwick County, Kansas; thence on a Kansas coordinate system of 1983 south zone grid bearing of S88°53'46"W, 611.46 feet to the east line of Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Greenwich Office Park Second Addition for the next three (3) course N01°06'14"W, 151.97 feet to a point on a curve to the right; thence along said curve 51.46 feet to a curve to the left, said curve to the right having a central angle of 38°47'53", a radius of 76.00 feet, and a long chord distance of 50.49 feet, bearing N18°17'43"E; thence along said curve to the left 15.59 feet to a curve the right, said curve to the left having a central angle of 13°50'54", a radius of 64.50 feet, and a long chord distance of 15.55 feet, bearing N30°46'12"E; thence along said curve to the right 75.98 feet to a compound curve, said curve to the right having a central angle of 48°22'16", a radius of 90.00 feet, and a long chord distance of 73.75 feet, bearing N48°01'53"E; thence along said compound curve 367.21 feet to a curve to the left, said compound curve having a central angle of 21°22'54", a radius of 984.00 feet, and a long chord distance of 365.08 feet, bearing N82°54'28"E; thence along said curve to the left 459.61 feet, said curve having a

central angle of 13°23'16", a radius of 1967.00 feet, and a long chord distance of 458.57 feet, bearing N86°54'17"E; thence S06°27'22"E, 78.97 feet to the northeast corner of Lot 2, Block 1, said Home Bank & Trust Company Addition; thence along the north line of said addition, S88°53'46"W, 297.21 feet to the northwest corner of said Lot 2; thence along the west line of said Lot 2, S00°54'08"E, 236.44 feet to the POINT OF BEGINNING,

TOGETHER WITH,

BEGINNING at the southeast corner of Lot 2, Block 1, Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Lot 2, on a platted bearing of N00°54'24"W, 340.51 feet; thence N00°54'24"W, 70.00 feet; thence N88°53'46"E, 479.32 feet; thence S00°48'07"E, 383.98 feet to a point on a non-tangent curve to the left; thence along said curve 384.97 feet to a curve to the right, said curve to the left having a central angle of 21°42'36", a radius of 1016.00 feet, and a long chord distance of 382.67 feet, bearing S82°44'37"W; thence along said curve to the right 71.12 feet to a curve to the left, said curve to the right having a central angle of 45°16'35", a radius of 90.00 feet, and a long chord distance of 69.28 feet, bearing N85°28'23"W; thence along said curve to the right 30.57 feet to the POINT OF BEGINNING, said curve having a central angle of 27°09'17", a radius of 64.50 feet, and a long chord distance of 30.28 feet, bearing N76°24'45"W.

HOME BANK & TRUST ADDITION
Lot 2, Block 1

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

WATER DISTRIBUTION SYSTEM:
Lots 1 and 3, Block 1; BERKELEY SQUARE FIRST ADDITION shall each pay $9,930.00 of the total cost payable by the improvement district. Lot 2, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay $8,150.00 of the total cost payable by the improvement district. Lot 4, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay $18,150.00 of the total cost payable by the improvement district. The UNPLATTED TRACT shall pay 84.5% of the total remaining cost payable by the improvement district. Lot 2, Block 1; HOME BANK & TRUST ADDITION shall pay 15.5% of the total remaining cost payable by the improvement district.

That the method of assessment for the main benefit fee for which the improvement district shall be liable shall be on a square foot basis.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth

above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 8th day of March, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF, DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on March 11, 2011

RESOLUTION NO. 11-037

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 168, WAR INDUSTRIES SEWER (NORTH OF 13TH, WEST OF GREENWICH) 468-84731 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF LATERAL 168, WAR INDUSTRIES SEWER (NORTH OF 13TH, WEST OF GREENWICH) 468-84731 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Lateral 168, War Industries Sewer (north of 13, west of Greenwich) 468-84731.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Hundred Six Thousand Dollars ($106,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after February 1, 2011, exclusive of the costs of temporary financing.

That, in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing sanitary sewer main, such benefit fee to be in the amount of Seventy Three Thousand Five Hundred Ninety Two Dollars ($73,592)

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

BERKELEY SQUARE FIRST ADDITION
Lots 1 through 4, Block 1

UNPLATTED TRACT

A tract of land lying within the Southeast Quarter of the Southeast Quarter, of Section 9, Township 27 South, Range 2 East, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:

BEGINNING at the southwest corner of Lot 2, Block 1, Home Bank & Trust Company Addition, to Wichita, Sedgwick County, Kansas; thence on a Kansas coordinate system of 1983 south zone grid bearing of S88°53'46"W, 611.46 feet to the east line of Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Greenwich Office Park Second Addition for the next three (3) course N01°06'14"W, 151.97 feet to a point on a curve to the right; thence along said curve 51.46 feet to a curve to the left, said curve to the right having a central angle of 38°47'53", a radius of 76.00 feet, and a long chord distance of 50.49 feet, bearing N18°17'43"E; thence along said curve to the left 15.59 feet to a curve the right, said curve to the left having a central angle of 13°50'54", a radius of 64.50 feet, and a long chord distance of 15.55 feet, bearing N30°46'12"E; thence along said curve to the right 75.98 feet to a compound curve, said curve to the right having a central angle of 48°22'16", a radius of 90.00 feet, and a long chord distance of 73.75 feet, bearing N48°01'53"E; thence along said compound curve 367.21 feet to a curve to the left, said

compound curve having a central angle of 21°22'54", a radius of 984.00 feet, and a long chord distance of 365.08 feet, bearing N82°54'28"E; thence along said curve to the left 459.61 feet, said curve having a central angle of 13°23'16", a radius of 1967.00 feet, and a long chord distance of 458.57 feet, bearing N86°54'17"E; thence S06°27'22"E, 78.97 feet to the northeast corner of Lot 2, Block 1, said Home Bank & Trust Company Addition; thence along the north line of said addition, S88°53'46"W, 297.21 feet to the northwest corner of said Lot 2; thence along the west line of said Lot 2, S00°54'08"E, 236.44 feet to the POINT OF BEGINNING,

TOGETHER WITH,

BEGINNING at the southeast corner of Lot 2, Block 1, Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Lot 2, on a platted bearing of N00°54'24"W, 340.51 feet; thence N00°54'24"W, 70.00 feet; thence N88°53'46"E, 479.32 feet; thence S00°48'07"E, 383.98 feet to a point on a non-tangent curve to the left; thence along said curve 384.97 feet to a curve to the right, said curve to the left having a central angle of 21°42'36", a radius of 1016.00 feet, and a long chord distance of 382.67 feet, bearing S82°44'37"W; thence along said curve to the right 71.12 feet to a curve to the left, said curve to the right having a central angle of 45°16'35", a radius of 90.00 feet, and a long chord distance of 69.28 feet, bearing N85°28'23"W; thence along said curve to the right 30.57 feet to the POINT OF BEGINNING, said curve having a central angle of 27°09'17", a radius of 64.50 feet, and a long chord distance of 30.28 feet, bearing N76°24'45"W.

HOME BANK & TRUST ADDITION
Lot 2, Block 1

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 and 3, Block 1; BERKELEY SQUARE FIRST ADDITION shall each pay $14,200.00 of the total cost payable by the improvement district. Lot 2, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay $11,660.00 of the total cost payable by the improvement district. Lot 4, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay $25,970.00 of the total cost payable by the improvement district. The UNPLATTED TRACT shall pay 84.5% of the total remaining cost payable by the improvement district. Lot 2, Block 1; HOME BANK & TRUST ADDITION shall pay 15.5% of the total remaining cost payable by the improvement district.

That the method of assessment for the sewer benefit fee for which the improvement district shall be liable shall be on a square foot basis.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 8th day of March, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on March 11, 2011

RESOLUTION NO. 11-038

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER SEWER NO. 660 (NORTH OF 13TH, WEST OF GREENWICH) 468-84732 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER SEWER NO. 660 (NORTH OF 13TH, WEST OF GREENWICH) 468-84732 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve Storm Water Sewer No. 660 (north of 13th, west of Greenwich) 468-84732.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Five Hundred Seventy-Five Thousand Dollars ($575,000), and Two Hundred Sixty Three Thousand Two Hundred Fifty Dollars ($263,250) for the Pipeline Relocation portion of the project or Eight Hundred Thirty Eight Thousand Two Hundred Fifty Dollars ($838,250) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after February 1, 2011, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

BERKELEY SQUARE FIRST ADDITION
Lots 1 through 4, Block 1

UNPLATTED TRACT

A tract of land lying within the Southeast Quarter of the Southeast Quarter, of Section 9, Township 27 South, Range 2 East, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:

BEGINNING at the southwest corner of Lot 2, Block 1, Home Bank & Trust Company Addition, to Wichita, Sedgwick County, Kansas; thence on a Kansas coordinate system of 1983 south zone grid bearing of S88°53'46”W, 611.46 feet to the east line of Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Greenwich Office Park Second Addition for the next three (3) course N01°06'14”W, 151.97 feet to a point on a curve to the right; thence along said curve 51.46 feet to a curve to the left, said curve to the right having a central angle of 38°47'53", a radius of 76.00 feet, and a long chord distance of 50.49 feet, bearing N18°17'43”E; thence along said curve to the left 15.59 feet to a curve the right, said curve to the left having a central angle of 13°50'54”, a radius of 64.50 feet, and a long chord distance of 15.55 feet, bearing N30°46'12”E; thence along said curve to the right 75.98 feet to a compound curve, said curve to the right having a central angle of 48°22'16”, a radius of 90.00 feet, and a long chord distance of 73.75 feet, bearing N48°01'53”E; thence along said compound curve 367.21 feet to a curve to the left, said compound curve having a central angle of 21°22'54”, a radius of 984.00 feet, and a long chord distance of 365.08 feet, bearing N82°54'28”E; thence along said curve to the left 459.61 feet, said curve having a central angle of 13°23'16”, a radius of 1967.00 feet, and a long chord distance of 458.57 feet, bearing N86°54'17”E; thence S06°27'22”E, 78.97 feet to the northeast corner of Lot 2, Block 1, said Home Bank & Trust Company Addition; thence along the north line of said addition, S88°53'46”W, 297.21 feet to the northwest corner of said Lot 2; thence along the west line of said Lot 2, S00°54'08”E, 236.44 feet to the POINT OF BEGINNING,

TOGETHER WITH,

BEGINNING at the southeast corner of Lot 2, Block 1, Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Lot 2, on a platted bearing of N00°54'24”W, 340.51 feet; thence N00°54'24”W, 70.00 feet; thence N88°53'46”E, 479.32 feet; thence S00°48'07”E, 383.98 feet to a point on a non-tangent curve to the left; thence along said curve 384.97 feet to a curve to the right, said curve to the left having a central angle of 21°42'36", a radius of 1016.00 feet, and a long chord distance of 382.67 feet, bearing S82°44'37”W; thence along said curve to the right 71.12 feet to a curve to the left, said curve to the right having a central angle of 45°16'35", a radius of 90.00 feet, and a long chord distance of 69.28 feet, bearing N85°28'23”W; thence along said curve to the right 30.57 feet to the POINT OF BEGINNING, said curve having a central angle of 27°09'17”, a radius of 64.50 feet, and a long chord distance of 30.28 feet, bearing N76°24'45"W.

HOME BANK & TRUST ADDITION
Lot 2, Block 1

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis:

STORM WATER SEWER:
Lots 1 and 3, Block 1; BERKELEY SQUARE FIRST ADDITION shall each pay $66,700.00 of the total cost payable by the improvement district Lot 2, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay $55,200.00 of the total cost payable by the improvement district. Lot 4, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay $122,475.00 of the total cost payable by the improvement district. The UNPLATTED TRACT shall pay 85.2% of the total remaining cost payable by the improvement district. Lot 2, Block 1; HOME BANK & TRUST ADDITION shall pay 14.8% of the total remaining cost payable by the improvement district.

PIPELINE RELOCATION:
Lots 1 and 3, Block 1; BERKELEY SQUARE FIRST ADDITION shall each pay $33,430.00 of the total cost payable by the improvement district. Lot 2, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay $26,590.00 of the total cost payable by the improvement district. Lot 4, Block 1; BERKELEY SQUARE ADDITION shall pay $60,285.00 of the total cost payable by the improvement district. The UNPLATTED TRACT shall pay 100% of the total remaining cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. 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 authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. 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 8th day of March, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on March 11, 2011

RESOLUTION NO. 11-039

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON BERKELEY SQUARE PARKWAY FROM THE EAST EDGE OF CHESTERFIELD TO THE WEST EDGE OF GREENWICH ROAD (NORTH OF 13TH, WEST OF GREENWICH) 472-84975 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON BERKELEY SQUARE PARKWAY FROM THE EAST EDGE OF CHESTERFIELD TO THE WEST EDGE OF GREENWICH ROAD (NORTH OF 13TH, WEST OF GREENWICH) 472-84975 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing pavement on Berkeley Square Parkway from the east edge of Chesterfield to the west edge of Greenwich Road (north of 13th, west of Greenwich) 472-84975 Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to Two Hundred Eighty-Seven Thousand Dollars ($287,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after February 1, 2011, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

BERKELEY SQUARE FIRST ADDITION
Lots 1 through 4, Block 1

UNPLATTED TRACT

A tract of land lying within the Southeast Quarter of the Southeast Quarter, of Section 9, Township 27 South, Range 2 East, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follow:

BEGINNING at the southwest corner of Lot 2, Block 1, Home Bank & Trust Company Addition, to Wichita, Sedgwick County, Kansas; thence on a Kansas coordinate system of 1983 south zone grid bearing of S88°53'46”W, 611.46 feet to the east line of Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Greenwich Office Park Second Addition for the next three (3) course N01°06'14”W, 151.97 feet to a point on a curve to the right; thence along said curve 51.46 feet to a curve to the left, said curve to the right having a central angle of 38°47'53", a radius of 76.00 feet, and a long chord distance of 50.49 feet, bearing N18°17'43”E; thence along said curve to the left 15.59 feet to a curve the right, said curve to the left having a central angle of 13°50'54”, a radius of 64.50 feet, and a long chord distance of 15.55 feet, bearing N30°46'12”E; thence along said curve to the right 75.98 feet to a compound curve, said curve to the right having a central angle of 48°22'16”, a radius of 90.00 feet, and a long chord distance of 73.75 feet, bearing N48°01'53”E; thence along said compound curve 367.21 feet to a curve to the left, said compound curve having a central angle of 21°22'54”, a radius of 984.00 feet, and a long chord distance

of 365.08 feet, bearing N82°54'28”E; thence along said curve to the left 459.61 feet, said curve having a central angle of 13°23'16”, a radius of 1967.00 feet, and a long chord distance of 458.57 feet, bearing N86°54'17”E; thence S06°27'22”E, 78.97 feet to the northeast corner of Lot 2, Block 1, said Home Bank & Trust Company Addition; thence along the north line of said addition, S88°53'46”W, 297.21 feet to the northwest corner of said Lot 2; thence along the west line of said Lot 2, S00°54'08”E, 236.44 feet to the POINT OF BEGINNING,

TOGETHER WITH,

BEGINNING at the southeast corner of Lot 2, Block 1, Greenwich Office Park Second Addition, an addition to Wichita, Sedgwick County, Kansas; thence along the east line of said Lot 2, on a platted bearing of N00°54'24”W, 340.51 feet; thence N00°54'24”W, 70.00 feet; thence N88°53'46”E, 479.32 feet; thence S00°48'07”E, 383.98 feet to a point on a non-tangent curve to the left; thence along said curve 384.97 feet to a curve to the right, said curve to the left having a central angle of 21°42'36", a radius of 1016.00 feet, and a long chord distance of 382.67 feet, bearing S82°44'37”W; thence along said curve to the right 71.12 feet to a curve to the left, said curve to the right having a central angle of 45°16'35", a radius of 90.00 feet, and a long chord distance of 69.28 feet, bearing N85°28'23”W; thence along said curve to the right 30.57 feet to the POINT OF BEGINNING, said curve having a central angle of 27°09'17”, a radius of 64.50 feet, and a long chord distance of 30.28 feet, bearing N76°24'45"W.

HOME BANK & TRUST ADDITION
Lot 2, Block 1

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 and 3, Block 1; BERKELEY SQUARE FIRST ADDITION shall each pay $38,460.00 of the total cost payable by the improvement district. Lot 2, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay $31,570.00 of the total cost payable by the improvement district. Lot 4, Block 1; BERKELEY SQUARE FIRST ADDITION shall pay $70,315.00 of the total cost payable by the improvement district. The UNPLATTED TRACT shall pay 84.5% of the total remaining cost payable by the improvement district. Lot 2, Block 1; HOME BANK & TRUST ADDITION shall pay 15.5% of the total remaining cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof,

considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 8th day of March, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF, DIRECTOR OF LAW

CERTIFICATE

Sedgwick County) SS
State of Kansas)

I, George Laham, Manager, Greenwich 13, LLC, a Kansas Limited Liability Company, owner and plattor of Berkeley Square First Addition, do hereby certify that petitions for the following improvements have been submitted to the City Council of Wichita, Sedgwick County, Kansas;

1. Paving Petition (1)
2. Water Distribution System Petition (1)
3. Sanitary Sewer Petition (1)
4. Storm Water Sewer/Drainage Petition (1)

As a result of the above mentioned petitions for improvements, lots within Berkeley Square First Addition may be subject to special assessments assessed thereto for the cost of constructing the above described improvements.

Signed this 3rd day of February, 2011.

GREENWICH 13, LLC,
A Kansas Limited Liability Company

By:_____
George Laham, Manager

Sedgwick County) SS
State of Kansas)

Be it remembered that on this 3rd day of February, 2011, before me a Notary Public in and for said State and County, came George Laham, Manager, Greenwich 13, LLC, a Kansas Limited Liability Company, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

KATHERINE M. SIEGRIST
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 9/22/12

(SEAL)

Notary Public: Katherine M. Siegrist

My Appointment Expires: 9/22/12

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law
City of Wichita, Kansas

RESTRICTIVE COVENANT

This covenant, executed this 3rd day of February, 2011.

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

WHEREAS, the undersigned is in the process of platting that certain real property to be known as Berkeley Square First Addition, an addition to Wichita, Sedgwick County, Kansas; and

WHEREAS, as a part of the platting process certain requirements have been made by The City of Wichita regarding maintenance of reserves, the establishment of an owners association, providing off-street parking, providing for the maintenance of reserves being platted, and regarding restriction to lot owner use of "street drainage and utility easements".

NOW, THEREFORE, the undersigned does hereby subject Berkeley Square First Addition, an addition to Wichita, Sedgwick County, Kansas, to have the following covenants and restrictions.

1. At such time as the property shall become developed by erection of improvements thereon the undersigned agrees to cause an association to be formed to provide for the care, maintenance and upkeep of the reserves, and the common areas.
2. The reserves located in said Addition will be conveyed to the association at such time as the project is sold to or occupied by owners or tenants other than the undersigned.
3. Until said reserves are so conveyed, the ownership and maintenance of the reserves shall be by the undersigned.
4. The owners of the reserves shall bear the cost of any repair or replacement of improvements within said reserves resulting from street construction, repair or maintenance.
5. No retaining wall, fence, earth berm, or mass planting shall be placed or permitted within the fifteen (15) foot street, drainage and utility easements adjacent to the public streets being platted, nor shall any other planting be permitted therein which would materially interfere with the flow of storm water run-off through said easement. Any change of grade is prohibited.
6. There shall be "No Parking" on both sides of Berkeley Square Parkway.
7. The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.
8. In the event that the Undersigned or the association, its' successors or assigns, shall fail at any time to maintain the Reserves dedicated for Drainage or fail in any manner to fulfill their obligation relating to the Reserves dedicated for Drainage, City of Wichita may serve a written Notice of Delinquency upon the Undersigned or the Association setting forth the manner in which the Undersigned or the Association has failed to fulfill its' obligations. Such Notice shall include a statement describing the obligation that has not been fulfilled and shall grant twenty (20) days within which the Undersigned or the Association may fulfill the obligation. If said obligation is not fulfilled within the time specified, the City of Wichita, in order to preserve the taxable value of the

properties within the Addition and to prevent the Reserves dedicated for Drainage from becoming a nuisance, may enter upon said Reserves dedicated for Drainage and perform the obligations listed in the Notice of Delinquency. All costs incurred by the City of Wichita in carrying out the obligations of the Undersigned or the Association may be assessed against the Reserves in the same manner as provided by law for such assessments and said assessments may be established as liens upon said Reserves. Should the Undersigned or the Association, its successors or assigns, upon receipt of said Notice of Delinquency believe that the obligations described in said Notice are not proper for any reason, it may, within the twenty-day period to be provided in said Notice, apply for a hearing before the City Council to appeal said assessments, and any further proceedings under said Notice shall be suspended pending the outcome of any proceedings with respect to such appeal.

This covenant runs with the land and is binding on future owners and assigns.

IN WITNESS WHEREOF THIS covenant has been executed by the undersigned as its act and deed upon this 3rd day of February, 2011.

GREENWICH 13, LLC,
A KANSAS LIMITED LIABILITY COMPANY

BY: _____
George Laham, Manager

STATE OF KANSAS) ss
SEDGWICK COUNTY)

Be it remembered that on this 3rd day of February, 2011, before me a Notary Public in and for said State and County, came George Laham, Manager, Greenwich 13, LLC, a Kansas Limited Liability Company, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

(SEAL) KATHERINE M. SIEGRIST
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 9/22/12

Notary Public: Katherine M. Siegrist

My Appointment Expires: 9/22/12

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law
City of Wichita, Kansas

City of Wichita
City Council Meeting
March 8, 2011

TO:	Wichita Airport Authority
SUBJECT:	Air Carrier Apron Trench Drain Grant Application Wichita Mid-Continent Airport
INITIATED BY:	Department of Airports
AGENDA:	Wichita Airport Authority (Consent)

Recommendation: Approve the grant application.

Background: On October 7, 2008, the Wichita Airport Authority approved the Apron Reconstruction, Phase II portion of the Air Capital Terminal 3 (ACT 3) project. The Air Carrier Apron Trench Drain was anticipated to be a part of that project; however Federal Aviation Administration (FAA) funding regulations required the trench drain to be constructed as an independent project with a separate FAA grant. The trench drain project construction was completed on January 5, 2011.

Analysis: Staff has prepared a grant application for the Air Carrier Apron Trench Drain to maximize the opportunity to receive grant funding.

Financial Considerations: The grant application is for administration, construction and construction related services in the amount of $426,026. The Airport's matching portion of 5% will be funded with Passenger Facility Charges (PFC).

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through the infrastructure improvements to the Airport and the continued acceptance of grant funding.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the grant application and acceptance of grant funds and authorize the Director of Airports to sign all necessary documents related to the grant.

Attachments: Grant Application.

OMB Number: 4040-0004
Expiration Date: 03/31/2012

Application for Federal Assistance SF-424

* 1. Type of Submission	* 2. Type of Application	* If Revision, select appropriate letter(s):
☐ Preapplication	☑ New	
☑ Application	☐ Continuation	* Other (Specify)
☐ Changed/Corrected Application	☐ Revision	

* 3. Date Received: 4. Application Identifier:

5a. Federal Entity Identifier: * 5b. Federal Award Identifier:

State Use Only:

6. Date Received by State: 7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name: Wichita Airport Authority

* b. Employer/Taxpayer Identification Number (EIN/TIN): 48-6000653

*c. Organizational DUNS: 124970641

d. Address:

* Street1: 2173 Air Cargo Road
Street 2:
* City: Wichita
County: Sedgwick
* State: Kansas
Province:
Country: USA
*Zip/ Postal Code: 67209

e. Organizational Unit:

Department Name: Department of Airports

Division Name: Airport Engineering

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Mr.
First Name: Victor
Middle Name:
* Last Name: White
Suffix:

Title: Director of Airports

Organizational Affiliation:

* Telephone Number: 316-946-4700
Fax Number: 316-946-1898

* Email: vwhite@wichita.gov

OMB Number: 4040-0004
Expiration Date: 03/31/2012

Application for Federal Assistance SF-424

9. Type of Applicant 1: Select Applicant Type: C. City or Township Government

Type of Applicant 2: Select Applicant Type: - Select One -

Type of Applicant 3: Select Applicant Type: - Select One -

* Other (specify):

* 10. Name of Federal Agency:
Federal Aviation Administration

11. Catalog of Federal Domestic Assistance Number:

20.106

CFDA Title:

Airport Improvement Program

* 12. Funding Opportunity Number: 3-20-0088-0061

* Title: Air Carrier Trench Drain

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Wichita, Sedgwick County, Kansas

* 15. Descriptive Title of Applicant's Project:

Construct Air Carrier Trench Drain

Attach supporting documents as specified in agency instructions.

OMB Number: 4040-0004
Expiration Date: 03/31/2012

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant 4th

* b. Program/Project: 4th

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

* a. Start Date: 5-1-2010

* b. End Date: 1-5-2011

18. Estimated Funding ($):

*a. Federal	$404,725.00
*b. Applicant	$21,301.00
*c. State	
*d. Local	
*e. Other	
*f. Program Income	
*g. TOTAL	$426,026.00

***19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on
☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.
☑ c. Program is not covered by E.O. 12372.

*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)
☐ Yes ☑ No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001).

☑ **I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Mr.

*First Name: Victor

Middle Name:

*Last Name: White

Suffix:

*Title: Director of Airports

*Telephone Number: 316-946-4700

Fax Number: 316-946-4793

*Email: vwhite@wichita.gov

*Signature of Authorized Representative:

Date Signed:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AIRPORT IMPROVEMENT PROGRAM
SPONSOR CERTIFICATION

DRUG-FREE WORKPLACE

Wichita Airport Authority	Mid-Continent	3-20-0088-61
(Sponsor)	*(Airport)*	*(Project Number)*

Description of Work:
The Air Carrier Trench Drain project will install contaminated storm water runoff storage and related improvements.

Title 49, United States Code, section 47105(d), authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General requirements on the drug-free workplace within Federal grant programs are described in Title 49, Code of Federal Regulations, Part 29. Sponsors are required to certify they will be, or will continue to provide, a drug-free workplace in accordance with the regulation. The AIP project grant agreement contains specific assurances on the Drug-Free Workplace Act of 1988.

Except for the certified items below marked not applicable (N/A), the list includes major requirements for this aspect of project implementation, although it is not comprehensive, nor does it relieve the sponsor from fully complying with all applicable statutory and administrative standards.

	Yes	No	N/A
1. A statement has been or will be published notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the sponsor's workplace, and specifying the actions to be taken against employees for violation of such prohibition.	☒	☐	☐
2. An ongoing drug-free awareness program has been or will be established to inform employees about: **a.** The dangers of drug abuse in the workplace; **b.** The sponsor's policy of maintaining a drug-free workplace; **c.** Any available drug counseling, rehabilitation, and employee assistance programs; and **d.** The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.	☒	☐	☐
3. Each employee to be engaged in the performance of the work has been or will be given a copy of the statement required within item 1 above.	☒	☐	☐
4. Employees have been or will be notified in the statement required by item 1 above that, as a condition employment under the grant, the employee will: **a.** Abide by the terms of the statement; and **b.** Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.	☒	☐	☐

	Yes	No	N/A
5. The FAA will be notified in writing within ten calendar days after receiving notice under item 4b above from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title of the employee, to the FAA. Notices shall include the project number of each affected grant.	☒	☐	☐
6. One of the following actions will be taken within 30 calendar days of receiving a notice under item 4b above with respect to any employee who is so convicted: **a.** Take appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or **b.** Require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency.	☒	☐	☐
7. A good faith effort will be made to continue to maintain a drug-free workplace through implementation of items 1 through 6 above.	☒	☐	☐

I have prepared documentation shown below or attached hereto with site(s) for performance of work (street address, city, county, state, zip code). There are no such workplaces that are not identified below or in the attachment. I have prepared additional documentation for any above items marked "no" and attached it hereto. I certify that, for the project identified herein, responses to the forgoing items are accurate as marked and attachments are correct and complete.

	Location	**Location**	**Location**
Street Address:	2173 Air Cargo Road		
City:	Wichita		
State:	KS		
Zip code:	67209		

Wichita Airport Authority
Name of Sponsor

Signature of Sponsor's Designated Official Representative

Victor White, A.A.E.
Type Name of Sponsor's Designated Official Representative

Director of Airports
Typed Title of Sponsor's Designated Official Representative

2-15-2011
Date of Signature

CERTIFICATE OF TITLE
FAA Central Region

To: Manager, Safety and Standards Branch

Subject: Mid-Continent Airport Air Carrier Trench Drain

AIP Project No. 3-20-0088-61

This certification is made to satisfy (check **both** if applicable):

Part II Section C.10 of the Grant Application (FAA Form 5100-100) for existing airport property
☐ **Grant conditions relative to satisfactory title evidence for land being acquired under this project**

The Wichita Airport Authority (hereinafter referred to as the "Sponsor"), pursuant to Section 47105(d) of the Federal Aviation Administration Authorization Act of 1994 (and amendments), hereby certifies that satisfactory property interest to the land indicated herein is vested in the Sponsor, as required by obligations of the referenced Grant Agreement with the Federal Aviation Administration.

The Sponsor hereby certifies that it holds the quality of title described below, as of the date of the attorney's title opinion on which this certification is based.

Parcel Number (Per Exhibit A)	**Quality of Interest** (Fee, Easement*, etc.,)
6	Fee Simple

Parcels must be listed. Avoid simply referencing the Exhibit A Property Map. Attach additional sheets as necessary.

*The Sponsor certifies that grantors of easements constitute all of the owners of the land affected by such easements, and they had such quality of title in and to such land as to enable them to convey the interest purported to be conveyed in and by the easements granted. No other interests or rights exist which are incompatible with or would interfere with the exercise and enjoyment by the Sponsor of the rights and interests conveyed.

Sponsor hereby certifies that the Sponsor or the Sponsor's attorney have reviewed, evaluated and subordinated to airport use where necessary, all encumbrances and that no outstanding encumbrances exist which might affect the maintenance, operation, or development of the airport.

Sponsor further certifies that if defects in the title require correction after acceptance of this Certificate of Title by the FAA, the Sponsor accepts full responsibility for clearing such defects, encumbrances, or exceptions at its own expense.

This Certificate of Title is based upon a current title opinion dated May 30, 2001 by the sponsor's attorney, Gary E. Rebenstorf.

Sponsor certifies that the title opinion referenced above corresponds with the "Exhibit A" airport property map dated April 17, 2007, AIP project number 3-20-0088-57. Although specific title evidence documents are not submitted herewith, copies of deeds and other appropriate evidence of title for the land are on file with the Sponsor and are available for inspection by the FAA.

It is understood that the FAA reserves the right to require additional information at any time.

Wichita Airport Authority
Name of Sponsor

_____ Director of Airports _
Signature and Title of Sponsor Official Authorized to Sign Grant Agreement

2-15-2011
Date

PART II

PROJECT APPROVAL INFORMATION
SECTION A

Item 1. Does this assistance request require State, local, regional, or other priority rating? ☐ Yes ☒ No	Name of Governing Body: Priority:
Item 2. Does this assistance request require State, or local advisory, educational or health clearances? ☐ Yes ☒ No	Name of Agency or Board: (Attach Documentation)
Item 3. Does this assistance request require clearinghouse review in accordance with OMB Circular A-95? ☐ Yes ☒ No	(Attach Comments)
Item 4. Does this assistance request require State, local, regional or other planning approval? ☐ Yes ☒ No	Name of Approving Agency: Date: / /
Item 5. Is the proposal project covered by an approved comprehensive plan? ☐ Yes ☒ No	Check one: State ☐ Local ☐ Regional ☐ Location of Plan:
Item 6. Will the assistance requested serve a Federal installation? ☐ Yes ☒ No	Name of Federal Installation: Federal Population benefiting from Project:
Item 7. Will the assistance requested be on Federal land or installation? ☐ Yes ☒ No	Name of Federal Installation: Location of Federal Land: Percent of Project:
Item 8. Will the assistance requested have an impact or effect on the environment? ☐ Yes ☒ No	See instruction for additional information to be provided
Item 9. Will the assistance requested cause the displacement of individuals, families, businesses, or farms? ☐ Yes ☒ No	Number of: Individuals: Families: Businesses: Farms:
Item 10. Is there other related Federal assistance on this project previous, pending, or anticipated? ☐ Yes ☒ No	See instructions for additional information to be provided.

PART II - SECTION C

The Sponsor hereby represents and certifies as follows:

1. Compatible Land Use. - The Sponsor has taken the following actions to assure compatible usage of land adjacent to or in the vicinity of the airport:

In as far as this is within our power, the Wichita Airport Authority of Wichita, Kansas, will affirmatively work to obtain appropriate zoning by the Wichita Sedgwick County Metropolitan Area Planning commission which has zoning authority to take action to restrict the use of land in the immediate vicinity of Mid-Continent Airport. The current zoning ordinance has obstruction zoning prohibiting certain manufacturing facilities, which produce smoke, dust, gaseous fumes, and electrical interference or glare impairing the visibility of pilots.

2. Defaults. - The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

NONE

3. Possible Disabilities. - There are no facts or circumstances (including the existence of effective or proposed leases, use agreements or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of Part V of this Application, either by limiting its legal or financial ability or otherwise, except as follows:

NONE

4. Consistency with Local Plans. – The project is reasonably consistent with plans existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

YES

5. Consideration of Local Interest - It has given fair consideration to the interest of communities in or near where the project may be located.

YES

6. Consultation with Users. In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport which project is proposed.

YES

7. Public Hearings. – In projects involving the location of an airport, an airport runway or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

NA

8. Air and Water Quality Standards. – In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable and air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

NA

PART II - SECTION C (Continued)

9. Exclusive Rights – There is no grant of an exclusive right for the conduct of any aeronautical activity at any airport owned or controlled by the Sponsor except as follows:

NA

10. Land. – (a) The sponsor holds the following property interest in the following areas of land* which are to be developed or used as part of or in connection with the Airport subject to the following exceptions, encumbrances, and adverse interests, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

The Wichita Airport Authority of Wichita, Kansas, has the Fee Simple Title to all land comprising Mid-Continent Airport, free and clear of all encumbrances and/or restrictions, subject however, to the leases and/or use agreements

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

(b) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interest in the following areas of land* on which such construction work is to be performed, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

NA

(c) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interest in the following areas of land* which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the aforementioned property map designated as Exhibit "A"

NA

**State character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.*

PART III - BUDGET INFORMATION - CONSTRUCTION

SECTION A - GENERAL

1. Federal Domestic Assistance Catalog No. _____

2. Functional or Other Breakout _____

SECTION B -CALCULATION OF FEDERAL GRANT

Cost Classification	Use only for revisions		Total Amount Required
	Latest Approved Amount	Adjustment + or (-)	
1. Administration expense	$	$	$ 980.00
2. Preliminary expense			
3. Land, structures, right-of-way			
4. Architectural engineering basic fees			
5. Other Architectural engineering fees			
6. Project inspection fees			99,193.00
7. Land development			
8. Relocation Expenses			
9. Relocation payments to Individuals and Businesses			
10. Demolition and removal			
11. Construction and project improvement			325,853.00
12. Equipment			
13. Miscellaneous			
14. Total (Lines 1 through 13)			426,026.00
15. Estimated Income (if applicable)			
16. Net Project Amount (Line 14 minus 15)			426,026.00
17. Less: Ineligible Exclusions			
18. Add: Contingencies			
19. Total Project Amt. (Excluding Rehabilitation Grants)			426,026.00
20. Federal Share requested of Line 19 (95%)			404,725.00
21. Add Rehabilitation Grants Requested (100 Percent)			
22. Total Federal grant requested (lines 20 & 21)			404,725.00
23. Grantee share			21,301.00
24. Other shares			
25. Total Project (Lines 22, 23 & 24)	$	$	$ 426,026.00

SECTION C - EXCLUSIONS

Classification	Ineligible for Participation (1)	Excluded From Contingency Provision (2)
a.	$	$
b.		
c.		
d.		
e.		
f.		
g. **Totals**	$	$

SECTION D - PROPOSED METHOD OF FINANCING NON-FEDERAL SHARE

27. Grantee Share	$ 21,301.00
a. Securities	
b. Mortgages	
c. Appropriations (By Applicant)	
d. Bonds	21,301.00
e. Tax Levies	
f. Non Cash	
g. Other (Explain)	
h. TOTAL - Grantee share	21,301.00
28. Other Shares	
a. State	
b. Other	
c. Total Other Shares	
29. TOTAL	$ 21,301.00

SECTION E - REMARKS

Grantee share will be a combination of PFCs and Airport revenues, percentage to be determined.

PART IV PROGRAM NARRATIVE (Attach - See Instructions)

PART IV
PROGRAM NARRATIVE
(Suggested Format)

DEPARTMENT OF TRANSPORTATION - FEDERAL AVIATION ADMINISTRATION OMB NO. 2120-0569

PROJECT : Air Carrier Trench Drain

AIRPORT : Mid-Continent Airport

1. Objective:

The Air Carrier Trench Drain project will install contaminated storm water runoff storage and related improvements.

2. Benefits Anticipated:

The project will serve the existing terminal and allow for expansion for the new terminal building. With the current gate being closed, construction at this time allows for the least disruption to the airlines.

3. Approach : *(See approved Scope of Work in Final Application)*

The project was constructed in a single phase in 60 calendar days with the west side of the concourse closed to eliminate potential construction traffic conflicts.

4. Geographic Location:

Wichita, Kansas

5. If Applicable, Provide Additional Information:

NA

6. Sponsor's Representative: *(include address & telephone number)*

Victor White, A.A.E.

2173 Air Cargo Road

Wichita, KS 67209

316-946-4700

ASSURANCES
Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Title 49, U.S.C., subtitle VII, as amended.
b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.[1]
c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
d. Hatch Act - 5 U.S.C. 1501, et seq.[2]

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.[1 2]
f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).[1]
g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.[1]
h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
i. Clean Air Act, P.L. 90-148, as amended.
j. Coastal Zone Management Act, P.L. 93-205, as amended.
k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.[1]
l. Title 49 ,U.S.C., Section 303, (formerly known as Section 4(f))
m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
q Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.[1]
r. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.[1]
s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.[1]
t. Copeland Anti kickback Act - 18 U.S.C. 874.[1]
u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.[1]
v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.[2]
x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

Executive Orders

Executive Order 11246 - Equal Employment Opportunity[1]
Executive Order 11990 - Protection of Wetlands
Executive Order 11988 – Flood Plain Management
Executive Order 12372 - Intergovernmental Review of Federal Programs.
Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction[1]
Executive Order 12898 - Environmental Justice

Federal Regulations

a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
c. 14 CFR Part 150 - Airport noise compatibility planning.
d. 29 CFR Part 1 - Procedures for predetermination of wage rates.[1]
e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.[1]
f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).[1]
g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).[1]

h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.[3]
i. 49 CFR Part 20 - New restrictions on lobbying.
j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
k. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.[1 2]
m. 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.[1]
o. 49 CFR Part 29 – Government wide debarment and suspension (non-procurement) and government wide requirements for drug-free workplace (grants).
p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.[1]

Office of Management and Budget Circulars

a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
b A-133 - Audits of States, Local Governments, and Non-Profit Organizations

[1] These laws do not apply to airport planning sponsors.
[2] These laws do not apply to private sponsors.
[3] 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

2. Responsibility and Authority of the Sponsor.

a. **Public Agency Sponsor:** It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. **Private Sponsor:** It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person

to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. **Sponsor Fund Availability.** It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. **Good Title.**

   a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

   b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. **Preserving Rights and Powers.**

   a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

   b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

   c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

   d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that

property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.

6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.

8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such

reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. **Accounting System, Audit, and Record Keeping Requirements.**

    a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

    b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. **Minimum Wage Rates.** It shall include, in all contracts in excess of $2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. **Veteran's Preference.** It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. **Conformity to Plans and Specifications.** It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved

plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.

17. **Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. **Planning Projects.** In carrying out planning projects:

    a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.

    b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

    c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

    d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

    e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

    f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

    g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

    h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. **Operation and Maintenance.**

    a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably

operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary.
In furtherance of this assurance, the sponsor will have in effect arrangements for-

(1) Operating the airport's aeronautical facilities whenever required;

(2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

(3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. **Hazard Removal and Mitigation.** It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. **Compatible Land Use.** It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. **Economic Nondiscrimination.**

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

(1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

(2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. **Exclusive Rights.** It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations,

aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. **Fee and Rental Structure.** It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. **Airport Revenues.**

    a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

    b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

    c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. **Reports and Inspections.** It will:

    a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

    b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use

agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
   (i) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
   (ii) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. **Use by Government Aircraft.** It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that-
   a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
   b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. **Land for Federal Facilities.** It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. **Airport Layout Plan.**

   a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall

be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

30. **Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

31. **Disposal of Land.**

a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.

b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (2) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. **Engineering and Design Services.** It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement **prescribed** for or by the sponsor of the airport.

33. **Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. **Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

35. **Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. **Access By Intercity Buses.** The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. **Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure

non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

38. **Hangar Construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. **Competitive Access.**

a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-

1. Describes the requests;
2. Provides an explanation as to why the requests could not be accommodated; and
3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.

b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date

City of Wichita
City Council Meeting
March 8, 2011

TO: Wichita Airport Authority

SUBJECT: Park and Ride Parking Lot Expansion
Supplemental Agreement No. 1
Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the supplemental agreement.

Background: On October 23, 2007, the Wichita Airport Authority (WAA) approved a capital project with a budget of $4,950,000 to build remote parking facilities to address passenger parking demands. Phase One of the project was completed and the Park and Ride lot was placed into service in early 2008. The Park and Ride lot now needs to be expanded as planned to accommodate passenger and employee parking demands. On February 9, 2010, the WAA approved a contract with Ruggles and Bohm, P.A. in the amount of $49,723 for design and bid services for the Phase Two expansion.

Analysis: A supplemental agreement with Ruggles and Bohm has been prepared for additional design work in order to comply with the new City of Wichita storm water quality regulations, and to provide construction related services.

Financial Considerations: The cost of the additional design services is $5,532, and the cost of the construction related services is a not-to-exceed amount of $49,365, bringing the total agreement to $54,897. The project is funded with General Obligation bonds paid for with Airport revenue, and the existing budget will cover these additional costs.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through maintaining sufficient parking to serve the aviation community.

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

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the contract and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 1.

SUPPLEMENTAL AGREEMENT NO. 1

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

THE WICHITA AIRPORT AUTHORITY, "OWNER",

AND

Ruggles & Bohm P. A., "CONSULTANT",

WITNESSETH:

WHEREAS, there now exists a Contract, dated February 9, 2010 between the two parties covering professional services to be provided by the CONSULTANT in conjunction with the construction of improvements to Park & Ride Parking Lot Expansion.

