

Table of Contents

Agenda	4
IV-1. Public Hearing and Issuance of Industrial Revenue Bonds, Shannon No. 2, LLC. (District IV)	
Agenda Report No. IV-1.	10
Ordinance 49-532.	12
IV-2. Memorandum of Understanding between the City of Wichita and Wichita Wagonmasters.	
Agenda Report No. IV-2.	16
Proposed MOU Wagonmasters 6 11 13 V2 (5).	17
Exhibit A Wagonmasters	20
IV-3. New Central Library Architectural Services. (District VI)	
Agenda Report No. IV-3.	21
RFQ.	23
Supp Agreement No 2 FINAL DRAFT 6-15-13	42
IV-4. Amending the Cultural Arts Plan.	
Agenda Report No. IV-4.	45
Cultural Plan Addendum FINAL v1a	48
II-3a. Preliminary Estimates.	
Agenda Report No. II-3a	65
II-4a. Partial Acquisition of 2932 North Amidon for the Amidon, 21st Street North to 29th Street North Improvement Project. (District VI)	
Agenda Report No. II-4a	66
Supporting Documents	67
II-4b. Partial Acquisition of 2750 North Amidon for the Amidon, 21st Street North to 29th Street North Improvement Project. (District VI)	
Agenda Report No. II-4b	72
Supporting Documents	73
II-4c. Partial Acquisition of 2856 North Amidon for the Amidon, 21st Street North to 29th Street North Improvement Project. (District VI)	
Agenda Report No. II-4c	80
Supporting Documents	81
II-4d. Partial Acquisition of 431 North 135th Street West for the Maple to Central Improvement Project. (District IV)	
Agenda Report No. II-4d	88
Real Estate Agreement and Maps	89
II-5. Contracts and Agreements for June 2013.	
Agenda Report No. II-5	93
II-6. Approval of IRB Subtenant Lease, Pulse Headquarters, LLC. (District II)	
Agenda Report No. II-6	95
Sublease Agreement	96

II-7. North Industrial Corridor (NIC) Groundwater Contamination Project – Remedial Design Contract.	
Agenda Report No. II-7	121
Contract.	123
Resolution No. 13-126	153
II-8. Second Reading Ordinances (First Read July 2, 2013)	
Agenda Report No. II-8	155
II-9. *DED2013-00001 - Dedication of Street Right-of-Way located south of 29th Street North, West of Broadway. (District VI)	
Agenda Report No. II-9	156
Dedication.	157
II-10. *SUB2013-00005 -- Plat of Mac West Addition located on the southwest corner of West Street and MacArthur Road. (District IV)	
Agenda Report No. II-10	158
Resolution No. 13-124	160
Supporting Documents	162
II-11. *SUB2013-00024 -- Plat of QuikTrip 13th Addition located on the northwest corner of Meridian and MacArthur Road. (District IV)	
Agenda Report No. II-11	164
Restrictive Covenant	167
II-12. *ZON2013-09 - City zone change from SF-5 Single-family Residential to TF-3 Two-family Residential, generally located west of Young Street and three blocks south of W. Central. (District VI)	
Agenda Report No. II-12	169
Ordinance No. 49-533.	171
Background Information.	172
II-13. *ZON2013-00011 and CON2013-00011 – City zone change from Single-Family Residential (SF-5) to GO General Office (GO), with a Conditional Use for “safety services,” specifically young victims of abuse; on property generally located south of Lincoln Street, between Topeka and Emporia Avenues. (District III)	
Agenda Report No. II-13	175
Ordinance No. 49-534.	178
Resolution No. 13-125	179
Background Information.	181
II-14. *A13-02 - Request by Loretta M. Zeller Revocable Trust to annex lands generally located at the northwest corner of MacArthur and Meridian. (District IV)	
Agenda Report No. II-14	185
Map	187
Ordinance No. 49-535.	188
II-15. *A13-03 - Request by MacWest LLC to annex lands generally located at the southwest corner of MacArthur Road and West Street. (District IV)	

Agenda Report No. II-15 190
Map 192
Ordinance No. 49-536. 193
II-16. *LeaseCorp, Inc. Assignment of Lease by ICT. (District IV)
 Agenda Report No. II-16 195
 Lease Agreement 196

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. July 9, 2013

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on July 2, 2013

AWARDS AND PROCLAMATIONS

- Proclamation:

American Indian Festival Weekend
- Award:

Small Business Week Presentation

I. PUBLIC AGENDA

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

1. Andrew Crane - Requesting that the City Council Members and City Manager ride the City bus with him.
2. Janice Bradley - The corporate welfare of the City's water "conservation" rebate program and the dire need for a Citizens' Review Board to bring accountability to the Wichita Police Department.

II. CONSENT AGENDAS (ITEMS 1 THROUGH 16)

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

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

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

None

IV. NEW COUNCIL BUSINESS

1. Public Hearing and Issuance of Industrial Revenue Bonds, Shannon No. 2, LLC. (District IV)

RECOMMENDED ACTION: Close the public hearing, place on first reading the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Industrial Revenue Bonds in an amount not to exceed \$3,500,000 to Shannon No. 2, LLC, approve the sublease of space to Norandex and authorize the necessary signatures.

2. Memorandum of Understanding between the City of Wichita and Wichita Wagonmasters.

RECOMMENDED ACTION: Approve the memorandum of Understanding (MOU) between the City of Wichita (City) and Wichita Wagonmasters and approve in-kind services to the City not to exceed \$10,000.

3. New Central Library Architectural Services. (District VI)

RECOMMENDED ACTION: Approve the release of a Request for Qualifications for building design services.

4. Amending the Cultural Arts Plan.

RECOMMENDED ACTION: Approve the addendum to the Cultural Arts Plan and commit to the continuation of the current level of funding to be reviewed in five years.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

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

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

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

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

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

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

VII. NON-CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

None

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 16)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated July 8, 2013.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>New</u>	<u>2013</u>	<u>(Consumption off Premises)</u>
Kenny Huy Nguyen	PP Station, LLC	4003 S. Broadway
Maria S. Mercado	La Tapatia Market LLC	1953 S. Seneca

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

3. Preliminary Estimates:

- a. Preliminary Estimates.

RECOMMENDED ACTION: Receive and file.

4. Property Acquisitions:

- Partial Acquisition of 2932 North Amidon for the Amidon, 21st Street North to 29th Street North Improvement Project. (District VI)
- Partial Acquisition of 2750 North Amidon for the Amidon, 21st Street North to 29th Street North Improvement Project. (District VI)
- Partial Acquisition of 2856 North Amidon for the Amidon, 21st Street North to 29th Street North Improvement Project. (District VI)
- Partial Acquisition of 431 North 135th Street West for the Maple to Central Improvement Project. (District IV)

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

5. Contracts and Agreements for June 2013.

RECOMMENDED ACTION: Receive and file.

6. Approval of IRB Subtenant Lease, Pulse Headquarters, LLC. (District II)

RECOMMENDED ACTION: Approve the sublease between Pulse Headquarters, LLC and Kansas Medical Mutual Insurance Company.

7. North Industrial Corridor (NIC) Groundwater Contamination Project – Remedial Design Contract.

RECOMMENDED ACTION: Approve the contract with SCS Aquaterra, authorize the necessary signatures, and approve any necessary budget adjustments *and adopt the bonding resolution.*

8. Second Reading Ordinances: (First Read July 2, 2013)
 - a. Second Reading Ordinances (First Read July 2, 2013)

RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

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

9. *DED2013-00001 - Dedication of Street Right-of-Way located south of 29th Street North, West of Broadway. (District VI)

RECOMMENDED ACTION: Accept the Dedication.

10. *SUB2013-00005 -- Plat of Mac West Addition located on the southwest corner of West Street and MacArthur Road. (District IV)

RECOMMENDED ACTION: Approve the document and plat, authorize the necessary signatures, and adopt the Resolution.

11. *SUB2013-00024 -- Plat of QuikTrip 13th Addition located on the northwest corner of Meridian and MacArthur Road. (District IV)

RECOMMENDED ACTION: Approve the document and plat, and authorize the necessary signatures.