WHEREAS, ARTICLE IV, B. of the 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 CONSULTANT provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. SCOPE OF SERVICES

The description of the improvements that the OWNER intends to construct and thereafter called the "PROJECT" as stated within ARTICLE I of the referenced Contract is hereby amended to include the following:

1) Design services to comply with the new City of Wichita storm water quality regulations and to include the installation of innerduct conduits in existing communications ducts.

2) Construction related services as described in the original contract and Exhibit A.

B. PAYMENT PROVISIONS

The fee in ARTICLE IV, A, shall be amended to include the following:

1) Payment to the CONSULTANT for the performance of additional design services pertaining to the new storm water quality regulations shall be a lump sum amount of $5,530.00. Refer to Exhibit B for a detailed fee schedule.

2) Payment to the CONSULTANT for the performance of construction related services as described herein and in the original contract shall be on the basis of an hour rate and

expenses incurred during the project with a not-to-exceed amount of $49,365. Refer to Exhibit C for a detailed fee schedule.

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the OWNER and the CONSULTANT executes this Supplemental Agreement as of this _____ day of _____, 2011.

ATTEST:

By: _____
Karen Sublett, City Clerk

By: _____
Victor White, Director of Airports

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Carl Brewer, President
"OWNER"

ATTEST:

_____

_____

_____

By: _____
Title: Christopher M. Bolum
Pres - Ruggles & Bolum

By: _____
Title: Associate, Ruggles & Bolum

APPROVED AS TO FORM: _____ Date: 2-22-11
Director of Law

Ruggles & Bohm P.A.
Engineering, Surveying, Land Planning

924 North Main
Wichita, Kansas 67203

(316) 264-8008
fax (316) 264-4621

www.rbkansas.com
info@rbkansas.com

February 17, 2011

EXHIBIT A

John Oswald, P.E.
Wichita Airport Authority
PO Box 9130
Wichita, KS 67277

Re: Park and Ride Parking Lot Expansion Project – Construction Phase Services

Dear Mr. Oswald,

As you requested, please accept this proposal from our design team of Ruggles & Bohm, GLMV Architecture, and Integrated Consulting Engineers for construction phase services on the Airport Park and Ride Parking Lot Expansion project. What follows is a commentary of representative duties of our firms during the construction phase, and is not necessary limited to these duties.

GENERAL DUTIES OF CONSTRUCTION ADMINISTRATION – PARK AND RIDE LOT EXPANSION

Pre-Construction Activities:

- Work with the Contractor to establish a work schedule for the project.
- Receive and review shop drawings and material submittals from the Contractor.
- Verify that all on-site underground utility lines have been marked by Kansas One Call, and arrange for the relocation of utility lines that may be in conflict with the project.
- Field check all materials on site to assure compliance with the specifications.
- Coordinate with Airport personnel to coordinate construction operations.
- Review and coordinate traffic control measures prior to construction.

Subgrade and Curb Construction

- We propose to spot check a few of the parking lot grades once they have been staked by the contractor.
- Check traffic control measures prior to construction.
- Check earthwork cuts and fill against the stakes to verify accuracy.
- Verify drainage ditches for alignment and grade.
- Coordinate soil testing for the subgrade compaction.
- Check placement of geogrid reinforcement or chemically amended subgrade.
- For chemically amended subgrade, check tonnage and application.
- Check subgrade rock depth and width.
- Check that subgrade is trimmed to the bluetop stakes after placement of curb.
- Check string lines for alignment and grade.
- Check expansion joint material.
- Check that curb machine is properly extruding the curb section.
- Check curb template for proper size and dimensions.
- Check that air temperature and ground conditions meet specifications.
- Direct contractor for collecting test cylinders on each pour day.

- Observe specified testing.

Asphalt Pavement

- Check delivered material for temperature and mixing consistency.
- Obtain tickets for the asphalt mixed that day from the plant.
- Check for proper lift thickness, grade, and width.
- Check joint construction, rolling techniques, compaction and smoothness.
- Check application of tack coats.
- Check surface course for smoothness.
- Ensure that site restoration (driveway removal, yard restoration, street restoration, etc.) is completed properly.
- Complete all inspection logs, and compile all inspection information for submittal to the Airport upon completion of the project.
- Verify proper placement of signs and pavement markings.
- Verify payment requests from the Contractor.
- Verify placement and maintenance of storm water erosion control devices, and maintain an inspection log as required by the NOI after rainfall events.

Storm Water Drain Project:

Pre-Construction Activities: The pre-construction pavement activities will be similar in nature to the other pre-construction activities listed above.

- Check trench width and depth.
- Check that proper trenching methods are being used.
- Ensure that proper care is taken when connecting to existing structures.
- Check that the bedding material meets pipe requirements and trench conditions.
- Check for pipe alignment and grade.
- Check pipe joints and fittings for proper placement.
- Check that pipe backfill meets compaction requirements.
- Coordinate and supervise TV testing of storm water sewer pipe.
- Ensure that site restoration (driveway removal, yard restoration, street restoration, etc.) is completed properly.
- Revise the original plans to reflect the as-built elevations and structure locations.
- Complete all inspection logs, and compile all inspection information for submittal to the Airport upon completion of the project.
- Verify payment requests from the Contractor.
- Receive and process Change Order Requests, Requests for Information and make recommendations regarding the same to the Airport Authority.

Landscaping (GLMV)

- Review submittals for irrigation, edging, and mulching materials.
- Check irrigation system before backfill for configuration and leak testing.
- Check drip lines in beds prior to mulch backfill.
- Review submittals for plant materials.
- View plants and check for size and health before planting.
- Field verify planting locations.
- Field verify preparation of areas to receive sod.
- Field verify sod delivered to the site as to condition before placement.
- Conduct a final project walkthrough upon completion.
- Check sod two weeks after placement to verify that it has rooted and at end of maintenance period.
- Attend construction meetings when applicable.
- Observe specified testing.

Electrical/Communication (Integrated Consulting Engineers)

- Review submittals for light fixtures, poles, conduit, cable and other major equipment
- Conduct an inspection of underground conduit before the trenches are closed.
- Conduct field inspection of cable terminations.
- Perform a night inspection of Lighting.
- Attend the final inspection of the site when the project is complete.
- Attend construction meetings when applicable.
- Observe specified testing.

The list of inspection items presented here provides an outline of the duties and responsibilities of our team prior to and during construction of this project.

We propose the following fees to complete the work detailed above based on 75 calendar days for the construction phase:

Firm	Staff Hours	Proposed Fee
Ruggles & Bohm P.A.	490	$36,300.00
GLMV Architecture	127	$10,115.00
Integrated Consulting Engineers	30	$2,950.00
Total of All	**(Not to Exceed)**	**$49,365.00**

Please contact me with questions, or if you would like to arrange a meeting of our team to discuss this proposal. We have enjoyed working with the Airport Authority on the design of this project and look forward to assisting you in a successful construction phase.

Best regards,

Christopher M. Bohm, P.E.

Exhibit B
Supplemental Design Services
Park and Ride Parking Lot Expansion
Wichita Airport Authority
February 17, 2011

Ruggles & Bohm	Project Engineer	Engineer	Survey Crew	Total
Water Quality Design	24	2		
Plan Modifications			0	
Bid Quantities	0	4		
Meetings		0		
Hour Totals	24	6	0	**30**
Rate	$110.00	$100.00	$110.00	
Extension	$2,640.00	$600.00	$0.00	**$3,240.00**

GLMV Architecture	Sr. Landscape Architect	Jr. Landscape Architect	Admin.	
Plan Modifications	12.0	3.0	1.0	
Hour Totals	12.0	3.0	1.0	**16.0**
Rate	$95.00	$75.00	$65.00	
Extension	$1,140.00	$225.00	$65.00	**$1,430.00**

Integrated Consulting Engineers	Sr. Engineer	Engineer		Total
Plan Modifications	2	6		
Hour Totals	2	7		**9**
Rate	$115.00	$90.00		
Extension	$230.00	$630.00		**$860.00**

Total of All $5,530.00

Exhibit C

Estimate of Construction Phase Services
Park and Ride Parking Lot Expansion
Wichita Airport Authority
February 17, 2011

Ruggles & Bohm	Project Inspector	Engineer	Survey Crew	Total
Shop Drawing Review		40		
Verify Construction Staking			20	
Field Inspection	400	10		
Weekly Meetings		20		
Hour Totals	400	70	20	490
Rate	$66.00	$110.00	$110.00	
Extension	$26,400.00	$7,700.00	$2,200.00	**$36,300.00**

GLMV Architecture	Sr. Landscape Architect	Jr. Landscape Architect	Admin.	
Meetings	10.0		0.0	
Construction Period	12.0	48.0	8.0	
Post Construction	16.0	24.0	9.0	
Hour Totals	38.0	72.0	17.0	**127.0**
Rate	$95.00	$75.00	$65.00	
Extension	$3,610.00	$5,400.00	$1,105.00	**$10,115.00**

Integrated Consulting Engineers	Sr. Engineer	Engineer		Total
Meetings	4	4		
Construction Period	4	12		
Post Construction	2	4		
Hour Totals	10	20		**30**
Rate	$115.00	$90.00		
Extension	$1,150.00	$1,800.00		**$2,950.00**

Total of All $49,365.00

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL MARCH 8, 2011

a. 2011 Contract Maintenance Concrete Repairs, Phase 2 (north of 63rd Street South, east of 135th Street West) (472-84963/132724/620570 /636246/133116/132724/661686 /661687/ 133116) Traffic to be maintained using flagpersons and barricades. (District I, II, III, IV, V, VI) - $692,000.00

b. Stormwater Drainage Improvements for Barrington Place and Villa Christi Additions, 7507 Westlawn and 3501 W. 2nd St. N. (west of Ridge Road, south of 21st Street North, and east of Sheridan Avenue on 2nd Street) (468-84710/468-84711/133117/N/A) Local travfic shall be maintained with minimal street closures not to exceed 48 hours. (District V,VI) - $79,235.00

c. 2011 Contract Maintenance Mill & Overlay, Overlay only and Rehab (north of 63rd Street South, east of 135th Street West) (472-84964/132724/636246/620570/133116/132724/ 661687/ 661686/133116) Traffic to be maintained using flagpersons and barricades. (District I,II,III,IV,V,VI) - $878,000.00

d. 2011 Sanitary Sewer Reconstruction Phase 1 (north of Kellogg, east of Oliver) (468-84726/ 620571/661687) Traffic to be maintained using flagpersons and barricades. (District I,II) - $105,000.00

e. Emporia Water Main Replacement from William to Douglas (south of Central, east of Douglas) (448-90504/636241/770629) Traffic to be maintained using flagpersons and barricades. (District I) - $175,000.00

f. The cost of construction of Main 6, Cowskin Interceptor Sewer Force Main for Southwest Passage and Red Rock Village Additions (south of Pawnee, west of 119th Street West). (District IV) (468-84227/744208/480-896) – Total Estimated Cost $191,530.00

Agenda Item No. XII-4a

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Community Events – First Annual Girls on the Run 5K (District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure, the event promoter Clark Ensz, Clark Ensz, Inc. is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

First Annual Girls on the Run 5K, Saturday May 1, 2011 8:00 am – 10:00 am

- Lewis Street, McLean Boulevard to Water Street.
- McLean Boulevard, Lewis Street to Taft Street.

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

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

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

Legal Consideration: None.

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

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Main Water Treatment Plant Evaluation Services (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreement.

Background: On July 10, 2007, the City Council approved and instructed staff to proceed with the projects necessary for Phase II of the Equus Beds Aquifer Storage and Recovery (ASR) Project. Phase II will consist of a Water Treatment Plant and surface water intake structure as well as the pipelines, recharge and recovery wells, overhead power lines and a Supervisory Control and Data Acquisition (SCADA) system.

Construction of ASR Phase II is currently underway and will involve the extended shutdown of the water supply from the Equus Beds Well Field in the fall of 2011, while existing infrastructure is tied to the new infrastructure. The main Water Treatment Plant was upgraded in the mid 1990's to treat a blend of Cheney and Equus Beds water to meet required drinking water standards. Changes to drinking water standards in the 2000's are still met by the Water Treatment Plant design when these two water sources are blended together, but there is question as to whether or not the Water Treatment Plant can treat Cheney or Equus Bed water to the new standards for an extended period of time. A Request for Proposal was issued on January 11, 2011, to conduct an analysis of the capabilities of the treatment plant with responses received from three consultants. On February 1, 2011, the Staff Screening and Selection Committee interviewed HDR, Burns & McDonnell and CH2M Hill for this study. The Staff Screening and Selection Committee recommended Burns & McDonnell based on a well defined, focused testing protocol and work done on similar projects.

Analysis: This study will provide a careful analysis of the capabilities of the Main Water Treatment Plant to treat new sources of raw water. It will include not only 100% Cheney and 100% Equus Beds Wellfield, but combinations of both with treated water from ASR Phase II.

Phase One of the Study will include bench scale testing to determine if the Main Water Treatment Plant currently has the capability to treat various combinations of raw water supplies. Phase Two will include a process evaluation and finished water stability analysis to identify potential modifications and improvements to existing facilities as well as the planning level costs to do so. A Technical Memorandum of Evaluation Results will be provided that will include the recommended improvements as well as budgetary estimates. The City may then proceed with making the necessary improvements in order to remain in compliance during ASR Phase II construction activities.

Financial Considerations: The maximum not-to exceed amount for this agreement is $128,988. Funding for these services is available in the Capital Improvement Program in W-549 Water Supply Plan.

Goal Impact: The project addresses the Ensure Efficient Infrastructure goal by ensuring that the Water Treatment Plant can continue to meet drinking water standards during the construction of ASR and during future interruptions of either Cheney or the Equus Beds Well Field.

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

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

Attachments: Agreement.

AGREEMENT
for
PROFESSIONAL SERVICES

PROFESSIONAL SERVICES AGREEMENT

CITY OF WICHITA

ASR PROGRAM – MAIN WATER TREATMENT PLANT EVALUATION

_____, 2011

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Attachment 5: City's Non-Discrimination and Equal Employment/Affirmative Action Program

AGREEMENT

THIS AGREEMENT, with an effective date of the ____ day of _____, 2011, is made and entered into between the CITY OF WICHITA, KANSAS, a municipal corporation, acting by and through the Public Works and Utilities (hereinafter called the "City"), and Burns & McDonnell Engineering Company, Inc. a Corporation with a principal place of business at 9400 Ward Parkway, Kansas City, MO 64114-3319, (hereinafter called the "Consultant"). (City and Consultant may be collectively referred to herein as "Parties", or individually as "Party".)

Recitals

WHEREAS, the City has developed an Integrated Local Water Supply (ILWS) Plan to meet the City's water supply requirements through the year 2050. This Plan consists of a portfolio of projects and components to be constructed in phases over a 10-year period that must be coordinated in order to meet the Plan's water supply goals.

WHEREAS, the City desires to obtain a Consultant to perform a Main Water Treatment Plant Evaluation to assist the City in evaluating the ability of the Main Water Treatment Plant to treat varying water quality(s) outside of historical operating conditions.

WHEREAS, Consultant represents that its members include duly-licensed engineer(s) and architect(s) of the State of Kansas, as applicable, and that it has the present capacity, is experienced and qualified to perform professional services for the City in connection with the Main Water Treatment Plant Evaluation as specified in this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants and obligations set forth herein, the parties mutually agree as follows:

Section I - Preliminary Matters

A. Consultant's professional services shall consist of a Scope of Work, ***Attachment 1***, attached hereto and incorporated into this Agreement, that details how the Consultant would proceed with the Main Water Treatment Plant Evaluation, the Proposal provided by Consultant as part of its bid and any other services included in this Agreement, including normal architectural, engineering and professional design services, unless superseded by Supplemental Agreement pursuant to **Section VI.C.** of this Agreement. Other exhibits or attachments may be attached to and made a part of this Agreement, some of which may be in conflict with other attachments, exhibits or portions of this Agreement. In the event of any conflict in any of these attachments, exhibits or portions of this Agreement, the intent of the parties is to resolve such conflict in favor of the provision which provides for the greatest scope of services to the City. The greater service shall be included in the professional services provided, without additional compensation.

B. If the Parties to this Agreement have previously entered into a Professional Services Agreement for professional services for any work related to the Program, then notwithstanding any provisions in

that agreement to the contrary, all work performed by Consultant for the Main Water Treatment Plant Evaluation under this Agreement shall be performed in accordance with the standards, terms, conditions and requirements of this Agreement.

C. In performing professional services pursuant to this Agreement, Consultant acknowledges that time is of the essence for Program delivery. All services to be performed under this Agreement shall be commenced immediately upon execution of this Agreement by the parties hereto and approval by the City, as required by applicable law, in accordance with the Milestone Schedule set forth in ***Attachment 2,*** attached hereto and incorporated into this Agreement.

D. The total compensation to be paid Consultant under this Agreement is stated in **Section VI** of this Agreement, which amount is intended to cover the entire cost of the professional services contemplated by this Agreement. The Consultant agrees to cooperate fully with the City during the Main Water Treatment Plant Evaluation to keep compensation within this limit. The City shall pay Consultant in accordance with the terms of this Agreement as reflected in the Fee Schedule set forth in ***Attachment 3,*** attached hereto and incorporated into this Agreement.

Section II - Authority

A. R.W. Beck, Inc. ("Project Manager") is the City's Project Manager for the ASR Program. The Project Manager is responsible for authorizing and approving all work performed under this Agreement. All work to be performed by Consultant shall be authorized in writing by the Project Manager as provided by this Agreement. All communications related to the Main Water Treatment Plant Evaluation shall be with the Project Manager and, in his absence, a person to be designated by him.

B. Brian Meier ("Consultant Representative") is Consultant's representative for the Main Water Treatment Plant Evaluation. Consultant Representative shall have sufficient authority to represent and bind Consultant in those instances when such authority is necessary to carry out Consultant's responsibilities and obligations under the terms of this Agreement.

Section III - Basic Services and Responsibilities

A. Consultant agrees to perform all of the professional services set forth below and described in ***Attachment 1*** and/or the proposal provided by Consultant as part of its bid.

B. Consultant hereby represents to the City that Consultant is financially solvent and possesses sufficient experience, licenses (including required state licenses as applicable), authority, personnel and working capital to complete the services required hereunder.

C. Consultant hereby represents to the City that Consultant has visited the site for the Main Water Treatment Plant Evaluation and has familiarized itself with the conditions under which the required services are to be provided; that it has properly investigated and considered all conditions and obstacles in their proposal submitted which may affect its services; and that Consultant will correlate its observations of the site conditions and all of the provisions of this Agreement and of any related construction documents for which Consultant has responsibility. Accordingly, the

parties agree that Consultant will not be granted any additional compensation based upon the lack of information or its effects on the cost of work.

D. The accuracy of soils, foundation, groundwater, and other subsurface investigations are not guaranteed by the City and Consultant is responsible for verifying same. Consultant shall make all necessary investigations in order to inform itself thoroughly as to the character and magnitude of all work involved in the performance of services hereunder. No plea of ignorance of conditions that exist or that may hereafter exist, or any of the difficulties that will be encountered in the performance of services hereunder, as a result of failure to make necessary examinations and investigations, will be accepted as sufficient excuse for failure or omission on the part of Consultant to fulfill in every detail all the requirements of the Agreement, or will be accepted as a basis for any claim whatsoever for extra compensation or an extension of time.

E. The professional services provided under this Agreement for the Main Water Treatment Plant Evaluation shall be of a high quality commensurate with that provided by specialized design professionals for projects of similar size, complexity, and difficulty, and shall be adequate and sufficient. All reports, drawings and specifications, as applicable, for the Main Water Treatment Plant Evaluation, when submitted by Consultant to the City, must represent a thorough study and competent solution for the Main Water Treatment Plant Evaluation and shall reflect appropriate and necessary architectural and engineering services applicable. Consultant shall be responsible for ensuring the professional quality, technical accuracy, timely completion and the coordination of all designs, plans, reports, specifications, drawings, schedules, cost estimates and other services rendered by Consultant. Accordingly, the City shall require reimbursement from the Consultant for the value of change orders on construction contracts which use Consultant's plans, specifications and other work due to design errors, plus fifteen percent (15%) of the value of change orders due to design omissions, when the sum of these two figures exceeds two percent (2%) of the original construction contract price. The following formula will apply: (cost of design error change orders) plus (cost of design omission change orders times 0.15) minus (original contract amount X 0.02) equals (required reimbursement by Consultant). This formula covers all necessary change orders during construction, and additionally applies to any necessary modifications that are discovered up to one year after the date of the notice of completion, or up to one year after the date of beneficial occupancy, whichever is earlier. The City's right to require reimbursement is cumulative and does not foreclose or otherwise prevent the City from recovering direct or incidental damages caused by Consultant's failure to perform as stated in this paragraph. The City reserves to itself the right, in its discretion, to make final determinations concerning the responsibility for design errors and omissions.

F. Consultant represents and warrants to the City that its and all of its subconsultant's services shall be performed in a skillful and competent manner, exercising due and reasonable professional care, and shall comply with the recognized standards of a nationally recognized consulting firm and the standards and practices in this Agreement. The Consultant shall be responsible to the City for all costs and damages resulting from (i) defects in design, (ii) non-workability of design details, (iii) failure to comply with the terms of this Agreement, and (iv) negligent acts, errors or omissions. Consultant and its consultants, subcontractors, agents, employees and officers shall promptly upon notice or discovery, make necessary revisions or corrections of errors, ambiguities, or omissions in the drawings and specifications without additional compensation.

G. The City shall have the right to disapprove any portion of Consultant's work including, but not limited to, work associated with the design and construction documents, pre-bid and bidding phases, and any other design work or documents, which does not comply with the requirements of this Agreement. In the event that Consultant's work or a portion thereof is not approved by the City, Consultant shall proceed, when requested by the City, with revisions to the design work or documents prepared for that work and meet all applicable requirements of this Agreement. If said additional work complies with the requirements of this Agreement, the City will provide prompt written approval. Correction or completion of work which does not comply with the requirements of this Agreement shall be made without adjustments to the compensation for Consultant's services provided for hereunder unless the revisions are made to work previously approved for previous tasks, in which case, Consultant's compensation shall be adjusted. It is the intent of the parties that Consultant shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, services or other work, without additional cost to the City. The acceptance of Consultant's services by the City shall not relieve Consultant from the obligation to correct subsequently discovered defects, inaccuracies or incompleteness resulting from Consultant's negligent acts, errors or omissions.

H. Consultant shall obtain written authorization from the City before proceeding with each major task for the Main Water Treatment Plant Evaluation.

I. Consultant shall consult with the City as necessary on all matters connected with carrying out and performing the services required under this Agreement.

J. Consultant agrees to conduct the Main Water Treatment Plant Evaluation within the general intent of the program and established budget. Should the Consultant determine that the Main Water Treatment Plant Evaluation cannot be conducted within the established budget, Consultant shall immediately notify the City, in writing, so that the scope and/or budget can be reviewed and modified as necessary, including any changes in Consultant's scope, compensation and schedule.

K. Consultant agrees to conform to and be bound by written standards, criteria, budgetary considerations and policies previously furnished by the City.

L. All drawings and specifications shall be prepared so that, when constructed in accordance with such drawings and specifications, complies with all applicable laws, statutes, codes, ordinances, executive orders, and rules and regulations of the City, County, the State of Kansas, and the United States Government in effect when the construction documents are finally accepted by the City. Consultant represents to City that the construction documents and any other documents prepared by or through Consultant under the terms and conditions of this Agreement shall meet the applicable standard of care and be prepared in accordance with the existing applicable laws, statutes, codes, ordinances, rules and regulations, including without limitation, those dealing with land use or water rights, use, zoning, building, fire, safety and environmental laws, codes and ordinances of the city, county, state and/or federal agencies or any other governmental or quasi-governmental entity having jurisdiction in effect at the time that the work is performed ("Code Requirements"); subject only to (i) all approved variances therefrom, and (ii) written agency

interpretations thereof when based upon inquiry by Consultant to the agencies charged with the enforcement of such laws, statutes, codes, ordinances, rules and regulations.

M. Consultant shall prepare plans and specifications in a format that complies with all City requirements as well as all applicable county, state and federal requirements. Consultant shall be responsible for contacting the appropriate agencies and to determine the acceptable format for the final documents. No documents will be considered final until approved by the City, even though federal, state and county agencies may have approved such documents.

N. Coordination with the City, other regulatory agencies, or Consultants of other ASR Program Projects shall be a continuing work item, continuing through the completion of Consultant's work as described in ***Attachment 1*** to the completion of the Program. Such coordination shall consist of regular progress and review meetings with the Contractor, City, Consultants of other ASR Program Projects, work sessions with the City's staff and the user agencies or as otherwise directed, and coordination with utility companies. Such coordination shall also include field and office reviews of plans and documents during development, as required in this Agreement. Consultant shall document all such meetings and work sessions and distribute notes of such meetings and work sessions to the City and others, as appropriate.

O. Consultant shall, upon the request of the City, be represented at all Design/Programming meetings or hearings which involve or impact the Main Water Treatment Plant Evaluation.

P. Consultant shall complete a Final Report and, following its completion, Consultant shall assist the City in determining the best course of action to take to complete implementation of selected subparts of the Main Water Treatment Plant Evaluation. The course of action may include a design-bid-build or alternate delivery. City reserves the right to structure the implementation in any such manner at its sole discretion.

Q. The responsibilities and obligations of Consultant under this Agreement are not to be relieved or affected in any respect by the presence on the site of any agent, consultant, subconsultant, City's Representative or employee of the City.

R. Consultant shall submit billings to the City for the services performed as required by this Agreement. During the progress of work covered by the Agreement, partial payments may be made to the Consultant at intervals of four weeks or greater time span.

S. Consultant shall complete and deliver preliminary and final planning documents to the City within the time allotted for the work as stipulated in ***Attachment 2*** or as it is amended.

T. Consultant represents that the statements of fact made in the proposal it submitted with its bid to perform professional services associated with the Main Water Treatment Plant Evaluation are true and accurate and that the City reasonably relied upon such representations.

Section IV – Subconsultants

A. These services shall be diligently performed by Consultant's regular professional and technical staff. In the event Consultant does not have as part of its regular staff certain professional consultants, then such consulting services shall be performed, with the City approval, by practicing professional subconsultants outside of Consultant's regular employment.

B. Prior to designating an outside professional to perform work or services under this Agreement, Consultant shall submit the name(s) of such professional, together with a resume of training and experience in work of like character and magnitude, to the City and receive prior written approval. The City shall have the right to reject any proposed subconsultant for reasonable cause. "Subconsultant" shall mean any person or business entity which is not an employee of Consultant.

C. A subconsultant's services, performed under this Agreement, are considered the services of the Consultant. Delegation of services shall not be construed to create any contractual relationship between the City and such subcontractor. All design documents, contract documents, and other documents prepared and issued by subconsultant(s) are documents of the Consultant for the purposes of this Agreement. Consultant's delegation to subconstultant(s) of some of Consultant's services does not relieve Consultant of any liability for full, workmanlike and proper performance of the delegated service and for any liability for representations, warranties or promises made in connection with or arising from performance of the services. All representations, warranties and promises made in this Agreement extend to and apply to subconstulant's services.

D. The City's communications with Consultant's subconsultants shall be through Consultant.

Section V - Schedule

A. Consultant shall submit to the City, in writing, a Milestone Schedule setting out the milestone dates on which the Consultant plans to complete its work under this Agreement within twenty (20) working days of the effective date of this Agreement. The City shall have ten (10) working days to review the proposed milestone schedule, or as mutually agreed by the parties. The milestone schedule shall include, but not be limited to, all dates by which any known actions, decisions or information required from the City must be provided in order for Consultant to perform according to the schedule. The milestone schedule shall, when reviewed by the City, be incorporated herein by reference as ***Attachment 2*** or as it is amended. Consultant shall provide monthly schedule updates to the City in a mutually agreeable electronic format.

B. Consultant shall make every reasonable effort to meet the Milestone Schedule. Meeting the deadlines contained in this Schedule shall not result in a higher design cost to the City nor shall quality of design be compromised to achieve these dates.

C. The parties agree that in performing the terms, conditions and requirements of this Agreement by Consultant, time is of the essence. Consultant shall perform diligently and uninterruptedly and shall complete its work within the time schedule set forth herein.

Section VI - Compensation

A. Payment to the Consultant for the performance of its services shall be as defined in ***Attachment* 3** and shall not exceed the sum of $128,988.00, which payment shall be in accordance ***Attachment 3***. It is understood and agreed by and between the Parties hereto, that the City shall pay Consultant for services furnished, and Consultant shall accept as full payment for such services, amounts of money computed in this Section.

B. It is the Parties' intent that all professional services required for the Main Water Treatment Plant Evaluation are to be provided by Consultant as part of its services as identified in **Section III** of this Agreement. The City's failure to list a specific service that would normally be provided shall not be cause to eliminate that service.

C. In the event that either party desires to change the scope of the services for any reason which is not within the scope of the services as identified in **Section III** of this Agreement, such party shall submit to the other party a request for a Supplemental Agreement. Consultant will then submit a projection of the cost of the requested Supplement Agreement. Consultant's compensation under any Supplemental Agreement shall be as defined in ***Attachment 3***. Any Supplemental Agreement shall be in writing and signed by representative of both parties. Neither party shall unreasonably disapprove a request for Supplemental Agreement. However, no additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement.

D. Design changes required by (i) changes in applicable laws, statutes, codes, ordinances or rules and regulations of the City, Local, State, or Federal governmental agencies after the City's acceptance of construction documents or (ii) unreasonable extension, by no fault of Consultant, of the Milestone Schedule beyond the dates in ***Attachment 2***, as amended from time to time, shall be compensated for pursuant to **Section VI.C**. of this Agreement. However, nothing in this paragraph shall be construed as granting Consultant the right to any additional compensation based upon lack of information concerning the Main Water Treatment Plant Evaluation, as described in **Section III.C.** or its effects on the cost of work.

E. Nothing in this Agreement shall be construed as placing any obligation on the City to proceed with any work beyond what has been specifically authorized in writing by the City.

F. In the event that any part of the Main Water Treatment Plant Evaluation is deleted or otherwise not designed or performed, compensation to Consultant for the Main Water Treatment Plant Evaluation shall be payable only to the extent services are actually performed on said work, or portions of said work, in accordance with Consultant's approved payment schedule.

G. Consultant shall promptly pay all owed bills, debts and obligations it incurs performing work under this Agreement and, provided that Consultant is timely paid amounts due from the City under this Agreement, shall not allow any lien, verified claim, mortgage, judgment or execution to be filed against land, facilities, funds or improvements owned or beneficially owned by the City as a result of such bills, debts or obligations. If the City, in its sole discretion, reasonably requires lien and/or

verified claim releases in a form satisfactory to City and executed by Consultant and its subconsultants, they shall be submitted with Consultant's monthly invoices to the City.

H. Consultant shall maintain current, accurate and complete records of all man hours expended and expenditures made by it in connection with the Main Water Treatment Plant Evaluation. In accordance with **Section VII** of this Agreement, all such records shall be available for review by the City at all reasonable times upon written request by the City to Consultant.

I. The final payment to Consultant shall not be made until after the Main Water Treatment Plant Evaluation is accepted by the City and this Agreement is otherwise fully performed by Consultant.

J. The City shall not be obligated to make any payment (whether an interim payment or Final Payment) to Consultant hereunder if any one or more of the following conditions exist:

(i) Consultant is in default of any of its obligations hereunder or under any provision of this Agreement.

(ii) Consultant has failed to make payments promptly to subconsultants or other third parties in accordance with the terms of its respective subconsultant agreements after the City has made payments to Consultant.

K. No interim payment or other partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the services to which such interim payment or other partial payment relates, nor shall it relieve Consultant of any of its obligations hereunder with respect thereto.

Section VII - Examination of Records

A. Consultant agrees to make available during regular business hours all of its and its subconsultant's calculations, sketches and drawings concerning the Main Water Treatment Plant Evaluation such as the City may wish to examine during performance of the Agreement.

B. Consultant agrees 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 at its office at reasonable times during the contract period, and for three (3) years from the date of final payment under the contract for inspection by the City or its authorized representatives.

C. Consultant agrees to include in first-tier subcontracts under this Agreement a clause to the effect that the City, acting through its duly authorized designee, shall, until 3 years after final payment under the subcontract, have access to and the right to examine and any of the subcontractor's directly pertinent documents, including but not limited to, books, invoices, timesheets, papers, or other records involving transactions related to the subcontract.

D. The periods of access and examination as noted above for records relating to (i) litigation or settlement of claims arising from the performance of this Agreement, or (ii) costs and expenses of

this Agreement to which the City, acting through its duly authorized designee, has taken exception, shall continue until such appeals, litigation, claims, or exceptions are finally resolved.

Section VIII – Assignments/Parties to Agreement

A. The list of Main Water Treatment Plant Evaluation team members and key personnel, essential to the successful completion of the Main Water Treatment Plant Evaluation and authorized to perform work under this Agreement are in ***Attachment 4.*** The list may only be amended during performance of this Agreement under the following procedure:

(i) If Consultant is required to replace any of its key personnel, Consultant shall notify the City in writing of the desired change. No such changes shall be made until at least two (2) qualified replacement candidates are recommended by Consultant and a replacement is approved in writing by the City. The City's approval shall not be unreasonably withheld. Failure of Consultant to comply with the requirements of this provision may be the basis for the City's termination of this Agreement.

(ii) The City shall respond to Consultant's written notice regarding replacement of key personnel within fifteen (15) working days after the City receives the list of proposed changes. If the City or its designated representative does not respond within that time, the listed changes shall be deemed to be approved.

(iii) If during the term of this Agreement, the City determines that the performance of approved key personnel is not acceptable, it shall notify Consultant and give Consultant the time which the City considers reasonable to correct such performance. Thereafter, the City may require Consultant to reassign or replace such key personnel. If the City notifies Consultant that certain of its key personnel or the key personnel of a subconsultant should be replaced, Consultant will use its best efforts to replace such key personnel within a reasonable time but not to exceed thirty (30) calendar days from the date of the City's notice.

B. Notwithstanding any other provision in this Agreement, it is the intent of the parties that all key personnel be engaged to perform their specialty for all such services required by this Agreement, and that Consultant's key personnel be retained for the life of this Agreement to the extent practicable and to the extent that such services maximize the quality of work performed hereunder.

C. Neither Consultant, nor any subconsultant shall have other interests which conflict with the interests of the City, including being connected with the sale or promotion of equipment or material which may be used on the Main Water Treatment Plant Evaluation, and Consultant shall make written inquiry of all of its subconsultants concerning the existence of or potential for such conflict. In unusual circumstances, and with full disclosure to the City of such conflict of interest, the City, in its sole discretion, may grant a written waiver for the particular consultant or subconsultant.

D. The City is not obligated or liable under this Agreement to any party other than the Consultant named herein. Consultant understands and agrees that this is a Professional Services Agreement and it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties

under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting.

E. 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 Agreement 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.

Section IX - Ownership of Documents

A. All deliverables, as described in ***Attachment 1***, prepared by Consultant under this Agreement when delivered to and accepted by the City, shall become the property of the City when Consultant has been compensated by the City under the terms of this Agreement. Consultant agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes and other documents used in the preparation for and performance of any of the services performed hereunder as more fully described in ***Attachment 1***.

B. The City shall have unlimited rights in the ownership of all deliverables, as described in ***Attachment 1***, including the right to use the same on any other City project(s) without additional cost to the City, and with respect thereto the Consultant agrees to and does hereby grant to the City a non-exclusive royalty-free license to all data which Consultant may cover by copyright and to the deliverables to which Consultant may assert any rights or establish any claim under the patent or copyright laws or any other applicable laws.

C. Consultant shall have common law, statutory and other reserved rights in the drawings, specifications and other documents, including those in electronic form, prepared by Consultant for use with respect to this Main Water Treatment Plant Evaluation. However, Consultant gives the City an irrevocable license to use the drawings, specifications, and other documents prepared by Consultant for completion of this Main Water Treatment Plant Evaluation. This license is for the benefit of the City and its assigns and permits the City to retain other architects, engineers and design professionals who may use the drawings, specifications and other documents for such purposes.

All drawings, specifications and other documents shall become the property of the City, at the conclusion of the Main Water Treatment Plant Evaluation, whether the Main Water Treatment Plant Evaluation for which they are made is executed or not, or the termination of the services of Consultant, whichever is earlier, and shall be delivered to the City clearly marked and identified in good order. Such documents may be used by the City to construct one or more like projects without the approval of, or additional compensation to, Consultant. Consultant shall not be liable for injury or damage resulting from reuse of drawings, specifications and other documents for a project in which Consultant is not also involved, the City will remove and obliterate from such documents all identification of the original Consultant, including name, address, professional seal and stamp.

D. The deliverables, as described in ***Attachment 1***, excluding Consultant's standard details and documents, shall not be used by Consultant on or for other projects without the written approval of the City, which shall not be unreasonably withheld.

E. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Main Water Treatment Plant Evaluation is not to be construed as publication in derogation of Consultant's or the City's rights.

Section X - Taxes and Licenses

A. Consultant shall promptly pay, when they are due, all taxes, excises, license fees and permit fees of whatever nature applicable to the work and services which it performs under this Agreement and shall take out and keep current all required municipal, City, state or federal licenses required to perform its services under this Agreement. Consultant shall furnish the Project Manager, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and/or registrations and taxes.

Section XI - The City's Responsibilities

A. The City shall:

(i) Use reasonable efforts to furnish all available information and data pertaining to the Main Water Treatment Plant Evaluation now in the City's possession.

(ii) Pay the Consultant for its services in accordance with the requirements of this agreement.

(iii) Provide right of entry for Consultant's personnel in performing the services hereunder.

B. Actions taken by the City under this Section shall not, in any way, relieve Consultant of its responsibilities for design deficiencies, errors or omissions.

C. The City shall not be liable for the payment of taxes, late charges, or penalties of any nature incurred by Consultant in performing its services under this Agreement.

D. The City makes no representations or warranties, express or implied, concerning the accuracy of information and data it provides pertaining to the Main Water Treatment Plant Evaluation.

Section XII - Laws and Ordinances

A. Consultant, at all times, agrees and shall observe and comply with all federal, state and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1974, and to comply with the City's Non-Discrimination and Equal Employment/Affirmative Action Program as set forth in ***Attachment 5*** which is attached hereto and adopted by reference as though fully set forth herein.

Section XIII - Status of Consultant

A. It is understood and agreed that the status of Consultant shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as it is not intended, nor shall it be construed, that Consultant, or any member of its staff or any consultant or subconsultant, is an employee, officer or agent of the City for any purpose whatsoever.

Section XIV - Termination of Agreement

A. The City may terminate this Agreement in whole or in part, at any time, upon written notice, with or without cause, at its sole discretion; 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 in **Section III** of this Agreement and ***Attachment 3***, but in no case shall payment be more than the Consultant's actual costs plus a reasonable sum for profit.

B. After receipt of written notification that this Agreement has been terminated under this Section, Consultant shall incur no further costs other than reasonable termination costs associated with current activities.

C. In the event of termination, all finished and unfinished Main Water Treatment Plant Evaluation deliverables prepared by Consultant pursuant to this Agreement shall become the sole property of the City, subject to the provisions of **Section IX** of this Agreement.

D. Termination shall not relieve Consultant from liability to the City for damages sustained as the result of Consultant's breach of this Agreement; and the City may withhold funds otherwise due under this Agreement until such time as the exact amount of damages, if any, has been determined.

Section XV - Insurance Requirements

A. During the Program, Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Consultant. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

B. Consultant shall procure and maintain as the insurance coverage:

(i) Professional Liability Insurance to insure the adequate performance of all professional activities under this Agreement in an amount of $1,000,000.

(ii) Workman's Compensation and Employer's Liability Insurance in an amount of: Workman's Compensation – Statutory, and Employer's Liability - $100,000.00 each occurrence.

This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law.

(iii) Comprehensive (also commonly referred to as "Commercial") General Liability Insurance in an amount of $500,000.00 per occurrence for bodily injury, death and property damage.

This policy shall be procured and maintained by the Consultant, 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 City or others arising out of any negligent act or omission of Consultant, its agents, officers, employees, subconsultants or subcontractors in the performance of Consultant's services under this Agreement. It shall include Premises — Operations, xcu (explosion, collapse and underground) hazards when applicable, Product/Completed operations, Broad Form Property Damage, and Contractual Liability coverages.

C. Every such policy shall be procured and maintained with appropriate forms and insurers acceptable to the City. All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Consultant, pursuant to **Section XVI,** of this Agreement. The City shall be added as an additional named insured on every such policy with the exception of Workers Compensation and Professional Liability insurance. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Consultant shall be solely responsible for any deductible losses under any required policy.

D. Every policy, except professional liability insurance, required above shall be primary insurance, and any insurance carried by the City, its officers, its employees or its consultants shall be excess and not contributory insurance to that provided by Consultant. No additional insured endorsement to the policy required by this paragraph shall contain any exclusion for bodily injury or property damage arising from completed operations.

E. Satisfactory Certificates of Insurance shall be filed with the City prior to the time Consultant starts any work under this agreement. Consultant shall furnish the City certificates of insurance in a form acceptable to the City evidencing that the insurance coverage required to be maintained by Consultant hereunder are in full force and effect. In addition, insurance policies applicable hereto shall contain a provision that provides that the City shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

F. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions and limits shall constitute a material breach of the Agreement. In such event, as its sole discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.

G. Consultant shall procure and maintain or shall cause any subconsultant of Consultant, concerning the services delegated under this Agreement to such subconsultant, to procure and maintain Professional Liability Insurance to insure its professional activities in an amount not less than $1,000,000 and the insurance coverages required in **Section XV** of this Agreement.

H. To the extent damages are covered by property insurance during construction, the City and Consultant waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The City and Consultant shall require of the contractors, consultants, agents and employees of any similar waivers in favor of the other parties identified herein.
Consultant shall require that all insurance policies, except for professional liability insurance, that are in any way related to the Main Water Treatment Plant Evaluation, including those that are secured and maintained by subconsultants, include clauses providing that each underwriter shall waive all of its rights of recovery under subrogation or otherwise, against the City and the City's representatives.

Section XVI - Indemnification

A. Consultant hereby agrees to indemnify, defend and hold harmless the City, its officials, officers, and employees from any and all third party claims, damages, suits, costs and expenses (including reasonable attorney fees, expert witness fees, court costs, and all associated defense fees), liability, actions or proceedings of any kind or nature to the extent caused or claimed to be caused directly or indirectly by the comparative fault of Consultant for negligent acts or errors or omissions, its agents, servants, employees or subconsultants occurring in the performance of its services under the Agreement The insurance coverage specified in this Agreement constitutes the minimum requirements and these requirements do not lessen or limit the liability of Consultant hereunder.

B. Consultant agrees that it will contractually obligate its subconsultants to indemnify and hold harmless the indemnitees identified in this Section to the same extent that Consultant is required to indemnify and hold harmless said indemnitees.

C. In the event of the filing of record of a lien or verified claim against any property on which the Main Water Treatment Plant Evaluation is located by Consultant, by a subconsultant, or by any other person or entity for which Consultant may be responsible, Consultant shall promptly remove the lien or claim in accordance with the laws of the State of Kansas.

D. Consultant shall protect, defend, indemnify, and hold harmless the City from and against any claims, actions, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) in the event that litigation is filed by one of Consultant's subconsultants for non-payment by Consultant to that subconsultant.

E. Consultant shall take reasonable actions to inform the City of known potential patents on processes, designs, or devices that may be incorporated into the Main Water Treatment Plant Evaluation. Consultant agrees to protect, defend and save harmless the City against any claim or

demand for payment for the use of any patented or copyrighted material, process, design, article or device that may enter into the work being performed by Consultant under this Agreement to the extent that the City shall have provided Consultant reasonable notice of such claim or demand for payment.

F. The City does not agree to indemnify, hold harmless, exonerate or assume the defense of Consultant or any other person, or entity whatsoever, for any purpose whatsoever by or in connection with this Agreement.

Section XVII – Consequential Damages

A. In no event shall either Party be liable in tort or in contract for any incidental, special, indirect or consequential damages of any kind, including, without limitation, claims for lost profits or loss of goodwill, even if that Party has been advised of the possibility of such damages, by reason of any breach or default under this Agreement. This section shall not be interpreted to affect in any way Consultant's obligations with respect to a third party.

Section XVIII- Force Majeure

A. Neither Party shall be responsible nor deemed to be in default, on account of damages or delays in performance of the Agreement due to a cause beyond its control and not occasioned by its fault or negligence. Such causes include but are not limited to: Acts of God, labor disputes, strikes or lockouts, acts of war or terrorism; provided, however, that the existence of such causes shall not excuse the delaying or nonperforming Party from the resulting delay unless such Party shall have given the other Party written notice on any excusable delays referenced to above, within ten (10) days (or such additional time as may be approved by the other Party) after the delaying or nonperforming Party has actual knowledge that such occurrences will result in damages or delays.

Section XIX - Miscellaneous

A. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law. The City's rights and remedies are separate and cumulative. No consent by the City, expressed or implied, to any breach of the Agreement or waiver or failure to exercise in any respect any right or remedy provided under this Agreement by the City waives or bars any future right or remedy hereunder or available at common law.

B. Neither the City's review, approval or acceptance or, 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.

C. The laws of the state of Kansas will govern the construction and operation of and the remedies available under this Agreement. Venue for any lawsuit arising under or related to this Agreement shall before the Eighteenth Judicial District Court of Kansas (Sedgwick County, Kansas) or the United States District Court for the District of Kansas sitting in Wichita, Kansas.

D. In the event any dispute arises under this Agreement and during the time such dispute is being resolved, Consultant hereby agrees that it shall continue performance under this Agreement in accordance with the terms and conditions hereof since time is of the essence and City shall continue to compensate Consultant for all undisputed payment amounts. Consultant's failure to continue expeditious performance due to a dispute arising under this Agreement, at the option of the City, shall be construed as a material breach of this Agreement.

E. Consultant 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.

F. The term of this Agreement shall commence upon written Notice to Proceed from the City to Consultant and end upon final completion of the services to be provided hereunder by Consultant. The insurance and indemnification provisions of this Agreement shall survive such termination.

G. The captions and headings set forth in this Agreement are for convenience and for reference only and shall not be construed so as to define or limit the terms and provisions hereof.

H. This Agreement is intended as the complete integration of all prior oral or written understandings between the Parties. No prior or contemporaneous additions, deletions or other amendments shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties and signed by the signatories to the original Agreement.

I. Supplemental Agreements and other amendments to the Agreement shall require approval by the City in the manner required by City policy, provided that City Staff or the Project Manager (as otherwise provided in writing by the City) may negotiate and approve modifications to ***Attachments 2 and 4***, on behalf of the City, as may be required from time to time.

J. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

K. All notices, demands, or other documents or instruments required or permitted to be served upon either Party hereto shall be in writing and shall be deemed duly served when delivered in person to an officer or partner of the Party being served, by facsimile transmission or when mailed certified or registered mail, return receipt requested, postage prepaid addressed to parties at the addresses stated below:

City: Wichita Water Utilities (WWU)
City Hall, 8th Floor
455 N. Main
Wichita, KS 67202

Consultant: Burns & McDonnell Engineering Company, Inc.
9400 Ward Parkway
Kansas City, MO 64114

L. By signing this Agreement, the representatives of the parties represent that they are duly authorized by their principal to execute this Agreement, and that they have agreed to be bound by all of its provisions.

In WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF WICHITA, KANSAS

By: _____

Title: _____

Date:_____ **, 2011**

ATTEST:

_____

City Clerk

APPROVED AS TO FORM: _____

City Attorney

Consultant, Burns & McDonnell Engineering Company, Inc.

By: _____

(Signature)

Name: Peter D. Zanoni

(Type or Print)

Date: February 11 **, 2011**

Attachment 1

Scope of Work

This is **ATTACHMENT 1**, referred to in and part of the **Agreement for Professional Services** dated _____.

Scope of Work

This study will evaluate if the Main Water Treatment Plant (MWTP) currently has the capability to treat only Cheney Reservoir, only Equus Beds Well Field (EBWF), and varying portions of water from the ASR Phase II Surface Water Treatment Plant (SWTP), Bentley Reserve Well Field, and Local Well Field. The project approach includes two phases to provide flexibility with how to proceed after bench scale testing of raw water blending scenarios and operational evaluation of existing facilities are complete. The City can decide to limit difficult to treat blending scenarios, or move forward with Phase Two to identify potential modifications that may be needed to treat certain raw water scenarios.

Phase One

Phase One will include bench scale testing and operational evaluation to determine if the MWTP currently has the capability to treat various combinations of raw water supplies. The operational changes, chemical feed improvements, and blending limitations that are required will be highlighted in a technical memorandum and project workshop.

Recommendations for each blending scenario will be based on the following critical assessments:

- **Current Performance** – Analyze unit processes based upon historical data and discussions with operations staff.
- **Operational Improvements** – Evaluate operational practices that could improve treatment performance.
- **Bench Scale and Jar Testing** – Conduct bench scale and jar testing to improve plant performance and process goals.
- **Blending Limitations** – Identify any blending limitations or scenarios that will be difficult to treat with existing facilities.

The Scope of Work and assumptions for Phase One of the MWTP Evaluation is presented below. A detailed fee estimate is shown in Exhibit A of Attachment 3.

A. Scope of Work
   Task 1 – Data Collection
   Task 2 – Raw Water Analysis
   Task 3 – Raw Water Modeling
   Task 4 – Plant Performance Evaluation
   Task 4.1– Bench Scale and Jar Testing
   Task 4.2 – Operational Evaluation
   Task 4.3 – Technical Memorandum and Summary Workshop

B. Assumptions
   1. City will provide water quality data that is available for the Cheney Reservoir, EBWF, Bentley Reserve Well Field, and Local Well Field.
   2. City will provide process drawings, design criteria, and operating procedures for each process and chemical feed system.
   3. Up to six days of jar and bench scale testing will be conducted at the MWTP by Consultant.
      a. Scope of Work includes six raw water blending scenarios.
      b. Consultant will provide ozone and AOP testing equipment at standard rental fees.
      c. City will provide representative raw water samples for each blending scenario.
      d. City will provide sample analysis for TOC, DOC, and other water quality parameters that can be measured with in-house equipment.
   4. Scope of Work includes a plant performance and operational evaluation only; hydraulic, electrical, mechanical, and structural reviews and evaluations are not included.
   5. Blending water limitations will be identified based on jar testing results and operational evaluation.
   6. Consultant will make three trips to the site (kickoff meeting, bench scale testing, and project workshop).
   7. Improvements to the existing facilities or additional chemical feed systems will require the Phase Two evaluation.
   8. Project may need to be modified based on testing results.

Phase Two

Phase Two will include a process evaluation and finished water stability analysis to identify potential modifications and improvements to existing facilities that may be required to treat certain raw water scenarios. Process alternatives that satisfy regulatory requirements and finished water quality goals will be developed. Evaluation criteria and associated weighting will be used for new equipment, physical improvements to existing facilities, and chemical feed modifications.

The evaluation will include a planning level cost opinion and non-economic selection criteria (i.e. operability, process reliability/flexibility, solids disposal, and finished water quality) for evaluating and ranking proposed alternatives. The results from this analysis will be highlighted in a draft and final report and presented in a project workshop.

Recommendations for each blending scenario will be based on the following critical assessments:

- **Physical/Chemical Improvements** – Evaluate modifications to the physical and chemical processes of existing facilities that could improve treatment performance.
- **Finished Water Stability** – Establish water quality goals using industry-accepted corrosion control and stability indices to evaluate what operational and chemical feed changes are required.
- **Alternatives Analysis** – Evaluate process alternatives using planning level cost opinions and selection criteria.
- **Blending Limitations** – Identify blending limitations or scenarios that will be difficult to treat without constructing new structures, basins, or filters.

The Scope of Work and assumptions for Phase Two of the MWTP Evaluation is presented below. A detailed fee estimate is shown in Exhibit B of Attachment 3.

A. Scope of Work
   Task 5 – Process Evaluation
   Task 6 – Finished Water Stability
   Task 7 – Alternatives Evaluation
   Task 8 – Final Report and Recommendations

B. Assumptions
   1. The Scope of Work includes:
      a. Process evaluation only.
      b. Modifications and improvements to existing facilities.
      c. New equipment located inside existing structures.
      d. New chemicals that may be required to meet finished water goals.
   2. The Scope of Work does not include:
      a. Additional bench scale or jar testing.
      b. Hydraulic, electrical, mechanical, and structural reviews and evaluations.
      c. Design of new structures, basins, or filters.
   3. Blending limitations that are difficult to treat without constructing new structures, basins, or filters will be identified.
   4. The evaluation will include a planning level cost opinion for ranking of alternatives.
   5. Consultant will make one additional trip to the site.
   6. Final design documents for construction of recommended improvements will require an amendment to the Agreement.
   7. Project may need to be modified based on testing results.

Attachment 2

Milestone Schedule

This is **ATTACHMENT 2**, referred to in and part of the **Agreement for Professional Services** dated _____.

Milestone Schedule

The project milestones will follow the schedule shown in the table below. The project kickoff meeting is scheduled within one week of an executed agreement and notice to proceed. A project workshop and draft Technical Memorandum is scheduled within five weeks from receipt of an executed agreement and notice to proceed. If Phase Two is selected, a draft and final report will be delivered within eight and ten weeks, respectively.

Milestone	**Schedule**
Phase One	
Notice to Proceed	Project Initiation
Kickoff Meeting	**Week 1**
Data Collection, Analysis, and Modeling	Week 1 and 2
Bench Scale Testing	Week 3
Performance and Operational Evaluation	Week 3 and 4
Project Workshop	**Week 5**
Draft Technical Memorandum	Week 5
Phase Two	
Process Evaluation	Week 5 and 6
Finished Water Stability	Week 5 and 6
Alternatives Evaluation	Week 6
Project Workshop	**Week 7**
Draft and Final Report	Week 8 and 10

Attachment 3

Compensation

This is **ATTACHMENT 3**, referred to in and part of the **Agreement for Professional Services** dated _____.

Compensation

The Phase One evaluation will be a schedule of rates with a maximum not-to-exceed amount of $78,563. A detailed fee estimate for Phase One is shown in Exhibit A.

The Phase Two evaluation will be a schedule of rates with a maximum not-to-exceed amount of $38,305. A detailed fee estimate for Phase Two is shown in Exhibit B.

Optional bench scale and jar testing of up to four additional raw water or treatment scenarios will be a schedule of rates with a maximum not-to-exceed amount of $12,120.

The maximum not-to-exceed amount for Phase One, Phase Two, and optional bench scale and jar testing is $128,988.

Exhibit A
Fee Schedule
Engineering Study - Phase I

Main Water Treatment Plant Evaluation
City of Wichita, KS

Task No	Description	Notes	Total Hours	Total Labor Cost	Total Subs	Tech Charge	Total Travel	Equipment and Testing	Task Total
1	Data Collection		36	**$6,084**		$358	$140		$6,582
2	Raw Water Analysis		52	**$8,664**		$517			$9,181
3	Raw Water Modeling		44	**$7,760**		$438			$8,198
4	Plant Performance Evaluation								
4.1	Bench Scale and Jar Testing		152	**$23,448**		$1,512	$2,960	$5,600	$33,520
4.2	Operational Evaluation		68	**$10,544**		$677			$11,221
4.3	Technical Memorandum and Summary Workshop		60	**$9,124**		$597	$140		$9,861
	Total		412	**$65,624**		**$4,099**	**$3,240**	**$5,600**	**$78,563**

Exhibit B
Fee Schedule
Engineering Study - Phase II

Main Water Treatment Plant Evaluation
City of Wichita, KS

Task No	Description	Notes	Total Hours	Total Labor Cost	Total Subs	Tech Charge	Total Travel	Equipment and Testing	Task Total
5	**Process Evaluation**		68	**$10,604**		$677			$11,281
6	**Finished Water Stability**		44	**$7,332**		$438			$7,770
7	**Alternatives Evaluation**		52	**$8,656**		$517	$740		$9,913
8	**Final Report and Recommendations**		56	**$8,784**		$557			$9,341
	Total		220	**$35,376**		**$2,189**	**$740**	**$0**	**$38,305**

Attachment 4

List of Main Water Treatment Plant Evaluation Team Members and Key Personnel

This is **ATTACHMENT 4**, referred to in and part of the **Agreement for Professional Services** dated _____.

List of Project Team Members and Key Personnel

Brian Meier - Project Manager

Nathan Dunahee - Process Lead / Optimization

Dave Oligschlaeger - Quality Assurance / Quality Control

Jerry Blain - Technical Resources

Jake White - Jar and Bench Testing

Jeff Klein - ILWS

Mike O'Connell - Plant Improvements

Attachment 5

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

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

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

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Settlement Agreement with Weaver Manufacturing for the North Industrial Corridor Site (District I)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the settlement agreement.

Background: The City of Wichita has received a settlement offer from the current owners of Weaver Manufacturing, Inc. located at 1005 East 17th Street and 1759 North Wabash Avenue, Wichita, Kansas. The owners have entered into an agreement to sell the company and property. As part of the property transaction, the current owners of Weaver Manufacturing are seeking a settlement for their potential contribution to the North Industrial Corridor (NIC) groundwater contamination site. City staff has reviewed the documentation submitted concerning the site. In order to consider a settlement amount and to be consistent and fair to all parties in the NIC site, the following categories were considered: 1) past cost; 2) future monitoring cost; 3) plume remediation cost; 4) source investigation/cleanup cost; 5) pre-allocation contributions; and 6) administrative cost.

Analysis: Based upon this analysis, the anticipated cost associated with the historical source at the Weaver site will be accounted for with the proposed settlement of $112,000. This settlement agreement provides for the financial compensation for the potential historic contribution to the area wide groundwater contamination.

Financial Considerations: The settlement agreement provides for a financial payment that is consistent with the level of impact and will cover the City's past and anticipated future costs.

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

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

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

Attachment: Settlement Agreement.

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into this date to be effective _____, 2011 ("Effective Date"), by and between (a) the **City of Wichita**, a municipal corporation organized and existing pursuant to the Constitution and laws of the State of Kansas ("WICHITA"), and (b) **Weaver Manufacturing, Inc.,** a corporation organized under the laws of the State of Kansas; **and Timothy J. Farrell, Daniel W. Farrell, Jr., and Sharon R. Farrell,** individuals (collectively, "SETTLORS").

RECITALS

A. WHEREAS, on or about November 14, 1995, WICHITA and the Kansas Department of Health and Environment ("KDHE") entered into a Settlement Agreement for Remedial Investigation and Feasibility Study, and for Certain Remedial Actions to be Determined Following Opportunity for Public Involvement, regarding the North Industrial Corridor Site (the "Site") in Wichita, Kansas, which agreement was entered into pursuant to proceedings under the Kansas Environmental Response Act, K.S.A. 65-3452a, et seq., as amended, and K.S.A. 65-161, et seq. (the "Wichita/KDHE Agreement"). Through the Wichita/KDHE Agreement, WICHITA undertook an obligation to perform a Remedial Investigation/Feasibility Study at the Site and to perform such response actions at the Site as may be indicated by the studies.

B. WHEREAS, on or about May 21, 1996, WICHITA also entered into a North Industrial Corridor Participation Agreement ("NIC Participation Agreement") with various business entities within the Site, not including SETTLORS. The signatories or participants to the NIC Participation Agreement have agreed to support WICHITA's environmental efforts within the Site and have contributed financially toward the investigation.

C. WHEREAS, the NIC Participation Agreement establishes a procedure for final allocation of responsibility to each of the participants based solely on costs associated with remediating contamination, if any, caused by that participant, whether on or off its property. The NIC Participation Agreement further provides, among other things, that additional parties identified as potentially responsible parties ("PRPs") shall be given an opportunity to participate in the allocation process and to provide any pertinent information to WICHITA, other private participants, and the neutral allocator.

D. WHEREAS, SETTLORS have been identified as PRPs at the Site by WICHITA.

E. WHEREAS, SETTLORS own and operate facilities at 1005 E. 17th and 1759 Wabash Street within the Site with the legal description as set forth on Exhibit A attached hereto (collectively, the "Property") or are otherwise holders of any form of legal or equitable interest in the Property, and are Persons for purposes of Paragraph 135a of the Wichita/KDHE Agreement.

F. WHEREAS, SETTLORS have made an application for a Certificate and Release ("Certificate") under the provisions of the Wichita/KDHE Agreement and seek to have the Property designated as a Certified Property under the Wichita/KDHE Agreement.

G. WHEREAS, Paragraph 135g of the Wichita/KDHE Agreement provides in part that "the City may enter a settlement agreement with any potentially responsible party, without requiring any admission of liability by such party, upon terms satisfactory to the City, and payment of a settlement amount satisfactory to the City."

H. WHEREAS, Paragraph 135g of the Wichita/KDHE Agreement provides in part that "Upon entry of any such settlement, the settling party also shall be granted a Certificate of Release providing for contribution protection and a covenant not to sue providing that KDHE and the City covenant not to pursue or take further action against the settling party, so long as the settling party remains in compliance with the terms of the settlement agreement applicable to such party, and subject to the provisions of this paragraph."

I. WHEREAS, WICHITA and SETTLORS desire to resolve claims and potential claims among them and, in accordance with the Wichita/KDHE Agreement, among SETTLORS and KDHE relating to response costs incurred or to be incurred in connection with the generation, transportation, disposal, storage, treatment, spill, release or threatened release of hazardous substances, pollutants, or contaminants at, within, from, beneath or about the Site, whether known or unknown, occurring prior to the Effective Date, including, but not limited to, any claims under 42 U.S.C. § § 9606, 9607 and 9613, subject, however, to certain limitations as provided in Paragraph 5 herein and to the reservation of the rights as provided in Paragraph 7 herein. The compromise and settlement contained in this Agreement was negotiated at arms-length and made in good faith.

J. WHEREAS, by entering into this Agreement, SETTLORS are not admitting that they are liable under CERCLA or under any other federal, state, or local law, are liable for response costs, or are liable for the generation, transportation, disposal, storage, treatment, spill, release or threatened release of hazardous substances, pollutants, or contaminants at, within, from, beneath, or about the Site.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, WICHITA and SETTLORS agree as follows:

1. **DEFINITION OF RESPONSE COSTS**. When used in this Agreement, "response costs" shall mean those costs, expenses or sums incurred prior to the Effective Date or to be incurred on or after the Effective Date for "response" activities as "response" is defined in CERCLA § 101(25), 42 U.S.C. § 9601 (25), and for costs of investigation and cleanup activities under other applicable federal and state law.

2. **RELEASE AND COVENANT NOT TO SUE**.

a. WICHITA agrees not to take any action against and hereby forever releases, SETTLORS, their former, current and future officers, directors, stockholders, partners, employees, heirs, personal representatives, advisory committee members, advisors, successors, or agents, with respect to any actual or alleged liability of SETTLORS, by way of contribution, subrogation, direct liability, or otherwise, for environmental investigation and remediation described in the Wichita/KDHE Agreement or this Agreement and for payment of Response Costs related to environmental investigation or remediation of the Site, including the Property. Such release from liability shall be final and irrevocable and shall not be affected or terminated by reason of the termination or modification of the Wichita/KDHE Agreement.

b. Provided, that the Release of subparagraph (a) shall not apply if SETTLORS have provided false or misleading information in connection with obtaining the Certificate.

3. **NON-COVERED CLAIMS.** Notwithstanding anything to the contrary contained herein, the Parties' Released Claims pursuant to Paragraph 2 shall not extend to and shall not be construed to extend to the following:

a. any claims brought by non-parties to this Agreement, other than KDHE, for toxic torts, natural resource damages, personal injury, or property damages in connection with the generation, transportation, disposal, storage, treatment, spill, release or threatened release of hazardous substances by SETTLORS within the Site;

b. any claims made by the United States or the State of Kansas relating to SETTLORS' response to requests for information, if any;

c. any claims relating to or arising out of disposal of hazardous substances by SETTLORS at any location not affecting or related to the Site;

d. any claims not relating to the Site, including the Property;

e. any contractual claims against SETTLORS by a third party; or

f. any criminal claims against SETTLORS.

4. **CONSIDERATION.**

a. Within 30 days of the Effective Date, SETTLORS shall pay WICHITA the sum of $112,000 (the "Settlement Amount"), in such form and manner as reasonably requested by WICHITA, as consideration for the release and mutual promises of this Agreement.

b. In consideration of the entry into this Agreement, SETTLORS agree not to assert, and hereby assign to WICHITA, any and all claims they may have (except for claims relating to insurance coverage or otherwise arising under contract) for Site response costs against any non-party to this Agreement, except that if any non-party to this Agreement brings a suit against SETTLORS for Site response costs arising from events occurring prior to the Effective Date that is not deemed barred by the contribution protection provided to SETTLORS herein, then SETTLORS retain the right to bring or initiate any claims they may have against any non-party to recover such costs if any such claim has not already been asserted by WICHITA under this assignment. All other claims are specifically reserved and are not assigned. Nothing in this paragraph shall be construed to affect or limit SETTLORS rights to assert any defenses, claims, or counter-claims in defense of any action. WICHITA agrees to indemnify and defend SETTLORS against any non-party claim or action assigned by SETTLORS under this paragraph.

5. **CONTRIBUTION PROTECTION.**

a. The parties agree that by entering into this Agreement that SETTLORS are entitled to and do hereby receive protection from contribution actions or claims as provided by 42 U.S.C. § 9613 (f)(2) and as set forth in Paragraphs 134, 135, and 136 of the Wichita/KDHE Agreement for a Person to whom a Certificate has been issued.

b. The consideration paid by SETTLORS pursuant to this Agreement constitutes reimbursement of WICHITA's present and future Response Costs in connection with the Site based on a determination of SETTLORS' proportionate contribution, if any, to the overall Site contamination and legal and equitable claims and defenses that might be raised by the parties, and the parties agree that the consideration paid by SETTLORS is at least sufficient to account for SETTLORS' equitable, several share, if any, of the Response Costs referenced in Paragraph 135 of the Wichita/KDHE Agreement, and hence this Agreement provides SETTLORS contribution protection under 42 U.S.C. § 9613(f)(2) and any applicable state law for matters addressed in the Wichita/KDHE Agreement and this Agreement.

6. **REPRESENTATIONS AND ACCESS**.

a. This Agreement arises from allegations that SETTLORS, or persons within the control of SETTLORS, have disposed of, transported or otherwise contributed hazardous substances to the Site. In connection therewith, and without admitting the truth of such allegations, SETTLORS represent that, to the best of their knowledge, as of the date of execution of this Agreement, they have not intentionally withheld and are not intentionally withholding material information requested by WICHITA, which is in their possession, establishing the location and amount or nature of any hazardous substances and releases contributed by SETTLORS to the Site.

b. SETTLORS agree that they will cooperate and grant to WICHITA such rights of access to the Property within the Site as is reasonably required for WICHITA to perform its obligations under the Wichita/KDHE Agreement.

c. Access under this paragraph shall be by WICHITA's written request, which shall include, but is not limited to, an identification of the property to which access is being requested, the date or time period during which access is being requested, and a complete description of the activities to be performed. SETTLORS shall respond in writing to any such request. Oral requests for access, and responses thereto, are sufficient under circumstances in which the making of a written request and response is not reasonable or practicable.

d. It is agreed that, if access is obtained under this paragraph, WICHITA shall remove or cause to be removed from the Property all materials and equipment belonging to it or its agents or contractors after the activities for which access was sought are completed, and will restore the Property, as nearly as possible, to the condition it was in at the time access was obtained. Without limiting the generality of the foregoing, WICHITA further agrees that it will repair or have repaired any property damage it causes, or which was caused by its agents or consultants, and will indemnify and hold harmless SETTLORS from any and all costs and other expenses SETTLORS may incur as a result of property damage (including, but not limited to, the creation or exacerbation of environmental contamination) or personal injury caused by WICHITA, or its agents or consultants; provided, however, that such indemnification by WICHITA under this Agreement shall be limited to the policy amounts of the applicable liability insurance of any contractor or subcontractor, or to the resources of the North Industrial Corridor Site project, if such insurance is not applicable.

7. RESERVATION OF RIGHTS.

a. Nothing in this Agreement is intended to be nor shall be construed as a release or covenant not to sue for any claim or cause of action, past or future, in law or in equity, which WICHITA or SETTLORS may have against the other for any claims not identified in Paragraph 2 or for any breach of this Agreement or the exercise of rights to enforce this Agreement.

b. Except as provided in Paragraph 2 or Paragraph 4, nothing herein is intended to release any of WICHITA's or SETTLORS' claims, causes of action or demands in law or equity against any person, firm, partnership, corporation, organization, governmental entity or any other entity not a signatory hereto for any liability such entity may have arising out of or relating in any way to the generation, transportation, disposal, storage, treatment, spill, release or threatened release of any hazardous substance, pollutant, or contaminant at, to, from, within, or beneath the Site.

8. NO ADMISSION OF LIABILITY. The execution of this Agreement shall not, under any circumstances, be construed as an admission by WICHITA or SETTLORS of any liability with respect to the Site or with respect to hazardous substances, pollutants, or contaminants at, within, from, beneath, or about the Site, including the Property. This Agreement shall not constitute or be used as evidence or an admission of any liability or fact or a concession of any question of law by WICHITA or SETTLORS.

9. NOTICES. All notices required or desired to be given under this Agreement shall be in writing and shall be delivered in person or mailed by registered, certified, or overnight mail as follows:

With respect to WICHITA to:

Gary E. Rebenstorf, City Attorney and Director of Law
City of Wichita
455 North Main
Wichita, Kansas 67202

With respect to SETTLORS to:

Weaver Manufacturing, Inc.
Attn: President
1005 E. 17th,
Wichita, Kansas, 67214

Mr. Daniel W. Farrell, Jr.
1377 Ironwood Ct.
Defiance, OH 43512

Mrs. Sharon R. Farrell
10501 Glen Lakes Drive
Bonita Springs, FL 34135

Mr. Timothy J. Farrell
8521 Killarney Place
Wichita, KS 67206-1809

10. MISCELLANEOUS PROVISIONS.

a. Governing Law and Venue. This Agreement shall be construed according to the laws of the State of Kansas, regardless of any conflict of law provisions that may apply. WICHITA and SETTLORS agree that any and all actions at law or in equity, which may be brought by any of the parties to enforce or interpret this Agreement, shall be brought only in the State of Kansas.

b. Severability. In the event that any provision of this Agreement is determined by a court to be invalid, the remainder of this Agreement shall not be affected thereby and shall remain in force.

c. Modification of the Agreement. Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

d. Rule of Construction. The judicial rule of construction requiring or allowing an instrument to be construed to the detriment of or against the interests of the maker thereof shall not apply to this Agreement.

e. Entire Agreement. This Agreement, consisting of the Recitals and Paragraphs 1 through 11, inclusive, constitutes the entire understanding of WICHITA and SETTLORS and supersedes all prior or contemporaneous agreements other than those expressly referenced herein, discussions or representations, oral or written, with respect to the subject matter hereof, and each of the parties hereto states that it has read each of the provisions of the Agreement and understands the same.

11. **CERTIFICATE AND EXECUTION.**

This Settlement and Release Agreement shall be considered as and shall operate as a Certificate and Release under the Wichita/KDHE Agreement and the procedures of the City of Wichita. WICHITA represents that the City Manager or Mayor is authorized to execute this Agreement in the same manner as such official has been authorized to execute Certificates for the North Industrial Corridor Site. WICHITA shall also provide SETTLORS with a form Certificate and either this Agreement or the Certificate may be filed of record as to the Property.

IN WITNESS WHEREOF, this Agreement has been deemed effective the day and year first written above.

CITY OF WICHITA, KANSAS

By: _____
Robert Layton, City Manager

ATTEST:

By:_____

_____, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

WEAVER MANUFACTURING, INC.

By: _____
Timothy J. Farrell, President

ATTEST:

_____
Amie Emerson Secretary

DANIEL W. FARRELL, JR.

_____

SHARON R. FARRELL

_____

TIMOTHY J. FARRELL

_____

Exhibit A
to
Settlement and Release Agreement

Legal Description of Property

1005 E. 17th Street N., Wichita, KS

Lots 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45 and 47, Block 7, Washington Avenue Addition to Wichita, Kansas, Sedgwick County, Kansas

1759 N. Wabash Ave, Wichita, KS

Lot 42, except south 15 foot thereof, and all of lots 44, 46, and 48, Block 7, Washington Avenue Addition to the City of Wichita, Kansas, Sedgwick County, Kansas, together with the East Half of the vacated alley adjoining said lots on the west

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council Members

SUBJECT: Supplemental Design Agreement for St Francis from Douglas to 2nd Street (District VI)

INITIATED BY: Department of Public Works and Utilities

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement.

Background: On August 24, 2010, the City entered into an Agreement with Professional Engineering Consultants, P.A.(PEC) to prepare design concepts to improve St Francis, between Douglas and 2nd Street. The fee was $39,920. Exhibit "A" of that original agreement states, "The City must approve the initiation of the Construction Design work following the completed Concept Phase. At that time, the City may proceed to final design with the engineer, via a supplemental contract." On March 8, 2011 the City Council approved a design concept for the project.

Analysis: The recommended design concept includes reconstruction of St. Francis and conversion to a two-way lane configuration with diagonal parking, decorative sidewalks, trees and other streetscape amenities in accordance with the Downtown Wichita Streetscape Design Guidelines. A supplemental agreement with PEC has been developed for the preparation of construction plans.

Financial Considerations: Payment to PEC will be on a lump sum basis of $214,000 and will be paid by General Obligations Bonds. This brings the total design fee to $253,920.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through a major transportation corridor.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Law Department.

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

Attachments: Supplemental Agreement

SUPPLEMENTAL AGREEMENT

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED AUGUST 24, 2010

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated August 24, 2010) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to **ST. FRANCIS FROM DOUGLAS TO 2ND STREET NORTH** (Concept Only) (Project No. 472 84920).

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:

1. Provide engineering services as required to perform all the duties listed under Section B. PHASE II – PLAN DEVELOPMENT of “Exhibit A” of the above referenced Contract based on the concept design approved by the CITY.

2. The project milestones noted in Section B. Paragraph 8. shall be amended as follows:
   (a) Field check plans of the PROJECT are due _____.
   (b) Office check plans are due _____.
   (c) Completion of all work required by this agreement (including submittal of final approved plan tracings, field notes, and related PROJECT documents) by _____.

B. PAYMENT PROVISIONS

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

Payment to the ENGINEER for the performance of the additional professional design services as outlined in this supplemental agreement shall be made on the basis of the lump sum fee specified below:

Phase II – Plan Development	$197,500.00
Coleman Parking Coordination	$ 7,500.00
Sanitary Sewer Improvement	$ 9,000.00
	$214,000.00

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2011.

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

_____

ATTEST:

_____

SCOPE OF SERVICES

Supplemental Agreement No. 1
for
ST. FRANCIS, DOUGLAS TO 2ND STREET SOUTH

(Project No. 472 84920)

1. Complete PHASE II – PLAN DEVELOPMENT services for Project based on concept approved by CITY in PHASE I – PRELIMINARY CONCEPT DEVELOPMENT.

2. Coordinate with Sedgwick County for Coleman parking lot improvement project at SE quadrant of intersection at 2nd Street and St. Francis. This work shall include preparation of necessary plans to be included in County Project for improvements in area behind curb to R/W line and may include associated curb improvements along 2nd and St. Francis adjacent to County Project.

3. Complete Phase II Services for Sanitary Sewer improvements along 1st Street and 2nd Street from 1/2 block east to 1/2 block west of St. Francis as approved by CITY in PHASE I.

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Change Order No. 1- 72nd Street Transmission Main (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the change order.

Background: On July 13, 2010, the City Council approved a contract with Wildcat Construction Co. Inc. to construct approximately six miles of water transmission lines to serve the ASR Wellfield. After the work began it was determined that sand deposits caused by collapsed water wells over a period of 60 years had filled portions of a 66" pipe. A change order has been prepared for the cost to remove the sand and disinfect equipment.

Analysis: The work consists of disinfecting the equipment and cleaning sand from the existing 66" water line in 700 to 800 foot intervals as necessary. Due to the unknown extents of the sand deposits, the work performed will be paid on a per-day basis.

Financial Considerations: The total cost of the additional work is $30,000, with the total paid by the Water Utility. The original contract amount is $8,679,356. This change order represents 0.35% of the original contract amount. Funding is available within the existing project budget.

Goal Impact: The project addresses the Efficient Infrastructure goal by providing a needed water supply.

Legal Considerations: The Law Department has approved the change order as to form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

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

Attachments: Change order.

PUBLIC WORKS-ENGINEERING

January 3, 2011

CHANGE ORDER

To: Wildcat Construction Co., Inc.

Project: BP C1 72ns St. Transmission Main

Change Order No.: 1
Purchase Order No.: 030567
CHARGE TO OCA No.: 633972

Project No.: FB030003
OCA No.: 633972
PPN: 788014

Please perform the following extra work at a cost not to exceed <u>$30,00.00</u>

Additional Work:
Disinfect equipment and clean sand from existing water main transmission peipelines.

Reason for Additional Work:
Significant sand deposits up to 48" thick have been discovered in the existing 66" main transmission line. The sand presence is believed to be the result of previously collapsed well casings over a long period of time. The sand will impede flow from the new wells and put the recharge wells at high risk of plugging. Work needs to be done now while the line is shut down.

Measured Quantity Itme	Negot'd/Bid	Qty	Unit Price	Extension
Disinfect Cleaning Equip.	Negot'd	1ea	$3,000.00	$ 3,000.00
Clean and Video Pipe	Negot'd	9 day	$3,000.00	$27,000.00

CIP Budget Amount: $53,051,554.00
Consultant: Camp Dresser Mckee
Exp & Encumbr. To Date: $50,535,135.59

CO Amount: $30,000.00
Unencum. Bal. After CO: $2,486,418.41

Original Contract Amt.: $8,679,356.00

Amt. of Previous CO's: $0.00
Total of ALL CO's: $30,000
% of Orig. Contract / 25% Max: 0.35%
Adjusted Contract Amt.: $8,709,356.00

Recommended By:

_____ _____
Deb Ary, P.E. Date
Water Prod. & Pump Superint.
Public Works & Utilities

Approved:

_____ _____
Jim Armour, P.E. Date
Construction Engineer
Co-Director of Public Works & Utilities

Approved:

_____ _____
Contractor Date
Larry Farrar
Project Manager

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
March 8, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of a Portion of 457 South Woodlawn for the Woodlawn/Kellogg Drive Intersection Improvement Project (District II)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: To improve traffic flow at Woodlawn and Kellogg Drive it has been determined that a dedicated right turn lane is needed on Woodlawn. There is insufficient right of way at the northwest corner of the intersection to accommodate this improvement. The project will require 4,763 square from the property located at 457 South Woodlawn. The property is improved with a church and rectory but the acquisition will not impact any of the improvements.

Analysis: The owners have agreed to dedicate the needed easements. These include a 4,763 square foot permanent easement and a 5,038 square foot temporary easement. As a part of the project, the City will work with the property owner to provide an access to the property from Woodlawn in a location that is mutually acceptable.

Financial Considerations: The funding source for the project is Local Sales Tax revenues. There is no cost to the City associated with this acquisition.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

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

Recommendation/Action: It is recommended that the City Council 1) Approve the agreements and; 2) Authorize the necessary signatures.

Attachments: Permanent easement, temporary easement, tract map and improvement sketch.

PERMANENT EASEMENT

THIS EASEMENT made this ___ day of February, 2011, by and between Heartland Community Church of Wichita, a Kansas not for profit corporation, Grantor, and the City of Wichita, Kansas, a municipal corporation, Grantee.

WITNESSETH: That the Grantor, in consideration of the sum of One Dollar and other good and valuable considerations ($1.00), the receipt whereof is hereby acknowledged, do hereby grant and convey unto the Grantee a perpetual right-of-way and easement for public purposes including constructing, maintaining, and repairing roads, road right-of-way appurtenances and utilities over, along and under the following described real estate situated in Wichita, Sedgwick County, Kansas, to wit:

Part of Reserve "C", Southeast Addition to the Village, located in the Southeast Quarter of Section 24, Township 27 South, Range 1 East of the 6th P.M., in the City of Wichita, Sedgwick County, Kansas described as follows:

Beginning at the Southeast corner of said Southeast Quarter; thence on an assumed bearing of North 00 degrees 53 minutes 19 seconds West along the East line of said Southeast Quarter a distance of 237.82 feet; thence South 89 degrees 45 minutes 40 seconds West a distance of 50.00 feet to the existing West right of way line of Woodlawn Boulevard and the point of beginning; thence continuing South 89 degrees 45 minutes 40 seconds West a distance of 19.91 feet; thence North 00 degrees 07 minutes 02 seconds East a distance of 158.85 feet; thence North 02 degrees 07 minutes 15 seconds East a distance of 251.77 feet to the North line of said Reserve "C"; thence North 89 degrees 23 minutes 15 seconds East along said North line a distance of 1.90 feet to the Northeast corner of said Reserve "C"; thence South 00 degrees 53 minutes 19 seconds East along the East line of said Reserve "C" a distance of 410.44 feet to the point of beginning.

And said Grantee, successors and assigns, is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such public improvements.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first written.

GRANTOR:
HEARTLAND COMMUNITY CHURCH OF WICHITA

By:_____	By:_____	By:_____
George C. Bruce, Trustee	Bryan S. Hanning, Trustee	LaVerne Waalkes, Trustee

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

This instrument was acknowledged before me on _____ day of February, 2011 by George C. Bruce, Bryan S. Hanning and LaVerne Waalkes, the Trustees of Heartland Community Church of Wichita.

_____
Notary Public

My Commission Expires: _____

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made this ___ day of February, 2011, by and between Heartland Community Church of Wichita, a Kansas not for profit corporation, Grantor and the City of Wichita, Kansas, a municipal corporation, Grantee.

WITNESSETH: That the said Grantor, in consideration of the sum of One Dollar and No Cents ($1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the Grantee a temporary right-of-way for the purpose of constructing, maintaining, and repairing road right-of-way, over, along and under the following described real estate situated in Wichita, Sedgwick County, Kansas, to wit:

Part of Reserve "C", Southeast Addition to the Village, located in the Southeast Quarter of Section 24, Township 27 South, Range 1 East of the 6th P.M., in the City of Wichita, Sedgwick County, Kansas described as follows:

Commencing at the Southeast corner of said Southeast Quarter; thence on an assumed bearing of North 00 degrees 53 minutes 19 seconds West along the East line of said Southeast Quarter a distance of 237.82 feet; thence South 89 degrees 45 minutes 40 seconds West a distance of 69.91 feet to the point of beginning; thence continuing South 89 degrees 45 minutes 40 seconds West a distance of 12.10 feet; thence North 00 degrees 53 minutes 19 seconds West a distance of 185.23 feet; thence North 37 degrees 46 minutes 16 seconds East a distance of 6.40 feet; thence North 00 degrees 53 minutes 19 seconds West a distance of 50.00 feet; thence North 05 degrees 29 minutes 32 seconds East a distance of 170.96 feet to the North line of said Reserve "C"; thence North 89 degrees 23 minutes 15 seconds East along said North line a distance of 7.26 feet; thence South 02 degrees 07 minutes 15 seconds West a distance of 251.77 feet; thence South 00 degrees 07 minutes 02 seconds West a distance of 158.85 feet to the point of beginning.

Said temporary construction easement shall expire at the end of construction for the project or at 11:59 PM on December 31, 2012, whichever comes first.

And said Grantee, successors and assigns, is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such roadway and utility improvements beginning the date this easement is executed. This temporary easement shall expire automatically at the end of construction or at three years from execution of said document, whichever comes first.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first written.