12. *ZON2013-09 - City zone change from SF-5 Single-family Residential to TF-3 Two-family Residential, generally located west of Young Street and three blocks south of W. Central. (District VI)

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the zone change to TF-3 Two-family Residential; authorize the Mayor to sign the zone change ordinance and place the ordinance on the first reading (simple majority required).

13. *ZON2013-00011 and CON2013-00011 – City zone change from Single-Family Residential (SF-5) to GO General Office (GO), with a Conditional Use for “safety services,” specifically young victims of abuse; on property generally located south of Lincoln Street, between Topeka and Emporia Avenues. (District III)

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the zone change and the Conditional Use subject to the recommended conditions, authorize the Mayor to sign the ordinance and the resolution and place the ordinance establishing the zone change on first reading (simple majority required).

14. *A13-02 - Request by Loretta M. Zeller Revocable Trust to annex lands generally located at the northwest corner of MacArthur and Meridian. (District IV)

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

15. *A13-03 - Request by MacWest LLC to annex lands generally located at the southwest corner of MacArthur Road and West Street. (District IV)

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

II. CONSENT HOUSING AGENDA ITEMS

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

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

None

II. CONSENT AIRPORT AGENDA ITEMS

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

16. *LeaseCorp, Inc. Assignment of Lease by ICT. (District IV)

RECOMMENDED ACTION: Approve the LeaseCorp, Inc. Lease Assignment to INTRUST Bank, N.A.

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council
SUBJECT: Public Hearing and Issuance of Industrial Revenue Bonds (Shannon No. 2, LLC) (District IV)
INITIATED BY: Office of Urban Development
AGENDA: New Business

Recommendation: Close the public hearing and place the Ordinance on first reading.

Background: On August 28, 2012, the Wichita City Council approved a Letter of Intent to issue Industrial Revenue Bonds (“IRBs”) for Shannon No. 2, LLC (“Shannon”), a local real estate investment holding company managed by David Shannon. The bonds will be used to finance the construction of a “speculative” manufacturing and warehouse/distribution facility near Pawnee and West Street in Southwest Wichita. Construction is now complete and Shannon is now requesting the issuance of IRBs in an amount not to exceed \$3,500,000.

Analysis: Bond proceeds will be used to permanently finance the costs of constructing a 90,000 square foot speculative warehouse/distribution facility located in the 2100 block of south West Street. Shannon has already leased 27,000 square feet to Norandex, an expanding local firm that distributes construction materials throughout the Wichita region. Shannon plans to lease the balance of the facility to one or more additional users, depending on space requirements of potential tenants.

The current City-County Economic Development Incentive Policy, adopted August 14, 2012, allows for IRBs with a property tax exemption to be issued for speculative industrial buildings that are 50,000 square feet or larger. The tax exemption for the first five years is 100%. A compliance review will be conducted at the five year mark to determine the project’s eligibility for the second five years of tax abatement. The total capital investment, actual net new job creation by the companies occupying the building at that time and the average annual salaries of all jobs located in the building compared to the North American Industrial Classification System (NAICS) average in the Wichita Metropolitan Statistical Area (MSA) will be measured to determine the percentage of abatement for the second five years.

Shannon agrees to comply with the City’s Standard Letter of Intent Conditions. Equal Employment Opportunity/Affirmative Action (EEO/AA) requirements will be required of Shannon, as is standard in all IRBs issues, and the EEO/AA requirements will also apply to the potential subtenants of Shannon.

The IRBs will be issued in two series of taxable bonds. The Series V Bonds will be purchased by Intrust Bank and the Series VI Bonds will be purchased by Shannon No. 2, LLC as its equity investment. The law firm of Kutak Rock serves as bond counsel. The sources and uses of funds are as follows:

<u>SOURCES OF FUNDS</u>	
Series V bonds, Intrust Bank	\$2,888,000
Series VI bonds, Shannon No. 2 LLC	<u>\$ 612,000</u>
TOTAL SOURCES	\$3,500,000

<u>USES OF FUNDS</u>	
Construction Cost & Cost of Issuance	<u>\$3,500,000</u>
Total Cost of Project	\$3,500,000

Financial Considerations: Shannon agrees to pay all costs of the City relative to the issuance of the bonds. The company also agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds.

Based on the City-County Economic Development Incentive Policy governing the use of IRBs with tax abatement for speculative industrial buildings, the developer qualifies for a 100% five-year tax exemption on real property constructed with bond proceeds and a sales tax exemption. Approval of the second five-year abatement period will be subject to compliance with job creation and average wage commitment, capital investment commitment and a requirement that at least 51% of product stored in the project are exported to end-users outside the Wichita MSA as required by the current incentive policy.

Based on the 2012 mill levy, the estimated tax value of exempted property for the first full year is approximately \$105,527. The value of a 100% real property tax exemption as applicable to taxing jurisdictions is:

City	\$ 28,413	State	\$ 1,313
County	\$ 25,765	USD 259	\$ 50,036

For the purpose of this analysis, certain assumptions have been made. If the project is approved for a 100% tax abatement for the first five years and if 22 net new jobs have been created by the time of the five year compliance audit and the average of all jobs in this project is at, or above, the NAICS average for the Wichita MSA, the project would qualify for a 77% tax abatement for the second five years to achieve the minimum benefit to costs ratio of 1.3 to 1.0 as required in the Economic Development Policy. The percentage of tax abatement for the second five years would be adjusted to achieve the required benefit/cost ratios.

Using the assumptions stated above, the cost/benefit analysis report completed using the fiscal and economic impact model of Wichita State University's Center for Economic Development and Business Research reflects benefit/cost ratios as follows:

City of Wichita General Fund	1.34 to one
City of Wichita Debt Service	1.45 to one
Sedgwick County	1.30 to one
USD 259	1.19 to one
State of Kansas	6.20 to one

Legal Considerations: Kutak Rock LLP, will serve as bond counsel in the transaction. Bond documents will be prepared by Kutak Rock, LLP and will be reviewed and approved as to form by the Law Department prior to the issuance of bonds. Under the terms of the IRB Lease Agreement, the Norandex sublease is subject to City Council approval. The form of the Norandex sublease has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council close the public hearing, place on first reading the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Industrial Revenue Bonds in an amount not exceed \$3,500,000 to Shannon No. 2, LLC, approve the sublease of space to Norandex and authorize the necessary signatures.

Attachments: Bond Ordinance

ORDINANCE NO. 49-532

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS, TO ISSUE ITS INDUSTRIAL REVENUE BONDS, SERIES V, 2013 (SHANNON NO. 2, L.L.C. (TAXABLE UNDER FEDERAL LAW) AND SUBORDINATED INDUSTRIAL REVENUE BONDS, SERIES VI, 2013 (SHANNON NO. 2, L.L.C.) (TAXABLE UNDER FEDERAL LAW), IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$3,500,000 FOR THE PURPOSE OF CONSTRUCTING AND ACQUIRING A COMMERCIAL FACILITY; AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

WHEREAS, the City of Wichita, Kansas (the “Issuer”), is authorized by K.S.A. 12-1740 *et seq.*, as amended (the “Act”), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities; and

WHEREAS, the Issuer has found and does find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its industrial revenue bonds in the aggregate principal amount of not to exceed \$3,500,000 (the “Bonds” as further described in this Ordinance), for the purpose of paying the costs of constructing and acquiring a commercial facility (the “Project”) as more fully described in the Indenture and in the Lease hereinafter authorized for lease by the Issuer to Shannon No. 2, L.L.C., a Kansas limited liability company (the “Tenant”); and

WHEREAS, the Bonds and the interest thereon shall not be a general obligation of the Issuer, shall not be payable in any manner by taxation and shall be payable solely from the trust estate established under the Indenture, including revenues from the Lease of the Project; and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds to execute and deliver (i) a Trust Indenture dated as of July 15, 2013 (the “Indenture”), with The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), prescribing the terms and conditions of issuing and securing the Bonds; (ii) a Lease dated as of July 15, 2013 (the “Lease”), with the Tenant in consideration of payments of Basic Rent and other payments provided for therein, (iii) a Bond Placement Agreement providing for the sale of the Series V, 2013 Bonds (as herein defined) by the Issuer to the INTRUST Bank (the “Series V, 2013 BPA”); (iv) a Bond Placement Agreement providing for the sale of the Series VI, 2013 Bonds (as herein defined) by the Issuer to the Tenant (the “Series VI, 2013 BPA”); and (v) Administrative Service Fee Agreement between the City and the Tenant (the “Agreement”) (the Indenture, the Lease, the BPA and the Agreement are referred to collectively herein as the “Bond Documents”);

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

Section 1. Authority to Cause the Project to be Constructed and Acquired. The Governing Body of the Issuer hereby declares that the Project, if in being, would promote the welfare of the Issuer, and the Issuer is hereby authorized to cause the Project to be constructed and acquired all in the manner and as more particularly described in the Indenture and the Lease hereinafter authorized.