GRANTOR:
HEARTLAND COMMUNITY CHURCH OF WICHITA

By:_____ By:_____ By:_____
George C. Bruce, Trustee Bryan S. Hanning, Trustee LaVerne Waalkes, Trustee

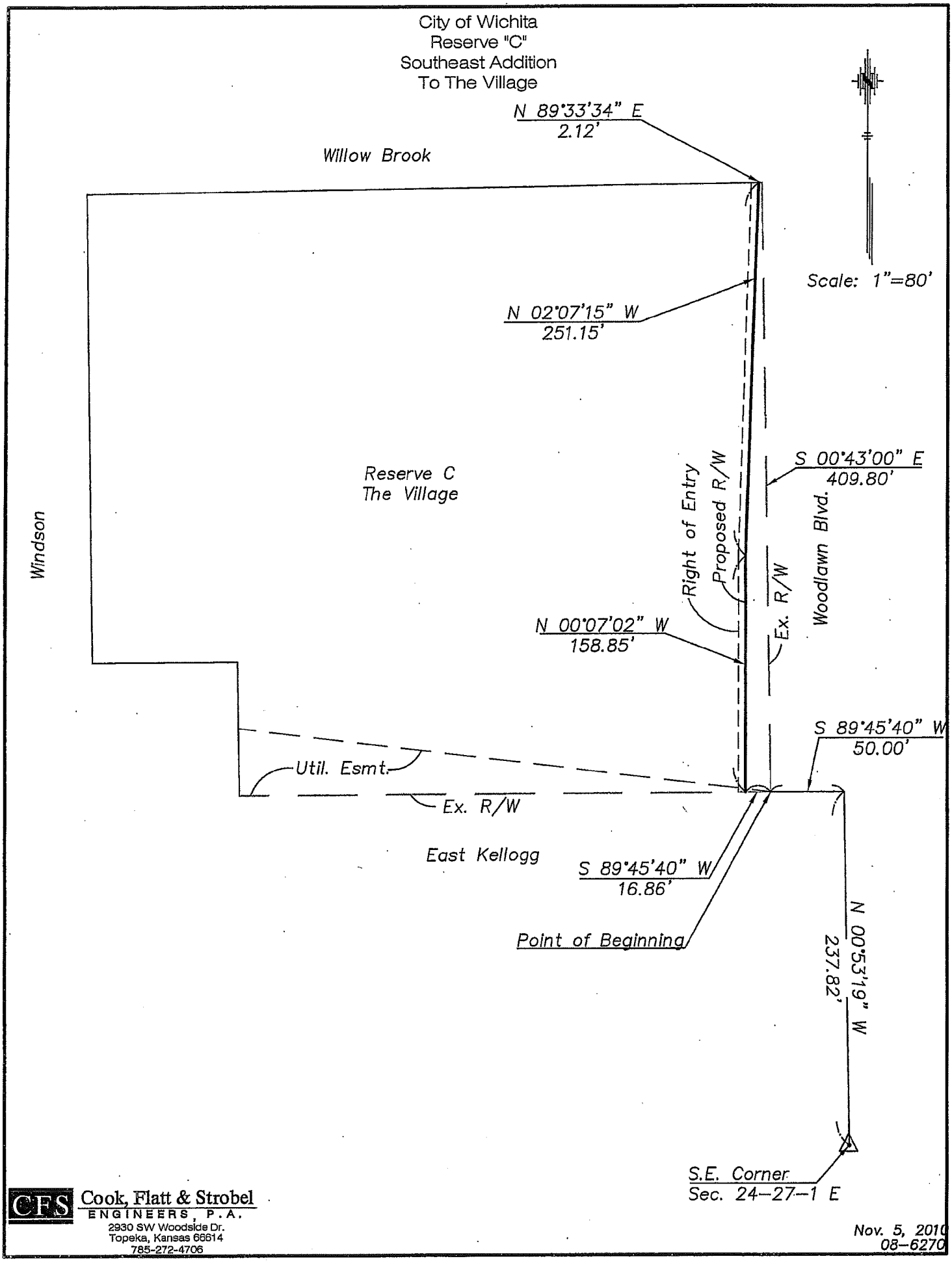
STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

This instrument was acknowledged before me on _____ day of February, 2011 by George C. Bruce, Bryan S. Hanning and LaVerne Waalkes, the Trustees of Heartland Community Church of Wichita.

_____
Notary Public

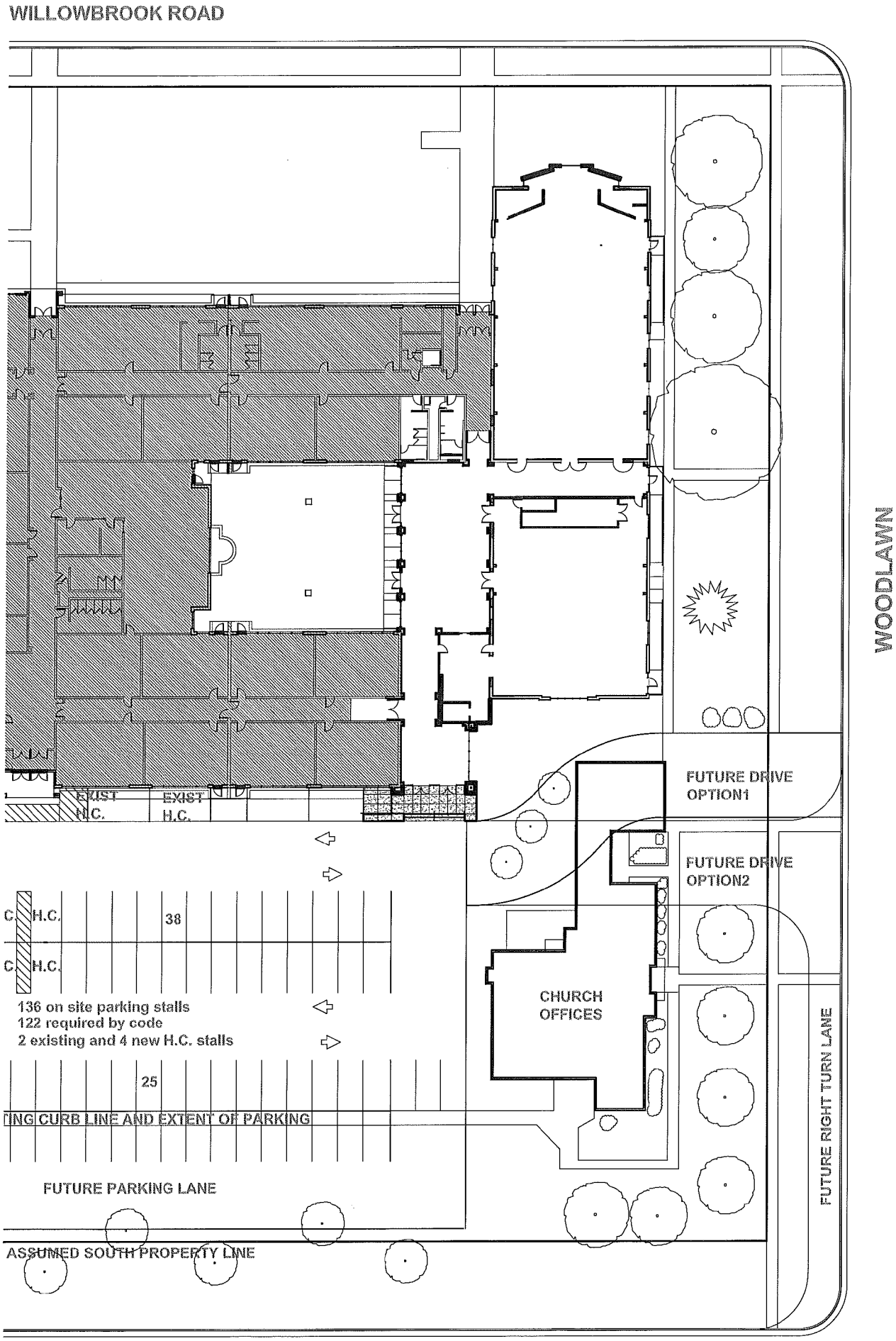
My Commission Expires: _____

City of Wichita
Reserve "C"
Southeast Addition
To The Village



CFS Cook, Flatt & Strobel
ENGINEERS, P.A.
2930 SW Woodside Dr.
Topeka, Kansas 66614
785-272-4706

Nov. 5, 2010
08-6270


WILLOWBROOK ROAD
WOODLAWN
EXIST H.C.
EXIST H.C.
FUTURE DRIVE OPTION1
FUTURE DRIVE OPTION2
H.C.
38
H.C.
136 on site parking stalls
122 required by code
2 existing and 4 new H.C. stalls
25
CHURCH OFFICES
FUTURE RIGHT TURN LANE
FUTURE PARKING LANE
ASSUMED SOUTH PROPERTY LINE
KELLOGG FRONTAGE ROAD

CITY OF WICHITA
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of a Temporary Construction Easement at 3122 South Seneca for the South Seneca, 31st Street South to Interstate 235 Road Improvement Project (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On April 6, 2010, the City Council approved the design concept and the funding to acquire right-of-way for the Seneca Street improvement project between 31st Street South and Interstate 235. The roadway will be widened to five lanes with four through lanes and a center, two-way turn lane. There will be new sidewalks on each side of Seneca. The traffic signals and the drainage system will be upgraded during construction. It is necessary to obtain a temporary easement from the residential property at 3122 South Seneca to facilitate construction at the intersection of Diane Street and South Seneca. The temporary easement area consists of 75 square feet. No improvements are impacted as a result of the project.

Analysis: The seller agreed to convey the necessary easement for $100; the established minimum offer.

Financial Considerations: The funding source for the acquisition is General Obligations Bonds. A budget of $150 is requested. This includes $100 for the acquisition area and $50 for closing costs and related charges.

Goal Impact: The acquisition of this easement 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 Temporary Construction Easement as to form.

Recommendation/Action: It is recommended that the City Council accept the easement and approve the budget.

Attachments: Aerial map, tract map and the temporary construction easement.

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made this 15 day of Feb, 2011, by and between Meitner Family Trust dated 12/1/2000, party of the first part, and the City of Wichita, Kansas, a municipal corporation, party of the second part.

WITNESSETH: That the said Grantor, in consideration of the sum of One Hundred Dollars and No Cents ($100.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the Grantee a temporary right-of-way for the purpose of constructing, maintaining, and repairing road right-of-way, over, along and under the following described real estate situated in Wichita, Sedgwick County, Kansas, to wit:

As temporary construction easement:

A tract of land lying in the Southwest Quarter, Section 5, Township 28 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas more particularly described as follows:

The South 5 feet of the West 15 feet of Lot 2, Robson Heights Addition, Sedgwick County, KS

And said Grantee, successors and assigns, is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such roadway and utility improvements beginning the date this easement is executed. This temporary easement shall expire automatically at the end of construction or at three years from execution of said document, whichever comes first.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first written.

MEITNER FAMILY TRUST:

Gregory L Meitner Trustee

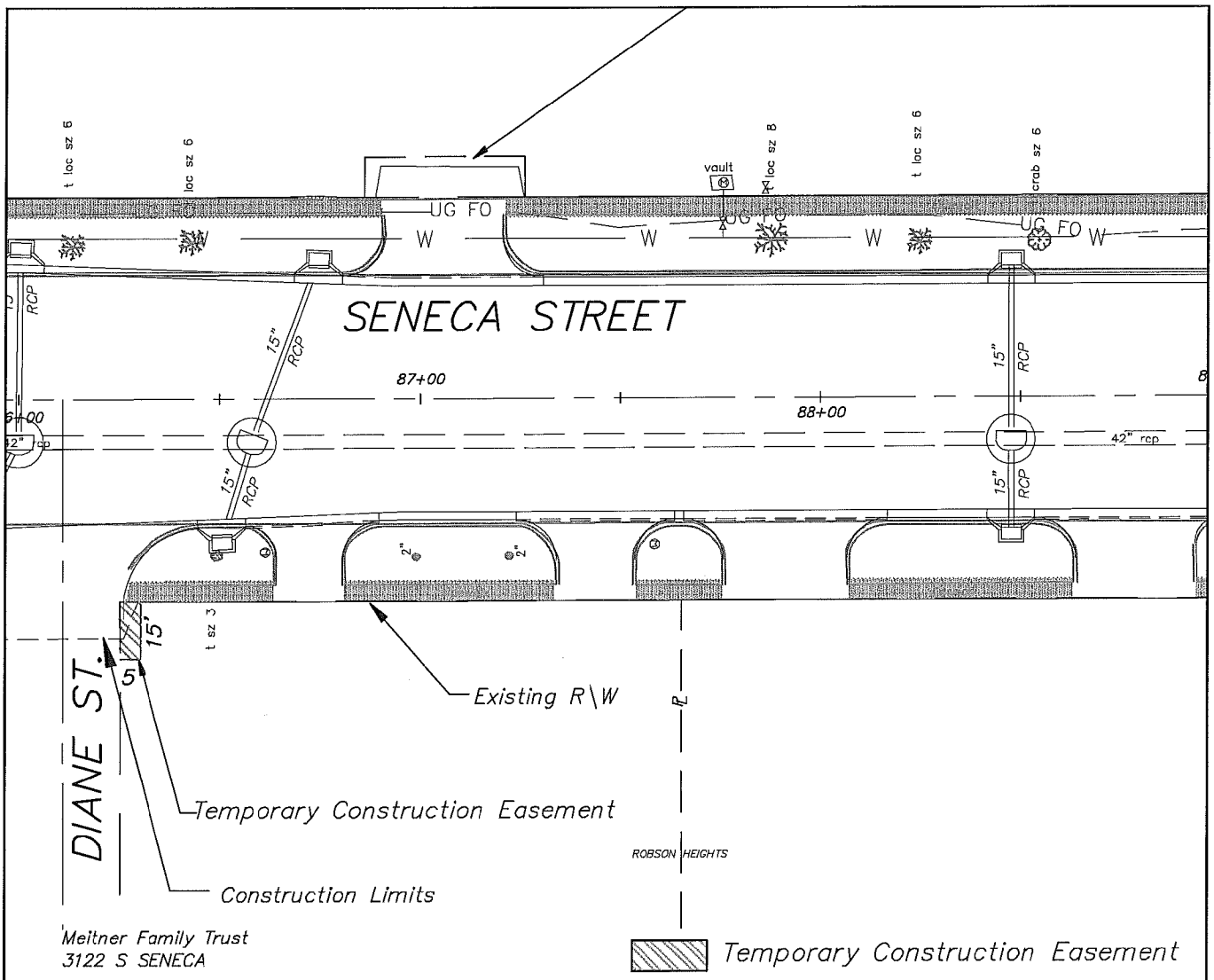
STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

This instrument was acknowledged before me on 15 day of Feb, 2011 by Gregory L. Meitner, Trustee of The Meitner Family Trust dated 12-1-2000.

Kelly Hilleary
Notary Public

My Commission Expires: 1/20/2013

KELLY T. HILLEARY
Notary Public - State of Kansas
My Appt. Expires 1/20/13



Proposed Temporary Construction Easement Legal Description:

A tract of land lying in the Southwest Quarter, Section 5, Township 28 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas more particularly described as follows:

The South 5 feet of the West 15 feet of Lot 2, Robson Heights Addition, Sedgwick County, Kansas.

Tax Key # D 10617
Proposed Right-of-way Acquisition Size: 75 Sq. Ft. +/-

SENECA STREET
I-235 TO 31st STREET

TRACT MAP

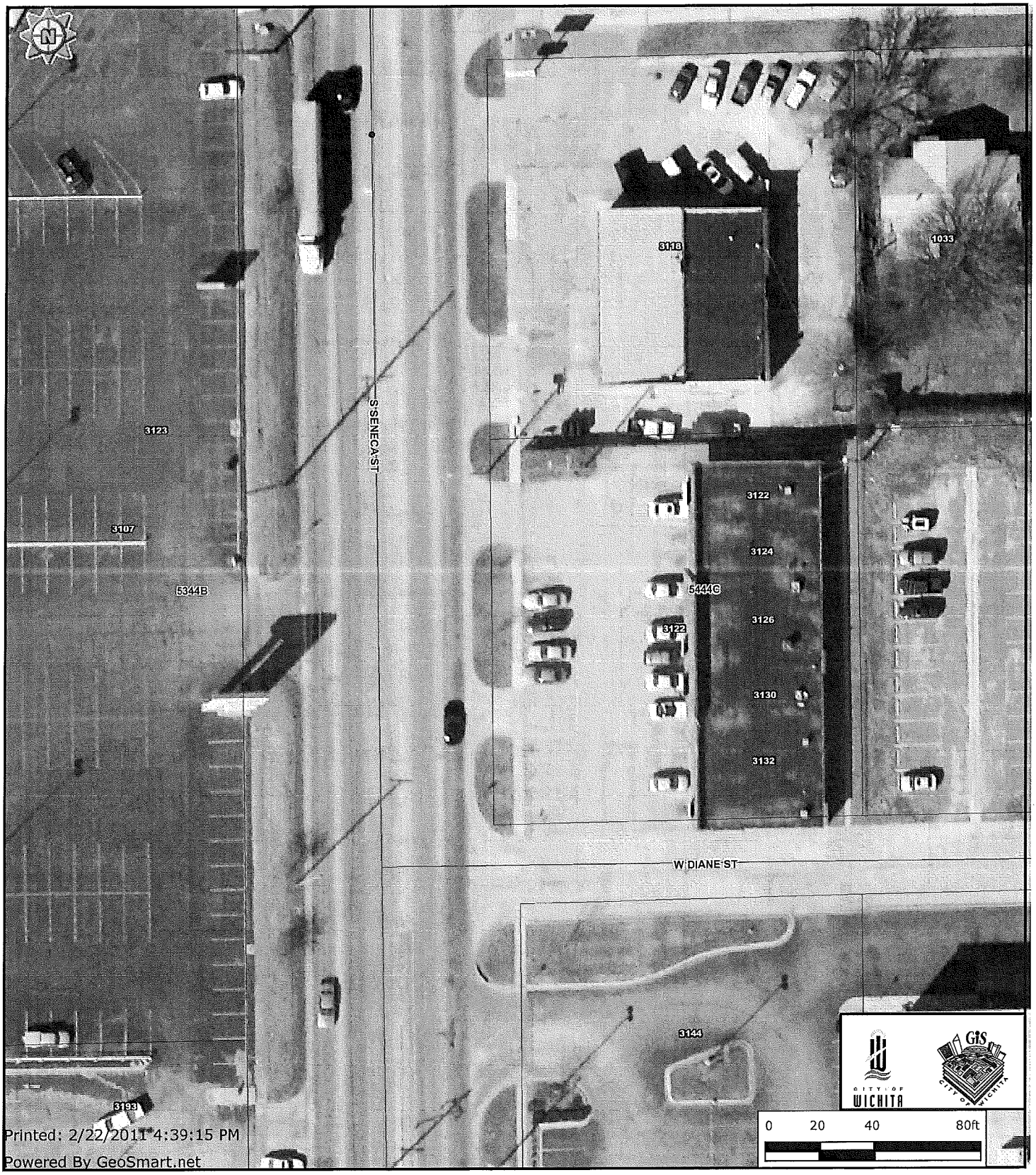
MEITNER FAMILY TRUST
SEC 8-T28S-R1E

SCALE: 1"=40'

March 26, 2010

SHT: TMPMAP45

3122 S Seneca



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
March 8, 2011

TO: Mayor and City Council Members

SUBJECT: Civic Justice Corps Grant Application

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve submission of Civic Justice Corps funding application and authorize the necessary signatures.

Background: The U.S. Department of Labor (DOL) has announced the availability of grant funds to serve juvenile offenders ages 18 to 24 who have been involved with the juvenile justice system within 12 months before entry into the program. These Civic Justice Corps Grants provide funds for community service projects that allow young offenders to demonstrate accountability for their actions and make reparations to the community, while at the same time improving their skills and enhancing their future educational and career opportunities. The DOL plans to award a minimum of 13 grants, of up to $1.5 million each, for projects in communities across the country. The grants will have a maximum performance period of 30-months, which will include planning and follow-up periods. The application deadline for these funds is March 15, 2011.

In the Sedgwick County Juvenile Community Planning Team's Benchmark 5 report (April 2010), several risk factors are analyzed relative to juvenile delinquency. Among those is related to leisure and/or recreation where the findings demonstrate that few youth in the juvenile justice system have pro-social leisure and recreational pursuits. Specifically they recommend mentoring, role modeling, alternative community activities and increased interaction with pro-social others.

Analysis: A consortium of City government and community agencies has been identified to submit a Wichita/Sedgwick County Civic Justice Corps Application for $1.5M. The City of Wichita will be designated as the lead applicant and fiscal agent for the grant. The Housing and Community Services Department will administer the grant through its Career Development Division (CDD). The Wichita/Sedgwick County Civic Justice Corps program will include the following core objectives:

- Meaningful community service projects and service-learning opportunities that will be of value to the local community and help participants learn work skills, including soft skills required for effective and sustained employment;
- Provision of educational interventions that lead to a credential and increased placement opportunities in post-secondary education and long-term employability of participants.
- Favorable staff-to-participant ratio providing close adult supervision on community projects;
- A career development component supported by partnerships with employers which will result in job placements with skill training, agreements with post-secondary local education providers, registered apprenticeship programs, or vocational training leading to industry-recognized credentials; and
- Post-program support and follow-up to ensure that participants retain jobs and remain in schools and other career development opportunities in which they are placed.
-

Consortium and support partnerships will include representatives from the following sectors (at a minimum):

- Sedgwick County juvenile justice system;
- City government departments (Fire, Housing and Community Services, Municipal Courts, OCI, Park and Police)
- Local workforce investment system;
- Education and training providers;
- Local employers, including professional organizations and trade association; and
- Community and faith-based organizations.

Financial Considerations: There is no match requirement for the grant. No general operating funds from the City's budget are obligated by this application.

Goal Impact: The Wichita/Sedgwick County Civic Justice Corps Project will Promote Economic Vitality and Affordable Living and Quality of Life goals.

Legal Considerations: If the Wichita/Sedgwick County Civic Justice Corps Application is funded, prior to grant implementation, Memoranda of Understanding will be established with all agencies receiving funding or payments through the grant with prior review by the Law Department.

Recommendation/Action: It is recommended that the City Council approve submission of the Wichita/Sedgwick County Civic Justice Corps Application and authorize the necessary signatures.

Attachments: Wichita/Sedgwick County Civic Justice Corps Application summary

Civic Justice Corps Application Summary – Wichita/Sedgwick County

Problem Statement: The Sedgwick County Juvenile Community Planning Team produces an annual Benchmark Report – A Comprehensive Assessment of Risk Factors and Juvenile Justice Authority Outcomes. In the most recent report (April 2010), the authors report as 'troubling' the *"numbers of youth with significant risk related to antisocial behavior, delinquent peer relationships, school, and substance abuse".* The report goes on to say, however, that *"risk related to antisocial personality, antisocial cognition and leisure and recreational activity offers the greatest opportunities, when considering anything over low risk."*

For purposes of this grant application, the Leisure and/or Recreation factor was explored. Following is a statement from the above-referenced report: *"Elements of risk associated with this factor include low levels of involvement and satisfaction in anti-criminal leisure activities. In order to address this risk, enhanced involvement and satisfaction in pro-social activities must occur. This could be done through mentoring, role modeling, alternative community activities and increased interaction with pro-social others."*

Relevant Research: The concept of Civic Justice Corps is in place in a number of communities and most provide hard evidence of substantial change: fourteen sites, from California to Wisconsin to Florida, in their first 18 months reduced recidivism to 8.8%, exceeded outcomes for enrolment, and placed 72.9% of participants in jobs and/or continuing education-including almost 44% employed in high growth industries. These results support the research in support of the Civic Justice Corps model which rests on three principles:

1. Community Service is a restorative practice that repairs harm caused by persons under criminal justice supervision to victims and communities and helps to meet basic community needs.
2. Persons under criminal justice supervision benefit from participating in community service, enhancing their ability to be law-abiding and productive citizens.
3. Service is a mechanism to rebuild severed prosocial relationships between lawbreakers and community members, and re-establish trust and positive status of offenders in the community.

Opportunity: The Employment and Training Administration (ETA) of the U.S. Department of Labor has announced the availability of funds for Civic Justice Corps Grants to serve juvenile offenders ages 18-24 who have been involved with the juvenile justice system in the 12 months prior to enrollment in the program. Wichita and Sedgwick County view this as an opportunity to address the need identified above.

Proposal: The Wichita/Sedgwick County Civic Justice Corps proposal will provide community service opportunities for up to 100 youth between the ages of 18 and 24. They will be assigned to community service projects tied to city of Wichita programs and operations including, but not limited to: neighborhood, park and river clean ups; and restoration; graffiti removal; painting of public infrastructure (public benches in designated areas); and tree and flower planting.

Components: The program will address the eight key components of successful Civic Justice Corps programs, as outlined by The Corps Network, a national organization committed to strengthening America through service and conservation. The components are:

1. Partnerships with Justice Agencies
2. Partnerships with Employers/Workforce Development
3. Educational Attainment & Postsecondary Connections
4. Meaningful Service Projects/Service-Learning
5. Corpsmember Development
6. Local Support
7. Staff Development
8. Post-Program Support & Follow-Up

The following partners will be initially engaged to implement the eight components:

- City of Wichita Housing and Community Services Department
- City of Wichita Park and Recreation Department
- City of Wichita Office of Central Inspection
- City of Wichita Fire Department
- City of Wichita Municipal Court Services
- City of Wichita Police Department
- Sedgwick County Department of Corrections
- Sedgwick County COMCARE
- Workforce Alliance of South Central Kansas
- KANSEL

Other partners will be added as the program is implemented.

Grant Amount: The application will be for $1.5M, which is the maximum allowable.

Fiscal Agent: The City of Wichita

Lead Role: The Housing and Community Services Department will administer the grant through its Career Development Division (CDD).

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Contract Renewal with Sedgwick County for Housing First Funding

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve the revised contract agreement renewal and authorize the necessary signatures.

Background: In 2006, the Wichita City Council and the Sedgwick County Commission authorized a Task Force on Ending Chronic Homelessness (TECH). The Task Force held meetings and conducted research over an 18-month period, and presented its recommendations to both elected bodies in March, 2008. One of the recommendations was the creation of a Housing First program, which both governmental units endorsed. It was later agreed that the costs for the rental subsidies for the Housing First program would be evenly split between the City of Wichita and Sedgwick County, and that the City of Wichita would administer the program. On January 4, 2011, the City Council approved the contract renewal; however Sedgwick County staff has prepared an amendment and have requested City approval.

Analysis: According to the U.S. Department of Housing and Urban Development a "chronically homeless" person is defined as "an unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more, or has had at least four episodes of homelessness in the past three years. Housing First is a national model which has proven effective in addressing the needs of this population. In Wichita's Housing First program, participants are provided permanent housing in apartments located in scattered sites in the community. They are required to meet weekly with a case manager and to adhere to the terms of their lease. Rent is provided for the units until such time as the participant can live independent of the assistance, or until/unless some other housing arrangement is deemed more appropriate.

On February 15, the TECH Oversight Committee presented its annual report on the program which noted that as of December 31, 2010, 59 people remain successfully housed, 54 of whom have been housed for over one year.

Financial Considerations: The 2011 budget for rent and utilities is $382,736 for 64 units of housing. The City Council has approved funding from the General Fund and federal funds, equal to half this amount. Sedgwick County has approved funding for the balance and this amendment confirms the County's funding commitment. This is the third year of funding for the program.

Goal Impact: Approval of this funding will impact the Economic Vitality & Affordable Living goal.

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

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

Attachments: Revised contract agreement renewal.

AGREEMENT

This contract entered into as of this _____ day of _____2011, by and between the City of Wichita, a municipal corporation, hereinafter referred to as "City" or "Contractor," and Sedgwick County, Kansas hereinafter referred to as "County."

WITNESSETH:

WHEREAS, City and County formed a Taskforce to End Chronic Homelessness (TECH) to develop a plan to effectively address the needs of people experiencing chronic homelessness; and

WHEREAS, the TECH plan to end chronic homelessness included implementation of a Housing First model program; and

WHEREAS, County wishes to contract with City for implementation of a Housing First model as hereinafter described.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto do agree as follows:

1. Employment: County hereby agrees to engage City as an independent contractor and City hereby agrees to fulfill the purpose, goals and objectives specified in Appendix B – Purpose and Outcomes.

2. Term: The term of this contract shall be for a period of one year, commencing January 1, 2011 and ending December 31, 2011.

3. Scope: City shall do, perform and carry out implementation of a Housing First Model Program to serve individuals who meet the criteria for chronic homelessness and have a disability (as defined by the U.S. Department of Housing and Urban Development) in a satisfactory and proper manner, as determined by County and in conformance with the criteria outlined in Appendix B – Purpose and Outcomes.

4. Compensation: City and County expressly understand and agree that in no event shall the total, full and complete compensation and reimbursement, if any, paid hereunder to City for performance of this contract exceed the maximum cash amount of $191,368.00 for rent support for approximately 32 apartments. Payments will be made monthly on a reimbursement basis upon receipt of an invoice detailing expenditures for the prior month. An invoice is required for payments to be processed. Additionally, City agrees to report to County quarterly as outlined in Appendix B – Purpose and Outcomes.

5. Indemnification Agreement. Both parties hereby expressly agree and covenant that they will hold and save harmless and indemnify the other party, its officers, agents, servants and employees from liability of any nature or kind connected with the work to be performed hereunder arising out of any act or omission of such party or of any

employee or agent of that party to the degree such indemnification is allowed by law. Provided, however, that such indemnification shall not be required to the extent that either the indemnified party or the indemnifying party has (or but for the indemnity, would have) a defense against or limitation of the subject liability under the Kansas Tort Claims Act.

6. Termination of Contract.

   A. Termination for Cause. If Contractor shall fail to fulfill in a timely and proper manner its obligations under this contract, or if Contractor shall violate any of the terms, covenants, conditions, or stipulations of this contract, County shall thereupon have the right to terminate this contract by promptly giving written notice to Contractor of such termination and specifying the reasons for the termination and the effective date thereof. A breach shall include, but not be limited to, failure to comply with any or all items contained in this contract and any appendices, exhibits or amendments thereto, if any.

   In the event of termination, such information prepared by Contractor to carry out this contract, including data, studies, surveys, records, drawings, maps and reports shall, at the option of County, become the property of the County and be immediately turned over to the County. Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

   Notwithstanding the above, Contractor shall not be relieved of liability to County by virtue of any breach of this contract by Contractor and County may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due County from Contractor are determined.

   B. Termination of Contract on Other Grounds. Except for paragraph A above, this contract may be terminated in whole or in part by either party, upon thirty (30) days written notice to the other party, stating the reasons(s) for the termination and the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto. When this contract is terminated, Contractor shall not incur new obligations for the terminated portion after the effective date of the termination and shall cancel as many outstanding obligations as possible. County shall allow full credit to Contractor for the grant share of the non-cancelable obligations properly incurred by Contractor prior to termination. Whether this contract is canceled by County or Contractor as provided herein, Contractor shall be paid for work satisfactorily completed, so long as the provisions applicable to Billing and Payment have been met by Contractor.

7. Incorporation of Appendices: Appendix A – General Contractual Procedures; Appendix B – Purpose and Outcomes; and Appendix C - Budget are attached hereto and made a part hereof as if fully set out herein.

IN WITNESS WHEREOF, City and County have executed this contract as of the day and year first above written.

SEDGWICK COUNTY, KANSAS

David M. Unruh, Chairman
Board of County Commissioners

ATTEST:

Kelly B. Arnold, County Clerk

APPROVED AS TO FORM:

Jennifer Magaña, Deputy County Counselor

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

APPENDIX A

GENERAL CONTRACTUAL PROVISIONS

1. AUTHORITY TO CONTRACT.

A. Affirmation of Legal Authority. City (herein referred to as "Contractor") assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the signing of this contract, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Contractor to act in connection with the application and to provide such additional information as may be required.

B. Required Documentation. Domestic (Kansas) corporations shall 1) furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. Foreign (non-Kansas) corporations shall furnish evidence of authority to transact business in Kansas, in the form of a Certificate signed by the Kansas Secretary of State; and 2) a copy of the Corporation Resolution evidencing the authority to sign the Contract Documents, executed by the Corporation's Secretary or Assistant Secretary. This subparagraph B shall not be applicable if the Contractor is a Kansas Municipal Corporation.

2. RELATIONSHIP of PARTIES.

It is agreed that the legal relationship between Contractor and County is of a contractual nature. Both parties assert and believe that Contractor is acting as an independent contractor in providing the services and performing the duties required by County hereunder. Contractor is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Contractor, and employees of Contractor, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Contractor, and employees of Contractor, be entitled to any current or future benefits provided to employees of County. Further, County shall not be responsible for withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by County to Contractor.

3. PERSONNEL.

A. Qualified Personnel. Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this contract. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this contract.

B. Minimum Wages. Contractor will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.

C. Employee Conflict of Interest. Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

D. Contractor's Safeguard. The parties to this agreement recognize that entities or persons providing government-funded services to the public are the subject of public scrutiny. Consequently, by entering into this agreement Contractor assumes an affirmative and ongoing duty during the pendency of this contract to maintain compliance with requirements set forth in subsection E below. Such compliance requires the use of criminal or other legal background checks upon all personnel or agents providing services pursuant to this agreement, or administering the funds conveyed under this agreement.

E. Participant Safeguard. Contractor certifies that:

1) Persons convicted of any felony, drug or drug-related offense, crime of falsehood or dishonesty, crime of moral turpitude or crime against another person during the ten-year period concluding on the date of execution of this contract or during the pendency of this contract, or any individual who is known by contractor to have had a prior employment history of abuse, neglect or exploitation of children or vulnerable adults, shall not be permitted to administer this contract or handle the funds conveyed under this contract;

2) Persons with convictions for crimes against persons, for crimes of moral turpitude, including, but not limited to, sex offenses and crimes against children, or any individual who is known by contractor to have had a prior employment history of abuse, neglect or exploitation of children or vulnerable adults, shall not be permitted to provide services or interact in any way with persons served pursuant to this contract; and

3) Persons having been convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the five-year period concluding on the date of execution of this contract, or during the pendency of this contract, shall not be permitted to operate a vehicle in which a person served pursuant to this contract is a passenger. For purposes of this section, "serious traffic offense" shall not include any offense deemed a "traffic infraction" under K.S.A. 8-2116 and 8-2118.

4) Any question concerning the interpretation of this subsection E and/or its application to an individual shall be referred to the Director of the Agency administering the funding of this agreement for the County. The Director's decision shall be final for purposes of compliance with this contract. The term "conviction" shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and shall include being placed into a diversion or deferred judgment program in lieu of prosecution. Contractor shall not be held accountable for cases in which diversions or deferred judgments are not reflected in an individual's criminal record, or for expunged convictions, if Contractor would have no other reasonable way of knowing of these acts.

F. It is understood that this contract may be revoked at the discretion of the County if Contractor is in violation of Subsection E.

No penalty shall be assessed to the County for revocation of this agreement in the event of a breach of any portion of Appendix A, Section 3.

4. PROHIBITION OF CONFLICTS OF INTEREST.

A. Interest of Public Officials and Others. No officer or employee of County, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this contract which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested; nor shall any officer or employee of County or any member of its governing body or other public official have any interest, direct or indirect, in this contract or the proceeds thereof.

B. Interest of Contractor. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract.

C. Employee Conflicts. Situations in which 1)an employee of the County shall also be an employee of Contractor at time of agreement, 2) an employee of Contractor seeks additional/alternate employment with County during pendency of agreement, or 3) an employee of County seeks additional/alternate employment with Contractor during pendency of agreement, shall require written notice to the County at the addresses listed in Section Twenty (20) below. The County shall make every effort to assure that such employees do not have any authority to approve 1) grant funds, 2) agreements, or 3) affiliate status to the Contractor or Contractor's competitors.

D. Notice to Bidders. Requests for proposal or invitations for bid issued by Contractor to implement this contract will provide notice to prospective bidders that County's conflict of interest provision is applicable in that contractors who develop or draft specifications, requirements, statements of work and/or RFP's for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement.

5. FUNDING.

A. Reprogramming of Funds. It is understood and agreed that in the event the amount of funds County actually receives from the County mill levy is less than anticipated, County may decrease the total compensation and reimbursement to be paid hereunder.

B. Inability to Perform Contract. It is further understood and agreed that in the event Contractor's rate of progress on this contract is leading to underspending due to inability to provide services at planned levels, County may decrease the total compensation and reimbursement to be paid hereunder or withdraw from the agreement.

C. Cash Basis and Budget Laws. The right of the parties to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that each party shall at all times stay in conformity with such laws, and as a condition of this Agreement each party reserves the

right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

D. Non-Supplanting Existing Funds. Contractor assures that grant funds made available under County mill levy grants and administered under this contract will not be used to supplant existing funds or other funding sources, but will be used to increase the amounts of those other funding sources.

E. Unexpended funds. It is agreed by Contractor and County that upon termination or expiration of the contract, any unexpended funds shall be returned to County.

6. PROGRAM INCOME.

Contract-related program income, if generated, shall be collected by Contractor and reported to County on Contractor's quarterly reports, required in Section Seven (7) below. Program income shall be defined as gross income earned by Contractor that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under the contract, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights. Interest earned on advances of County funds is not program income. Except as otherwise provided in County contract requirements, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc, or interest earned on any of them. Unless otherwise stated in the contract, program income earned during this contract term shall be retained by Contractor and shall be added to funds committed to the project by County and Contractor and used to further eligible project or program objectives.

7. RECORDS, REPORTS AND INSPECTION.

A. Documentation of Costs. All costs incurred by Contractor for which Contractor purports to be entitled to reimbursement shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible to both parties to this agreement.

B. Maintenance of Records. Except as otherwise authorized by County, Contractor shall retain such documentation for a period of three (3) years after receipt of the final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this three (3) year period.

C. Reports. During the term of this contract, Contractor shall furnish to County, in such form as County may require, such statements, records, reports, data and information as County requests pertaining to matters covered by this contract. Payments to Contractor will be withheld by County if Contractor fails to provide all required reports in a timely and accurate manner, until such time as all reports are furnished to County. Incomplete reports may be considered a breach of this contract.

D. Audit. Contractor shall provide for an annual independent audit of its financial records and shall provide a copy of said audit to County annually. With the copy of the audit Contractor shall include a copy of the audit letter to management and agency response. If not otherwise required by law to perform an audit and upon approval by County, Contractor may provide a copy of a financial balance sheet developed by a reputable accountant/accounting firm instead of a formal audit.

E. Availability of Records. Contractor agrees to make any and all of its records, books, papers, documents and data available to County, or the authorized representative of a State agency with statutory oversight authority, for the purpose of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies and transcriptions at any time during the terms of this contract and for a three (3) year period following final payment under the terms of this contract.

F. Contractor's Purchasing Procedure. Contractor certifies that it does not practice any form of discrimination based on race, ethnic origin, gender or religion or disability in its purchasing procedures. Contractor agrees to make available a written description of its purchasing procedures if requested by County.

G. Confidentiality. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records.

8. METHOD OF BILLING AND PAYMENT.

A. Billing Procedures. Contractor agrees that billings and payments under this contract shall be processed in accordance with established budgeting, purchasing and accounting procedures of Sedgwick County, Kansas. Subject to the maximum amount of compensation prescribed on page 1 at paragraph 4 of this

contract, payment shall be made after the receipt of billing, and the amount of payment shall not exceed the maximum amount allowed by this contract.

B. Support Documentation. Billing shall be supported with documentation required by County including, but not necessarily limited to, that documentation described in Section Seven (7) above.

C. Reimbursement Restrictions. Payments shall be made to Contractor only for items and services provided to support the contract purpose when such items and services are specifically authorized by this agreement. County reserves the right to disallow reimbursement for any item or service billed by Contractor if County believes that such item or service was not provided to support the contract purpose or was not authorized by the contract.

D. Pre-disbursement Requirements. Contractor must provide to County the documentation required pursuant to this contract prior to any disbursements being made by County to Contractor.

E. Mailing Address. Payments shall be mailed to Contractor's address as listed in paragraph 20 below.

9. PARTICIPANT INPUT.

Contractor shall provide persons receiving services funded pursuant to this contract with an opportunity to assess and evaluate the program at least once during the contract term, unless such requirements are more specifically addressed elsewhere in this agreement or by statute.

10. LICENSES AND PERMITS.

Contractor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this contract. Contractor shall notify County immediately if any required license, permit, bond or insurance is canceled, suspended or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by County, in its discretion.

11. INSURANCE REQUIREMENTS

Contractor shall annually provide evidence of its self-insured status upon request. Contractor shall also annually provide evidence of Professional Liability insurance, as appropriate.

12. EPA APPROVED BUILDING.

Contractor will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the contract are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the contract is under consideration for such listing by the EPA.

13. HANDICAPPED ACCESSIBILITY.

Contractor will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons in employment services, participation and access to all programs receiving federal financial assistance. Contractor shall also comply with applicable requirements of the Americans With Disabilities Act (ADA) which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs.

14. ASSIGNMENT.

Neither this contract nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

15. SUBCONTRACTING.

None of the work or services covered by this contract shall be subcontracted without the prior written approval of County. All approved subcontracts must conform to applicable requirements set forth in this contract and in its appendices, exhibits and amendments, if any.

16. PUBLICATION OF CONTRACT RESULTS.

A. Copyright. If this contract results in a book or other material which may be copyrighted, the author is free to copyright the work. County reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material which can be copyrighted.

B. Documentation of originality or source. All published material and written reports submitted under this contract or in conjunction with the third party agreement under this contract will be originally developed material unless specifically provided for otherwise. Material not originally developed included in reports will have the source identified either in the body of the report or in a footnote, whether the material is in a verbatim or extensive paraphrase format. All published material and written reports shall give notice that funds were provided by a grant from County.

17. COMPLIANCE WITH APPLICABLE LAWS, SERVICE STANDARDS AND REQUIRED PROCEDURES. A. Service Standards and Procedures. Contractor shall perform the services set forth in this contract in compliance with applicable standards and procedures specified in Appendix B which covers the specific purpose and outcomes of this agreement.

B. Governing Law. This contract shall be interpreted under and governed by the laws of the State of Kansas.

C. Compliance With Law. Contractor shall comply with all applicable local, state and federal laws and regulations, in carrying out this contract, regardless of whether those legal requirements are specifically referenced in this agreement.

D. Access to Meetings. Contractor agrees to grant access to County to meetings of its managing board or committee during that time when matters involving use of County grant funds are discussed, if requested by County.

18. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.

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

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

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

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

D. If 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, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by County.

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

F. The provisions of this section shall not apply to a contract entered into by a contractor who: 1) employs fewer than four employees during the term of this contract; or 2) whose contracts with the County cumulatively total $5,000.00 or less during the fiscal year of the County pursuant to *K.S.A. 44-1031(c).*

19. TERMINATION OF CONTRACT.

A. Termination for Cause. If Contractor shall fail to fulfill in a timely and proper manner its obligations under this contract, or if Contractor shall violate any of the terms, covenants, conditions, or stipulations of this contract, County shall thereupon have the right to terminate this contract by promptly giving written notice to Contractor of such termination and specifying the reasons for the termination and the effective date thereof. A breach shall include, but not be limited to, failure to comply with any or all items contained in this contract and any appendices, exhibits or amendments thereto, if any.

In the event of termination, such information prepared by Contractor to carry out this contract, including data, studies, surveys, records, drawings, maps and reports shall, at the option of County, become the property of the County and be immediately turned over to the County. Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Contractor shall not be relieved of liability to County by virtue of any breach of this contract by Contractor and County may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due County from Contractor are determined.

B. Termination of Contract on Other Grounds. Except for paragraph A above, this contract may be terminated in whole or in part by either party, upon thirty (30) days written notice to the other party, stating the reasons(s) for the termination and the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto. When this contract is terminated, Contractor shall not incur new obligations for the terminated portion after the effective date of the termination and shall cancel as many outstanding obligations as possible. County shall allow full credit to Contractor for the grant share of the non-cancelable obligations properly incurred by Contractor prior to termination. Whether this contract is canceled by County or Contractor as provided herein, Contractor shall be paid for work satisfactorily completed, so long as the provisions applicable to Billing and Payment have been met by Contractor.

20. INDEMNIFICATION AGREEMENT.

Both parties hereby expressly agree and covenant that they will hold and save harmless and indemnify the other party, its officers, agents, servants and employees from liability of any nature or kind connected with the work to be performed hereunder arising out of any act or omission of such party or of any employee or agent of that party to the degree such indemnification is allowed by law. Provided, however, that such indemnification shall not be required to the extent that either the indemnified party or the indemnifying party has (or but for the indemnity, would have) a defense against or limitation of the subject liability under the Kansas Tort Claims Act.