Section 2. Authorization of and Security for the Bonds. The Issuer is hereby authorized and directed to issue the Bonds in the aggregate principal amount of not to exceed \$3,500,000, to be designated “City of Wichita, Kansas, Industrial Revenue Bonds, Series V, 2013 (Shannon No. 2, L.L.C.) (Taxable Under Federal Law);” (the “Series V, 2013 Bonds”) and “City of Wichita, Kansas, Subordinated Industrial Revenue Bonds, Series VI, 2013 (Shannon No. 2, L.L.C.) (Taxable Under Federal Law)” (the “Series VI, 2013 Bonds”). The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The Bonds shall be special limited obligations of the Issuer payable solely from the trust estate established under the Indenture, including revenues from the Lease of the Project. The Bonds shall not be general obligations of the Issuer, nor constitute a pledge of the full faith and credit of the Issuer and shall not be payable in any manner by taxation.

Section 3. Lease of the Project. The Issuer shall cause the Project to be leased to the Tenant pursuant to and in accordance with the provisions of the Lease in the form approved herein.

Section 4. Execution of Bonds and Bond Documents. The Mayor of the Issuer is hereby authorized and directed to execute the Bonds and deliver them to the Trustee for authentication on behalf of, and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor is further authorized and directed to execute and deliver the Bond Documents on behalf of, and as the act and deed of the Issuer in substantially the forms presented for review prior to final passage of this Ordinance, with such minor corrections or amendments thereto as the Mayor may approve, which approval shall be evidenced by his execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or any Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer’s official seal.

Section 5. Pledge of the Project and Net Revenues. The Issuer hereby pledges the Project and the net revenues generated under the Lease to the payment of the Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Bonds shall be deemed to have been paid within the meaning of the Indenture.

Section 6. Approval of the Guaranty Agreement. The form of Guaranty Agreement dated as of July 15, 2013, pursuant to which the Tenant, David J. Shannon, Julie Melhorn, the Kenneth F. Shannon Irrevocable Trust and the Janet A. Shannon Irrevocable Trust each, as a Guarantor, guarantees to the Trustee, for the benefit of the owners of the Series V, 2013 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the Series V, 2013 Bonds.

Section 7. Further Authority. The officers, agents and employees of the Issuer are hereby authorized and directed to take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Bonds and the Bond Documents as necessary to give effect to the transactions contemplated in this Ordinance and in the Bond Documents.

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

[Remainder of Page Intentionally Left Blank]

PASSED by the Governing Body of the City of Wichita, Kansas, and approved by the Mayor on July 19, 2013.

CITY OF WICHITA, KANSAS

(Seal)

—

Attest:

By _____

Carl Brewer, Mayor

By _____
Karen Sublett, City Clerk

Approved as to form:

By _____
Gary E. Rebenstorf, City Attorney

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council

SUBJECT: Memorandum of Understanding between the City of Wichita and Wichita Wagonmasters (All Districts)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: New business

Recommendation: Approve the Memorandum of Understanding (MOU) between the City of Wichita (City) and Wichita Wagonmasters and approve in-kind services to the City not to exceed \$10,000.

Background: Wichita Wagonmasters have occupied space located on the grounds of Old Cowtown Museum designated as the Lumber Yard since its beginning in 1974. The group was formed around the Windwagon Smith story based on the Conestoga wagon with sails. Wichita Festivals used the idea to create the Windwagon Smith mascot for the River Festival.

Wagonmasters were formed to act as a support group for the Wichita River Festival but presently do much more to support various events and activities around the City. They currently have two “windwagons;” one for parades and special events and the other floats on the river to provide transportation up and down the river. The group was provided land on the current grounds of the Old Cowtown Museum back in 1974 and construction was completed for a facility that would house the windwagon and provide a meeting space for members. This Memorandum of Understanding is a new agreement with the Wagonmasters. The previous agreement was with the Board of Directors for Old Cowtown Museum and no longer exists.

Analysis: In exchange for in-kind services including maintenance of the Lumber Yard building and providing food services to Old Cowtown Museum, the City agrees to the following:

- To provide water service in reasonable quantities to the Lumber Yard building occupied by the Wagonmasters;
- To provide trash service to the building occupied by the Wagonmasters in accord with the basic service as it currently exists but trash service charges beyond the base rate shall be the responsibility of Wagonmasters;
- and to keep the Wagonmasters informed of special activities and events scheduled at the Museum.

Financial Consideration: Wagonmasters will provide in-kind services not exceed \$10,000 to the City including food services and equipment for various special events and general maintenance on the building known as the Lumber Yard.

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

Recommendations/Actions: It is recommended that the City Council approve the Memorandum of Understanding (MOU) between the City of Wichita (City) and Wichita Wagonmasters and approve in-kind services to the City not to exceed \$10,000.

Lease

This Lease is entered into this _____ day of July, 2013 between the City of Wichita, a municipal corporation (City) and the Wichita Wagonmasters , Inc., a 501(c)(4) corporation (Wagonmasters).

Whereas, the Wagonmasters occupy at sufferance a certain structure and adjoining premises located on the grounds of Old Cowtown Museum (Museum) owned and operated by City, which structure is currently designated as the Lumber Yard and is identified on the attached Exhibit A, and

Whereas, City's granting of this benefit to the Wagonmasters is consistent with City support for the Wichita River Festival and other Wichita events for which the Wagonmasters provide valuable volunteer service; therefore

The Wagonmasters agree to:

- Comply with all Museum policies and procedures.
- Remain responsible for any keys issued to them, report any security issues to the Museum immediately and keep the facility locked and secure. The Museum shall have a key and access to the building occupied by the Wagonmasters at all times.
- Accept full responsibility for personal property in the Lumber Yard building, and be fully responsible for all repairs necessary to the interior or exterior of the building, as designated and in the manner approved by Museum management.
- Assume full responsibility for all utilities to the facility other than water, which will be provided in reasonable quantities by the Museum. The Wagonmasters may add a buried phone line to the structure, located at Museum's reasonable discretion, and at Wagonmasters' expense, and pay all charges associated with its operation.
- Keep the Museum informed of any planned, unusual events or activities which may impact the Museum operations or property, and obtain Museum approval before embarking on such activities.
- Conform use of the facilities in a manner so as not to interrupt, disrupt, or impede Museum operations, functions or events. All activities by Wagonmasters members and guests will comply with all federal, state and local laws, and will not interfere with Museum's quiet enjoyment of the use of its property, including, but not limited to anti-discrimination laws.
- Provide the Museum with a list of information for contact persons authorized to handle routine business matters and in the event of an emergency.

--Submit plans and seek Museum approval, which may be given or withheld in its sole discretion, for any proposed alterations to the building.

In compensation and consideration for continued use of the Lumberyard structure under these terms, Wagonmasters will assist the Museum by providing food service and/or performing maintenance projects on Museum buildings and grounds, all in a manner meeting Museum approval. The reasonable value of the in-kind services (food, maintenance supplies and materials, along with labor) provided by Wagonmasters to Museum shall be a minimum of ten thousand (\$10,000) dollars per calendar year.

The City of Wichita agrees to:

--Provide the building at no cost to the Wagonmasters other than the above stated consideration.

--Provide water service in reasonable quantities to the Lumber Yard building occupied by the Wagonmasters.

--Provide trash service to the building occupied by the Wagonmasters in accord with the basic service as it currently exists. Trash service charges beyond the base rate shall be the responsibility of Wagonmasters.

--Keep the Wagonmasters informed of special activities and events scheduled at the Museum.

Both the City and Wagonmasters agree that:

This LEASE of the Lumber Yard does not extend to Wagonmasters any rights to use any other structure on the Museum campus without prior Museum approval. This LEASE does grant an easement for ingress and egress to the Lumber Yard, subject to the duties to protect the security of the Museum campus, the Museum's quiet enjoyment of its property, and other obligations set out in this LEASE. Termination of the LEASE by either Party or by expiration of the Term shall also, without need of expression, terminate the ingress/egress easement.

The term of this LEASE and the easement shall be effective for five (5) years from the date of execution. Wagonmasters may terminate this Lease at any time after giving at least one (1) year's notice in writing to:

City of Wichita, Division of Arts and Cultural Services, 225 W. Douglas, Wichita, KS 67202, jdangelo@wichita.gov City reserves the right to terminate this agreement at any time after giving at least one (1) year's notice. Notice of intent to terminate shall be provided to the Wagonmasters in writing to:

Wichita Wagonmasters, Inc, C/O Current Captain, PO Box 1106, Wichita, KS 67201, captain@wagonmasters.org

And posted prominently on the interior of the door to the Lumber Yard structure. This notice to terminate shall be effective on the date stated, which shall be at least one (1) year after the earlier of mail, fax or email receipt or witnessed posting within the Lumber Yard structure. If such termination results from the need of Museum to use the Lumber Yard for its operations or for any other public purpose, Museum will attempt to make other property on the Museum campus available to Wagonmasters on the same terms, to the extent that such is a reasonable use of Museum property. If such termination results from Wagonmasters breach of any term of this Lease, Museum will not make any attempt at an alternate space allocation, and has no obligation to do so.

This LEASE shall be reviewed annually prior to its anniversary date. Failure to continue the Lease or to reach agreement on any proposed revisions prior to conclusion of the current term will terminate this LEASE without the requirement of notice by either party.

The parties have approved this agreement on the day and year first above written.

CITY OF WICHITA, KANSAS

WICHITA WAGONMASTERS

By _____

By _____

Carl Brewer, Mayor

Bryan Frye, Captain

Wichita Wagonmasters, Inc.

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

Devore Lumber

The Devore Farm

Wagonmasters/
LUMBER YARD

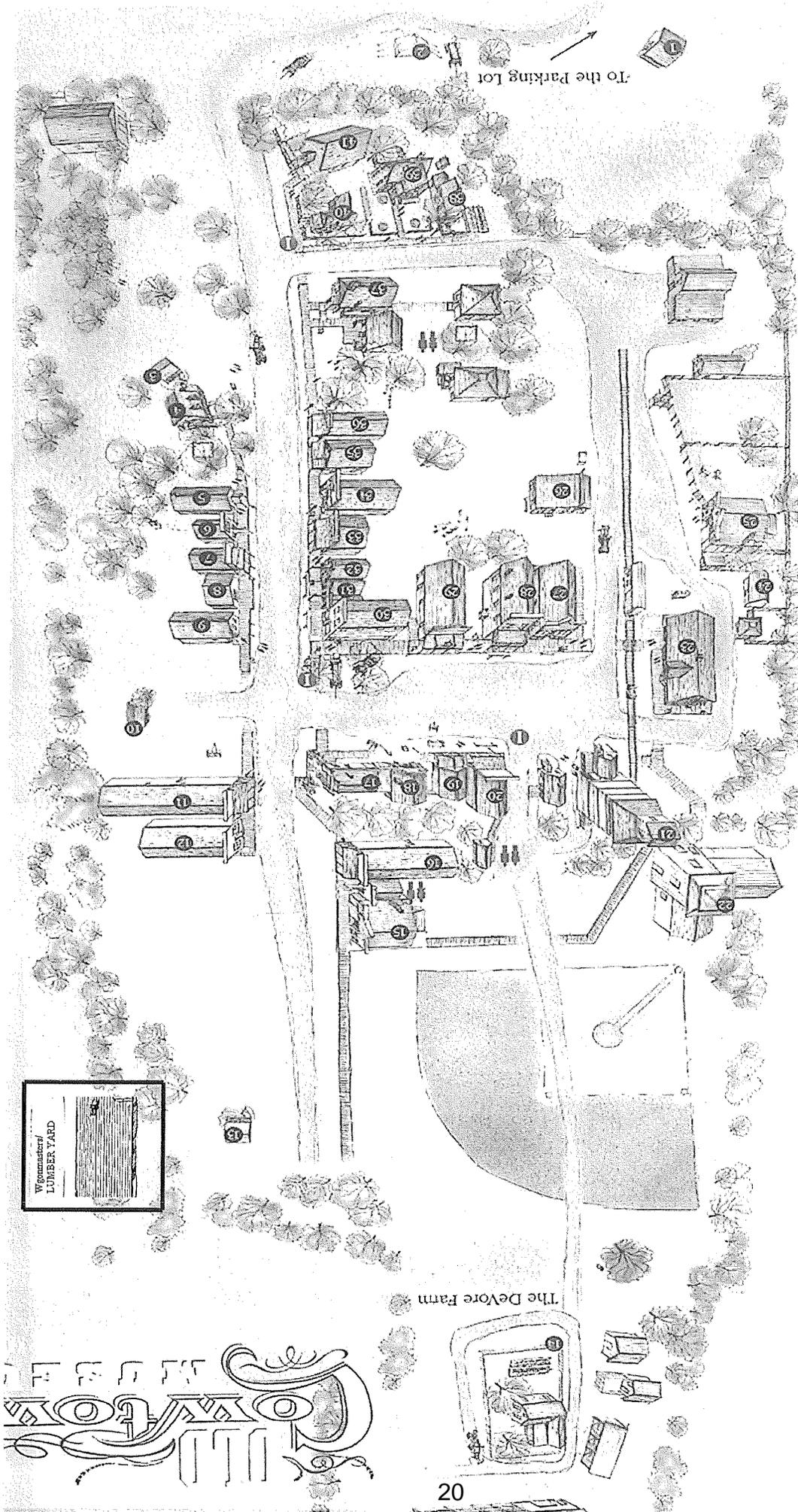


EXHIBIT "A"

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council
SUBJECT: New Central Library Architectural Services (District VI)
INITIATED BY: Wichita Public Library
AGENDA: New Business



Recommendation: Approve release of Request for Qualifications for building design services.

Background: The 2006-2021 Wichita Public Library System Master Plan was adopted by the Library Board of Directors on August 15, 2006 and endorsed by the City Council on September 12, 2006. On November 6, 2007, the City Council adopted a \$30,000,000 bonding resolution, initiated the Capital Improvement Project (CIP) for a new Central Library and authorized negotiation to acquire property once a site was selected. On June 3, 2008, the City Council approved a Real Estate Purchase Contract and Lease Agreement to acquire property at 711 West 2nd Street as the location for the new Central Library. A contract with HBM Architects for building programming was approved by the City Council on April 21, 2009. A supplemental contract with the same firm to test the feasibility of modifying the building program into a phased construction project was approved by City Council on May 15, 2012. The modified building program was approved by the Library Board of Directors on April 16, 2013 and presented to the City Council during a workshop on April 23, 2013. A presentation on the project was presented during the June 13, 2013 City Council meeting after which the Library Board and staff were directed to present the information to District Advisory Boards during July meetings.

Analysis: The adopted 2011-2020 Capital Improvement Program (CIP) includes a project to construct a new Central Library. During a 2010 City Council workshop on the original building program, the idea of phased construction was suggested. The recommendation was made again in 2011 after an Expansion Study of the existing Central Library confirmed that the needs of the Library cannot be met by the current facility. There were also requests to better understand libraries of the future, including what services will be offered and what spaces will be needed.

A white paper provided to City Council members in 2012 noted that the libraries of the future will offer a variety of services relating to lifelong learning. Libraries will remain community technology centers, providing public computing services and training as well as high speed internet access for people using their own laptops, tablets and smart phones. Libraries will continue to emphasize service to youth with larger areas for infants and children and new spaces for teens, all of which will integrate books, media, technology and programs. Libraries will be interactive learning centers where residents can research topics of interest as well as create new content inspired by library collections and resources. Libraries will evolve into anchors for community life as preferred third places of informal gathering and social interaction.