21. NOTIFICATION.

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

County:

Sedgwick County Division of Human Services
Attn: Deborah Donaldson, Director
635 N. Main,
Wichita, KS 67203-3752
PHONE (316) 660-7600
FAX (316) 383-7925

Sedgwick County Legal Department
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203-3790

Contractor:

City of Wichita
Mary K. Vaughn, Housing Director
332 N. Riverview
Wichita, Kansas 67203

City of Wichita Legal Department
Attn: Contract Notification
City Hall, 455 North Main
Wichita, KS 67202

22. Amendments to Agreement.

To provide necessary flexibility for the most effective execution of this contract, whenever both County and Contractor mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract. Any change which affects contract objectives must be approved by COMCARE and the Sedgwick County Board of Commissioners. Line item changes to the approved Appendix C- Budget

(where applicable) exceeding ten percent (10%) or $5,000 (whichever is less) must be presented to and approved by the Executive Director of COMCARE.

23. Certificate of Tax Clearance.

Annually Contractor shall provide County with a certificate of tax clearance from the State of Kansas certifying Contractor has paid all state taxes.

APPENDIX B – PURPOSE AND OUTCOMES

CITY OF WICHITA – HOUSING FIRST INITIATIVE

It is mutually agreed by and between County and City that it is the purpose of this contract for City to implement a Housing First model program to serve individuals who meet the criteria for chronic homelessness and have a disability (as defined by the U.S. Department of Housing and Urban Development) through its Housing and Community Services Department.

1. GENERAL PROVISIONS.

A. It is understood that City's records used in the preparation of all reports are subject to review by County to insure the accuracy and validity of the information reported.

B. It is mutually agreed by and between County and City that this contract will be evaluated by County in terms of meeting purpose and outcomes.

C. City shall provide written notice to the Director of Human Services if it is unable to provide the requested quantity or quality of service. This written notice shall include a plan to address the issues affecting quantity and/or quality of services being provided.

D. City agrees to submit a program progress report covering the outcomes as listed below by the 15th day of the month following each calendar quarter. Financial reports are due no later than the 15th day of the month following the end of each calendar quarter. Reports should be in a format acceptable to County. A report template is available. The report should be sent to the COMCARE Contractor Administrator (e-mail address available upon request). The program progress report should address the outcomes as stated in the contract. Financial reports should provide a line item account of how the funds were expended over the last quarter in accordance with the budget as set out in Appendix C. If the reports are not received by the aforementioned deadline, City may be subject to suspension of payment until the reports have been received and approved.

E. Sedgwick County funds will only be used to serve individuals who meet the criteria for chronic homelessness and have a disability (as defined by the U.S. Department of Housing and Urban Development).

2. SERVICE DESCRIPTION.

A Housing First program is designed to end homelessness and support recovery for individuals who are homeless and have a disability. The Housing First model is based on the belief that housing is a basic need and on a theoretical foundation that emphasizes consumer choice and harm reduction. The program addresses homeless individuals' needs from a consumer perspective, encouraging them to define their own needs and goals, and

provides immediate housing (in the form of apartments located in scattered sites) without any prerequisites for treatment.

Consumers' tenancy is not dependent on their adherence to treatment. Case managers work with consumers through housing loss, hospitalization, or incarceration and helps consumers obtain housing after these episodes. While consumers can refuse services, the program requires them to meet with a case manager at least four times per month to ensure their safety and well-being.

Important components for all Housing First programs include:

a) Case management is utilized to coordinate services that follow a housing placement;
b) Housing is not contingent on the consumer's willingness to accept treatment services;
c) Consumers are encouraged but not required to take medications or abstain from using substances to participate;
d) Service plans are individualized and client driven;
e) Assistance locating rental housing and lease negotiation, as well as relationship building with private market landlords;
f) Housing placement is not time limited; and,

Sedgwick County is allocating $191,368.00 for approximately 32 apartments in the Housing First Model Program. It is anticipated that 16 of the 32 apartments will be one-bedroom apartments but the figure can be adjusted contingent on County approval. Up to $10,000 is budgeted for repairs.

3. OUTCOMES.

City agrees to report on outcomes quarterly. Performance reports are due by the 15th day of the month following the end of the calendar quarter. Reports should be submitted to the attention of the Division of Human Services Homeless Plan Specialist at 635 N. Main, Wichita, KS 67203.

1. Maintain fidelity to the model as evidenced by adherence to the components listed above.
2. Reduction in length of stay in shelters as measured by time Housing First consumers spent in shelters during the last year as compared to length of time spent in shelters during the current year.
3. Number of consumers referred for Housing First services, placed in Housing First apartments, and number of consumers continuing in the Housing First program.
4. Reduction in subsidy amounts needed to continue housing participants, due to increases in participant income.
5. Reduction in homelessness for program participants as measured by consumers not re-entering the shelter system.
6. Number of positive exits from the Housing First program.

APPENDIX C – BUDGET

CITY OF WICHITA HOUSING FIRST PROGRAM

EXPENDITURE	BUDGETED AMOUNT
Rent and Security Deposit	$181,368.00
Repairs	$10,000.00
TOTAL	$191,368.00

CONTRACTS & AGREEMENTS
BLANKET PURCHASE ORDERS RENEWAL OPTIONS
FEBRUARY 2011

COMMODITY TITLE	EXPIRATION DATE	VENDOR NAME	DEPARTMENT	ORIGINAL CONTRACT DATES	RENEWAL OPTIONS REMAINING
Argon Gas, Liquid	2/29/2012	Matheson Tri-Gas, Inc.	Public Works & Utilities	3/9/2010 - 2/28/2011	1 - 1 year option
Armored Car Services	2/28/2011	PSI Armored, A Garda Company	Finance	3/4/2008 - 2/28/2009	1 - 1 year option
Ballast & Ballast Kits	2/29/2012	Stanion Wholesale Electric Co.	Various	3/1/2010 - 2/28/2011	1 - 1 year option
Bus Washer Bulk Cleaning Compound	2/29/2012	Alkota of Kansas	Transit	3/1/2010 - 2/28/2011	1 - 1 year option
Compactor Trucks and Open Dumpster Services for Neighborhood Cleanup - Primary Contractor	2/29/2012	Waste Connections, Inc. dba Waste Connections of Kansas, Inc.	Public Works & Utilities	3/1/2010 - 2/28/2011	1 -1 year option
Compactor Trucks and Open Dumpster Services for Neighborhood Cleanup - Secondary Contractor	2/28/2012	Waste Management of Kansas Inc.	Public Works & Utilities	3/1/2010 - 2/28/2011	1 - 1 year option
Guard Service for Environmental Court	2/29/2012	Smart Security and Investigations, Inc.	Municipal Court	3/1/2010 - 2/28/2011	3 - 1 year options
High Pressure Self-Contained Breathing Apparatus with Pass Associated Tools, Equipment and Software Personal SCBA Masks	2/28/2011	Municipal Emergency Services, Inc.	Fire	3/9/2010 - 2/28/2011	2 - 1 year options
Mow, Edge, Trim - Fire Station, 1903 W. Pawnee	2/29/2012	First Choice Home Inspections, Inc.	Police	3/1/2010 - 2/28/2011	1 - 1 year option
Mow, Trim & Edge Housing Properties - Group 1 Greenway Manor, Property Mgmt. Office, McLean Manor, Bernice Hutcherson &Rosa Gragg	2/29/2012	Two Friends for All Seasons Lawncare	Housing & Community Services	3/1/2010 - 2/28/2011	1 - 1 year option
Mow, Trim & Edge Housing Properties - Group 2 - Country Acres Park/Arnold Easement	2/29/2012	Dragonfly Lawn Services	Housing & Community Services	3/1/2010 - 2/28/2011	1 - 1 year option
Paper Recycling	2/28/2012	International Paper Company, a New York Company	Various	3/1/2009 - 2/28/2010	1 - 1 year option
Park, ROW and Public Facility Grounds Maintenance - Group 3	2/29/2012	Complete Landscaping Systems, Inc.	Parks & Recreation	3/1/2010 - 2/28/2011	1 - 1 year option
Park, ROW and Public Facility Grounds Maintenance - Groups 1, 9, 14, 16, 21, 24, 25 & 26	2/29/2012	Superior Landscape Management, Inc.	Parks & Recreation	3/1/2010 - 2/28/2011	1 - 1 year option
Park, ROW and Public Facility Grounds Maintenance - Groups 11, 18 & 22	2/28/2011	Dragonfly Lawn Service	Parks & Recreation	3/1/2010 - 2/28/2011	2 - 1 year options
Park, ROW and Public Facility Grounds Maintenance - Groups 2, 8, 13 & 20	2/29/2012	Michael's Complete Lawn Care, Inc.	Parks & Recreation	3/1/2010 - 2/28/2011	1 - 1 year option
Park, ROW and Public Facility Grounds Maintenance - Groups 4, 15 & 27	2/29/2012	Eco Outdoor Management, Inc.	Parks & Recreation	3/1/2010 - 2/28/2011	1 - 1 year option
Park, ROW and Public Facility Grounds Maintenance - Groups 5, 6 & 17	2/28/2011	JSB Landservices	Parks & Recreation	3/1/2010 - 2/28/2011	2 - 1 year options
Park, ROW and Public Facility Grounds Maintenance - Groups 7, 10, 12, 19 & 23	2/29/2012	Commercial Lawn Management, LLC	Parks & Recreation	3/1/2010 - 2/28/2011	1 - 1 year option
Photography Services for Special Events	2/28/2011	Sprague Company, LLC dba Art's Photography	Parks & Recreation	3/1/2009 - 2/28/2010	1 - 1 year option
Uniforms for Police Department & Airport	2/28/2011	Baysinger Police Supply, Inc.	Police & Airport	3/10/2009 - 2/28/2010	1 - 1 year option
Vehicle Washes (Brush & Brushless)	2/28/2011	Presto Convenience Stores, LLC	Various	3/1/2005 - 2/28/2006	Annual basis
Well Chemical Rehabilitation	2/20/2012	Layne Western Company, a Division of Layne Christensen	Public Works & Utilities	3/1/2010 - 2/28/2011	1 - 1 year option
Windows, Thermal Break Primary (Energy Star)	2/29/2012	Jordan Companies Inc. dba Jordan Wholesale	Housing & Community Services	3/28/2010 - 2/28/2011	1 - 1 year option

PROFESSIONAL CONTRACTS UNDER $25,000
FEBRUARY 2011

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		
Azur Ground LLC	PO130082	Landscape Architecture	14,650.00		
Terracon Consultants Inc.	PO130083	Engineering & Architectural Consulting	5,700.00		
Joseph & Hollander PA	PO130109	Legal Services Including Depositions and Expert Witnesses	9,990.00		

ANNUAL MAINTENANCE CONTRACTS OVER $25,000
DIRECT PURCHASE ORDERS FOR FEBRUARY 2011

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		
Infor Global Solutions Inc.	DP130102	Software Maintenance/Support	$74,516.56		

Agenda Item No. XII-13

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: 2011 Employee Health Fair and Wellness Initiative

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Approve the contract and authorize related wellness expenditures.

Background: The City's health insurance program has been self-insured and administered through a third party since January 1, 2007. To manage health benefit costs and promote employee health and well being, the City contracted with on-site wellness coaches from 2007 through 2010. A new initiative to develop City employees' wellness is being recommended by the Health Insurance Advisory Committee. One of the new components is a City sponsored annual employee health fair to encourage employees to better manage their personal health.

Analysis: If approved, the City sponsored employee health fair will be at the Century II Convention Center on April 8, 2011, from 7:30 a.m. to 2:00 p.m. Various health and wellness providers will be in attendance, providing helpful information relating to medical, dental and mental health issues. Employees will also be encouraged to participate in a health risk assessment provided by Coventry either on-site or on-line. A primary objective of the health fair will be to give employees an economical, voluntary opportunity to access essential biometric health information.

The City issued a competitive request for proposal, FP130009, asking for on-site biometric screening of participating employees. Of the thirty proposals mailed to prospective vendors, one response was received. For the fee of $55 per test, Via Christi Occupational Health and Wellness proposes to measure the following biometrics and provide the following services:

- Height
- Weight
- Blood Pressure
- Provide an on-site written summary of their findings to the employee
- Provide qualified individuals to review the results and counsel for abnormal findings
- Total Cholesterol
- HDL Cholesterol
- Blood Glucose
- Body Mass Index

In an effort to encourage employees to participate in the biometric screening and health risk assessment, the Health Insurance Advisory Committee recommends awarding a $30 gift card to each participant who completes the biometric screening and health risk assessment and reviews it with their personal physician providing proof of that visit during the current calendar year. Individuals who have a blood analysis prior to the health fair, or at their physician's office later in the year, and review the health risk assessment with their physician will also be eligible for the gift card. The goal is to engage employees with their personal physicians on a regular basis and identify health problems before they become chronic.

The City organization is prohibited by HIPPA from accessing specific health information concerning individual employees, and nothing in this proposal would disclose any individual employee health records or health information to the employer.

In addition to the Employee Health Fair, other wellness information and activities are being developed to promote a "Culture of Wellness" within the City organization.

Financial Considerations: Wellness statistics suggest 40% participation as an excellent turnout. The total costs based on 40% participation are $64,306 for the biometric screening and $35,100 for the gift card, resulting in a total cost of $99,406 to the City's Self Insurance Health Fund. The Health Insurance Fund is currently funded 80% by the City and 20% by employees.

Goal Impact: The Wellness Program is part of the Internal Perspective goal. The Wellness Program is a part of the City's strategic health care plan to reduce costs and improve the health of all City employees. It is designed to avoid costs by lowering future health care premiums, increase employee satisfaction and increase employee's knowledge, skills and abilities.

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

Recommendations/Actions: It is recommended the City Council approve the contract and authorize the employee participation incentive.

CONTRACT
for
Biometric Screenings

THIS CONTRACT entered into this 8th day of March, 2011, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY"**, and **VIA CHRISTI Occupational Health and Wellness.**, 1151 N Rock Road, Wichita, KS 67211, Telephone Number (316) 687-9794, hereinafter called **"VENDOR"**.

WITNESSETH:

WHEREAS, the **CITY** has solicited a proposal (Formal Proposal FP130009) for biometric testing and reporting; 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 FP130009 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 FP130009, shall be considered a part of this contract and is incorporated by reference herein.

Performance Standards: VENDOR shall comply with the following performance standards. Periodically and when requested, the Vendor shall provide data to indicate actual performance provided as related to these standards.

Vendor will provide the stated services at the City of Wichita's Employee Health Fair on April 8, 2011, and provide walk-in services at the 2535 E. Lincoln office of Via Christi for individuals not able to attend the health fair during normal office hours through November 30 of that year. In the event this contract is renewed per Section III, the date of the health fair will be a mutually agreed upon date each Spring.

Vendor will provide biometric screenings identified under Option 2 of the Proposal to include the following measurements:

- Height
- Weight
- Blood Pressure
- Body Mass Index

- Total Cholesterol
- HDL Cholesterol
- Blood Glucose
- Result Review

Vendor will provide qualified individuals to counsel employees concerning questions and abnormal findings.

Vendor will provide the participating employee with a written report on-site after the biometric screening.

Vendor will adhere to all HIPPA regulations and patient privacy rights.

2. **Compensation. CITY** agrees to pay to **VENDOR** a fee not to exceed $55 per individual screening, for a total fee not to exceed $64,306 based on 40% participation of the City's eligible employee population.

3. **Term.** The term of this contract shall be for a one (1) year period from April 8, 2011 through April 7, 2012 with an option to renew for four (4) additional one year annual renewal option period(s) under the same terms and conditions by mutual consent of both 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 sixty (60) days written notice to **VENDOR.**

4. **Indemnification and Insurance.**

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

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

1. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability $100,000 each accident

c. **VENDOR** will furnish the **CITY** a copy of appropriate medical malpractice insurance with **CITY** listed as a certificate holder for the coverage.

The Insurance Certificate must contain the following:

A. Cancellation – should any of the above polices be canceled before the expiration date thereof the issuing company will mail ten (10) days

written notice to certificate holder.

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, 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 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 Vendor 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 the 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:

_____
Karen Sublett
City Clerk

CITY OF WICHITA, KANSAS

_____
Carl Brewer
Mayor

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf
Director of Law

_____
Date

VIA CHRISTI REHABILITATION CENTER, INC.

_____
(Signature)

_____
(Print Name)

_____
(Title-President or Corporate Officer)

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, Contractor 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, Contractor 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 Contractor.

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

1. The Contractor, 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 contractor, 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 Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, 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 Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The Contractor, 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 Contractor, 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 Contractor, 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 Contractor, 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, subcontractor 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, Contractors 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 Contractors, 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, Contractor 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
March 8, 2011

TO:	Mayor and City Council
SUBJECT:	Approval of Design Build for S-Well and M-Well Repairs (All Districts)
INITIATED BY:	Department of Public Works & Utilities
AGENDA:	Consent

Recommendation: Authorize the selection of a team (engineer/contractor) to design and construct improvements associated with the re-drilling of M-Well 31 and S-Wells 4, 5, 7, 8, 10 and 11.

Background: Equus Beds water supply well; M-31 has collapsed and is no longer able to produce water. In order to restore production from this well it must be re-drilled. The Capital Improvement Program (CIP) includes $300,000 for M-Well repairs every three years. The City Council approved the initiation of this project on November 2, 2010.

Local S-Wells 4, 5, 7, 8, 10 and 11, located near the Water Treatment Plant has failed. The CIP includes $940,000 for S-Well repairs and the City Council approved the initiation of this project on October 19, 2010. This project will fund the re-drilling and re-equipping of five S-wells, and the installation of monitoring wells and sensors that would enhance the operation of all of the wells and usage of the aquifer.

Analysis: Staff recommends that the project be done by a design-build method. Timing is a factor as the S-Wells are used heavily for water supply during the summer months and are depended on as a replacement water source for Equus Beds wells that will be out of service during construction of ASR Phase II infrastructure. For a normal design-build project, the delivery method offers significant (40% to 50%) time savings over traditional design-bid-build project delivery. For this project, the time savings will be tied to the permitting process associated with the design of the wells through Kansas Department of Health and Environment (KDHE). The design for M-31 will be very similar to the newest wells in the Equus Beds Wellfield, but the design for the S-Wells must be more tailored for each well and the designer must work closely with KDHE. In addition to the designer working closely with KDHE, the design-build process will allow the engineer who designed the wells to be involved with the actual construction and inspection of the well. In general, well contractors have qualified engineers on staff who manage required design modification to the wells during construction. Attached are the criteria staff recommends using to select a design-build contractor for this project.

Financial Consideration: It is estimated that re-drilling M-Well 31 will cost approximately $300,000 and the re-drilling and enhancements to the S-Wells will cost approximately $940,000. Funds for this effort are included in M-Well Repair CIP project and Local S & E Well Field Repairs CIP project.

Goal Impact: This project addresses the Efficient Infrastructure goal by assuring that the City is able to provide an adequate supply of water to its customers.

Legal Considerations: Per Charter Ordinance 111, the City Council must approve projects to be delivered by a design-build method and the criteria that will be used to select the design-build contractor. (law approval?)

Recommendations/Actions: It is recommended that the City Council authorize the projects as design-build projects and authorize staff to proceed with a Request for Proposal.

Attachment: Design-Build Contractor Selection Criteria.

Design-Build Contractor Selection Criteria

Charter Ordinance 111 requires that design-build projects be awarded on the basis of: "..lowest lump-sum fixed price, design concepts, experience of company or consortium of companies submitting proposals and upon other pertinent criteria that shall be set by the City Council prior to the acceptance of proposals". Staff recommends that the City Council set the criteria for selection of the design-build ("DB") team on the Charter Ordinance basis plus the additional criteria outlined below.

1. Cost (60 points). The DB contractor's lump sum price proposal will be scored by the Staff Screening & Selection Committee ("Committee") taking into account all costs within the proposal. The most competitive price proposals will receive higher scores.
2. Experience of DB Contractor (15 points). The DB contractor's proposed team including lead designer, project manager, construction superintendents, and primary subcontractors will be evaluated by the Committee for experience, expertise and reputation on design and construction of wells under the influence of surface water. Demonstrated safety record on construction will also be considered. The best qualified and committed teams will receive the higher scores.
3. Design Concepts (15 points). The DB contractors' proposals will be evaluated by the Committee for their planning, constructability, logistics, safety and awareness of existing conditions. The Committee will evaluate the degree to which risks to the success of the project have been identified and addressed with reasonable solutions as well as possible cost reduction proposals.
4. Proposed Construction Schedule (10 points). DB contractors will be asked to submit a proposed schedule for construction and completion of the S-Wells and M-31. Those schedules judged by the Committee to have the most reasonable shorter durations will receive the higher scores.

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Resolutions Authorizing Congestion Mitigation and Air Quality (CMAQ) grant from the Federal Transit Administration (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the resolution.

Background: The Federal Transit Administration (FTA) grant application process requires a resolution by the governing body authorizing staff to file grant applications to receive funds and administer the grant's program. The purpose of the resolution is to authorize staff to file for eligible federal funds for the support of Q-Line services for Fiscal Year 2011. The total authorized apportionment includes $127,840 federal share. Transit staff held a public hearing on March 4, 2011, with no adverse comments. Congestion Mitigation and Air Quality (CMAQ) funds are Federal Highway Administration (FHWA) funds that are transferred to the FTA for use for transit services. The funds are 80% federal share and 20% local match. A second resolution is required by the Kansas Department of Transportation (KDOT) to pledge sufficient matching funds.

Analysis: The proposed resolution authorizes the filing of application for the following funding:

$	127,840	federal share
	32,160	local match
$	**160,000**	**Total**

The federal share being requested is just under 80% of the total ($160,000) being applied for. The Transportation Policy Board, which develops and approves transportation plans for the Wichita Area Metropolitan Planning Organization (WAMPO), awarded $160 less than requested by Wichita Transit, so that amount will be made up in matching funds by Sedgwick County.

Financial Consideration: The total grant request is $160,000. The federal share is $127,840, and the local match of $32,160 will be funded by Sedgwick County per the Coordination Agreement for Arena Event Transit Services approved by the Wichita City Council on March 1, 2011.

Goal Impact: Funding from this grant will support Wichita Transit's role in providing for Efficient and Effective Infrastructure by maintaining and optimizing public facilities and assets.

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

Recommendation/Actions: Staff recommends the City Council approve the resolution and authorize the necessary signatures.

Attachments: Resolution authorizing filing of the grant; KDOT form Request for Congestion Mitigation and Air Quality (CMAQ) Improvement Program Project; Coordination Agreement for Arena Event Transit Services

RESOLUTION NO. 11-035

A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL TRANSPORTATION ASSISTANCE AUTHORIZED BY 49 U.S.C., AND OTHER FEDERAL STATUTES ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION TO SUPPORT FY 2011 CONGESTION MITIGATION AND AIR QUALITY (CMAQ) PROJECTS

WHEREAS, the Federal Transportation Administrator has been delegated authority to award federal financial assistance for transportation projects; and

WHEREAS, the grant or cooperative agreement for federal financial assistance will impose certain obligations upon the City of Wichita and may require the City to provide the local share of the project cost; and

WHEREAS, the City of Wichita has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project; and

WHEREAS, the City of Wichita desires financial assistance for support of the following projects: Pursuant to CMAQ – Congestion Mitigation and Air Quality: Q-line services.

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

1. The City Manager or designee is authorized to execute and file an application on behalf of the City of Wichita, Kansas, with the Federal Transit Administration for Federal assistance under 49 U.S.C., United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration to aid in financing 49 U.S.C.

2. That the City Manager or designee is authorized to execute and file with its application the annual certifications and assurances and other documents the Federal Transit Administration requires before awarding a federal assistance grant or cooperative agreement.

3. That the City Manager or designee is authorized to execute the grant and cooperative agreements with the Federal Transit Administration on behalf of the City of Wichita.

CERTIFICATION

The undersigned duly qualified Mayor, acting on behalf of the City of Wichita, which is the Recipient of CMAQ assistance under the provisions of 49 U.S.C., certifies that the foregoing is a true and correct copy of a resolution adopted at a legally-convened meeting of the City of Wichita.

ADOPTED at Wichita, Kansas on March 8, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

#4037-7

COORDINATION AGREEMENT
ARENA EVENT / TRANSIT SERVICES

THIS AGREEMENT is made and entered into this 9 day of February, 2011, by and between Sedgwick County, Kansas, hereinafter referred to as "County," and the City of Wichita, Kansas, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the County and City are authorized to enter into this Agreement pursuant to K.S.A. 12-2908, as amended; and

WHEREAS, the County and City have agreed that a significant aspect of the redevelopment of downtown Wichita is the construction of the INTRUST Bank Arena (hereinafter "the arena"), a modern, first-class, sports and entertainment venue with a 15,000 seat capacity (for basketball) and 20 executive and two party suites designed to provide maximum "fan experience" for all guests; and

WHEREAS, the arena will be owned and operated by the County and located in the center of a revitalizing area of downtown Wichita, the center city of Sedgwick County; and

WHEREAS, the arena will be in an area generally bordered by William on the north, Waterman on the south, the Burlington Northern-Santa Fe tracks on the east, and Emporia on the west; and

WHEREAS, the County and City have adopted the Arena Neighborhood Redevelopment Plan, November 2007 as an element of The Wichita-Sedgwick County Comprehensive Plan; and

WHEREAS, said Arena Neighborhood Redevelopment Plan establishes a vision, frameworks, objectives, and strategies for the redevelopment of downtown Wichita in the general vicinity of the arena; and

WHEREAS, said vision, frameworks, objectives, and strategies require cooperative actions on the part of the County and City; and

WHEREAS, the County and City desire to formally establish cooperative actions that address Transit services that respond to the accessibility of users of the arena as well as with changes related to the future redevelopment in this portion of downtown Wichita;

NOW, THEREFORE, for and in consideration of the parties' mutual promises and covenants, it is agreed in principle as follows:

A. TRANSIT SERVICE

The County desires to provide transit service for all arena events to serve patrons who choose to park at downtown lots or in areas that are further from the arena than within reasonable walking distance.

The City and County agree that coordination of transit service among arena events, events at Century II, and other downtown uses and events is critical to enhanced accessibility and the orderly movement of vehicles and pedestrians in downtown during events. The City and County also agree that a critical component to the success of arena operations and downtown redevelopment as envisioned by the *Arena Neighborhood Redevelopment Plan* is to provide a downtown circulator transit service.

1. **Establishment of Base Service:** The County agrees to participate in funding the Downtown Circulator Route after January 1, 2010 to establish regular service in accordance with current Federal Transit Administration regulations and meet expanded service needs associated with the anticipation of downtown arena events starting as early as December 2009. This regular, full time route would operate Monday, Tuesday, Wednesday, Thursday from 6 PM to 10 PM (one Trolley), Friday from 6 PM to 12 Midnight (two Trolley's) and Saturday 12 Noon to 12 Midnight (two Trolley's) 51 weeks per year. This base service would result in a total of 52 operating hours per week. The County agrees to provide $93,000.00 per year to support the cost of operating this service. (See Attachment #1 that summarizes this additional cost).

This agreement is effective between the parties upon execution and will continue in effect on a year to year basis from January 1, to December 31, at the costs of $93,000 per year. Either party may make a written request by no later than October 1 to review the existing service level and costs. Such review shall be completed no later than November 1. Following such review, the parties may negotiate an amendment to the contract to revise the service level and/or costs. Either party may terminate the agreement as of December 31 by providing written notice of nonrenewal no later than December 1.

2. **Additional Event Only Service:** The City and County agree that flexibility will be needed for each arena event and the actual transit service requested and provided will vary based on the needs of the arena and the ability of the City to provide the requested service while also meeting its other transit service commitments. **Additional Transit services specifically required to meet Arena events will be determined by SMG Management (INTRUST Arena Management Company) and directly contracted with Wichita Transit on an event by event basis.**

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

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

DAVID M. UNRUH
First District - Commissioner

THE CITY OF WICHITA, KANSAS

CARL BREWER
Mayor

ATTEST:

KELLY B. ARNOLD
County Clerk

ATTEST:

KAREN SUBLETT
City Clerk

APPROVED AS TO FORM:

ROBERT W. PARNACOTT
Assistant County Counselor

APPROVED AS TO FORM:

GARY E. REBENSTORF
City Attorney

ATTACHMENT #1. Cost Analysis of Base Service to Support Arena Events.

The additional first year cost to Wichita Transit to run full time Downtown Circulator service over the normal seasonal Q-Line service is $93,120.00.

Proposed Expansion to Monday-Saturday Downtown Circulator All Year .....$ 159,120.00

Seasonal Thursday-Saturday Q-Line service from May to October .....$ 66,000.00
(City budgeted funding)

Additional Cost to Facilitate Arena (excluding expanded event only service).....$ 93,120.00
All Year Cost – City Budgeted Funding = Funding Requested From County

KANSAS DEPARTMENT OF TRANSPORTATION

BUREAU OF LOCAL PROJECTS

REQUEST FOR CONGESTION MITIGATION AND AIR QUALITY (CMAQ)

IMPROVEMENT PROGRAM PROJECT

County/City: WICHITA

WHEREAS, The Secretary of Transportation of the State of Kansas, hereinafter referred to as the "Secretary," has been designated as an agent for WICHITA under an agreement dated _____, or, will be designated as an agent for WICHITA under an agreement to be executed at a later date and,

WHEREAS, the Federal-Aid Highway Act of 1956, as amended, and subsequent acts and amendments, provides Federal-Aid funds to assist the counties, cities, and other political sub-divisions in improving their roads and streets and congestion mitigation activities that provide air quality benefits, and,

WHEREAS, The above-noted county/city desires to improve a certain portion of their road or street system or other related project that will contribute to air quality improvements and reduce congestion, now, therefore,

WHEREAS, The county/city request the Secretary program the following Congestion Mitigation Air Quality Improvement project Q-line downtown circulator route used to encourage people to park once and ride the Q-line to different downtown destinations.

ESTIMATED costs of such improvements are as follows:

Federal Funds	$	127,840.00
Local Funds	$	32,160.00
ESTIMATED Total for Project	$	160,000.00
Proposed Let Date		July 01, 2011

Submit One (1) Copy of the document along with Approved TIP documentation

BE IT RESOLVED: That sufficient funds of WICHITA County/City are now, or will be available and are hereby pledged to the Secretary in the amount and at the time required for the supplementing of federal funds available for the completion of this project. Prior to Federal Authorization, any project expenditures made by the County/City are ineligible for federal funding and remain the responsibility of the County/City. Upon cancellation of the project by the County/City, the County/City shall reimburse the Secretary within thirty (30) days after receipt of statement of cost incurred by the Secretary prior to cancellation.

Day _____ Month _____ Year _____, at _____, Kansas.

Recommend for Approval:

Michael Drennin

County/City Engineer or Administrator

APPROPRIATE LOCAL OFFICIAL(S)

Chairperson/Mayor

ATTEST:

Member

County/City Clerk

Member

DOT Form 1312 (Original 3/10)

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Approval of Amended Development Agreement for Maize 54 Community Improvement District (District V)

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendation: Approve the amended development agreement.

Background: On September 21, 2010, the City adopted an ordinance establishing the Maize 54 Community Improvement District (CID) on the northeast corner of Kellogg Drive and Maize Road. The Developer requested certain amendments to the development agreement which required revisions to the City's CID Policy. On December 7, 2010, the City Council approved an amended CID Policy.

CID financing in the amount not-to-exceed $75,000,000 will be used for land acquisition and infrastructure construction within the district and all other costs allowed by law, including eligible operating costs.

Analysis: The amended CID policy requires disclosure of a CID by the City providing information and an interactive map on its website and the developer posting a sign at the entrance informing customers that the project is made possible by a Community Improvement District, directing customers to the City's website for additional information. The policy also provides for 100% assignment of CID rights by the developer to a third party, with written approval of the City.

The attached Amended and Restated Development Agreement between the City and Maize 54, LLC (the "Developer") provides the contractual framework for CID. The Developer will be required to submit certified expenditures to the City for reimbursement of eligible costs. The City will reimburse the Developer with CID funds for eligible costs as expenditures are approved if sufficient funds are available or quarterly as funds become available if funds are insufficient at the time. The amended agreement has been revised to include the CID Policy revisions.

Financial Considerations: Net CID sales tax revenues will be passed through by the City to Maize 54 or its assignees. Guidelines and procedures for disbursing funds to developers and assignees have been established.

Goal Impact: Economic Vitality and Affordable Living and Quality of Life. Business prospects and workers seeking to relocate are attracted to a city that takes care of its older sections.

Legal Considerations: The Law Department has reviewed and approved the Amended and Restated Development Agreement between the City and Maize 54, LLC.

Recommendation/Action: It is recommended that the City Council approve the amended development agreement.

Attachments: Amended and Restated Development Agreement

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this _____ day of March, 2011 by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the "City"); and **MAIZE 54, LLC**, (the "Developer") (with the "Developer" and the "City" collectively referred to as the "Parties" and each a "Party").

RECITALS

A. The City has authority to create a community improvement district ("CID"), pursuant to K.S.A. § 12-6a26 *et seq*. (the "CID Act"), for the purpose of financing certain public and private improvements as defined therein. Under the CID Act, the owners of at least 55% of the total assessed value and land area within the proposed CID boundaries may petition the City to request the creation of a CID and to impose special assessments or a special sales tax to pay the cost of eligible projects.

B. The Developer is the owner of certain land in the City located in the vicinity of the intersection of U.S. Highway 400/54 and Maize Road within the City (the "Project").

C. On June 24, 2010, the Developer, along with other property owners within the Project, submitted a petition (the "Petition") to the City requesting the formation of a community improvement district (the "District"). A copy of the Petition is attached hereto as **Exhibit 1**. A legal description and map of the boundaries of the District is set forth on **Exhibit 2** attached hereto.

D. On September 21, 2010, the City approved the creation of the District through the adoption of Ordinance No. 48-823 (the "CID Ordinance"). As was contemplated in the Petition, the CID Ordinance approved certain public and private improvements within the District (the "CID Improvements"), as well as certain administrative and operating expenses to be incurred within the District, as more particularly described on **Exhibit 3** attached hereto (collectively, the "CID Costs"), to be financed with pay-as-you-go financing payable from revenues received from the imposition of an additional 2% sales tax on all taxable sales within the District (the "CID Sales Tax"). The CID Sales Tax shall commence following submittal by the City of a certified copy of the CID Ordinance to the Kansas Department of Revenue. Submittal to the Kansas Department of Revenue shall occur following publication of the CID Ordinance and written notice to the City from the Developer requesting submittal.

E. The Parties now desire to enter into this Agreement to formalize the construction and financing of the CID Improvements.

NOW, **THEREFORE**, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION

A. Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

1. "Administrative Service Fee" means the fee charged by the City for administration of the CID Sales Tax Fund and distributions from same, in the amount of five percent (5%) of the CID Sales Tax collected.

2. "Agreement" means this Agreement as may be amended in accordance with the terms hereof.

3. "CID Act" means K.S.A. § 12-6a26 *et seq*.

4. "CID Bonds" means community improvement district special obligation bonds issued by the City to finance all or a portion of the CID Projects, if any.

5. "CID Costs" means, collectively, the costs of the CID Improvements and other eligible expenses related to the Project to the extent such expenses are "costs" of a "project" as defined in the CID Act, the estimated amounts of which are shown in **Exhibit 3**, which also includes the City's administrative service fee. In the event KSA 12-6a27(f) is subsequently amended or construed by a judicial or attorney general's opinion to include in the definition of "cost" interest accrued on borrowed money after the period of construction, post-construction costs of private financing shall then also be deemed included in "CID Costs."

6. "CID Improvements" means the Project and related permissible improvements as set forth in the CID Act and the CID Ordinance.

7. "CID Policy" means the policy of the City of Wichita governing the use of CID financing within the City, as most recently approved by the City Council on December 7, 2010 and as amended from time-to-time thereafter.

8. "CID Ordinance" means Ordinance No. 48-823 adopted by the City on September 21, 2010.

9. "CID Sales Tax" means the community improvement district sales tax authorized by the CID Act and the CID Ordinance.

10. "CID Sales Tax Fund" means the separate fund established by the City for deposit of the CID Sales Tax received from the State collected within the District, and that is used to finance the CID Costs pursuant to the CID Act.

11. "City" means the City of Wichita, Kansas.

12. "City Representative" means the City Manager or his or her designee as evidenced by a written certificate furnished to the Developer containing the specimen signature of such person or persons and signed by the City Manager.

13. "Developer" means Maize 54, LLC**,** and its successors and assigns.

14. "Event of Default" means any event or occurrence as defined in Article VI of this Agreement.

15. "Parties" means the City and the Developer.

16. "Pay-as-you-go Financing" means pay-as-you-go financing, as that term is defined in the CID Act, which financing shall be used to pay the CID Costs.

17. "Signage" means a sign at least 24 square inches in size containing the words: "THIS PROJECT MADE POSSIBLE BY COMMUNITY IMPROVEMENT DISTRICT FINANCING" using type face of at least 18 points in size, and directing individuals to the City website for further information using type face of at least 12 points in size.

18. "State" means the State of Kansas.

19. "Term" means the earlier of twenty-two (22) years from the date the Director of Taxation for the State of Kansas begins collecting the CID Sales Tax within the District or when CID Costs up to the amount of $75,000,000 have been paid.

B. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

1. The terms defined in this Article include the plural as well as the singular.

2. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.

3. All references herein to "generally accepted accounting principles" refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

4. All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.

5. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

6. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

ARTICLE II
DEVELOPMENT OF THE PROJECT

A. Completion of the CID Improvements. Any of the CID Improvements completed by the Developer shall be in conformance with approved plans for such improvements, City building codes, City Ordinances and all other applicable rules and regulations. Before commencement of construction or development of any buildings, structures or other work or improvement, the Developer shall obtain any and all permits which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work.

B. Cost of the Project. The Developer shall be responsible for and will bear all the CID Costs, subject to the terms of this Agreement governing reimbursement for expenditures on the CID Costs.

ARTICLE III
CID FINANCING

A. CID Sales Tax. The City shall deliver a certified copy of the CID Ordinance to the Kansas Department of Revenue imposing the CID Sales Tax upon the receipt of written notice from the Developer requesting such delivery. Except as otherwise set forth herein, all of the CID Sales Tax collected and delivered to the CID Sales Tax Fund shall be available for and dedicated to pay the CID Costs for the duration of the Term.

B. CID Sales Tax Fund. During the existence of the District all CID Sales Taxes generated within the District shall be deposited into a CID Sales Tax Fund, which shall be established and administered by the City in compliance with the laws of the State of Kansas and this Agreement and shall be held solely for the payment of the CID Costs and shall not be otherwise expended or commingled with other funds.

C. Pay-as-you-go Financing of the CID Costs. The CID Sales Tax shall be used to reimburse the Developer for the CID Costs, as described in **Exhibit 3**. The City hereby agrees that the estimates of expenses related to the CID Costs may change prior to and during the expenditure of the CID Costs. However, the aggregate total amount of all CID Costs to be paid hereunder shall not exceed $75,000,000. Unless otherwise agreed by the Parties in writing, reimbursements shall be made solely to the Developer unless otherwise set forth in this Agreement, except for payment of the City's Administrative Service Fee, which will be deducted by the City in advance of distribution of the CID Sales Tax funds to Developer.

D. Certification of Expenditures. The Developer shall certify all costs and expenditures to be made in connection with the CID Costs in accordance with the following:

1. The Developer shall submit to the City a Certification of Expenditures in the form attached hereto as **Exhibit 4** setting forth the amount for which reimbursement is sought and an itemized listing of the related CID Improvements.

2. Each Certification of Expenditures shall be accompanied by such bills, contracts, invoices, and other evidence as the City shall reasonably require to document appropriate payment.

E. Reimbursement. The City shall have twenty (20) calendar days after receipt of any Certification of Expenditures to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certification of Expenditures shows payment by the Developer of the CID Costs; (2) the expense was incurred; (3) the aggregate amount of CID Costs theretofore paid pursuant to this Agreement is less than $75,000,000 and if added to the amount of the Certification of Expenditures, would not exceed $75,000,000; (4) the Developer is not in material default under this Agreement; and (5) there is no fraud on the part of the Developer, then the City shall approve the Certification of Expenditures and promptly reimburse the Developer for the CID Costs pursuant to the terms of this Agreement if sufficient funds are available in the CID Sales Tax Fund, and quarterly as funds become available in the event that funds in the CID Sales Tax Fund are at that time insufficient. If the City reasonably disapproves of the Certification of Expenditures, the City shall notify the Developer in writing of the reason for such disapproval within such twenty (20) day period.

F. Payment of the City's Administrative Service Fee. The City shall be paid from the CID Sales Tax Fund an Administrative Service Fee in an amount equal to five percent (5%) of the total CID revenues generated within the District. The $5,000 application fee paid by Developer upon submission of this Agreement to the City shall be applied as a credit toward payment of the Administrative Service Fee.

ARTICLE IV
DEFAULTS AND REMEDIES

A. Defaults - General. The following events shall constitute an Event of Default under this Agreement:

1. Subject to the extensions of time set forth in subsection F below (Enforced Delay), failure or delay by any Party to perform any term or provision of this Agreement, after receiving written notice and failing to cure, as set forth in paragraph (2) below, constitutes a default under this Agreement. A Party claiming a default (claimant) shall give written notice of default to the other parties, specifying the default complained of.

2. The claimant shall not institute proceedings against a Party, nor be entitled to damages if the other Party within fourteen (14) days from receipt of such written notice, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice; or if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period, such cure, correction or remedy is diligently and continuously prosecuted until completion thereof.

B. Remedies on Default. Whenever any Event of Default by the City shall have occurred and be continuing, subject to applicable cure periods, the Developer may pursue any remedy at law and in equity, except as provided below. Whenever any Event of Default by the

Developer shall have occurred and be continuing, subject to applicable cure periods, the City may (1) pursue any remedy at law and in equity, except as provided below, and/or (2) refuse to approve any further Certificates of Expenditures and make any disbursements until such Event of Default is cured by the Developer and/or terminate this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall the Developer or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise. For the purposes of this Section, consequential damages shall include, but not be limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred by the non-defaulting Party. Further, specific performance shall not be available to the City to require the Developer to construct any improvements within the District. The only remedy that may be sought from the City is strictly limited to use of CID revenues available in the CID Fund to pay CID Costs (i.e., the City can have no liability under this Agreement that in any way extends to its general or tax funds, or any other source of funds apart from the CID revenues derived from this project), except that, in case of any diversion by the City of CID revenues from the CID Fund in breach of this Agreement, the City will be obligated to restore such diverted revenues, dollar for dollar, from any lawfully available source of appropriations.

C. Legal Actions.

1. Institution of Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Sedgwick County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas.