The modified building program, developed with significant amounts of community engagement, implements the phased construction strategy and provides spaces required of libraries of the future. The building program incorporates new, forward thinking strategies and trends for library service to reduce space requirements while minimizing operating costs. The building described by this program embraces a variety of anticipated future needs by planning multiple integrated options for expansion. This planned flexibility provides highly cost effective targeted expansion with minimal disruption of library service. Cost control has been an important part of the building program modification.

The next step in the project process is to identify an architectural firm and its consultants to comprise a building design team to continue the project through schematic design, design development and creation of construction documents. A request for qualifications (RFQ) will be used to select the building design team. The City will retain HBM as its library consultant throughout the design phase and the preparation of construction documents to help ensure that the intent and efficiencies identified in the building program are realized by the building design.

Financial Considerations: The adopted 2011-2020 CIP includes \$18,000,000 in 2014 and \$12,000,000 in 2015 for this project.

Legal Considerations: The proposed selection process based on qualifications, which leaves price and performance details for later negotiation, is governed by AR 1.2a. After the best qualified proposer is identified, the parties will negotiate a price term. If those negotiations remain outside the project budget, the City will negotiate with the next best qualified proposer, etc., until a qualified proposal within budget is determined. The proposer selected and the contract negotiated will be subject to Council approval.

Recommendation/Action: It is recommended that the City Council approve the release of a Request for Qualifications for building design services.

Attachments: Request for Qualifications (RFQ) Architectural Services for a new Central Library; Supplemental Agreement No. 2 Contract for Architectural Programming Services New Central Library

REQUEST FOR QUALIFICATIONS (RFQ)
ARCHITECTURAL SERVICES FOR A NEW CENTRAL LIBRARY
Wichita, Kansas

1. Introduction

The City of Wichita, Kansas (City) is planning to build a new Central Library in downtown Wichita. This new library will replace the current Central Library and will serve as the primary facility and administrative headquarters for the Wichita Public Library system. The new Central Library will be located on property acquired and cleared by the City southwest of the intersection of 2nd Street and McLean Boulevard at 711 West 2nd Street.

It is the intent of the City that the new Central Library be both a great public building in terms of its architectural design and a great public library in terms of its functionality and efficiency. The City has taken steps to assure that the facility will be a great public library through hiring its own library consultant to develop the architectural program and to later advise the City regarding the library interiors including furnishings, fixtures and equipment (FF&E). The purpose of this RFQ is to identify an architectural firm and its consultants (Design Team) to design a new Central Library that is a great public building of architectural significance which includes all the functionalities and efficiencies presented in the architectural program and which respects the City's preferences regarding interiors and FF&E.

In preparing a response to this RFQ, it is recommended that architects assemble their proposed design team with emphasis on creating a great public building. It is not necessary or recommended that architects include special library programming consultants or library design consultants as part of their design team. That specialized knowledge will be provided by the City through its existing library consultant who will be actively involved with the City's Project Committee throughout the project. It is expected that the design of the new Central Library will be a collaborative effort involving the Design Team, the City's Project Committee and its library consultant.

2. Background

In 2009, the City developed a project plan for the new library that separated programming and architectural design into two separate efforts, and no firm would be allowed to perform both services. The first step was to do a national search and select a highly qualified firm with excellent experience in developing architectural programs for new libraries. The second step of the plan is now to select the Design Team to design the facility utilizing the architectural program that has been developed and approved. The intent of this methodology has been (1) to assure development of an architectural program that meets the City's unique needs and results in a great library that is highly functional and efficient, and (2) to provide a more level playing field for design teams competing for the opportunity to design a great library building while giving preference to local firms.

A Request for Qualifications (RFQ) for programming was advertised nationally in 2009. Numerous responses from interested firms were received. The City followed its selection

process and chose HB+M/Providence (now HBM Architects) based in Cleveland, Ohio to develop the architectural program. Dan Meehan is the partner in charge of the Wichita project.

HBM was instructed to work closely with City staff to develop an architectural program outlining the required spaces and their relationships for the new Central Library recognizing technological developments, future trends, staffing requirements and budget limitations for both construction and operations. In addition, the new Central Library must serve public functions in areas that can be separated from the rest of the facility during times outside the library's service hours.

HBM spent months evaluating existing library operations and held numerous meetings with library staff, City administrators and City planners as well as library users, citizen groups, and members of the business community to determine a vision of how a new Central Library could best serve the future needs of the citizens of Wichita. The resulting program called for a 137,500 sq. ft. building estimated to cost \$42,000,000. This program is closely aligned with the Library Master Plan for Facilities which recommends construction of a new Central Library of approximately 135,000 sq. ft.

The Wichita City Council responded favorably to the building program but expressed concern about the projected cost which exceeded the Capital Improvement Program (CIP) project allocation of \$30,000,000. Council members challenged the Library to raise funds for the extra cost and/or to find a way to meet the needs of the new library within the \$30,000,000 budget allocation. At the same time, they expressed concern about anticipated increases in operating costs and asked that the Library consider ways to reduce the ongoing operational costs of a new facility.

To facilitate developing the options requested of the Library, the City Council approved a supplemental agreement with HBM to modify the original building program. They were asked to create a revised program to meet the City's current and future needs for a new Central Library within the \$30,000,000 budget allocation. This would be accomplished by a facility that provides immediate efficiency gains and enhanced service delivery to meet shorter term needs while maintaining flexibility for meeting evolving future service needs through phased construction or planned expansion opportunities.

Meeting the reprogramming challenge required HBM to reduce both functional areas and circulation space. It also required them to maximize the efficiency of functional adjacencies, planning flexibility and the clear sight lines required for minimal staffing. HBM adjusted the program for potential future growth by making the building strategically expandable to accommodate growth in specific areas with only minimal disruption to other library operations.

This revised program describes a facility of approximately 102,000 sq. ft. with potential future expansion of specific functional areas raising the total area incrementally to over 146,000 sq. ft. The program documents were approved by the Library Board of Directors on April 16, 2013 and were shared with the City Council on April 23, 2013.

In developing the approved program, HBM went through a process to create a "proof of concept" layout to assure that important workflows and efficiencies identified in the original program can be achieved within the reduced building area. New strategies for library service and

programming were explored and incorporated into the revised program layout. This layout is included with the program executive summary attached to this RFQ.

DO NOT CONSIDER THE ATTACHED LAYOUT TO BE THE REQUIRED FLOOR PLAN. The Design Team is encouraged, although not required, to make use of concepts developed in the layout when developing its schematic plans. It is expected that the Design Team will create its own design which may or may not be similar to the layout provided. However, all designs must comply with the existing revised program as accepted by the Library Board of Directors and presented to the Wichita City Council. This program will be the governing document and will not be allowed to undergo significant changes. No variations and/or changes to the program will be accepted unless they have first been considered and approved by the Project Committee.

The City will retain HBM as its library consultant throughout the design phase and the preparation of construction documents to assist the Project Committee. HBM will be present, either in person or through web-based computer conferencing, at all progress meetings with the Design Team. HBM's role will be to utilize their library experience in offering thoughts and/or suggestions regarding how the Design Team's building design may affect library functions. HBM will advise the Project Committee if conflicts between the building design and the program are acceptable within the intent of the program or if they will have a negative impact on some aspect of the programmed operating efficiencies. In addition, HBM will make recommendations to the Project Committee and the Design Team regarding interior finishes and FF&E for the new facility.

The Project Committee, HBM and the Design Team will work together in a collaborative process to bring the best ideas forward in order to achieve the City's goal of both a great library and a great building.

Both the master plan and the building program are available for review on the Library's web site: <http://www.wichita.lib.ks.us/Library/Reports/Planning.htm>. This Library project is a component of the Wichita Downtown Master Plan. The new library will serve as a gateway and anchoring destination for downtown. Information about the downtown master plan is available on the website of Wichita's Downtown Development Corporation: <http://www.downtownwichita.org>.

3. Public Art

The proposed library has been designated as a "special consideration" project according to City of Wichita Design Council Consultant Guidelines, a copy of which is attached to this RFQ. As such, the design of the project's site plan, building massing and exterior elevations is expected to make use of an integrated design team approach to public art. The integration of public art shall not be artistic elements treated as "add-ons" but rather as fundamental elements of the design that are developed during the early phases of the project by approaching architecture, engineering, landscape and art at the same time. For this reason, the selected firm must include an art consultant as part of its proposed project team. The role of the art consultant is to identify opportunities for incorporating public art into the project design and to assist in identifying artists to do the work. The duties of the art consultant do not include creating or constructing the art.

4. Scope of Services

The City of Wichita will be represented by a Project Committee that includes but is not limited to Co-Project Managers from the Public Works Department and the Wichita Public Library, the City Manager or his designee, the President of the Board of Directors of the Wichita Public Library and the Chairperson of the Board's Planning & Facilities Committee.

The Project Committee will be served by the following people acting as special consultants to the committee: the Director of Parks or designee with regard to landscape design, the Chief of Police or designee with regard to implementation of Crime Prevention Through Environmental Design (CPTED) concepts, the Chief Information Officer or designee with regard to information technology implementation, the Director of Wichita Transit or designee with regard to coordination of access by transit riders, and the Director of Planning or designee with regard to coordination with the downtown master plan.

Work shall be coordinated and jointly approved by the Project Committee and the Library Board of Directors. Both groups must approve each phase of the project. The City's Design Council must approve the design proposals in accordance with the "Design Council Consultant Guidelines." Final approval of the design rests with the Wichita City Council.

The City will continue to contract directly with HBM to represent the City's interests and serve as a consultant to the Project Committee when evaluating design proposals for conformance with the Architectural Program. HBM will also be available to answer questions from the Design Team related to the program and to assist the selected team in creating a smooth transition from programming to design throughout the design process. The purpose of this approach is to bring the best ideas forward based on a program driven design resulting in both a great library and great building for the City of Wichita.

The services provided for this project will be divided into the following five phases:

A. SCHEMATIC DESIGN

The Schematic Design Phase includes developing design concept options that respond to the needs identified in the Building Program. The Design Team will present the schematic design concept options first to the Project Committee and then to the Library Board of Directors and will work with both groups to arrive at the preferred schematic design. A presentation of the preferred exterior views, site development and public art opportunities should be scheduled with the Design Council as soon as possible in the schematic design process to obtain input from the members of the Design Council, the City Manager and the City Council. The attached Design Council Consultant Guidelines provide additional information about the expectations for this presentation.

Low maintenance cost and low operating cost, including low energy consumption, are to be an important part of the library design. Although LEED certification is not required, the designers should take every opportunity within reason to orient the building and to make design decisions that promote reduced maintenance cost, reduced operating cost and reduced energy consumption.

A cost effective design and full use of value engineering opportunities are important components of this project and shall be considerations throughout the Schematic Design Phase. For this reason, the Design Team must provide preliminary project cost estimates as part of the Schematic Design Phase.

The Schematic Design phase shall include the following deliverables:

- Site layout and preliminary utility information
- Building orientation, forms, massing, materials, entries, and fenestration
- Location and character of open public space, including rights of way
- Parking study
- Pedestrian and vehicular circulation for both public and staff
- Report on building and site plan's integration with the Downtown Master Plan
- Layout and organization of spaces
- Preliminary layout of shelving and furniture
- 3D computer model with a series of views to explain the design
- Identification of public art opportunities
- Sustainable design strategies
- Preliminary estimate of construction costs + FF&E
- Timeline for providing architectural services through construction documents

B. DESIGN DEVELOPMENT

After the Schematic Design has been approved by the Project Committee, Library Board, Design Council and City Council, the Design Team shall continue to develop and refine the design in preparation for producing Design Development drawings and documents. When the library's exterior views, site development and public art have been well developed and tentatively approved by the Project Committee and the Library Board of Directors, they shall be presented to the Design Council. These aspects of the project must receive final approval from the Design Council before being submitted to the Mayor and City Council for their final approval. Once these approvals have all been obtained, the design shall be frozen.

The Design Development phase shall include the following deliverables:

- Site improvements and utilities
- Building floor plans
- Building elevations
- Building sections
- Preliminary wall sections
- Interior layout of all shelving, furniture, and cabinetry
- Structural system layout and preliminary information
- Mechanical system layout and preliminary information
- Electrical, lighting and technology system layout and preliminary information
- Outline specifications
- Detailed 3D computer model with animation and a series of rendered views
- Development of public art opportunities
- Fully developed sustainable design strategies
- Preliminary estimate of energy use/utility costs
- Detailed estimate of construction costs with quantity take offs and unit prices+ FF&E at 50% Design Development
- Updated detailed estimate of construction cost + FF&E at 100% Design Development

- Updated timeline for architectural services through construction documents
- Timeline for bidding, contracting for services, and construction of the facility

C. CONSTRUCTION DOCUMENTS

Upon approval of all the listed Design Development deliverables by the Project Committee and Library Board, the Design Team shall prepare final construction drawings, specifications, and other documents required for the City to publicly bid and construct the project in its entirety. In addition to the normal reviews for compliance with applicable codes and regulations, the construction documents must be reviewed and approved by the Building Maintenance Section of the Public Works & Utilities Department for maintainability prior to bidding. It is strongly suggested that a preliminary review by Building Maintenance be requested at the end of Design Development but prior to beginning work on the construction documents to reduce the chance of approval problems later.

At the 90% completion point of the construction documents, the design team shall furnish:

- Updated timeline for contracting for services and construction of the facility.
- Updated detailed estimate of energy use/utility costs
- The final construction cost estimate + FF&E

D. BIDDING

The Design Team's Bidding Phase responsibilities include assisting the City with the bidding process, managing the bid documents, answering contractor questions, and preparing Addenda for distribution by the City. The Design Team may also assist the City, if requested, in reviewing and evaluating bids, meeting with low bidders, checking credentials, making recommendations to the City and assisting with the preparation of construction contract agreements.

E. CONSTRUCTION ADMINISTRATION

The selected firm shall provide regular construction observation during the course of the Construction Phase, review and approve all submittals, respond to contractor requests for information, review change orders, attend regularly scheduled construction meetings, take minutes of the construction meetings and distribute them, and perform other services as required by the City and Library to complete the construction project.

The selected firm shall also provide project close-out services including preparing project punch lists, assisting with project turnover to the City and Library, equipment start-up, and post-construction evaluation. An 11-month post-occupancy review shall also be conducted to ensure satisfaction and to provide the contractor with any outstanding issues to be addressed within the warranty period.

F. Cost Control

The selected Design Team shall provide the project cost estimates described for each phase: preliminary project cost information at the end of schematic design; detailed project cost information at 50% design development; updated at 100% design development; and finalized at

90% construction documents. In addition, the selected firm must provide for an independent cost estimating firm to prepare independent estimates to compare and validate the Design Team's project cost estimate. Credentials for two or three independent cost estimating firms shall be submitted to the City for its review and selection. The cost for the independent cost estimating firm will be included in the selected firm's fee. The independent estimate shall be prepared at 100% design development and finalized at 90% construction documents. This extra measure of cost control is to confirm that the estimated project cost does not exceed the project budget including adequate contingency through development of the design and construction documents. Approval for each phase is dependent on this validation process.

5. City Responsibilities

The City shall be responsible for obtaining all platting, topographical survey and soil boring services as required for the project. The City shall also be responsible for the assessment and any environmental remediation that may be required for the site.

6. SUBMITTAL REQUIREMENTS

All statements of qualifications submitted in response to this RFQ shall contain the following information. For ease of evaluation, please provide information in clearly identified sections, organized as listed below. **Submittals that do not meet this minimum requirement may be deemed incomplete and eliminated from consideration.** Additional or supplemental information may be included in submittals at the option of the responding firm as the last section of the submittal.

SECTION 1 - Primary Firm Information

The Primary Firm shall be defined as the architectural firm which has responsibility for management of all professional services on the project, which exercises design control, and which will be the Architect of Record for the completed facility.