2. Applicable Law. The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement.

3. Acceptance of Service of Process.

(a) In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(b) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon an officer or agent of the Developer and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law. In the event the Developer no longer has an officer or registered agent to serve, the Secretary of State is hereby irrevocably appointed to accept service for the Developer.

D. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

E. Inaction Not a Waiver of Default. Any failures or delays by a Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

F. Enforced Delay; Extension of Times of Performance.

1. In addition to specific provisions of this Agreement, performance by a Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays or defaults are due to default of the other Party; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; market conditions; quarantine restrictions; freight embargoes; lack of transportation; or unusually severe weather; or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform.

2. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer.

ARTICLE V
GENERAL PROVISIONS

A. Termination of the CID. The City shall not terminate the CID prior to the expiration of its Term, except as provided by law, or as requested by the Developer.

B. Modification of the District. From time to time during the Term, the Developer may request, and the City shall reasonably consider, any modification to the District, in accordance with the CID Act and the CID Policy.

C. Public Disclosure. The Developer will post Signage adjacent to the main entrance of the property. Signage is to be posted and maintained throughout the term of the CID and Agreement.

D. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties, upon official action of the City's governing body approving said amendment, and by the execution of said amendment by the Parties or their successors in interest. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties shall take such reasonable measures including, but not limited to, reasonable amendment of this Agreement to cure such invalidity where the invalidity contradicts the clear intent of the Parties in entering into this Agreement.

E. Assignment. No Party may assign all or any part of its interest in this Agreement without the prior written consent of the other Parties, and any such assignment without such consent shall be void; except that the Developer may assign all or any part of its interest in this Agreement upon the prior written consent of the City Representative; provided, however, in the

event the City Representative does not consent to such assignment, the Developer may proceed before the City's governing body to request that such assignment be approved; and provided further that any such assignments be administered through a single, third party fiduciary who would receive any payments made pursuant to such assignments and distribute funds to assignees and who would be responsible for calculating any subdivision of funds for such distribution. Under no circumstances shall the City be responsible for determining the amount of funds to be assigned under this provision. Notwithstanding the foregoing, the Developer, with prior written notice to the City, may make a collateral assignment of 100% its rights under this Agreement to a single financial institution as security for a financing of the Project. Any decision to consent or refuse consent to an assignment pursuant to this paragraph shall solely at the discretion of the City Representative or the City's governing body, as the case may be. Nothing herein shall be construed to delegate rights or responsibilities of the City under this agreement, including without limitation the determination of eligible project costs for reimbursement.

F. Right to Inspect. The Developer agrees that the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect, audit, and copy, from time to time, all of the Developer's books and records relating to the CID Costs as pertinent to the purposes of this Agreement.

G. Right of Access. For the purposes of assuring compliance with this Agreement, the City Representative shall have the right of access to the District, without charges or fees, during normal business hours for purposes related to this Agreement, including, but not limited to, the inspection of the work being performed in constructing any of the CID Improvements.

H. No Other Agreement. Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the Parties.

I. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

J. Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To the Developer:

Maize 54, LLC
Attention: Jay Maxwell
1634 E. Central Avenue
Wichita, Kansas 67214

With copies to:

Korb W. Maxwell
Polsinelli Shughart, P.C.
6201 College Blvd., Ste. 500
Overland Park, KS 66211

To the City:

City Manager
City Hall, 13th Floor
455 N. Main
Wichita, Kansas 67202

With copies to:

Urban Development Office
Attention: Allen Bell
City Hall, 13th Floor
455 N. Main
Wichita, Kansas 67202

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

K. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

L. Recordation of Agreement. The Parties agree to execute and deliver a memorandum of this Agreement in proper form for recording in the real property records of Sedgwick County, Kansas.

M. Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld.

N. Survivorship. Notwithstanding the termination of this Agreement, the Developer's obligations set out in Article II and Sections IV.B. and IV.C. shall survive the termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during the Term hereof.

O. Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF WICHITA, KANSAS

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, City Attorney

MAIZE 54, LLC

By: _____

Jay Maxwell, Managing Member

Date: _____

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

On this _____ day of _____, 2011, before me personally appeared Jay Maxwell to me personally known, who being by me duly sworn did say that he is the Managing Member of Maize 54, LLC, and that said instrument was signed and delivered on behalf of said limited liability company and acknowledged to me that he/she executed the same as the free act and deed of said limited liability company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____
NOTARY PUBLIC

My Commission Expires:

EXHIBIT LIST

EXHIBIT 1 – CID PETITION

EXHIBIT 2 – LEGAL DESCRIPTION AND MAP EXHIBIT OF DISTRICT

EXHIBIT 3 – CID COSTS

EXHIBIT 4 – CERTIFICATION OF EXPENDITURES

EXHIBIT 1
CID PETITION

RECEIVED
JUL 23 '10
CITY CLERK OFFICE

COMMUNITY IMPROVEMENT DISTRICT PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1) We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows/provided in **Exhibit A** attached hereto:

IMPROVEMENT DISTRICT

do hereby petition pursuant to the provisions of K.S.A. 12-6a26 et seq., as amended (the "Act"):

(a) **General Nature**: That the general nature of the proposed community improvement district ("CID") project, Maize 54 (the **"Project"**), is a mixed-use commercial district that is anticipated to leverage approximately $95 million in private capital investment over an estimated 5-year development period in accordance with the general development plan as depicted in **Exhibit B** attached hereto . The undersigned request the City of Wichita to assist the Project by providing community improvement financing in accordance with City of Wichita policy and the Act to finance the construction, maintenance, and procurement of certain improvements, costs and services within the District, which may include, but are not limited to: land acquisition, infrastructure related items, streets, sidewalks, parking lots and facilities, buildings, facilities, tenant improvements, water management and drainage related items, landscaping, lighting, art, water features and other cultural amenities ,and the City's financing costs (if any) as well as the City's administrative costs in establishing and maintaining the District.

(b) **Estimated Cost**: That the estimated cost of the Project is **$95 Million Dollars ($95,000,000)** of which the maximum CID eligible cost is **$75 Million Dollars ($75,000,000),** exclusive of the cost of interest on borrowed money and exclusive of any other public funds that may be received. See attached "**Exhibit C**" for a detailed budget.

(c) **Proposed Method of Financing**: That the proposed Projects be financed through the use of a *"Pay-as-you-go basis"* as defined in the Act.

(d) **Proposed Amount of Sales Tax**: That the proposed amount of Community Improvement District sales tax, if any, shall be an *increment of 2%* for twenty two (22) **years**.

(e) That a legal description map of the proposed CID are attached hereto as **Exhibits A and D,** respectively.

2) It is requested that the improvement hereby petitioned be made with notice and public hearing, pursuant to City policy.

3) That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first, and that the signers consent to any assessments to the extent described therein without regard to benefits conferred by the project.

4) That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by the owners of 100% of the land area within the proposed district. The Governing Body is requested to proceed in the manner provided by statute and City policy.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
Improvement District		
Maize 54, LLC	Jay S. Maxwell, Member	6-23-10

[Please include printed names, as well as titles and representative capacity if the signer is signing for a business entity other than a natural person, and have each signature be notarized]

EXHIBIT A

TRACT A

That part of the SW1/4 Section 29, Township 27, South, Range 1 West of the 6th P.M. Sedgwick County, Kansas described as Beginning at the N.E. corner of Lot 1, Block A, Kansas State Bank Addition, Wichita Sedgwick County, Kansas being a common corner of the S.E. corner of Lot 8, Verda Vista Sedgwick County, Kansas; thence N88°20'30"E along the common line as extended East, 200 feet; thence S01°18'15"E, 275 feet; thence N88°20'30"E, 399.5 feet; thence N01°18'15"W, 275 feet; thence N88°20'30"E, 205.96 feet; thence S14°10'35"E, 401.95 feet to a point 40 feet North of the North line of U.S. 54 Highway as deeded on Film 2144, Page 1847; thence N74°04'48"E parallel with and 40 feet North of said U.S. 54 Highway, 258.59 to a point on the West line of Miles Lakewood Village Second Addition, Wichita Sedgwick County, Kansas; thence S01°28'11"E along the West line of said Miles Lakewood Village Second Addition, and Davis Moore 12th Addition, Wichita Sedgwick County, Kansas, 41.31 feet to a point on the North line of said U.S. 54 Highway; thence S74°04'48"W along said U.S. 54 Highway, 419.31 feet; thence S15°55'12"E, 125 feet; thence S71°17'23"W, 324.5 feet; thence S76°05'36"W, 210.7 feet; thence S83°50'05"W, 19.89 feet to the S.E. corner Lot 1, Block A, Quiktrip 10th Addition, Wichita, Sedgwick County, Kansas; thence N01°19'41"W, 236.41 feet to the N.E. corner of said Quiktrip 10th Addition; thence S88°12'33"W along the North line of said Quiktrip 10th and the North line of Lot 1, Block A, Quiktrip 8th Addition, Wichita, Sedgwick County, Kansas, 236 feet to a bend point in the East line of said Quiktrip 8th Addition; thence N01°18'15"W along the East line of said Quiktrip 8th Addition and said Kansas State Bank Addition, 500 feet to the point of beginning.

Said tract contains 414,279 square feet more or less.

TRACT B

That part of the SW1/4 Section 29, Township 27, South, Range 1 West of the 6th P.M. Sedgwick County, Kansas described as Commencing at the N.E. corner of Lot 1, Block A, Kansas State Bank Addition, Wichita Sedgwick County, Kansas being a common corner of the S.E. corner of Lot 8, Verda Vista Sedgwick County, Kansas; thence N88°20'30"E along the common line as extended East, 200 feet to the Point of Beginning thence continuing N88°20'30"E, 399.5 feet; thence S01°18'15"E, 275 feet; thence S88°20'30"W, 399.5 feet; thence N01°18'15"W, 275 feet to the point of beginning;

ALONG WITH,

That part of the SW1/4 Section 29, Township 27, South, Range 1 West of the 6th P.M. Sedgwick County, Kansas and Lot 5, Verda Vista, Sedgwick County, Kansas all being described as Beginning at the N.E. corner of Lot 1, Block A, Kansas State Bank Addition, Wichita Sedgwick County, Kansas being a common corner of the S.E. corner of Lot 8, Verda Vista Sedgwick County, Kansas; thence N88°20'30"E along the common line as extended East, 659.8 feet to a point on the West line of a Ponding and Overland Flowage Easement filed on DOC#/FLM-PG:

28652650; thence N12°55'02"W along said Easement, 59.72 feet; thence continuing along said Easement N36°46'09"W, 96.11 feet; thence N51°17'57"W, 146.12 feet; thence N35°39'24"W, 95.48 feet; thence N16°26'04"W, 101.68 feet; thence N11°19'07"W, 120.39 feet along the West line of a Ponding and Overland Flowage Easement filed on DOC#/FLM-PG: 28652650, and DOC#/FLM-PG: 28652651; thence continuing N22°33'08"W, along said DOC#/FLM-PG: 28652651, 179.57 feet; thence N16°20'54"W, 124.1 feet; thence N25°52'23"E, 38.55 feet more or less to a point on the South line of the North 40 acres of the SW1/4 of said Section 29; thence S88°20'41"W along the South line of the North 40 acres of said SW1/4, 299.04 feet to a point 270 feet East of the West line of said SW1/4, said point being 30 feet North of the N.E. corner of Lot 1, Verda Vista Sedgwick County, Kansas; thence S01°18'15"E along the East line of said Verda Vista , 450 feet to the N.E. corner of Lot 5, in said Verda Vista; thence S88°20'41"W, 220 feet to the N.W. corner of said Lot 5; thence S01°18'15"E, 100 feet to the S.W. corner of said Lot 5; thence N88°20'41"E, 220 feet to the S.E. corner of said Lot 5; thence S01°18'15"E, 300 feet to the point of beginning.

Said tract contains 495,992 square feet more or less.

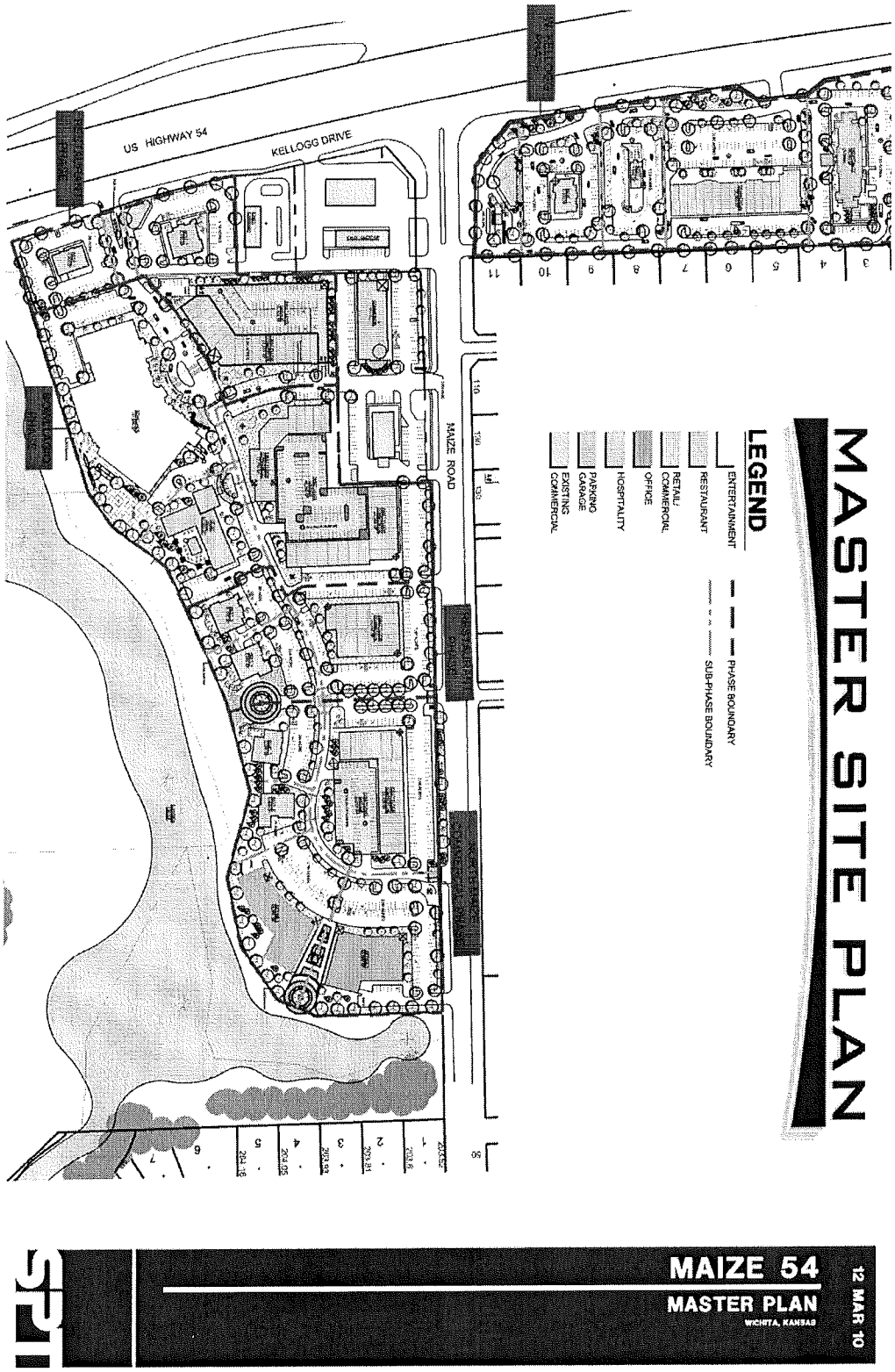
ALONG WITH,

TRACT C

Lot 7, Verda Vista, Sedgwick County, Kansas.

Said tract contains 22,000 square feet more or less.

EXHIBIT B


US HIGHWAY 54
KELLOGG DRIVE
MAIZE ROAD
MASTER SITE PLAN
LEGEND
ENTERTAINMENT
RESTAURANT
RETAIL/ COMMERCIAL
OFFICE
HOSPITALITY
PARKING GARAGE
EXISTING COMMERCIAL
PHASE BOUNDARY
SUB-PHASE BOUNDARY
MAIZE 54
MASTER PLAN
WICHITA, KANSAS
12 MAR 10

Maize 54, LLC
COMMUNITY IMPROVEMENT DISTRICT
Use of Funds

Sources of Funds

CID	$ 16,000,000	
		$ 16,000,000

Uses of Funds

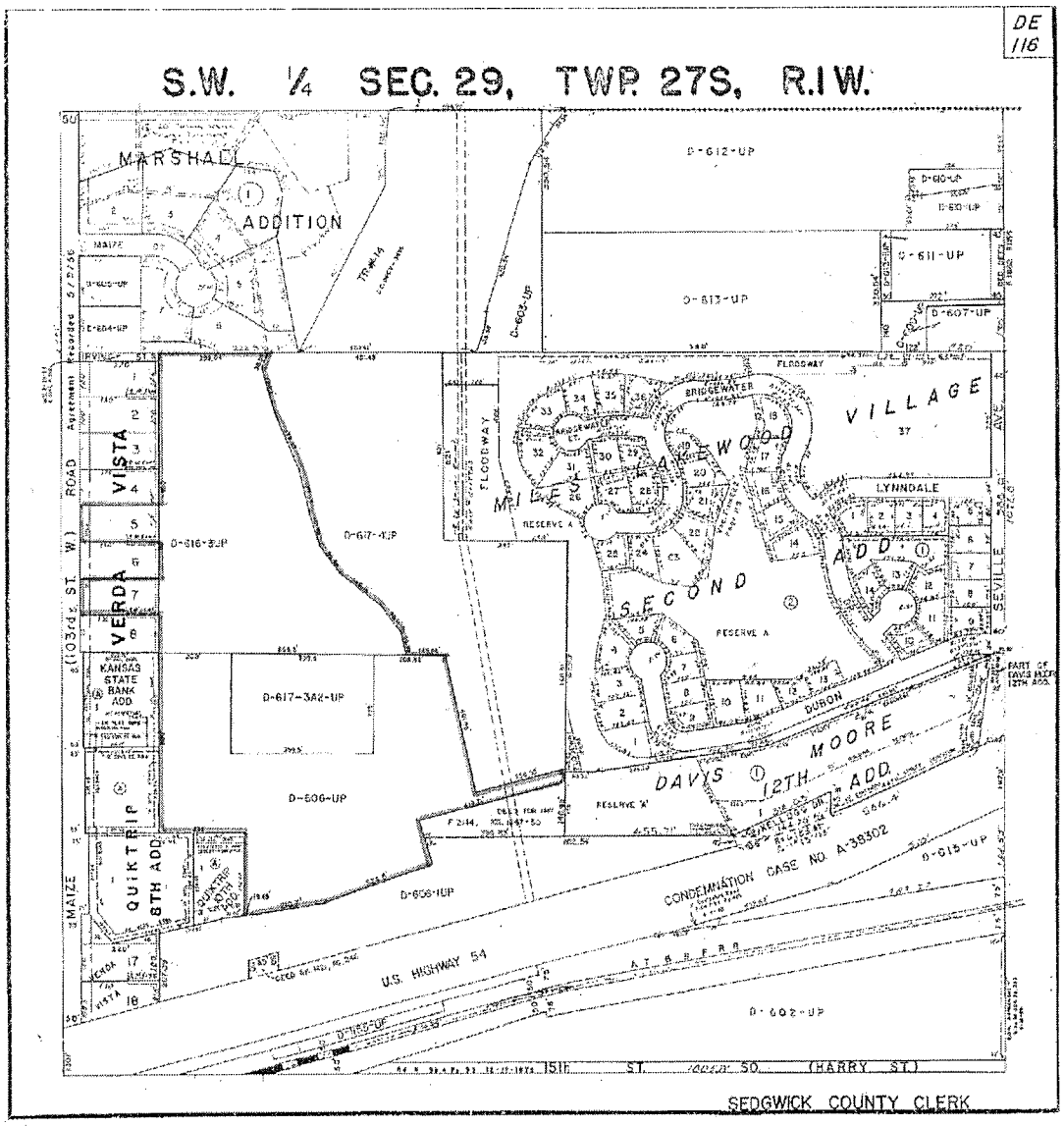
Capital Expenditures

Buildings, structures, and other facilities	$ 46,000,000
Drainage Improvements	$ 2,000,000
Site Improvements and Amenities	$ 2,000,000
Public Street Improvements	$ 1,000,000
Professional Design Services	$ 2,000,000

Annual Operational Expenditures

Including but not limited to, advertising, sales promotions, tourism promostions, economic development, etc.	$ 22,000,000
GRAND TOTAL .	$ 75,000,000

Exhibit D



CID DISTRICT BOUNDRY

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

Name
Timothy R. Austin

Poe & Associates, Inc.
5940 E. Central; Suite 200
Wichita, KS 67208
Address

(316) 685-4114
Telephone Number

Sworn to and subscribed before me 24th day of June, 2010.

Deborah Jadlow
Deputy City Clerk

EXHIBIT 2
LEGAL DESCRIPTION AND MAP EXHIBIT OF DISTRICT

LEGAL DESCRIPTION

TRACT A

That part of the SW1/4 Section 29, Township 27, South, Range 1 West of the 6th P.M. Sedgwick County, Kansas described as Beginning at the N.E. corner of Lot 1, Block A, Kansas State Bank Addition, Wichita Sedgwick County, Kansas being a common corner of the S.E. corner of Lot 8, Verda Vista Sedgwick County, Kansas; thence N88°20'30" E along the common line as extended East, 200 feet; thence S0l °18'15"E, 275 feet; thence N88°20'30" E, 399.5 feet; thence N01 °18'15"W, 275 feet; thence N88°20'30"E, 205.96 feet; thence S14°10'35"E, 401.95 feet to a point 40 feet North of the North line of U.S. 54 Highway as deeded on Film 2144, Page 1847; thence N74°04'48"E parallel with and 40 feet North of said U.S. 54 Highway, 258.59 to a point on the West line of Miles Lakewood Village Second Addition, Wichita Sedgwick County, Kansas; thence S0l°28'11"E along the West line of said Miles Lakewood Village Second Addition, and Davis Moore 12th Addition, Wichita Sedgwick County, Kansas, 41.31 feet to a point on the North line of said U.S. 54 Highway; thence S74°04'48"W along said U.S. 54 Highway, 419.31 feet; thence S15°55'12"E, 125 feet; thence S71°17'23"W, 324.5 feet; thence S76°05'36"W, 210.7 feet; thence S83°50'05"W, 19.89 feet to the S.E. corner Lot 1, Block A, Quiktrip 10th Addition, Wichita, Sedgwick County, Kansas; thence N01°19'41"W, 236.41 feet to the N.E. corner of said Quiktrip 10th Addition; thence S88°12'33"W along the North line of said Quiktrip 10th and the North line of Lot 1, Block A, Quiktrip 8th Addition, Wichita, Sedgwick County, Kansas, 236 feet to a bend point in the East line of said Quiktrip 8th Addition; thence N01°18'15"W along the East line of said Quiktrip 8th Addition and said Kansas State Bank Addition, 500 feet to the point of beginning.

Said tract contains 414,279 square feet more or less.

TRACT B

That part of the SW1/4 Section 29, Township 27, South, Range 1 West of the 6th P.M. Sedgwick County, Kansas described as commencing at the N.E. corner of Lot 1, Block A, Kansas State Bank Addition, Wichita Sedgwick County, Kansas being a common corner of the S.E. corner of Lot 8, Verda Vista Sedgwick County, Kansas; thence N88°20'30"E along the common line as extended East, 200 feet to the Point of Beginning thence continuing N88°20'30"E, 399.5 feet; thence S0l°18'15"E, 275 feet; thence S88'20'30"W, 399.5 feet; thence N01°18'15"W, 275 feet to the point of beginning;

ALONG WITH,

That part of the SW1/4 Section 29, Township 27, South, Range 1 West of the 6th P.M. Sedgwick County, Kansas and Lot 5, Verda Vista, Sedgwick County, Kansas all being described as Beginning at the N.E. corner of Lot 1, Block A, Kansas State Bank Addition, Wichita Sedgwick County, Kansas being a common corner of the S.E. corner of Lot 8, Verda Vista Sedgwick County, Kansas; thence N88°20'30"E along the common line as extended East, 659.8 feet to a point on the West line of a Ponding and Overland Flowage Easement filed on DOC#/FLM-PG: 28652650; thence N12°55'02"W along said Easement, 59.72 feet; thence continuing along said Easement N36°46'09"W, 96.11 feet; thence N51°17'57"W, 146.12 feet; thence N35°39'24"W, 95.48 feet; thence N16°26'04"W, 10l.68 feet; thence N1l°19'07"W, 120.39 feet along the West

line of a Ponding and Overland Flowage Easement filed on DOC#/FLM-PG: 28652650, and DOC#/FLM-PG: 28652651; thence continuing N22°33'08"W, along said DOC#/FLM-PG: 28652651, 179.57 feet; thence N16°20'54"W, 124.1 feet; thence N25°52'23"E, 38.55 feet more or less to a point on the South line of the North 40 acres of the SW1/4 of said Section 29; thence S88°20'41"W along the South line of the North 40 acres of said SW1/4, 299.04 feet to a point 270 feet East of the West line of said SW1/4, said point being 30 feet North of the N.E. corner of Lot 1, Verda Vista Sedgwick County, Kansas; thence S0l °18'15"E along the East line of said Verda Vista, 450 feet to the N.E. corner of Lot 5, in said Verda Vista; thence S88°20'41"W, 220 feet to the N.W. corner of said Lot 5; thence S0l°18'15"E, 100 feet to the S.W. corner of said Lot 5; thence N88°20'41"E, 220 feet to the S.E. comer of said Lot 5; thence S0l°18'15"E, 300 feet to the point of beginning.

Said tract contains 495,992 square feet more or less.

ALONG WITH,

TRACT C

Lot 7, Verda Vista, Sedgwick County, Kansas.

Said tract contains 22,000 square feet more or less.

Proposed Bowllagio Star Community Improvement District

City of Wichita, Kansas

Proposed Bowllagio Community Improvement District

Property Parcels within District

Property Parcels outside District

Software: ArcGIS 9.3.1
Hardware: Dell Xeon
Printer: HP 5000 Plotter

Map Data Source:
Property Parcels provided by Sedgwick County GIS

Road Centerlines provided by City of Wichita

Monday, July 19, 2010 9:12:29 AM
K:\gisweb\Projects\NRA\BowllagioCID.mxd

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 are

EXHIBIT 3
CID COSTS

Maize 54, LLC
COMMUNITY IMPROVEMENT DISTRICT
Use of Funds

Sources of Funds

CID	$ 16,000,000	
		$ 16,000,000

Uses of Funds

Capital Expenditures

Buildings, structures, and other facilities	$ 46,000,000
Drainage Improvements	$ 2,000,000
Site Improvements and Amenities	$ 2,000,000
Public Street Improvements	$ 1,000,000
Professional Design Services	$ 2,000,000

Annual Operational Expenditures

Including but not limited to, advertising, sales promotions, tourism promostions, economic development, etc.	$ 22,000,000
GRAND TOTAL .	$ 75,000,000

EXHIBIT 4
CERTIFICATION OF EXPENDITURES

Request No. _____ Date:_____

Pursuant to the Development Agreement (the "Agreement") for the Bowllagio Community Improvement District between the City of Wichita, Kansas and the undersigned (the "Developer"), the Developer requests reimbursement and hereby states and certifies as follows:

1. The date and number of this request are as set forth above.

2. All terms in this request shall have and are used with the meanings specified in the Agreement.

3. The names of the persons, firms or corporations to whom the payments have been made and reimbursement is hereby requested, the amounts to be reimbursed and the general classification and description of the costs for which each obligation requested to be reimbursed hereby was incurred are as set forth on **Attachment I** hereto.

4. These costs have been incurred and are reasonable costs that are reimbursable under the Agreement.

5. Each item listed above has not been previously reimbursed from the CID Sales Tax Fund and no part thereof has been included in any other Certification of Expenditures or other disbursement request previously filed with the City.

Maize 54, LLC

By: _____
Title: _____

Approved this ____ day of _____, 20__

CITY OF WICHITA

By: _____
City Representative

ATTACHMENT I
TO CERTIFICATION OF EXPENDITURE

REQUEST NO. _____ DATED_____ _

SCHEDULE OF PAYMENTS REQUESTED

Person, firm or corporation to whom payment was made	Amount to be reimbursed	General classification and description of the costs of issuance for which the Obligation to be reimbursed was incurred

Revised 3-4-2011 **Agenda Item No. XII-17**
(Corrected District Number)

City of Wichita
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Approval of Amended Development Agreement for Central and Oliver Community Improvement District ~~(District V)~~ ***(Districts I and II)***

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendation: Approve the amended development agreement.

Background: On August 17, 2010, the City adopted an Ordinance establishing a Community Improvement District (CID) on the northeast and southeast corners of Central and Oliver Avenue and approved a development agreement to govern the implementation of the CID project. The Developer requested certain amendments to the development agreement which required revisions to the City's CID Policy. On December 7, 2010, the City Council approved an amended CID Policy.

CID financing in the amount not-to-exceed $12,500,000 will be used for land acquisition, infrastructure and building construction within the district.

Analysis: The amended CID policy requires disclosure of a CID by the City providing information and an interactive map on its website and the developer posting a sign at the entrance informing customers that the project is made possible by a Community Improvement District, directing customers to the City's website for additional information. The policy also provides for 100% assignment of CID rights by the developer to a third party, with written approval of the City.

The attached Development Agreement between the City and Oliver Investments, LLC (the "Developer") provides the contractual framework for CID. The Developer will be required to submit certified expenditures to the City for reimbursement of eligible costs. The City will reimburse the Developer with CID funds for eligible costs as expenditures are approved if sufficient funds are available or quarterly as funds become available if funds are insufficient at the time. The agreement allows for the developer to request the issuance of Special Obligation Bonds. The City Council will have the option to approve the issuance of bonds in the future, if requested, but is not obligated to issue bonds. The amended agreement has been revised to include the CID Policy revisions.

Financial Considerations: Net CID sales tax revenues will be passed through by the City to Oliver Investments, LLC or its assignees. Guidelines and procedures for disbursing funds to developers and assignees have been established.

Goal Impact: Economic Vitality and Affordable Living and Quality of Life. Business prospects and workers seeking to relocate are attracted to a new city that takes care of its older sections.

Legal Considerations: The Law Department has reviewed and approved the Amended and Restated Development Agreement between the City and Oliver Investments, LLC.

Recommendation/Action: It is recommended that the City Council approve the amended development agreement.

Attachments: Amended and Restated Development Agreement

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this _____ day of March, 2011 by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the "City"); and **OLIVER INVESTMENTS, LLC**, (the "Developer") (with the "Developer" and the "City" collectively referred to as the "Parties" and each a "Party").

RECITALS

A. The City has authority to create a community improvement district ("CID"), pursuant to K.S.A. § 12-6a26 *et seq*. (the "CID Act"), for the purpose of financing certain public and private improvements as defined therein. Under the CID Act, the owners of at least 55% of the total assessed value and land area within the proposed CID boundaries may petition the City to request the creation of a CID and to impose special assessments or a special sales tax to pay the cost of eligible projects.

B. The Developer is the owner of certain land in the City located at the northeast and southeast corners of the intersection of Central and Oliver Avenues within the City (the "Project").

C. On or about July 1, 2010, the Developer, along with other property owners within the Project, submitted a petition (the "Petition") to the City requesting the formation of a community improvement district (the "District"). A copy of the Petition is attached hereto as **Exhibit 1**. A legal description and map of the boundaries of the District is set forth on **Exhibit 2** attached hereto.

D. On August 17, 2010, the City approved the creation of the District through the adoption of Ordinance No. 48-793 (the "CID Ordinance"). As was contemplated in the Petition, the CID Ordinance approved certain public and private improvements within the District (the "CID Improvements"), as well as certain administrative and operating expenses to be incurred within the District, as more particularly described on **Exhibit 3** attached hereto (collectively, the "CID Costs"), to be financed with pay-as-you-go financing payable from revenues received from the imposition of an additional 1% sales tax on all taxable sales within the District (the "CID Sales Tax"). The CID Sales Tax shall commence following submittal by the City of a certified copy of the CID Ordinance to the Kansas Department of Revenue. Submittal to the Kansas Department of Revenue shall occur following publication of the CID Ordinance and written notice to the City from the Developer requesting submittal.

E. The Parties now desire to enter into this Agreement to formalize the construction and financing of the CID Improvements.

NOW, **THEREFORE**, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION

A. Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

1. "Administrative Service Fee" means the fee charged by the City for administration of the CID Sales Tax Fund and distributions from same, in the amount of five percent (5%) of the CID Sales Tax collected.

2. "Agreement" means this Agreement as may be amended in accordance with the terms hereof.

3. "CID Act" means K.S.A. § 12-6a26 *et seq*.

4. "CID Bonds" means community improvement district special obligation bonds issued by the City to finance all or a portion of the CID Projects, if any.

5. "CID Costs" means, collectively, the costs of the CID Improvements and other eligible expenses related to the Project to the extent such expenses are "costs" of a "project" as defined in the CID Act, the estimated amounts of which are shown in **Exhibit 3**, which also includes the City's administrative service fee. In the event KSA 12-6a27(f) is subsequently amended or construed by a judicial or attorney general's opinion to include in the definition of "cost" interest accrued on borrowed money after the period of construction, post-construction costs of private financing shall then also be deemed included in "CID Costs."

6. "CID Improvements" means the Project and related permissible improvements as set forth in the CID Act and the CID Ordinance.

7. "CID Policy" means the policy of the City of Wichita governing the use of CID financing within the City, as most recently approved by the City Council on December 7, 2010 and as amended from time-to-time thereafter.

8. "CID Ordinance" means Ordinance No. 48-793 adopted by the City on August 17, 2010.

9. "CID Sales Tax" means the community improvement district sales tax authorized by the CID Act and the CID Ordinance.

10. "CID Sales Tax Fund" means the separate fund established by the City for deposit of the CID Sales Tax received from the State and collected within the District, and that is used to finance the CID Costs pursuant to the CID Act.

11. "City" means the City of Wichita, Kansas.

12. "City Representative" means the City Manager or his or her designee as evidenced by a written certificate furnished to the Developer containing the specimen signature of such person or persons and signed by the City Manager.

13. "Developer" means Oliver Investments, LLC**,** and its successors and assigns.

14. "Event of Default" means any event or occurrence as defined in Article VI of this Agreement.

15. "Parties" means the City and the Developer.

16. "Pay-as-you-go Financing" means pay-as-you-go financing, as that term is defined in the CID Act, which financing shall be used to pay the CID Costs.

17. "Signage" means a sign at least 24 square inches in size containing the words: "THIS PROJECT MADE POSSIBLE BY COMMUNITY IMPROVEMENT DISTRICT FINANCING" using type face of at least 18 points in size, and directing individuals to the City website for further information using type face of at least 12 points in size.

18. "State" means the State of Kansas.

19. "Term" means the earlier of twenty-two (22) years from the date the Director of Taxation for the State of Kansas begins collecting the CID Sales Tax within the District or when CID Costs up to the amount of $12,500,000 have been paid.

B. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

1. The terms defined in this Article include the plural as well as the singular.

2. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.

3. All references herein to "generally accepted accounting principles" refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.

4. All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.

5. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

6. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

ARTICLE II
DEVELOPMENT OF THE PROJECT

A. Completion of the CID Improvements. Any of the CID Improvements completed by the Developer shall be in conformance with approved plans for such improvements, City building codes, City Ordinances and all other applicable rules and regulations. Before commencement of construction or development of any buildings, structures or other work or improvement, the Developer shall obtain any and all permits which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work.

B. Cost of the Project. The Developer shall be responsible for and will bear all the CID Costs, subject to the terms of this Agreement governing reimbursement for expenditures on the CID Costs.

ARTICLE III
CID FINANCING

A. CID Sales Tax. The City shall deliver a certified copy of the CID Ordinance to the Kansas Department of Revenue imposing the CID Sales Tax upon the receipt of written notice from the Developer requesting such delivery. Except as otherwise set forth herein, all of the CID Sales Tax collected and delivered to the CID Sales Tax Fund shall be available for and dedicated to pay the CID Costs for the duration of the Term.

B. CID Sales Tax Fund. During the existence of the District all CID Sales Taxes generated within the District shall be deposited into a CID Sales Tax Fund, which shall be established and administered by the City in compliance with the laws of the State of Kansas and this Agreement and shall be held solely for the payment of the CID Costs and shall not be otherwise expended or commingled with other funds.

C. Pay-as-you-go Financing of the CID Costs. The CID Sales Tax shall be used to reimburse the Developer for the CID Costs, as described in **Exhibit C**. The City hereby agrees that the estimates of expenses related to the CID Costs may change prior to and during the expenditure of the CID Costs. However, the aggregate total amount of all CID Costs to be paid hereunder shall not exceed $12,500,000. Unless otherwise agreed by the Parties in writing, reimbursements shall be made solely to the Developer unless otherwise set forth in this Agreement, except for payment of the City's Administrative Service Fee, which will be deducted by the City in advance of distribution of the CID Sales Tax funds to Developer.

D. Certification of Expenditures. The Developer shall certify all costs and expenditures to be made in connection with the CID Costs in accordance with the following:

1. The Developer shall submit to the City a Certification of Expenditures in the form attached hereto as **Exhibit D** setting forth the amount for which reimbursement is sought and an itemized listing of the related CID Improvements.

2. Each Certification of Expenditures shall be accompanied by such bills, contracts, invoices, and other evidence as the City shall reasonably require to document appropriate payment.

E. Reimbursement. The City shall have twenty (20) calendar days after receipt of any Certification of Expenditures to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certification of Expenditures shows payment by the Developer of the CID Costs; (2) the expense was incurred; (3) the aggregate amount of CID Costs theretofore paid pursuant to this Agreement is less than $12,500,000 and if added to the amount of the Certification of Expenditures, would not exceed $12,500,000; (4) the Developer is not in material default under this Agreement; and (5) there is no fraud on the part of the Developer, then the City shall approve the Certification of Expenditures and promptly reimburse the Developer for the CID Costs pursuant to the terms of this Agreement if sufficient funds are available in the CID Sales Tax Fund, and quarterly as funds become available in the event that funds in the CID Sales Tax Fund are at that time insufficient. If the City reasonably disapproves of the Certification of Expenditures, the City shall notify the Developer in writing of the reason for such disapproval within such twenty (20) day period.

F. Payment of the City's Administrative Service Fee. The City shall be paid from the CID Sales Tax Fund an Administrative Service Fee in an amount equal to five percent (5%) of the total CID revenues generated within the District. The $5,000 application fee paid by Developer upon submission of this Agreement to the City shall be applied as a credit toward payment of the Administrative Service Fee.

ARTICLE IV
CID BOND ISSUANCE

F. CID Bonds. Notwithstanding anything in this Agreement to the contrary, the Developer may request, in accordance with the City's CID Policy, the issuance of special obligation bonds to pay the CID Costs issued in one or more series payable from the CID Sales Tax and on terms mutually agreeable to the Parties (the "CID Bonds").

G. CID Bond Fund. If the CID Bonds are issued by the City, a CID bond fund shall be created and administered by the City or its designee and will be utilized solely to repay the CID Bonds. The specifics of the issuance and repayment of the CID Bonds shall be in accordance with the bond documents for such issuance, to be approved by City ordinance, and in accordance with this Agreement. Upon issuance of the CID Bonds, the net bond proceeds of the issuance of such bonds shall be disbursed to the Developer by the City or bond trustee for the purpose of funding the CID Costs in accordance with the terms of this Agreement and the bond documents of such issuance.

H. Privately Placed Bonds. The Developer may request to have the CID Bonds privately placed and sold to (i) institutional investors including, without limitation, insurance companies, funds and state or federally charted financial institutions, and/or (ii) the Developer and/or entities related to or affiliated with the Developer.

I. No Full Faith and Credit Bonds. The Parties agree that any CID Bonds shall be special obligation bonds only and shall not be general obligation bonds backed by the full faith and credit of the City.

ARTICLE V
DEFAULTS AND REMEDIES

A. Defaults - General. The following events shall constitute an Event of Default under this Agreement:

1. Subject to the extensions of time set forth in subsection F below (Enforced Delay), failure or delay by any Party to perform any term or provision of this Agreement, after receiving written notice and failing to cure, as set forth in paragraph (2) below, constitutes a default under this Agreement. A Party claiming a default (claimant) shall give written notice of default to the other parties, specifying the default complained of.

2. The claimant shall not institute proceedings against a Party, nor be entitled to damages if the other Party within fourteen (14) days from receipt of such written notice, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice; or if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period, such cure, correction or remedy is diligently and continuously prosecuted until completion thereof.

B. Remedies on Default. Whenever any Event of Default by the City shall have occurred and be continuing, subject to applicable cure periods, the Developer may pursue any remedy at law and in equity, except as provided below. Whenever any Event of Default by the Developer shall have occurred and be continuing, subject to applicable cure periods, the City may (1) pursue any remedy at law and in equity, except as provided below, and/or (2) refuse to approve any further Certificates of Expenditures and make any disbursements until such Event of Default is cured by the Developer and/or terminate this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall the Developer or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise. For the purposes of this Section, consequential damages shall include, but not be limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred by the non-defaulting Party. Further, specific performance shall not be available to the City to require the Developer to construct any improvements within the District. The only remedy that may be sought from the City is strictly limited to use of CID revenues available in the CID Fund to pay CID Costs (i.e., the City can have no liability under this Agreement that in any way extends to its general or tax funds, or any other source of funds apart from the CID revenues derived from this project), except that, in case of any diversion by the City of CID revenues from the CID Fund in breach of this Agreement, the City will be obligated to restore such diverted revenues, dollar for dollar, from any lawfully available source of appropriations.

C. Legal Actions.

1. Institution of Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Sedgwick County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas.

2. Applicable Law. The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement.

3. Acceptance of Service of Process.

(a) In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

(b) In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon an officer or agent of the Developer and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law. In the event the Developer no longer has an officer or registered agent to serve, the Secretary of State is hereby irrevocably appointed to accept service for the Developer.

D. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

E. Inaction Not a Waiver of Default. Any failures or delays by a Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

F. Enforced Delay; Extension of Times of Performance.

1. In addition to specific provisions of this Agreement, performance by a Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays or defaults are due to default of the other Party; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; market conditions; quarantine restrictions; freight embargoes; lack of transportation; or unusually severe weather; or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform.

2. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer.

ARTICLE VI
GENERAL PROVISIONS

A. Termination of the CID. The City shall not terminate the CID prior to the expiration of its Term, except as provided by law, or as requested by the Developer.

B. Modification of the District. From time to time during the Term, the Developer may request, and the City shall reasonably consider, any modification to the District, in accordance with the CID Act and the CID Policy.

C. Public Disclosure. The Developer will post Signage adjacent to the main entrance of the property. Signage is to be posted and maintained throughout the term of the CID and Agreement.

D. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the Parties, upon official action of the City's governing body approving said amendment, and by the execution of said amendment by the Parties or their successors in interest. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties shall take such reasonable measures including, but not limited to, reasonable amendment of this Agreement to cure such invalidity where the invalidity contradicts the clear intent of the Parties in entering into this Agreement.

E. Assignment. No Party may assign all or any part of its interest in this Agreement without the prior written consent of the other Parties, and any such assignment without such consent shall be void; except that the Developer may assign all or any part of its interest in this Agreement upon the prior written consent of the City Representative; provided, however, in the event the City Representative does not consent to such assignment, the Developer may proceed before the City's governing body to request that such assignment be approved; and provided further that any such assignments be administered through a single, third party fiduciary who would receive any payments made pursuant to such assignments and distribute funds to assignees and who would be responsible for calculating any subdivision of funds for such distribution. Under no circumstances shall the City be responsible for determining the amount of funds to be assigned under this provision. Notwithstanding the foregoing, the Developer, with prior written notice to the City, may make a collateral assignment of 100% its rights under this Agreement to a single financial institution as security for a financing of the Project. Any decision to consent or refuse consent to an assignment pursuant to this paragraph shall be solely at the discretion of the City Representative or the City's governing body, as the case may be. Nothing herein shall be construed to delegate rights or responsibilities of the City under this agreement, including without limitation the determination of eligible project costs for reimbursement.

F. Right to Inspect. The Developer agrees that the City, with reasonable advance notice and during normal business hours, shall have the right and authority to review, inspect,

audit, and copy, from time to time, all of the Developer's books and records relating to the CID Costs as pertinent to the purposes of this Agreement.

G. Right of Access. For the purposes of assuring compliance with this Agreement, the City Representative shall have the right of access to the District, without charges or fees, during normal business hours for purposes related to this Agreement, including, but not limited to, the inspection of the work being performed in constructing any of the CID Improvements.

H. No Other Agreement. Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersedes all prior agreements, negotiations and discussions, both written and oral, relative to the subject matter of this Agreement and is a full integration of the agreement of the Parties.

I. Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable. In no such event shall the validity or enforceability of the remaining valid portions hereof be affected.

J. Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To the Developer:

Oliver Investments, LLC
Attn: Christian Ablah
8110 E. 32nd Street North, Suite 150
Wichita, Kansas 67226

With a copy to:

Korb W. Maxwell
Polsinelli Shughart, P.C.
6201 College Blvd., Ste. 500
Overland Park, KS 66211

To the City:

City Manager
City Hall, 13th Floor
455 N. Main
Wichita, Kansas 67202

With copies to:

Urban Development Office
Attention: Allen Bell
City Hall, 13th Floor
455 N. Main
Wichita, Kansas 67202

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

K. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

L. Recordation of Agreement. The Parties agree to execute and deliver a memorandum of this Agreement in proper form for recording in the real property records of Sedgwick County, Kansas.

M. Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld.

N. Survivorship. Notwithstanding the termination of this Agreement, the Developer's obligations set out in Article II and Section V.B. and C. shall survive the termination of this Agreement to the extent that any incident giving rise to a claim, suit, judgment or demand occurred during the Term hereof.

O. Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF WICHITA, KANSAS

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, City Attorney

OLIVER HOLDINGS, LLC

By: _____

Name: _____

Title: _____

Date: _____

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

On this _____ day of _____, 2011, before me personally appeared ___ _____ to me personally known, who being by me duly sworn did say that he is the _____ of Oliver Holdings, LLC, and that said instrument was signed and delivered on behalf of said limited liability company and acknowledged to me that he/she executed the same as the free act and deed of said limited liability company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____
NOTARY PUBLIC

My Commission Expires:

EXHIBIT LIST

EXHIBIT 1 – CID PETITION

EXHIBIT 2 – LEGAL DESCRIPTION AND MAP EXHIBIT OF DISTRICT

EXHIBIT 3 – CID COSTS

EXHIBIT 4 – CERTIFICATION OF EXPENDITURES

EXHIBIT 1
CID PETITION

RECEIVED
JUL 01 '10
CITY CLERK OFFICE

PETITION FOR THE CREATION OF A COMMUNITY IMPROVEMENT DISTRICT

TO: The Governing Body,
City of Wichita, Kansas

The undersigned, being the owners of record, whether resident or not, of the following:

1. More than fifty-five percent (55%) of the land area contained within the hereinafter described community improvement district; and
2. More than fifty-five percent (55%) by assessed value of the land area contained within the hereinafter described community improvement district.

hereby petition the City of Wichita, Kansas (the "**City**") to create a community improvement district and authorize the proposed projects hereinafter set forth, all in the manner provided by K.S.A § 12-6a26, *et seq*. (the "**Act**"). In furtherance of such request, the petitioners state as follows:

1. GENERAL NATURE

The general nature of the proposed projects (the "**Projects**") is to promote the redevelopment and revitalization of a blighted portion of the Central and Oliver corridor, as is more particularly described herein, by providing community improvement district financing in accordance with this petition and with the Act to finance the construction, maintenance, and procurement of certain improvements, costs, and services within the District, including, but not limited to: land acquisition, infrastructure related items, streets, sidewalks, parking lots and facilities, buildings, facilities, tenant improvements, water management and drainage related items, landscaping, lighting, art, water features and other cultural amenities, ongoing maintenance of the District, marketing, advertisement and economic development, cleaning and maintenance, and the City and the developer's administrative costs in establishing and maintaining the District, and any other items permitted to be financed within the District under the Act.

2. ESTIMATED COST

The estimated or probable and maximum cost of the Projects is $12,500,000. The maximum amount of operating costs, including, but not limited to, security, entertainment, public events, business promotion, employee training, and market studies is $400,000. See the attached **EXHIBIT "A"** for a detailed budget.

3. PROPOSED METHOD OF FINANCING

It is proposed that the Projects be financed through a combination of private equity,

private debt and Pay-as-you-go financing, as defined in the Act, or potentially the issuance of special obligation bonds/notes in the future.

4. PROPOSED METHOD AND AMOUNT OF ASSESSMENT

It is not being proposed that the Projects be financed through the levying of assessments.

5. PROPOSED AMOUNT OF SALES TAX

It is being proposed that the Projects be financed in part through the levying of a 1% add-on sales tax as authorized by the Act.

6. MAP AND LEGAL DESCRIPTION OF THE PROPOSED DISTRICT

A map of the proposed community improvement district (the "**District**") is attached hereto as **EXHIBIT "B"**.

The legal description of the District is attached hereto as **EXHIBIT "C"**.

7. NOTICE TO PETITION SIGNERS

Names may not be withdrawn from this Petition by the signers hereof after the City commences consideration of this Petition, or later than seven (7) days after the filing hereof with the City Clerk, whichever occurs first.

EXHIBIT "A"

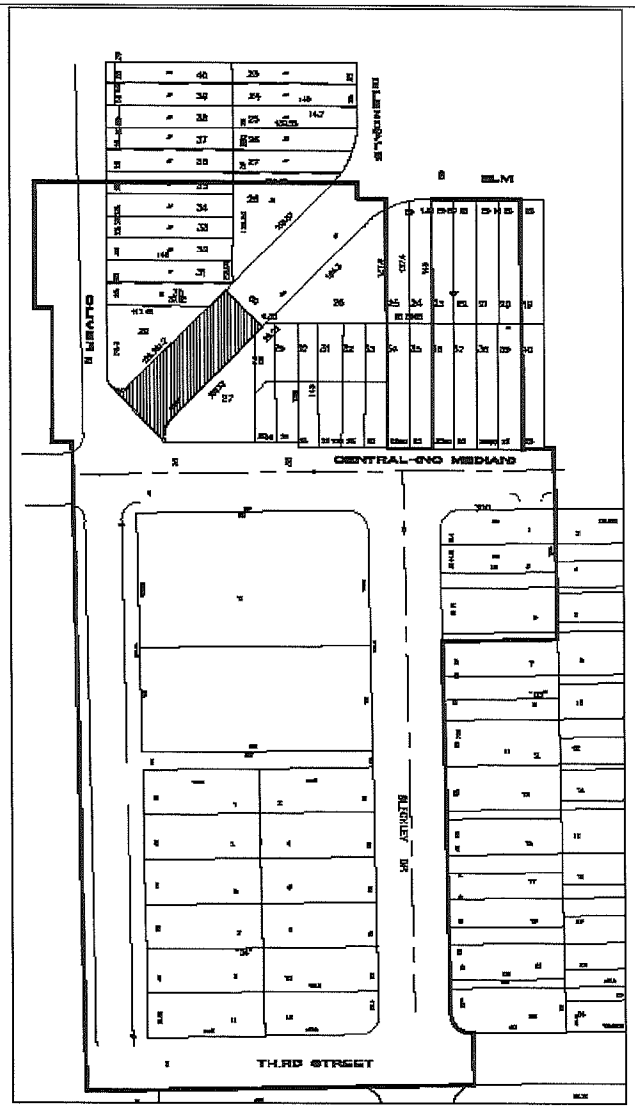
ESTIMATED PROBABLE COST OF PROJECTS

Central and Oliver Development
Community Improvement District - Uses

Development Costs	Description	Project Costs
ACQUISITION COSTS		
Purchase Price		$ 3,650,000.00
Due Dilligence		$ 34,000.00
Closing Costs		$ 85,000.00
SUBTOTAL		$ 3,769,000.00
SITEWORK		
Demolition	Utility removal, residential bldgs	$ 65,450.00
Supervision		$ 82,000.00
Permits	Permits, bonds	$ 5,000.00
SUBTOTAL		$ 152,450.00
SITE		
Earthwork	Dirt haul	$ 103,450.00
Site lighting		$ 15,750.00
Site landscaping		$ 45,250.00
Paving curbing	Plots, drives	$ 325,450.00
Sidewalks		$ 19,500.00
SUBTOTAL		$ 509,400.00
UTILITY RELOCATES (PRIVATE)		
Water	Tap fees	$ 24,250.00
Sanitary sewer	Hook-up fees	$ 16,250.00
SUBTOTAL		$ 40,500.00
HARD RENOVATION COSTS		
New construction		$ 3,100,000.00
Remodel		$ 1,200,000.00
New signage		$ 154,000.00
SUBTOTAL		$ 4,454,000.00
SOFT COSTS - DESIGN / ENGINEERING		
Civil land planning	Roads, utility work	$ 76,250.00
Soils environmental	Soil testing	$ 5,400.00
Survey and platting	Boundary and topo survey	$ 15,650.00
SUBTOTAL		$ 97,300.00
SOFT COSTS - LEGAL/DEVELOPER FEES		
Legal	Benefits districts preparation	$ 50,000.00
Consulting fee	Developer oversight and coordination	$ 18,000.00
Leasing/Marketing Costs		$ 275,000.00
Maintenance		$ 100,000.00
Administrative		$ 45,000.00
Other	Other	$ 16,500.00
SUBTOTAL		$ 504,500.00
SUBTOTAL - PROJECT COSTS		**$ 9,527,150.00**
SUBTOTAL w/ 25% CONTINGENCY		**$ 11,908,937.50**
ONGOING OPERATING COSTS		
Security		$ 100,000.00
Entertainment/Public Events		$ 100,000.00
Business Promotion		$ 100,000.00
Market Studies		$ 50,000.00
Employee Training		$ 50,000.00
SUBTOTAL		**$ 400,000.00**
TOTAL COSTS		**$ 12,308,937.50**

EXHIBIT "B"

MAP OF DISTRICT



LEGAL DESCRIPTION

Lots 28 through 38, Block 4, East Highlands, Sedgwick County, Kansas, EXCEPT the north 11 feet of Lot 38 AND the north 11 feet of Lot 28 in said Block 4 of said Addition, AND EXCEPT that part dedicated for road right of way;

ALONG WITH Lots 28 through 33, Block 14, East Highlands, Sedgwick County, Kansas, EXCEPT that part deeded to city for road right of way AND EXCEPT LOTS 24, 25, 34, 35 in said Block 14 of said Addition;

ALONG WITH the vacated portion of said Highland Drive (now Elm Street) described in the vacation order recorded on Film 678, Page 787;

ALONG WITH the following described vacated portion of Elm Street described as follows:

Beginning at a point on the south line of Elm Street (formerly Highland Drive) as platted in East Highlands Addition, Wichita, Sedgwick County, Kansas, said point being the northeasternmost corner of the vacated portion of said Highland Drive described in the vacation order recorded on Film 678, Page 787, for a point of beginning;

Thence northwesterly, along the northeast line of said vacated portion of Highland Drive for a distance of 80 feet, to the north line of said Elm Street right-of-way;

Thence northeasterly along the north line of said Elm Street right-of-way for a distance of 198.25 to a point of curvature to the left, (said curve having a radius of 100 feet, an arc length of 77.21 feet and a deflection angle of 44°26';)

Thence northeasterly along said curve to the left for a distance of 77.21 feet, to the west line of Glendale right-of-way as platted in said Addition;

Thence south along the west line of said Glendale right-of-way extended for a distance of 88.33 feet, to a point of intersection with the south line of said Elm Street right-of-way extended, said south line of Elm also being the north line of Block 14 in said Addition;

Thence east along said south line of Elm Street right-of-way extended for a distance of 78.45 feet to a point of curvature on said south line of Elm Street;

Thence southwesterly along the south line of said Elm Street right-of-way along a curve to the left, said curve having a radius of 100 feet, an arc length of 78.44 feet and a deflection angle of 44°30';

Thence southwesterly along the south line of said Elm Street right-of-way, for a distance of 198.68 feet to the point of Beginning; Along With Lots 23 through 25, and Lots 36 through 38, Block 14, East Highlands, Sedgwick County, Kansas, EXCEPT that part deeded to city for road right of way.

ALONG WITH Lots 1, 3, 5 and the north 8.50 feet of Lot 7, Block 2, East Boulevard Addition to Wichita, Kansas; Along With All of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13, EXCEPT the west 5 feet thereof for street all in Block 1, East Boulevard Addition to Wichita, Sedgwick County, Kansas.

ALONG WITH the Blackley Drive street right-of-way from the south line of the Third Street right-of-way extended to the south line of the Central Avenue street right-of-way extended.

ALONG WITH the Third Street right-of-way from the west line of Blackley Drive street right-of-way to the east line of Oliver Street right-of-way.

ALONG WITH the Oliver Street right-of-way from the south line of Third Street right-of-way extended to a line, 11 feet south of the north line of Lot 38, Block 14, East Highlands, Sedgwick County, Kansas, extended.

ALONG WITH the Central Avenue right-of-way from the west line of the Oliver Street right-of-way extended to the east line of Lot 1 , Block 2, East Boulevard Addition to Wichita, Kansas, extended.

Said tract contains 462,738 square feet more or less.

Vacated Elm Street
(From Vacation Order—Film 678, Page 794)
That part of Highland Drive (now Elm Street) right-of-way as platted in East Highlands, Sedgwick County, Kansas, more fully described as a 50-foot wide strip 30 feet each side of the centerline of said street, extending 173 feet northeasterly (along the centerline of said street) from the following described line: Beginning 30 feet east and 94.7 feet north of the Southwest Corner of Section 13, Township 27 South, Range 1 East of the 6th P.M.; thence southeasterly to a point 80.28 feet east and 35 feet north of said Southwest Corner.

No.	Date	By	Revisions
1			
2			
3			
4			

Central & Elm

EXHIBIT

CITY OF WICHITA, KANSAS

ROE & ASSOCIATES OF KANSAS, INC.
CONSULTING ENGINEERS
8700 E. Central, Wichita, KS 67206-2404
Phone 316/683-4411 • Fax 316/683-4415

EXHIBIT

Designed By: B. Schmidt
Drawn By: B. Schmidt
File: 001/735-Central-Elm/Exhibit.dwg
Date: 11/30/06
Sheet 1 of 1

EXHIBIT "C"

LEGAL DESCRIPTION OF DISTRICT

Lots 28 through 35, Block 4, East Highlands, Sedgwick County, Kansas, EXCEPT the north 11 feet of Lot 28 AND the north 11 feet of Lot 35 in said Block 4 of said Addition, AND EXCEPT that part dedicated for road right of way;

ALONG WITH Lots 26 through 33, Block 14, East Highlands, Sedgwick County, Kansas, EXCEPT that part deeded to city for road right of way AND EXCEPT LOTS 24, 25, 34, 35 in said Block 14 of said Addition;

ALONG WITH the vacated portion of said Highland Drive (now Elm Street) described in the vacation order recorded on Film 679, Page 797;

ALONG WITH the following described vacated portion of Elm Street described as follows:

> Beginning at a point on the south line of Elm Street (formerly Highland Drive) as platted in East Highlands Addition, Wichita, Sedgwick County, Kansas, said point being the northeasternmost corner of the vacated portion of said Highland Drive described in the vacation order recorded on Film 679, Page 797, for a point of beginning; Thence northwesterly, along the northeast line of said vacated portion of Highland Drive for a distance of 60 feet, to the north line of said Elm Street right-of way; Thence northeasterly along the north line of said Elm Street right-of-way for a distance of 169.25 to a point of curvature to the left, (said curve having a radius of 100 feet, an arc length of 77.81 feet and a deflection angle of 44°35'); Thence northeasterly along said curve to the left for a distance of 77.81 feet, to the west line of Glendale right-of-way as platted in said Addition; Thence south along the west line of said Glendale right-of-way extended for a distance of 88.32 feet, to a point of intersection with the south line of said Elm Street right-of-way extended, said south line of Elm also being the north line of Block 14 in said Addition; Thence east along said south line of Elm Street right-of-way extended for a distance of 79.48 feet to a point of curvature on said south line of Elm Street; Thence southwesterly along the south line of said Elm Street right-of-way along a curve to the left, said curve having a radius of 100 feet, an arc length of 79.44 feet and a deflection angle of 45°31'; Thence southwesterly along the south line of said Elm Street right-of-way, for a distance of 160.89 feet to the point of Beginning; Along With Lots 20 through 23, and Lots 36 through 39, Block 14, East Highlands, Sedgwick County, Kansas, EXCEPT that part deeded to city for road right of way.

ALONG WITH Lots 1, 3, 5 and the north 8.50 feet of Lot 7, Block 2, East Boulevard Addition to Wichita, Kansas; Along With All of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13, EXCEPT the west 5 feet thereof for street all in Block 1, East Boulevard Addition to Wichita, Sedgwick County, Kansas.

ALONG WITH the Bleckley Drive street right-of-way from the south line of the Third Street right-of-way extended to the south line of the Central Avenue street right-of-way extended,

ALONG WITH the Third Street right-of-way from the west line of Bleckley Drive street right-of-way to the east line of Oliver Street right-of-way,

ALONG WITH the Oliver Street right-of-way from the south line of Third Street right-of-way extended to a line, 11 feet south of the north line of Lot 35, Block 14, East Highlands, Sedgwick County, Kansas, extended,

ALONG WITH the Central Avenue right-of-way from the west line of the Oliver Street right-of-way extended to the east line of Lot 1 , Block 2, East Boulevard Addition to Wichita, Kansas, extended.

Said tract contains 462,798 square feet more or less.

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

STEVE WILLIAM RANDLE

Steve William Randle

Date: 4/28/10

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 28TH day of APRIL, 2010 before me, the undersigned, a Notary Public in and for said County and State, came Steve William Randle, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

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

(Seal) JUNE LOGGINS - HICKS
Notary Public - State of Kansas
My Appt. Expires 4-18-2010

June Loggins-Hicks
Notary Public in and for said
County and State

My Commission Expires:

4-18-2010

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

MILE HIGH RESORTS, LLC

By: _____
Signature of Authorized Agent for Entity

Name: Alison White

Title: President
(Type or print)

Date: 4/30/10

ACKNOWLEDGMENT

State of California
County of Orange)

On April 30, 2010 before me, Natalie Asik, Notary Public
(insert name and title of the officer)

personally appeared Alison White, President, Mile High Resorts LLC
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

NATALIE ASIK
NOTARY PUBLIC - CALIFORNIA
COMMISSION # 1827004
ORANGE COUNTY
My Comm. Exp. December 16, 2012

Signature _____ **(Seal)**

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

MARCUS TURMAN

Date: May 5, 2010

ACKNOWLEDGMENT

STATE OF Kansas)
) ss.
COUNTY OF Sedgwick)

BE IT REMEMBERED, that on this 5th day of May, 2010 before me, the undersigned, a Notary Public in and for said County and State, came Marcus Turman, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

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

(Seal) CONNIE L. KELLY
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 5/13/11

Connie L. Kelly
Notary Public in and for said County and State

My Commission Expires:

5/13/11

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

CHARLES B. EASTER

Date: 5-3-2010

ACKNOWLEDGMENT

STATE OF Kansas)
) ss.
COUNTY OF Douglas)

BE IT REMEMBERED, that on this 3rd day of May, 2010 before me, the undersigned, a Notary Public in and for said County and State, came Charles B. Easter, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

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

(Seal)

Notary Public in and for said
County and State

My Commission Expires:
10-14-2012

TIFFANY JOHNSON
Notary Public - State of Kansas
My Appt. Expires 10-14-2012

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

MICHAEL A. FARHA

Michael A. Farha

Date: 5/10/10

JENNIFER R. FARHA

Jennifer R. Farha

Date: 5.10.10

ACKNOWLEDGMENT

STATE OF Kansas)
) ss.
COUNTY OF Sedgwick)

BE IT REMEMBERED, that on this 10th day of May, 2010 before me, the undersigned, a Notary Public in and for said County and State, came Michael A. Farha and Jennifer R. Farha, who are known to me to be the same persons who executed the within instrument, and such persons duly acknowledged the execution of the same.

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

(Seal)

Lara Patterson
Notary Public in and for said
County and State

My Commission Expires:

12/8/12

LARA PATTERSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 12/8/12

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

CENTRAL & OLIVER, LLC

By: _____
Signature of Authorized Agent for Entity

Name: Christian A. Ablah

Title: Member
(Type or print)

Date: 5/18/10

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 18TH day of MAY, 2010 before me, the undersigned, a Notary Public in and for said County and State, came CHRISTIAN A. ABLAH, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

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

(Seal) JUNE LOGGINS - HICKS
Notary Public - State of Kansas
My Appt. Expires 4-18-2013

June Loggins-Hicks
Notary Public in and for said
County and State

My Commission Expires:

4-18-2013

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

OLIVER INVESTMENTS, LLC

By: _____
Signature of Authorized Agent for Entity

Name: Christian A. Ablah

Title: Member
(Type or print)

Date: 5/18/10

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 18TH day of MAY, 2010 before me, the undersigned, a Notary Public in and for said County and State, came CHRISTIAN A. ABLAH, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

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

(Seal) JUNE LOGGINS - HICKS
Notary Public - State of Kansas
My Appt. Expires 4-18-2013

June Loggins-Hicks
Notary Public in and for said
County and State

My Commission Expires:

4-18-2013

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

EXCHANGE HOLDINGS, LLC

By: _____
Signature of Authorized Agent for Entity

Name: Christian A. Ablah

Title: Member
(Type or print)

Date: 5/18/10

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 18TH day of MAY, 2010 before me, the undersigned, a Notary Public in and for said County and State, came CHRISTIAN A. ABLAH, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

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

(Seal) JUNE LOGGINS - HICKS
Notary Public - State of Kansas
My Appt. Expires 4-18-2013

JUNE LOGGINS-HICKS
Notary Public in and for said
County and State

My Commission Expires:

4-18-2013

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

CENTRAL & BLECKLEY, LLC

By: _____
Signature of Authorized Agent for Entity

Name: Christian A. Ablah

Title: Member
(Type or print)

Date: 5/18/10

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 18TH day of MAY, 2010 before me, the undersigned, a Notary Public in and for said County and State, came CHRISTIAN A. ABLAH, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

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

(Seal) JUNE LOGGINS - HICKS
Notary Public - State of Kansas
My Appt. Expires 4-18-2013

June Loggins-Hicks
Notary Public in and for said
County and State

My Commission Expires:

4-18-2013

IN WITNESS WHEREOF, the undersigned petitioners have executed the above foregoing petition to create the district at the dates set forth opposite their respective signatures below:

CENTRAL & OLIVER HOLDINGS, LLC

By: _____
Signature of Authorized Agent for Entity

Name: Christian A. Ablah

Title: Member
(Type or print)

Date: 5/18/10

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 18TH day of MAY, 2010 before me, the undersigned, a Notary Public in and for said County and State, came CHRISTIAN A. ABLAH, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

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

(Seal) JUNE LOGGINS - HICKS
Notary Public - State of Kansas
My Appt. Expires 4-18-2013

June Loggins-Hicks
Notary Public in and for said
County and State

My Commission Expires:

4-18-2013

EXHIBIT 2
LEGAL DESCRIPTION AND MAP EXHIBIT OF DISTRICT

Lots 28 through 35, Block 4, East Highlands, Sedgwick County, Kansas, EXCEPT the north 11 feet of Lot 28 AND the north 11 feet of Lot 35 in said Block 4 of said Addition, AND EXCEPT that part dedicated for road right of way;

ALONG WITH Lots 26 through 33, Block 14, East Highlands, Sedgwick County, Kansas, EXCEPT that part deeded to city for road right of way AND EXCEPT LOTS 24, 25, 34, 35 in said Block 14 of said Addition;

ALONG WITH the vacated portion of said Highland Drive (now Elm Street) described in the vacation order recorded on Film 679, Page 797;

ALONG WITH the following described vacated portion of Elm Street described as follows:

> Beginning at a point on the south line of Elm Street (formerly Highland Drive) as platted in East Highlands Addition, Wichita, Sedgwick County, Kansas, said point being the northeasternmost corner of the vacated portion of said Highland Drive described in the vacation order recorded on Film 679, Page 797, for a point of beginning; Thence northwesterly, along the northeast line of said vacated portion of Highland Drive for a distance of 60 feet, to the north line of said Elm Street right-of way; Thence northeasterly along the north line of said Elm Street right-of-way for a distance of 169.25 to a point of curvature to the left, (said curve having a radius of 100 feet, an arc length of 77.81 feet and a deflection angle of 44°35'); Thence northeasterly along said curve to the left for a distance of 77.81 feet, to the west line of Glendale right-of-way as platted in said Addition; Thence south along the west line of said Glendale right-of-way extended for a distance of 88.32 feet, to a point of intersection with the south line of said Elm Street right-of-way extended, said south line of Elm also being the north line of Block 14 in said Addition; Thence east along said south line of Elm Street right-of-way extended for a distance of 79.48 feet to a point of curvature on said south line of Elm Street; Thence southwesterly along the south line of said Elm Street right-of-way along a curve to the left, said curve having a radius of 100 feet, an arc length of 79.44 feet and a deflection angle of 45°31'; Thence southwesterly along the south line of said Elm Street right-of-way, for a distance of 160.89 feet to the point of Beginning; Along With Lots 20 through 23, and Lots 36 through 39, Block 14, East Highlands, Sedgwick County, Kansas, EXCEPT that part deeded to city for road right of way.

ALONG WITH Lots 1, 3, 5 and the north 8.50 feet of Lot 7, Block 2, East Boulevard Addition to Wichita, Kansas; Along With All of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13, EXCEPT the west 5 feet thereof for street all in Block 1, East Boulevard Addition to Wichita, Sedgwick County, Kansas.

ALONG WITH the Bleckley Drive street right-of-way from the south line of the Third Street right-of-way extended to the south line of the Central Avenue street right-of-way extended,

ALONG WITH the Third Street right-of-way from the west line of Bleckley Drive street right-of-way to the east line of Oliver Street right-of-way,

ALONG WITH the Oliver Street right-of-way from the south line of Third Street right-of-way extended to a line, 11 feet south of the north line of Lot 35, Block 14, East Highlands, Sedgwick County, Kansas, extended,

ALONG WITH the Central Avenue right-of-way from the west line of the Oliver Street right-of-way extended to the east line of Lot 1 , Block 2, East Boulevard Addition to Wichita, Kansas, extended.

Said tract contains 462,798 square feet more or less.

Proposed Central and Oliver Community Improvement District
City of Wichita, Kansas
Proposed Central and Oliver Community Improvement District
Property Parcels within District
Property Parcels outside District
Software: ArcGIS 9.3.1
Hardware: Dell Xeon
Printer: HP 5000 Plotter
Map Data Source
Property Parcels
provided by
Sedgwick County GIS
Road Centerlines
provided by
City of Wichita
E ELM ST
E CENTRAL AVE
E 3RD ST N
N GLENDALE AVE
N HARDING AVE
N OLIVER AVE
N DELLROSE AVE
N BLECKLEY DR
N BATTIN AVE
N CORONADO PL
NORTH

EXHIBIT 3
CID COSTS

Central and Oliver Development
Community Improvement District - Uses

Development Costs	Description	Project Costs
ACQUISITION COSTS		
Purchase Price		$ 3,650,000.00
Due Dilligence		$ 34,000.00
Closing Costs		$ 85,000.00
SUBTOTAL		$ 3,769,000.00
SITEWORK		
Demolition	Utility removal, residential bldgs	$ 65,450.00
Supervision		$ 82,000.00
Permits	Permits, bonds	$ 5,000.00
SUBTOTAL		$ 152,450.00
SITE		
Earthwork	Dirt haul	$ 103,450.00
Site lighting		$ 15,750.00
Site landscaping		$ 45,250.00
Paving curbing	Plots, drives	$ 325,450.00
Sidewalks		$ 19,500.00
SUBTOTAL		$ 509,400.00
UTILITY RELOCATES (PRIVATE)		
Water	Tap fees	$ 24,250.00
Sanitary sewer	Hook-up fees	$ 16,250.00
SUBTOTAL		$ 40,500.00
HARD RENOVATION COSTS		
New construction		$ 3,100,000.00
Remodel		$ 1,200,000.00
New signage		$ 154,000.00
SUBTOTAL		$ 4,454,000.00
SOFT COSTS - DESIGN / ENGINEERING		
Civil land planning	Roads, utility work	$ 76,250.00
Soils environmental	Soil testing	$ 5,400.00
Survey and platting	Boundary and topo survey	$ 15,650.00
SUBTOTAL		$ 97,300.00
SOFT COSTS - LEGAL/DEVELOPER FEES		
Legal	Benefits districts preparation	$ 50,000.00
Consulting fee	Developer oversight and coordination	$ 18,000.00
Leasing/Marketing Costs		$ 275,000.00
Maintenance		$ 100,000.00
Administrative		$ 45,000.00
Other	Other	$ 16,500.00
SUBTOTAL		$ 504,500.00
SUBTOTAL - PROJECT COSTS		**$ 9,527,150.00**
SUBTOTAL w/ 25% CONTINGENCY		**$ 11,908,937.50**
ONGOING OPERATING COSTS		
Security		$ 100,000.00
Entertainment/Public Events		$ 100,000.00
Business Promotion		$ 100,000.00
Market Studies		$ 50,000.00
Employee Training		$ 50,000.00
SUBTOTAL		**$ 400,000.00**
TOTAL COSTS		**$ 12,308,937.50**

EXHIBIT 4
CERTIFICATION OF EXPENDITURES

Request No. _____ Date:_____

Pursuant to the Development Agreement (the "Agreement") for the Central & Oliver Community Improvement District between the City of Wichita, Kansas and the undersigned (the "Developer"), the Developer requests reimbursement and hereby states and certifies as follows:

1. The date and number of this request are as set forth above.

2. All terms in this request shall have and are used with the meanings specified in the Agreement.

3. The names of the persons, firms or corporations to whom the payments have been made and reimbursement is hereby requested, the amounts to be reimbursed and the general classification and description of the costs for which each obligation requested to be reimbursed hereby was incurred are as set forth on **Attachment I** hereto.

4. These costs have been incurred and are reasonable costs that are reimbursable under the Agreement.

5. Each item listed above has not been previously reimbursed from the CID Sales Tax Fund and no part thereof has been included in any other Certification of Expenditures or other disbursement request previously filed with the City.

OLIVER HOLDINGS, LLC

By: _____
Title: _____

Approved this ____ day of _____, 20__

CITY OF WICHITA

By: _____
City Representative

ATTACHMENT I
TO CERTIFICATION OF EXPENDITURE

REQUEST NO. _____ DATED_____ _

SCHEDULE OF PAYMENTS REQUESTED

Person, firm or corporation to whom payment was made	Amount to be reimbursed	General classification and description of the costs of issuance for which the Obligation to be reimbursed was incurred

CITY OF WICHITA
City Council Meeting
March 8, 2011

TO: Mayor and City Council

SUBJECT: Acquisition by Eminent Domain of Tracts Required for the Integrated Local Water Supply Plan (Harvey County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real properties.

Background: On August 3, 1993, the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River to be transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita. Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. There were 92 parcels identified as being impacted by the project and acquisitions of easements was necessary. Ninety tracts have been acquired through negotiations since acquisitions started in 2009. At this time, initiation of eminent domain to acquire the remaining three lots is recommended.

Analysis: The two remaining parcels are adjacent and have common ownership. One parcel is an 80 acre agricultural parcel. The project requires 3.18 acres for pipeline easement and 3.04 acres for a temporary easement. The estimated market value for the proposed acquisition is $8,988. This is comprised of $1,500 an acre for the easement area, $300 for the temporary easement area and $3,306 as damages to the crop land. The second parcel is immediately east and is also crop land. The City requires a .35 acre pipeline easement together with a .05 acre temporary easement. The pipeline easement is part of the main water line which will cross over the southwest portion of the site. In addition, an injection well site is required. The proposed injection well site will be located within an existing 5 acre easement that the City already has for production wells. The estimated market value of the proposed acquisition is $17,261. This is comprised of $3,280 for the fee value of the well site, $1,800 an acre for the easement, $360 per acre for the temporary easement area and $213 as damages to the crops. The combined value of the required easements on the two parcels is $26,249. Staff has been negotiating with this land owner since late 2009. The last counter offer received was approximately three times more than the offered amount. In addition, the owner required numerous restrictions be places on the City's utilization of the easements that are not feasible such as requiring that the City will correct, at its expense, any future conflicts between the easement and future development of the property. Staff will continue to negotiate with both owners. If an agreement is reached, the tract will be deleted from the eminent domain action.

Financial Considerations: The cost of these acquisitions will be paid for with General Obligation Bonds.

Goal Impact: The acquisition of these parcels is necessary to ensure Efficient Infrastructure.

Legal Considerations: The City is authorized by law to commence eminent domain proceedings to acquire these properties.

Recommendation/Action: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real property; and directing the City Attorney to file the appropriate proceedings in the District court to accomplish such acquisition.

Attachments: Tract maps, condemnation resolution and condemnation ordinance.

PUBLISHED IN THE WICHITA EAGLE ON _MARCH 25, 2011# 633669

ORDINANCE NO. 48-973

AN ORDINANCE PROVIDING FOR THE ACQUISITION BY EMINENT DOMAIN OF CERTAIN PRIVATE PROPERTY, EASEMENTS AND RIGHT-OF-WAY THEREIN, FOR THE PURPOSE OF ACQUIRING REAL PROPERTY FOR THE AQUIFER RECHARGE AND STORAGE PROJECT IN SEDGWICK COUNTY AND HARVEY COUNTY, KANSAS; DESIGNATING THE LANDS REQUIRED FOR SUCH PURPOSES AND DIRECTING THE CITY ATTORNEY TO FILE A PETITION IN THE DISTRICT COURT OF HARVEY COUNTY, KANSAS AND IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS, FOR ACQUISITION OF THE LANDS AND EASEMENTS THEREIN TAKEN AND PROVIDING FOR PAYMENT OF THE COST THEREOF.

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

SECTION 1. That it be and is hereby declared to be a public necessity to acquire by eminent domain proceedings for the purpose of public right-of-way for the development of infrastructure associated with the Aquifer Recharge and Storage project in Sedgwick County and Harvey County, Kansas, the lands and easements hereinafter described in Section 2.

SECTION 2. That the description of the lands and title therein necessary for the purpose of such action is as follows:

Clear and complete title for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

The East 466.69 feet of the South 466.69 feet of the NE ¼, Section 35, T24S, R2W of the Sixth Principal Meridian, Harvey County, Kansas. Said tract contains 5.00 acres, more or less, including existing road Right-of-Way.

And permanent easements for the purposes herein described in and to the following-described tracts, to-wit:

A permanent easement for the purpose of constructing, operating, maintaining, inspecting and repairing a pipeline for the transmission of water and associated uses over an 85.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the northeast corner of the South half of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the Sixth Principal Meridian, Harvey County, Kansas; thence along the north line of the South half of said Northeast Quarter on an assumed bearing of S89^{0}33'17"W, 1487.18 feet; thence S00^{0}36'57"E, 1256.61 feet along the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter to the Point of Beginning; thence S42^{0}55'57"E, 90.32 feet to the Point of Termination, said point lying on the south line of said Northeast Quarter and lying S89^{0}29'01"W, 1423.95 feet from the southeast corner of said Northeast Quarter. Said tract contains 0.35 acres, more or less.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines on the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter and the south line of said Northeast Quarter and

A permanent easement for the purpose of constructing, operating, maintaining, inspecting and repairing a pipeline for the transmission of water and associated uses over an 85.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the northwest corner of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the Sixth Principal Meridian, Harvey County, Kansas; thence along the north line of the Southwest Quarter of said Northeast Quarter on an assumed bearing of N89°33'17"E, 9.97 feet to the Point of Beginning; thence S42°55'57"E, 1704.04 feet to the Point of Termination; said point lying on the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter being S00°36'57"E, 1256.61 feet from the north line of the Southwest Quarter of said Northeast Quarter and 165.00 feet west of the southeast corner of the Southwest Quarter of said Northeast Quarter. Said tract contains 3.18 acres, more or less.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines on the north line of the Southwest Quarter of said Northeast Quarter and the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter and

A permanent easement for the purpose of constructing, operating, maintaining, inspecting and repairing a pipeline for the transmission of water and associated uses over a 60.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the northwest corner of the south half of the Northwest Quarter of Section 17, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of N89^{0}14'27"E, 1381.09 feet along the north line of said south half to the Point of Beginning; thence S45^{0}13'29"E, 1814.40 feet to the Point of Termination, said point being on the east line of said south half and lying S00^{0}47'42"E, 2622.57 feet from the northeast corner of said Northwest Quarter. Said Tract contains 2.44 acres, more or less.

The above easement adjoins the sourthwesterly side of an easement described in Condemnation Case No. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above described strip of land are to be shortened or lenghthened to form continuous lines and to terminate on the north line of said south half and on the east line of said south half.

And temporary construction easements for the purpose of constructing, maintaining, and repairing utilities, over, along and under the following described real estate situated in Harvey County, Kansas, to wit:

A temporary construction easement over a 75 feet wide strip of land lying on the right side (southwesterly side) of a line described as; Commencing at the northwest corner of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of

the Sixth Principal Meridian, Harvey County, Kansas; thence along the north line of the Southwest Quarter of said Northeast Quarter on an assumed bearing of N89°33'17"E, 9.97 feet to the Point of Beginning; thence S42°55'57"E, 1704.04 feet to the Point of Termination said point lying on the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter being S00°36'57"E, 1256.61 feet from the north line of the Southwest Quarter of said Northeast Quarter and 165.00 feet west of the southeast corner of the Southwest Quarter of said Northeast Quarter. Said tract contains 3.04 acres, more or less.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines on the north and south lines of the Southwest Quarter of said Northeast Quarter and on the north line of the Southeast Quarter of the Northwest Quarter and on the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter and

A temporary construction easement over a tract of land described as: Commencing at the northeast corner of the South half of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the Sixth Principal Meridian, Harvey County, Kansas; thence along the north line of the South half of said Northeast Quarter on an assumed bearing of S89^{0}33’17”W, 1487.18 feet; thence S00^{0}36’57”E, 1256.61 feet along the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter to the Point of Beginning; thence S42^{0}55’57”E, 90.32 feet to the south line of said Northeast Quarter; thence S89^{0}29’01” W, 60.81 feet along the south line of said Northeast Quarter said point being 165.00 feet west of the southwest corner of the Southeast Quarter of said Northeast Quarter; thence N00^{0}36’57” W, 66.68 feet along the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter to the Point of Beginning. Said tract contains 0.05 acres more or less.

SECTION 3. That the City Attorney is hereby authorized and directed to commence proceedings in eminent domain in the District Court of Sedgwick County, Kansas and the District Court of Harvey County, Kansas, for the appropriation of said lands and determination of the compensation to be awarded for the taking thereof.

SECTION 4. That the costs of said acquisition when ascertained shall be paid from General Obligation Bonds to be issued for the costs of such improvements; PROVIDED, however, should the City of Wichita acquire said property (and said City hereby reserves its right to abandon the condemnation as to any of all tracts) that General Funds are available for said purpose as provided by law.

SECTION 5. That the costs of said acquisition shall be charged to the City of Wichita.

SECTION 6. That this Ordinance 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 22nd day of, March 2011.

CITY OF WICHITA

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

OCA 633669

Published in the Wichita Eagle on March 11, 2011

RESOLUTION NO. 11-034

A RESOLUTION DECLARING THE NECESSITY FOR ACQUIRING PRIVATE PROPERTY FOR THE USE OF THE CITY OF WICHITA IN CONNECTION WITH THE PLANNED AQUIFER RECHARGE AND SUPPLY PROJECT IN SEDGWICK COUNTY AND HARVEY COUNTY, KANSAS;

WHEREAS, the governing body has previously authorized the study and the preliminary design of certain improvements for a ground water recharge project in conjunction with a comprehensive water supply plan; and

WHEREAS, such study and preliminary design has identified the need to acquire several parcels of private property in order to properly complete such improvements; and

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

SECTION 1. The governing body hereby declares it to be necessary to acquire certain private property in connection with the development of the Aquifer Recharge and Storage project improvement.

SECTION 2. The City Engineer is directed to make or cause to be made a survey and description of the lands and/or interests to be acquired and to have such survey and description filed with the City Clerk.

SECTION 3. That this Resolution shall take effect and be in force from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 8th day of March, 2011.