1. Firm name, address, telephone number, and web site
2. Brief overview and history of the primary firm
3. Names of principals of the firm
4. Number of staff by position (architects, interior designer, CAD technicians, administrative, etc.)
5. Number of licensed architects
6. Principal-in-Charge and Project Manager with their direct telephone numbers and e-mail addresses

SECTION 2 – Consultant Information (provide for each consultant)

1. Firm name, address, telephone number, and web site
2. Brief overview and history of the consulting firm
3. Number of staff by discipline including number of licensed professionals
4. If a consultant is not headquartered locally list which office(s) will support this project and how those offices are staffed
5. Services the consultant will provide to the primary firm

6. History of working with the primary firm: project name, size, year completed, services provided

SECTION 3 - Project Team Information

1. Project team organization chart
2. List all key staff from the primary firm and consulting firms that are expected to work on this project and provide a brief description of their responsibilities.
3. Provide resumes for key staff on the project team; both primary firm and consulting firms. Include experience, qualifications, and years with the firm.
4. Describe the primary architectural firm's history of collaborating with other firms and consultants on this team.
5. If there is more than one architectural firm on the team, describe the specific involvement of each in all phases of the project. List the percentage involvement for each architectural firm in each of the five phases in the scope of services.

SECTION 4 – Project Experience

1. Provide information about the team's collective experience working on large public projects. Note: HBM has extensive library planning and design experience and will participate in the design and construction process on the City's behalf as described above in Part 1 Introduction and Part 2 Background. However, HBM will not be considered part of the design team, and their resume will not be considered as complementing and supporting a local architectural firm's project experience.
2. Provide information on five projects completed by the primary firm similar in size and complexity. Include photographs, size, cost, date completed, and contact information. Similar projects would include public, city, municipal or institutional work. Additional similar projects may be listed after the five described above, including similar projects by the team's consultants (clearly identified as consultant's projects).
3. If primary firm is not local, provide information on five projects completed by the local firm similar in size and complexity. Include photographs, size, cost, date completed, and contact information. Similar projects would include public, city, municipal or institutional work.

SECTION 5 - Project Approach

1. Working with the City & Library - A statement of your team's approach, process and willingness to work with representatives from the City of Wichita and the Library throughout this process.
2. Cost Control - A statement of your firm's approach to analyzing, managing and controlling costs from schematic design through project completion. This should address both initial costs and operating costs. Provide specific examples to support your statement.
3. Cooperation - A statement of how your team will work with the City, Library and HBM to see that the intent of the Architectural Program is realized in a program-driven design process for the new library.

4. Library Interiors - A statement of how your team will work with the City, Library and HBM to see that the intent of the Architectural Program is realized in the handling of the library's interiors: cabinetry; shelving; furniture; display; and interior signage.
5. Art Consultant - A statement of how the art consultant's credentials are appropriate for this project and how your team will use the art consultant's expertise to fulfill the Design Council requirements and ensure that public art elements are integrated as fundamental components of the building design.
6. Downtown Master Plan Integration – A statement of how your team will coordinate design of the Central Library with the Downtown Master Plan to ensure that the Central Library fulfills the vision of its potential as a gateway and anchoring destination for downtown and a building block for continued development of the cultural and river corridors.
7. Why Us? - A statement of why your firm should be considered for this project and why your team should be considered most qualified.

SECTION 6 - Project Requirements

1. Affirmation of willingness to comply with requirements set forth in the Non-discrimination and Equal Employment Opportunity Statements and/or any other Federal or State requirements.
2. Affirmation of the following conflict of interest disclaimers:
 - a. That the primary firm and consulting firms presently have no interest, and shall acquire no interest, direct or indirect, that would conflict in any manner or degree with the performance of its services.
 - b. That the primary firm and consulting firms shall not employ any person having such conflicting interest.
3. Affirmation of ability to comply with insurance requirements as set forth by the State of Kansas and the City of Wichita.
4. Affirmation of the request for qualifications certification conditions:
 - a. **Certification 1**-The Consultant hereby certifies that:
 - i. The Consultant has not employed or retained for a commission, percentage, brokerage, contingent fee, override or other consideration, any firm or person at any time or for any purpose, (other than a bona fide employee working solely for the above Consultant) to solicit or secure this Agreement.
 - ii. The Consultant has not agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement.
 - iii. The Consultant has not paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement, except as here expressly stated (if any).
 - b. **Certification 2**- The Consultant hereby certifies that:
 - i. No Lobbying and Influencing Federal and/or City Employees or City Council Members:
 1. No Federal or locally appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, an

officer or employee or City Council member of the City of Wichita, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities" in accordance with its instruction.

c. **Certification 3**-The Consultant hereby certifies that:

- i. No member, officer, employee, agent, or City Council member of the City of Wichita member exercising any functions or responsibilities with respect to the program outlined in this contract shall have any personal financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. The Consultant shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purposes of this section. The Consultant shall use due diligence to ensure employees, Board members, family members and officers do not participate in contracts receiving funds pursuant to this agreement.

SECTION 7 – References

1. Provide at least three references for the primary firm for similar projects completed within the past five years. Include basic cost performance information that can be reviewed when contacting the reference.

OPTIONAL SECTION 8 - Additional Information

1. Provide any additional or supplemental information not listed above that helps convey your qualifications for this project. Leaving this section out is encouraged unless something pertinent is not covered in the sections above.

7. Selection Process

The selection process shall be based on the qualifications and applicable experience of the firm's submitting qualifications. Preference will be given to submittals where local architectural firms are prime and substantially involved in all phases of the project. All submittals will be reviewed by a Screening and Selection Committee comprised of representatives from both the City of Wichita and the Wichita Public Library. A short list of firms will be selected for formal presentations to the Selection Committee. Following the presentations, the Committee will rank the firms in order of preference. This ranking will provide the basis for the process of negotiating the contract fees and project schedule, beginning with the firm deemed most qualified. Once a preliminary contract is negotiated, the firm will be recommended to the City

Manager for action by the City Council. The City Council reviews and approves or disapproves the contract and authorizes the necessary signatures.

8. Evaluation Criteria

The criteria on which proposals will be evaluated include:

- Primary firm's information, qualifications, experience, size and resources to service this project
- Primary firm's headquarter location
- Local architectural firm's substantial involvement in all phases of the project:
- Consultants' information, qualifications, experience and resources to service this project
- Consultants' headquarter locations
- Design Team's overall organization, qualifications, experience
- Design Team's experience and history with partnering and collaborating
- Design Team's collective experience with large public projects
- Design Team's approach to:
 - Working with the City & Library
 - Cost Control
 - Coordination with HBM for a program driven design process
 - Library Interiors
 - Working with Art Consultant
 - Downtown Master Plan integration
- Affirmed compliance with project requirements
- References

9. Kansas Open Records Act

Pursuant to the Kansas Open Records Act (K.S.A. 45-215 et seq.), all proposals received become a public record once award of the contract or agreement has been approved by the City Council. Consultants should not expect the City to seek confidentiality protection for any claimed privileged or proprietary information in the written qualification just because the material is marked "confidential" or "proprietary." For any essential information that the consultant reasonably believes can be defended as being exempt from disclosure under the Act, the information must be capable of being separated or redacted from the balance of the qualification and should be clearly and specifically marked as confidential or proprietary. For any material so designated, the City will seek to claim confidentiality if the justification for such confidentiality is readily apparent or if the bidder requests that the City to contact the bidders for guidance before making the material public. The City cannot guarantee the confidentiality of claimed material, however.

10. Subcontracting/Joint Ventures

Consultants may subcontract portions of the contract to other businesses. A joint venture between two or more vendors is wholly acceptable if it serves the best interests of the City of Wichita. If this is done, the names of the proposed subcontracting vendors must be clearly

identified in the qualification. Following an award of the contract, no additional subcontracting will be permitted without the express prior written consent of the City of Wichita. The firm receiving the contract award will be responsible for any work of such subcontractors and sign the contract with the City of Wichita.

11. Emerging and Disadvantaged Business Participation

Consultants are encouraged to consider subcontracting portions of the contract to emerging and disadvantaged businesses and/or women owned businesses. Therefore, each consultant shall specifically identify the participation of emerging and disadvantaged contractors and subcontractors in the work to be performed by the consultant and shall list such emerging and disadvantaged contractors or subcontractors by name and show the dollar amount of work to be performed by each in the proposal.