CITY OF WICHITA

_____

Carl Brewer, Mayor

ATTEST:

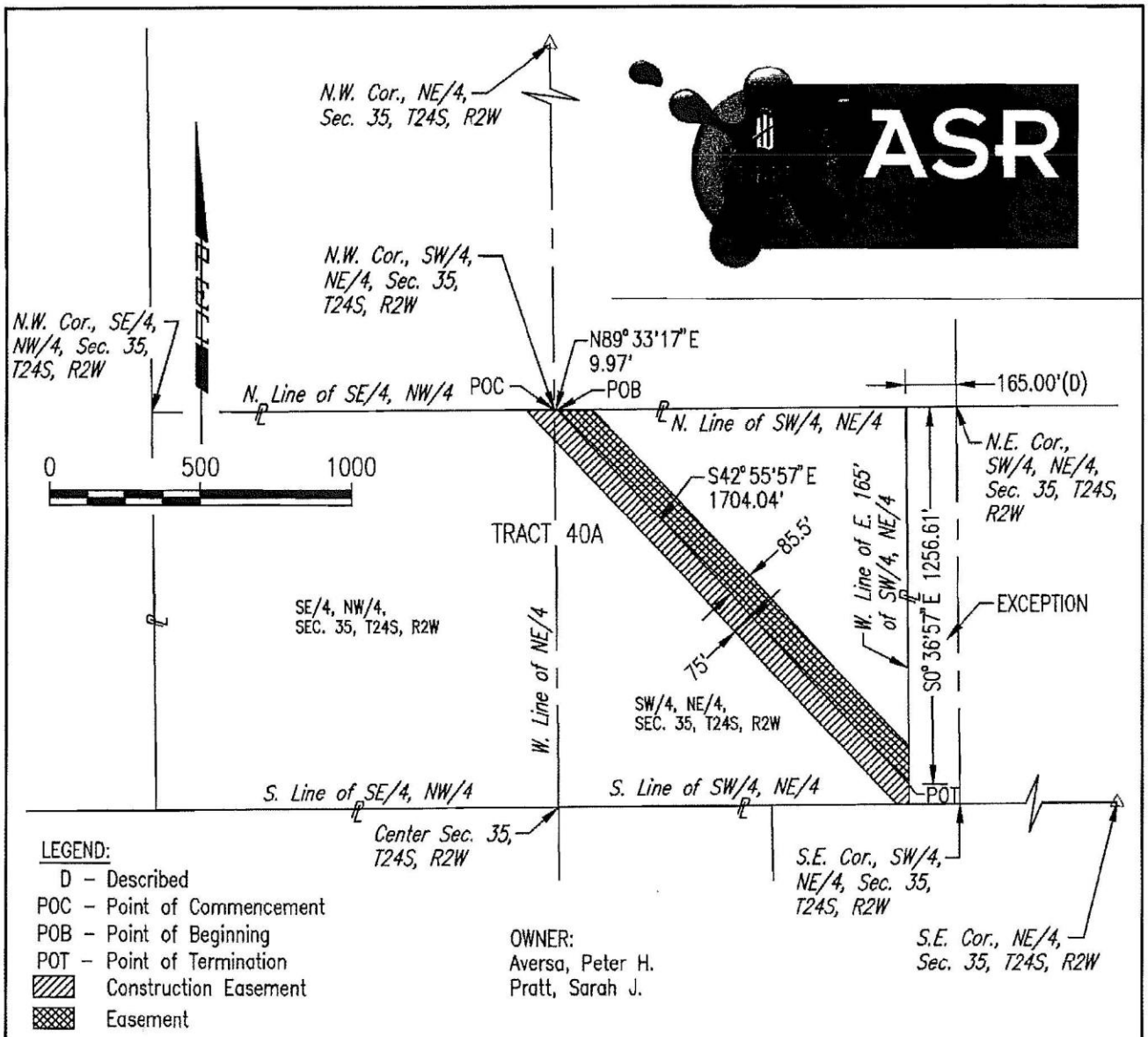
_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law



EASEMENT:
A 85.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the northwest corner of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the Sixth Principal Meridian, Harvey County, Kansas; thence along the north line of the Southwest Quarter of said Northeast Quarter on an assumed bearing of N89°33'17"E, 9.97 feet to the Point of Beginning; thence S42°55'57"E, 1704.04 feet to the Point of Termination; said point lying on the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter being S00°36'57"E, 1256.61 feet from the north line of the Southwest Quarter of said Northeast Quarter and 165.00 feet west of the southeast corner of the Southwest Quarter of said Northeast Quarter. Said tract contains 3.18 acres, more or less.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines on the north line of the Southwest Quarter of said Northeast Quarter and the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter.

CONSTRUCTION EASEMENT:
A 75 feet wide strip of land lying on the right side (southwesterly side) of a line described as; Commencing at the northwest corner of the Southwest Quarter of the Northeast Quarter of Section 35, Township 24 South, Range 2 West of the Sixth Principal Meridian, Harvey County, Kansas; thence along the north line of the Southwest Quarter of said Northeast Quarter on an assumed bearing of N89°33'17"E, 9.97 feet to the Point of Beginning; thence S42°55'57"E, 1704.04 feet to the Point of Termination said point lying on the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter being S00°36'57"E, 1256.61 feet from the north line of the Southwest Quarter of said Northeast Quarter and 165.00 feet west of the southeast corner of the Southwest Quarter of said Northeast Quarter. Said tract contains 3.04 acres, more or less.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines on the north and south lines of the Southwest Quarter of said Northeast Quarter and on the north line of the Southeast Quarter of the Northwest Quarter and on the west line of the east 165.00 feet of the Southwest Quarter of said Northeast Quarter.

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Plot Scale 1:500 01-14-2010 4:18:33 PM by JTS
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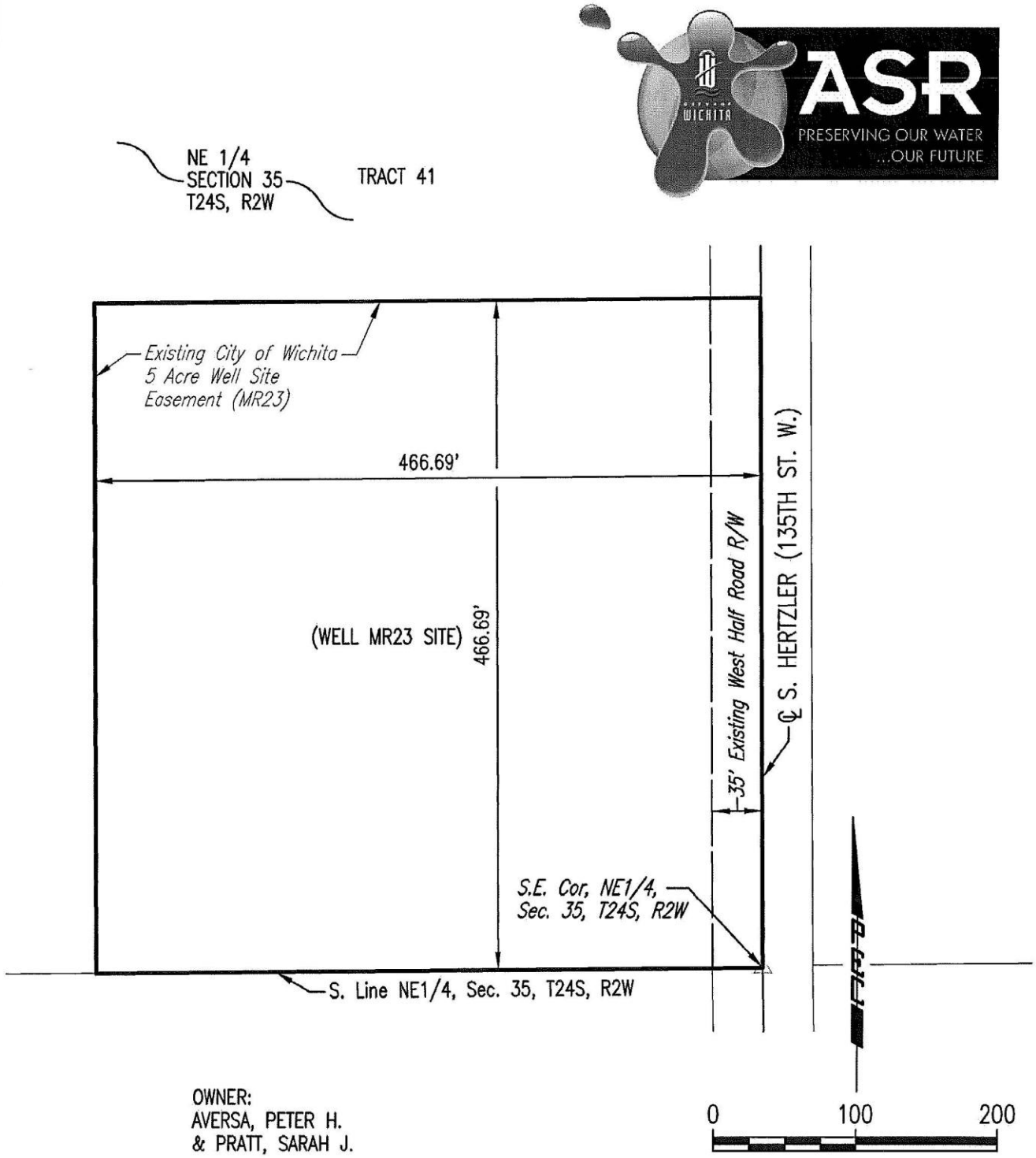

OWNER:
AVERSA, PETER H.
& PRATT, SARAH J.

TRACT 41 (WELL MR23)

THE EAST 466.69 FEET OF THE SOUTH 466.69 FEET OF THE NE1/4, SEC 35, T24S, R2W OF THE SIXTH PRINCIPAL MERIDIAN, HARVEY COUNTY, KANSAS. SAID TRACT CONTAINS 5.00 ACRES, MORE OR LESS, INCLUDING EXISTING ROAD RIGHT OF WAY.

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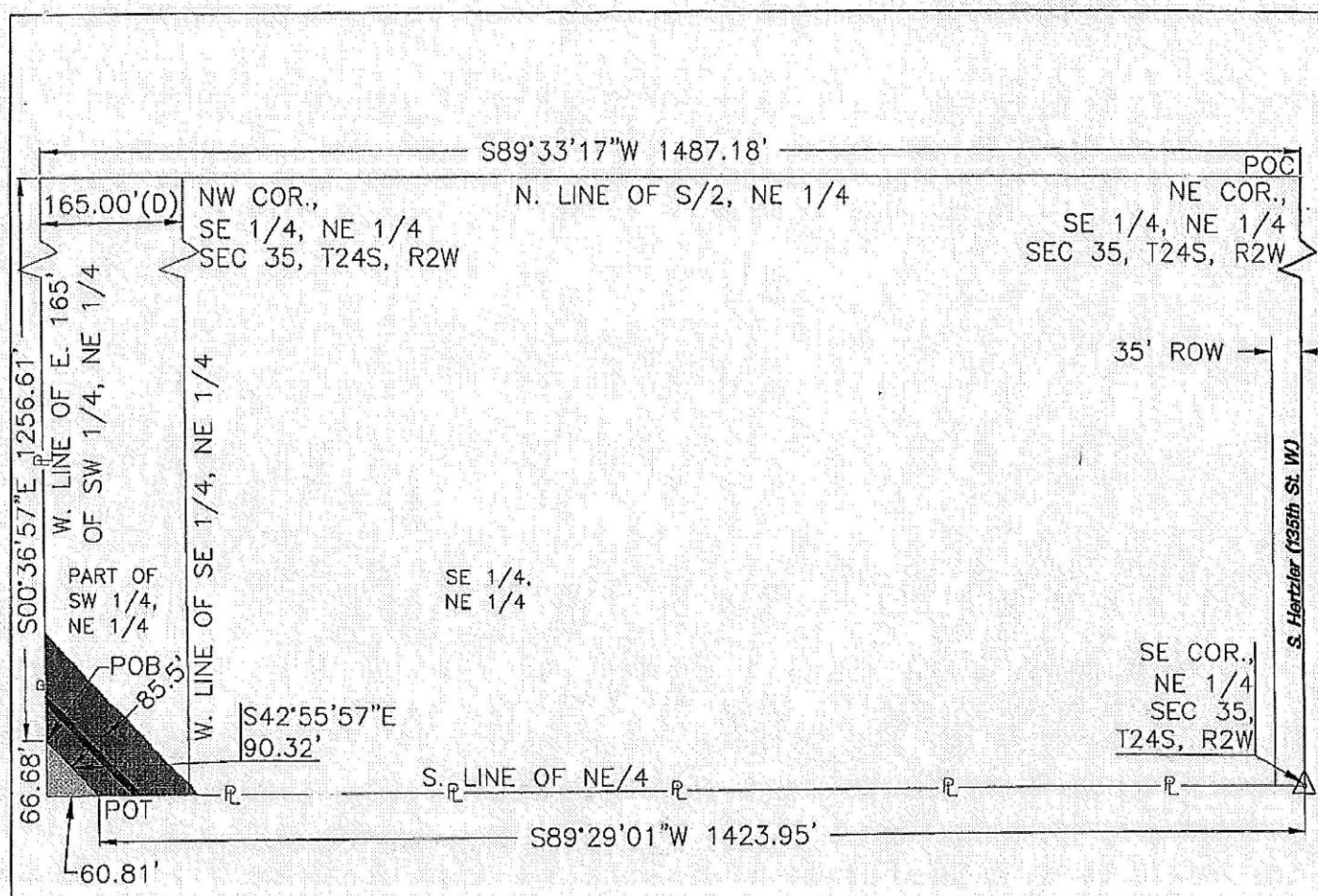
Plot Scale 1:100 10-28-2010 10:05:11 AM by JOSH T. SULLARD
Q:\2007\07685\004\TRACT DRAWINGS\07685-004-TRACT 41 WELL SITE MR-23



N

SCALE: 1" = 200'

LEGEND

D – Described
POC – Point of Commencement
POB – Point of Beginning
POT – Point of Termination

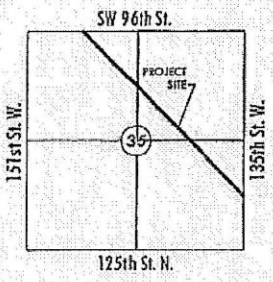
Easement 0.35 acres

Construction Easement 0.05 acres

Proposed Water Line

OWNER:

Aversa, Peter H.
& Pratt, Sarah J.
P.O. BOX 65
Sedgwick, KS 67135



VICINITY MAP

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THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

ASR

MKEC ENGINEERING CONSULTANTS, INC.
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

CDM
Camp Dresser & McKee
345 Riverview, Ste. 520
Wichita, KS 67203
Tel: (316) 850-8700
consulting • engineering • construction • operations

DIAGONAL TRANSMISSION MAIN AND RIVER INTAKE LINE
PROJECT NAME

TRACT 41
SHEET TITLE

DFL	DSN/AAM/DM	CWL
DESIGN BY:	DRAWN BY:	CHECKED BY:
APRIL 2009 JULY 2009 revised	08248	1 / 2
DATE	JOB NO.	SHEET/OF

EASEMENT:

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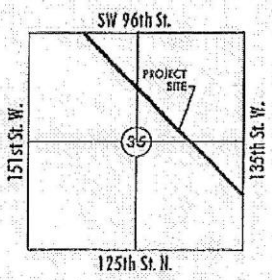
OWNER:

Aversa, Peter H.
& Pratt, Sarah J.
P.O. BOX 65
Sedgwick, KS 67135



VICINITY MAP

I:\MAP\2008\08248\DWG APRIL 2009\TRACT MAPS\41.DWG

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WICHITA, KS. 67206
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Tel: (316) 660-0700
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THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

DIAGONAL TRANSMISSION MAIN AND RIVER INTAKE LINE
PROJECT NAME

TRACT 41
SHEET TITLE

DFL	*DSN/AAM/DM*	*CWL*
DESIGN BY:	DRAWN BY:	CHECKED BY:
APRIL 2009		
JULY 2009 revised	*08248*	*2 / 2*
DATE	JOB NO.	SHEET/OF

CITY OF WICHITA
City Council Meeting
March 8, 2010

TO: Mayor and City Council Members

SUBJECT: Contract for Appraisal Services: Broadway Bridge at 34th Street South (District III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the contract.

Background: On February 15, 2011, the City Council approved the East Alignment of the proposed Broadway Bridge Project at 34th Street South. The project will require the acquisition of all or part of approximately twelve parcels. The properties consist of a mix of residential and commercial uses. Due to the timing needs of the project and current staffing levels, assistance is required to complete the appraisals in a timely manner.

Analysis: Proposals to provide appraisal services were solicited from the firms listed on the Kansas Department of Transportation's list of qualified consultants. Three of the thirteen firms submitted a proposal to provide valuations of the properties impacted by the project. An internal appraisal committee comprised of four voting members from Finance, Law, Public Works and the City Manager's Office selected Shaner Appraisals, Inc from the proposals submitted. Shaner Appraisals, Inc was selected based on timing, ability, qualifications, staffing levels and price. Based on the proposal, it is estimated that $30,000 will be sufficient to complete the assignment.

Financial Considerations: Funding is available within the project budget to fund the proposed costs. The funding source is General Obligations Bonds and Federal Funds.

Goal Impact: These acquisitions are 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 contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Contract and 3) Authorize the necessary signatures.

Attachments: Contract for Appraisal Services.

AGREEMENT FOR APPRAISAL SERVICES

THIS AGREEMENT, entered into this ___ day of _____ 2011, by and between the City of Wichita, Kansas, a municipal corporation, hereinafter referred to as the "City" and Shaner Appraisals, Inc. hereinafter referred to as the "Appraiser".

WITHNESSETH THAT:

WHEREAS, the City wishes to determine the fair market value of Twelve (12) parcels identified described as:

Tract	Property Address	Tax Key	Property Type
1	3501 S Broadway	A 00195000100UP	Commercial
2	3555 S Broadway	A 0019900UP	Vacant
3	3500 S Broadway	A 0019401UP	Industrial
4	3709 S Broadway	A 157980001	Commercial
5	3558 S Broadway	B 0003900UP	Residential
6	3565 S Topeka	B 0004500UP	Residential
7	3601 S Topeka	B 0004200UP	Vacant
8	3639 S Topeka	B 0004400UP	Commercial
9	3700 S Broadway	B 0002400UP	Residential
10	3720 S Broadway	B 0003601UP	Retail
11	3730 S Broadway	B 15216	Commercial
12	331 E 37th St S	B 0003600UP, B 0003500UP	Commercial

and the Appraiser represents that he is fully qualified to perform appraisal services and will furnish such services to the City.

NOW, THEREFORE, the City and the Appraiser, for the consideration and under the conditions hereinafter set forth, do agree as follows:

ARTICLE 1. Property To Be Appraised. A description of the real property to be appraised, including and identification of any interests in the real property to be specifically excluded from appraisal. A separate appraisal is to be furnished for each "parcel". (The term "parcel" means any tract or contiguous tracts of land in the same ownership, whether any such tract consists of one or more platted lots or a fractional part of a lot. An easement or other separately held interest in two or more parcels shall be considered to be a separate parcel for appraisal purposes and an exception to the title to the parcels so encumbered. An easement in a parcel that is appurtenant to another parcel shall be considered to be part of such other parcel and an exception to the title of the parcel encumbered.) Each parcel shall be considered to include all right, title, and interest of the owner in or to any adjacent or abutting streets, alleys, or other public rights of way.

ARTICLE 2. Purpose and Basis of Valuations.

(a) Purpose and Significance of Appraisals. The appraisals to be furnished under this Agreement are required by the City for its guidance in making fair and impartial determinations of fair market value. The text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Appraiser's reasoning and his analyses of the evidences of value.

(b) Appraisal Standards. The appraisals under this Agreement shall be based on nationally recognized appraisal standards and techniques to the extent that such principals are consistent with the concepts of value and the rules on the admissibility of evidence of value under the eminent domain law of the State. Factors relating to race, color, religion, sex or national origin, or the racial, religious and ethnic identification of neighborhoods are not relevant to the estimation of value and shall not be considered in connection with appraisals of residential real property.

(c) Date of Valuation. The Appraiser's valuation shall be as of a date concurrent with the preparation of his report, unless the City has specified some other date of valuation.

ARTICLE 3. Scope of Appraiser's Services. The Appraiser agrees to perform the following services:

(a) Appraise each parcel and prepare and deliver to the City, on or before **April 8, 2011(30 days)** for the appraisal, 2

copies of the appraisal report conforming to the provisions of the Agreement. The Appraiser shall inspect each parcel, including all buildings, structures, fixtures, and other improvements to the property. The Appraiser shall give the owner or his designated representative an opportunity to accompany the Appraiser during his detailed inspection of the property. If the owner of a compensable interest in the property or a representative of such owner does not accompany the Appraiser during the inspection, the Appraiser shall include in his appraisal report a copy of his notification to the owner of the opportunity to accompany the Appraiser and evidence of the owner's receipt of such notification. In the process of inspecting the property, the Appraiser shall, to the extent practicable, ascertain the rights of all parties in possession and not for consideration of all factual information and comments furnished by the owner or his representative relevant to the appraisal.

(b) Modify or furnish supplements. To any appraisal report furnished under this Agreement, without additional cost to the City, if (1) applicable principles of law with respect to the valuation of the property require the modification or supplementing of such appraisal, (2) material omissions, inaccuracies, or defects in the appraisal report are discovered after delivery and acceptance of the report by the city, or (3) the Appraiser receives or becomes aware of relevant additional appraisal information in existence prior to the date the Appraiser signed the report.

(c) Estimate the value of any right or interest proposed to be reserved by the owner in a property appraised by the Appraiser, such as an easement for access to other property of the owner, the right to continue occupancy for an extended period after the city acquires the property, or the right to remove any building, structure, fixture, or other improvement.

(d) Consult with the City and its legal counsel regarding services to be performed by the Appraiser, at such times(s) as may be mutually convenient for the parties to this Agreement. The Appraiser shall initiate such consultations whenever he is in doubt as to whether an element of property is real or personal property or needs legal advice on any aspect of the appraisals to be furnished under this Agreement. There shall be no charge by any party for such consultations.

ARTICLE 4. Contents of Appraisal Reports. Each appraisal report to be furnished by the Appraiser under this Agreement shall contain certain information and the Appraiser's conclusions and opinions, together with the data and analysis by which they were derived, as set forth below. A separate report shall be submitted for each parcel. However, if more than one parcel is to be appraised all general data may be included in a separate date volume that is referenced in the separate appraisal reports on the individual parcels. The appraisal report on each parcel shall include the following:

(a) A summary headed "Appraisal Report for John Philbrick, Real Estate Administrator, that provides the following:

(1) Project name and number: Broadway Bridge at 34th Street South

(2) Date of report

(3) Parcel number, address of the property, brief identification of all interest in the property appraised, and the name of the owner(s) including any tenant-owners.

(4) Date(s) of the Appraiser's inspection of the property with the owner(s) or the owner's designated representative including the name of each owner or representative of an owner who accompanied the Appraiser during his inspection and the interest held in the property or the representative capacity of each such person.

(5) The Appraiser's estimate of the fair market value of the entire parcel and the fair market value of the same interest in the land, as if vacant.

(6) The limiting conditions of the appraisal, which may include assumptions (i) that the title is good and marketable, (ii) that no responsibility is assumed by the Appraiser for legal matters, especially those affecting the title to the property, (iii) that the legal description of the property and the interest in the property to be appraised, furnished to the Appraiser by the City, is correct, and (iv) that no survey of the property has been made. Any other appropriate assumption or limiting condition may be added if it has been specifically approved in writing by the City.

(7) The certifications of the Appraiser (i) that he/she personally made a thorough inspection of the property, (ii) that, to the best of his/her knowledge and belief, everything contained in the report is true and no relevant and important fact has been omitted, (iii) that neither his/her employment nor his/her compensation is contingent on the valuation reported, and (iv) that he/she has no past, present, or prospective interest (including that of real estate agent or broker) in the property, the parties involved, or any other interest that would conflict in any way with the services

performed or the making of an impartial report.

(8) A certification that, in the Appraiser's opinion, the fair market value of the property is (an amount to be stated) as of (the date of valuation).

(9) The signature of the Appraiser.

(b) The name and address of the owner of the property and the name and the address, if known, of any other party known or believed to hold a separate compensable interest in the property.

(c) The street address and an accurate description of each parcel and all interests in the parcel appraised. The property description shall identify all conditions, restriction, easement, servitude, and reservations affecting the title. The property description shall specifically exclude and describe any separately held interest in the property that is to be acquired separately or as part of another parcel. The description shall also specifically exclude all separately held interests which are not to be acquired and will not be affected adversely by the City's project. If there are any separately held interests in a parcel, which are to be acquired with other interest in the same parcel, such as leasehold, tenant owned improvements, life estates, easements, and water, gas, oil, or mineral rights, a description of each such separate interest and the name of its owner shall be furnished.

(d) Off-record Title information concerning interests or instruments that affect title, but are not of record, such as leases, options to renew a lease, contracts of sale, and other interests or rights of parties in possession. Such information shall be reported, and if available facts are sufficient, the Appraiser's report shall be based on such additional title information and so noted in the appraisal report. Otherwise, the Appraiser shall refer the matter to the City and defer completion of the appraisal until the question is resolved.

(e) Basic property data including pertinent information with respect to such matters as (1) the environment and location of the property, (2) the zoning and any restrictive covenants, conditions, or servitude affecting the available use or occupancy of the land, (3) the assessed value of the real property and the current annual real estate tax burden, (4) the use and occupancy of the property at time of appraisal, (5) the public improvements, services, and utilities serving and providing access to the property, (6) the character, topography, dimensions, and area of the land, (7) the freedom of the property from special hazards, (8) the current rental and rental history of the property, if rented, (9) the estimated annual costs of ownership and for operation and maintenance of the property, and (10) a description of the buildings, structures, and other improvements, if any, including relevant information as to type of improvement, designated use, construction materials and finish, equipment, dimensions, floor area, age, condition, space or room arrangement, functional utility, and any other characteristics or attributes of the improvements germane to the value of the real property. The appraisal report shall contain a general sketch plat showing the shape and dimensions of the land, the location of the principal improvements on the land, the location of any easements in the land, and the abutting streets, alleys, or other public rights of way. The report shall also include such photographs, each clearly identified, as may be appropriate.

(f) Report of any condition or occupancy of the property in violation of law that may affect the value of the property.

(g) The Appraiser's opinion as to the highest and best use for the property. The appraisal report shall also include the Appraiser's opinions as to any other use(s) for such the property is reasonably suitable or adaptable. If the property is unused vacant land or the highest and best use is not self-evident or is found to differ significantly from the present use, the appraisal report shall contain the analyses by which the Appraiser reached his conclusions as to the highest and best use and as to the relative suitability or adaptability of the property for any other use(s) for which the property could reasonably be considered to be suitable or adaptable. The analysis of a potential use shall include consideration of relevant matters, such as the suitability of the location, the environment and the legal and physical attributes of the property for such use, the estimated cost, if any, of converting the property to such use, and the supply, sale price levels, and relative desirability of other properties that would compete for the same kind of use. The analysis of the property for the future use or uses found to be the highest and best use is part of the process of appraising the property, and therefore, may be included in the valuation analysis furnished in accordance with Paragraph 4(h) below.

(h) The opinion of the Appraiser as to the fair market value of the property. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching his conclusions as to value and all data and analysis needed to explain and support his valuation. The supporting data and analysis furnished in the appraisal report shall include the following:

(1) An analysis of the property, from the point of view of evaluating the effect of its characteristics and attributes on its value for the available use or uses for which the property is best suited. Particular attention shall be given to the characteristics of the property most relevant to its value, such as, in the case of an investment property, the income potential and the expenses of ownership, maintenance, and operation.

(2) An identification of the most recent sale of each property appraised and any other sales of such property during the last five (5) years preceding the appraisal. Such sale(s) of the property appraised and all recent sales of comparable properties considered by the Appraiser in forming his opinion(s) of fair market value shall be verified insofar as practical. The information furnished with respect to each such sale shall include, among other pertinent facts, the names of the grantor and grantee, the date of the sale, the sale price, any special terms or conditions or circumstances of the sale that affected the transaction, and a description of the property and its condition at the time of sale in sufficient detail for use in making the appraisal.

(3) The analyses that constitute the principal basis for the Appraiser's opinion of the fair market value. The appraisal report shall contain the appraiser's evaluation with respect to previous sales of the property appraised and any recent offer of the owner to sell the property. The appraisal report shall also contain the appraiser's analysis of each comparable property and its sale in relation to the property appraised. The Appraisal's analysis shall reflect appropriate allowances for the difference in the time of the sale of the comparable properties and the date of appraisal and the differences in the utility, desirability, and productivity of the properties that are pertinent to their relative value. The appraisal report shall contain a valuation data map showing the location of the property appraised and the comparable properties referred to in the appraisal report.

(4) All other information, analyses, and estimates considered by the Appraiser to be relevant to the estimation of the fair market value of the property.

(5) If the property appraised is part of a larger parcel in the same ownership or is less than the entire interest of the owner in the property, the appraisal report shall contain the Appraiser's opinion of just compensation for a taking of such property or interest, using the before-and-after method of valuation as interpreted under State law unless it is obvious that there would be no damages or benefits to the remaining property or interest of the owner. However, if the part of interest to be taken is such a small part of the whole property that the damages for the taking can be more accurately estimated directly, that method may be used if permitted under State law, without estimating the fair market value of the entire property of the owner. The foregoing opinions of the appraiser shall be supported in his report by the data and analyses by which he reached his conclusions.

For information purposes, the appraisal report shall also contain the Appraiser's estimates of the fair market value of the to-be-acquired part or interest as part of the whole property and the net damages or benefits to the remaining property of the owner. If in the opinion of the Appraiser, acquisition of the part of, or interest in, the property proposed for acquisition would leave the owner with an uneconomic remnant, the Appraiser shall furnish a separate estimate of the fair market value of a "parcel" comprising both the parcel proposed for acquisition and the uneconomic remnant. (A remainder parcel or interest shall be considered to be an uneconomic remnant if by itself it has little or no utility or value to the owner.)

(6) Such maps, plans, photographs, or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser.

(7) The Appraiser's evaluation of the indications of value deduced from his separate analyses of the various evidences of value and an explanation of how he reached his final conclusion as to the fair market value of the property.

(i) The opinion of the appraiser as to the fair market value of the land, as if vacant. The valuation shall be for same interest in the land as is to be acquired in the real property. The report shall contain information with respect to the available use or uses for which the land would be suitable if vacant, the opinion of the appraiser as to its highest and best use, and the Appraiser's analysis of the evidences of value and of the use potential by which he reached his conclusions as to the highest and best use of the land and the land value.

(j) A property analysis if the property is a commercial, industrial, institutional, government, or farm property that involves substantial quantities and kinds of fixtures such as machinery and equipment. Any building, structure, fixture, or other improvement, which would be real property if owned by the owner of the land, shall be considered to be real property

(even if the improvement is the property of a tenant who has the right to remove it or the obligation to remove it at the expiration of his term). The property analysis must be approved by the City before the appraisal is completed and, as approved by identify, and classify as to ownership and type of improvement, all items of physical property considered to be part of the real property. The property analysis shall also identify tangible personal property located on the p remises to the extent reasonably necessary to prevent misunderstandings as to what is regarded as being real or personal property. Buildings, structures, fixtures and other improvements, including their accessories and spare parts, shall be identified and classified as to ownership and type of property as follows:

(1) Ownership.

(i) Owner of the land.
(ii) Each tenant in occupancy.
(iii) Each non-occupant owner of any fixtures or other improvement, or personal property on the premises.

(2) Type of Property.

(i) Building, structure, or fixed improvement.
(ii) building equipment, removable.
(iii) Fixtures, classified as to whether economically removable for reuse, removable for salvage only, or irremovable.
(iv) Personal property, identified as to types and approximate amounts, or otherwise, as needed to prevent misunderstandings as to the classification of any item.

If any building, structure, fixture or other improvement is not to be acquired, will not be adversely affected by the City's project, and will not be required by the City to be removed, such as pipeline in an easement not to be acquired, such improvement shall be identified as excluded from the appraisal.

ARTICLE 5. Services to be Provided by City. The city agrees to furnish the Appraiser the following:

(a) A map or plat, based on official records, of the property described in ARTICLE 1, showing the boundaries and dimensions of the parcels to be appraised. Each parcel shall be designated by a number, and the parcel numbers shown on the Appraiser's report shall correspond to the parcel numbers shown on the map or plat. However, additional parcel numbers may be assigned by the Appraiser for easements appraised separately or for additional parcels revealed while making the appraisals. The Appraiser shall promptly advise the City of any such additions.

(b) An ownership data report for each parcel. That report will show all estate and interests in the parcel as shown of record and consequently shall not be assumed to accurately define the interests to be appraised. The ownership data report on each parcel as shown on the parcel map will include:

(1) The name (and address, if available) of the owner appearing on record;

(2) The legal description of the parcel as shown by the conveyance(s) by which the record owner acquired title;

(3) Identification of the convenience(s) by which the present owner acquired title;

(4) Outstanding estates and other rights or interest of record;

(5) Outstanding special assessments, if any, for public improvements such as streets, sidewalks, public utilities, and similar public facilities.

(6) The amount of real estate taxes for the current year and the assessed valuation stated separately for land and for improvements.

(c) Legal advice, upon request of the Appraiser, on legal matters affecting the appraisal of any property to be appraised.

ARTICLE 6. Payment in consideration of the services provided by the Appraiser under this agreement, the City agrees to make

payments to the Appraiser upon the submission to the City of properly certified invoices, as follows:

(a) For appraisal reports accepted by the City, and for all other services furnished in accordance with ARTICLE 3, the lump sum of Thirty Thousand Dollars and no cents ($30,000), for the appraisals of Twelve (12) parcels which shall constitute full payment to the Appraiser for all of such services and for all supplies, materials, and equipment used or furnished by the Appraiser and all expenses incurred by the Appraiser in connection with the performance of such services.

(b) In the event that deliver of the appraisals is later than the date provided in Article 3(a), the amount of renumeration as outlined in Article 6(a) shall be reduced by two 2% percent per working day.

(c) When requested by the City, the Appraiser will enter into a Supplemental Agreement for additional services related to this Appraisal such as, but not limited to:

(1) Testify as an expert witness in behalf of the City in any judicial proceeding involving any property appraised under this Agreement. Such services shall include such reasonable time as may be required for reinspection of the property, updating the Appraiser's valuation, participation in pretrial conferences with counsel for the City and testifying in the judicial proceeding.

(2) If there is a significant delay between the date of valuation and the date of acquisition of any parcel or if the property has been materially altered since the appraisal by a fire, a revised determination of the boundaries of the property to be acquired, or other cause, the Appraiser shall, if supporting data and analyses to a current date.

ARTICLE 7. Agreements of Appraiser. The Appraiser agrees that:

(a) Qualifications. The Appraiser is qualified to perform the services to be furnished under this Agreement and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

(b) Solicitation of Agreement. The Appraiser has not employed any person to solicit this Agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this Agreement.

(c) Interest of Appraiser and Appraiser's Employees. The Appraiser does not have any interest (including that of real estate agent or broker), direct or indirect, present or prospective, in any property described in ARTICLE 1 or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this Agreement, any person having any such interest. Until the property is acquired by the City or excluded from its project by resolution of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interest and will not, for their owner account or for other than the City, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.

(d) Services to be Confidential. All services, including reports, opinions, and information, to be furnished under this Agreement are confidential and shall not be divulged, in whole or in part, to any person, other than to duly authorized representatives of the city, without prior written approval of the City, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure that no member of his staff or organization divulges any such information except as may be required by law.

(e) Facilities and Personnel. The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements to attributes of a property appraised under this Agreement, the employment of such person or persons for such purpose shall not place the city under any obligation of such employee, nor relieved the Appraiser of full responsibility for the faithful performance of the services to be furnished under this Agreement.

(f) Assignment. The Appraiser's rights, obligations, and duties under this Agreement shall not be assigned in whole or in part, but this shall not prohibit the assignment of the proceeds due under this Agreement to a bank or financial institution. This Agreement may be assigned by the City to any corporation, agency, or instrumentality having authority to accept the assignment.

(g) Subcontracting. None of the work or services covered by this Agreement shall be subcontracted without prior approval of the City.

(h) Records. The Appraiser shall maintain records of all details with respect to the services performed under this Agreement, including one complete copy of each appraisal report and related notes, for three (3) years after delivering the report or until the property is acquired by the City or the acquisition in abandoned, whichever is later.

(i) Affirmative Action Program. The Appraiser shall comply with all Federal, State and Local Laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and shall comply with the CITY's Affirmative Action Program as set forth in Exhibit "A" which is attached hereto and adopted by reference as though fully set forth herein.

(j) Affidavits of Compliance. The Appraiser will, if requested by the City, furnish the City affidavits certifying compliance with the provisions of this ARTICLE 7.

ARTICLE 8. Changes. The City, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under this Agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for their performance, equitable adjustment shall be made in the provisions of this Agreement for payments to the Appraiser or for the time for performance of the services or for both, and this agreement shall be modified by agreement of the parties accordingly.

ARTICLE 9. Termination of Agreement for Cause. If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner his obligations under this Agreement, or if the appraiser shall violate any of the provisions of this Agreement, the City may upon written notice to the Appraiser terminate the right of the Appraiser to proceed under this Agreement or with such part or parts of the Agreement as to which there has been default, and may hold the appraiser liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this Agreement shall, at the option of the City, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Appraiser, however, shall not thereby be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Appraiser, and the City may withhold any payments from the Appraiser is determined. The Appraiser shall not be held liable for damages under this ARTICLE solely for reasons of delay if the delay is due to cases beyond his control and without his fault or negligence, but this shall not prevent the City from terminating this Agreement because of such delay.

ARTICLE 10. Interest of Members of City. No member of the City shall participate in any decision relative to this Agreement affecting, directly or indirectly, his personal interests. No such member and no other officer, agent, or employee of the City having any responsibility or function in connection with this Agreement or the proceeds of this Agreement.

ARTICLE 11. Third Party Beneficiary. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the City and the Appraiser have executed this Agreement on or as of the date first above written.

SHANER APPRAISALS, INC.:

By:_____
Laird Goldsborough, President

CITY OF WICHITA, KS, A MUNICIPAL CORPORATION:

By:_____
Carl Brewer, Mayor

ATTEST:

By:_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By:_____
Gary Rebenstorf, Director of Law

EXHIBIT "A"

REVISED NONDISCRIMINATION AND

EQUAL EMPLOYMENT OPPORTUNITY STATEMENT

FOR CONTRACTS OR AGREEMENTS

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

A. During the performance of this City contract the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11141; Part 60 of Title 41 of the Code of Federal Regulations; The Age Discrimination in Employment Act of 1967; 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, physical handicap unrelated to such person's ability to engage in the particular work, 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 Commission on Civil Rights.

3. If the contractor fails to comply with the manner in which the contractor reports to the Kansas Commission on Civil Rights, in accordance with the provisions of K.S.A. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by 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 Commission on Civil Rights, 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, inclusively, of this subsection B, in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

C. Exempted from these requirements are: (State of Kansas)

1. Any contractor, subcontractor, vendor or supplier who has already complied with the provisions set forth in sections pertaining to the State of Kansas by reason of holding a contract with the federal government, or a contract involving federal funds.

2. Contracts entered into by a contractor, subcontractor, vendor or supplier who employs fewer than

four (4) employees during the term of this contract.

3. Contract with the City of Wichita with a cumulative total of five thousand dollars ($5,000) or less during the fiscal year to the City.

D. Provisions of the City of Wichita, Kansas, relating to Nondiscrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall observe the provisions of the Code of the City of Wichita against discrimination (Section 2.12.900, et seq., of the Code of the City of Wichita, Kansas) and shall not discriminate against any employee or applicant for employment in the performance of work under the present contract, purchase order or agreement because of race, religion, color, sex, physical handicap, national origin, ancestry or marital status. The vendor, supplier, contractor or subcontractor shall practice Nondiscrimination and 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 Citizen Rights and Services Division/Board 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, physical handicap, national origin, ancestry or marital status. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase "Equal Opportunity Employer," or a similar phrase that is deemed acceptable by the Citizen Rights and Services Division/Board.

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the rules and regulations of the Citizen Rights and Services Division/Board and will permit access to books, records and procedures concerning employment relations by the Citizens Rights and Services Division/Board of said City for purposes of investigation to ascertain compliance with Nondiscrimination and 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 CRS Division 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.

4. If the vendor, supplier, contractor or subcontractor is found guilty of a violation of any provision of the Code of the City of Wichita pertaining to and regulating Non-discrimination and Equal Employment Opportunity under a decision of the Citizen Rights and Services Division/Board of the City of Wichita, Kansas, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement, and it may be canceled, terminated or suspended in whole or in part by the City of Wichita, and such other sanctions and remedies may be imposed as provided by law.

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

E. Exempted from these requirement are: (City of Wichita)

1. Any contractor or subcontractor, vendor or supplier of the City of Wichita, or any of its agencies, who wishes to enter into a contract, purchase order or agreement which is covered by the provisions of Section 2.12.900, et seq., of the Code of the City of Wichita, Kansas, shall, prior to entering into such contract, purchase order or agreement, submit to the Citizen Rights and Services Division/Board of the City of Wichita, Kansas, a preliminary report on forms provided by the Board concerning Nondiscrimination and Equal Employment/Affirmative Action for review and evaluation. Upon review of the preliminary form submitted:

a. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements 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.

b. The provisions of Section 2.12.900, et seq., shall not apply to 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 notice of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the federal agency involved.

c. Those contractors, subcontractors, vendors or suppliers not exempted herein whose preliminary report reveals deficiencies shall be required to submit goals and timetables for correcting such deficiencies in accordance with instructions included with the preliminary report for review, evaluation and acceptance prior to a contract, purchase order or agreement award.

F. Failure of any contractor, subcontractor, vendor or supplier to report to the Kansas Civil Rights Commission as required by K.S.A. 44-1031, as amended, or to the Citizen Rights and Services Division/Board of the City of Wichita as required by Section 2.12.900, et seq., of the Code of the City of Wichita, Kansas; or has been found guilty of a violation of the City's ordinances, state statutes, or federal statutes, or regulations pertaining to unlawful discrimination, which finding, decision or order has become final, shall be deemed a breach of this contract and said contract may be canceled, terminated or suspended in whole or in part by the City or its contracting agency.

Second Reading Ordinances for March 8, 2011 (first read on March 1, 2011)

Charitable Solicitation Event, Section 11.44.050

ORDINANCE NO. 48-950

An ordinance creating new chapter 3.26 of the code of the City of Wichita, Kansas, pertaining to permits for charitable solicitation events at intersections within the City of Wichita, the requirements therefor, and regulating the conduct of participants therein.

Public Hearing and Tax Exemption Request Chrome Plus International. (District IV)

ORDINANCE NO. 48-953

An ordinance exempting property from ad valorem taxation for economic development purposes pursuant to Article 11, Section 13, of the Kansas constitution; providing the terms and conditions for ad valorem tax exemption; and describing the property of chrome plus international, inc., so exempted.

Tyler Improvement, between 21st Street and 29th Street (District V)

ORDINANCE NO. 48-954

An ordinance amending ordinance no. 48-815 of the City of Wichita, Kansas declaring Tyler, between 21st Street North and 29th Street North (472-84921) to be a main trafficway within the City of Wichita Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.

SUB2008-00087 -- Plat of Funston Addition located on the southwest corner of Hydraulic and 47th Street South. (District III)

ORDINANCE NO. 48-955

An ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.