12. Owner's Rights Reserved

The City of Wichita reserves the right to accept or reject any or all submittals in whole or in part; to waive any irregularities in any submittals, and to accept the submittals which are, in the judgment of both entities, most advantageous to the project. The City of Wichita maintains the following rights:

- To accept or reject any statement of qualifications submitted.
- To retain all statements of qualifications or any ideas submitted in a statement of qualifications.
- To request additional information or clarification or to allow corrections on omissions during the evaluation process.
- To modify the scope of services during negotiation of the contract.
- To make an award on the basis of the determined greatest benefit and not necessarily based on fee.
- To negotiate separately with any firm after opening the statements of qualifications when such action is in their best interest. Negotiations may be conducted, but will not constitute acceptance, rejection, or a counter offer on the part of the owners.

Submission of a statement of qualifications indicates acceptance by the firm of the conditions contained in the RFQ and a willingness to enter into a contract.

All preparations for the statement of qualifications are to be at the expense of the submitting firm.

13. Interest of Public Officials

No member, officer, or employee of the City of Wichita during the period of this project or for one year thereafter shall have any interest, direct or indirect, in this submittal or the proceeds thereof.

14. Indemnification

Firm must agree to protect, defend, indemnify, and hold harmless both City of Wichita and the Wichita Public Library, their elected and appointed officials, agents, and employees from and against any and all liability, damages, claims, suits, liens and judgments of whatever nature.

This includes claims for contribution and/or indemnification, for injuries to any person or persons, caused as a result of or in conjunction with this submittal or subsequent submittals.

Firm's obligation to protect, defend, indemnify, and hold harmless both entities, shall include any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition, disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations.

15. Ownership

All documents and materials prepared pursuant to this submittal are the property of the City of Wichita.

16. Verbal Agreement

No verbal agreement or conversation with any elected or appointed official, agent, or employee of the City of Wichita and/or the Wichita Public Library, either before, during, or after the submittal of this statement of qualifications, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle Firm to any additional compensation or consideration whatsoever.

17. Changes

The City of Wichita, at its option, may make changes in the terms or requirements included in this RFQ, and such changes shall be incorporated into this document through written addendums.

18. Anti-Discrimination

The primary firm and consulting firms shall not discriminate against any person or applicant for employment because of race, color, creed, religion, sex, national origin or ancestry, age, physical or mental disability.

The City of Wichita encourages minority participation in this project.

19. PRE-SUBMITTAL CONFERENCE

A pre-submittal conference will be held **[date] at [time] in the [location]** to review requirements contained in the submittal package and to make any necessary changes. Attendance is recommended for firms submitting statements of qualifications.

HBM will attend the pre-submittal conference and will be available for questions. The contact person at HBM is Dan Meehan at dmeehan@HBMArchitects.com or 216-241-1100 ext.14.

20. CONTACT PERSON

All information regarding the RFQ and subsequent submittals should be directed to:

Ed Martin, Building Services Manager
City Hall, 8th Floor
455 North Main St.
Wichita, KS 67202
Phone: 316-268-4119
Email: emartin@wichita.gov

21. DEADLINE

The response to the RFQ must be received by the City of Wichita on or before **[time]** on **[date]**

Submit 10 copies of the Statement of Qualifications to:

Melinda Walker
Purchasing Manager
455 N. Main – 12th Floor
Wichita, Kansas 67202

DRAFT



Design Council

CONSULTANT GUIDELINES

Introduction:

The Design Council is 15 design professionals who advise the City Council and City Manager on design standards related to all public improvements. The City Council and City Manager, wishing to improve the visual qualities of the built environment appoints this group of design professionals to advise the Mayor, City Council, the City Manager and staff on matters of design and methods of accomplishing a more beautiful city. The fundamental responsibility of the Design Council is to guarantee that the citizens of Wichita receive the highest level of design quality in the built environment possible within the limits of bureaucracy, budget and time.

The Design Council is to advise and make recommendations to the City Manager, City staff, Mayor and City Council on matters of aesthetic quality related to the built environment. The goal is to improve the quality of life for all citizens and visitors in Wichita through the highest design standards.

Special Consideration Projects:

This process is a cooperative attitude toward city departments. The operative tone is one of a workshop atmosphere where all involved seek a finer product and uses an “integrated design team” approach for projects requiring “special consideration”.

“Special consideration” is defined as projects that occupy high visibility locations, possess monumental scale, reside within the central business district, or establish an identifying “place,” neighborhood or planning document within the City. Projects identified to need special consideration will *require* an integrated design team approach.

“An integrated design team approach encourages design that stems from the pursuit of enhancements not as “add-ons” but rather as fundamental elements of a structure planned during the early phases of a project by approaching design, architecture, engineering, landscaping and art at the same time.”

DESIGN TEAM:

The City envisions a design program that considers the highest design standards in every neighborhood; along our rivers, within our parks, on our public transportation systems and city streets, in our municipal buildings and our public spaces. The City challenges designers that are selected for public projects to create projects that find innovative solutions using our economic resources to their best advantage. A successful collaboration provides a framework for design professionals to find solutions that could not have been conceived of individually.

Design Review Process

CIP and Design Criteria Process

- **The Capital Improvement Program List of Projects**
The City Manager, members of City Council and their local District Advisory Boards (DABs) make recommendations for projects that should be part of the Capital Improvement Projects (CIP). City Staff develops a preliminary budget amount for each project.
- **Identifying Projects for “Special Consideration**
City Departments working with staff that is assigned to the Design Council will identify projects requiring special consideration. These projects will be presented to the Design Council for their recommendations and criteria. After this approval, staff will develop budgets that are in keeping with this identify. Projects which meet these criteria will require an integrated design approach. Not all projects will meet the definition for special consideration or require an integrated design team approach but will still need review.

City Staff will then meet to review projects identified for special consideration with the City Manager, City Council representative in which the project is located and the Mayor to discuss design criteria specific to those projects, advise on the proposed budget and formalize recommendations in writing as part of the CIP program. (See Exhibit A)
 - A workshop will then be held to review all projects identified as requiring special consideration. This workshop will be presented to all members of City Council and the Mayor for their comments.
- **Prioritization**
Members of City Council and the City Manager meet to prioritize the CIP projects. District Advisory Boards (DABs) or other public input will be used at the discretion of City Council. City Council members and the City Manager may request a special meeting with the Design Council to discuss these projects which require special consideration.
- **Approval**
Annually the City Council approves the Capital Improvement Program.

Project Initiation

- **Department Initiation**
Individual departments will initiate their projects. Those requiring special consideration will include communication with the staff person assigned to the Design Council. It is at this point that a Request for Proposals (RFP) is created which further defines the project criteria using the included written criteria defined by City Staff, City Manager, City Council and Design Council.
- **Design Team Selection**
Projects that have been identified for special consideration will require use of an integrated design approach to complete the project. Using planners, engineers, architects, landscape architects, and artists allows projects that require special consideration to move forward with a collaborative team approach to find creative, innovative solutions to meet design criteria. A member of the Design Council or City Staff assigned to the Design Council will be voting members of the selection panel.

Design Council Review

In order to handle Design Council reviews efficiently, and avoid multiple presentations, the staff and consultant are asked to cooperatively include the following elements in their presentation:

- **Conceptual Design Phase (35% Design Phase)**

The first presentation should be made as early in the design phase as possible to avoid designers spending great amounts of time designing without input from the members of the City Council, City Manager, and Design Council.

The City Staff person assigned to the Design Council will meet with the City Council representative for the district where the project is located. At-large projects will also be presented by a City staff member assigned to Design Council and the project manager for review by the Mayor in addition to the Council member. The consultant will be advised by staff upon approval to present this concept for review by the Design Council. The Mayor and City Council members are invited to attend any Design Council meeting where projects of interest to them are presented. Minutes from all meetings are made available to them 10 days after the meeting.

The Design Council believes important factors at this stage include:

1. Encourage early collaboration.
2. Support early inclusion and explanation of all members as equals to the team.
3. Promote team brainstorming to encourage a variety of diverse ideas.
4. Endorse interdisciplinary problem solving.

Concept Presentation

- A conceptual sketch of the designer's preferred design should be presented.
- The criteria for the project should be summarized by the responsible City project manager assigned to this project. Existing pertinent circumstances should be explained and visual materials provided to the board members one week prior to the meeting date.
- Photos of the existing on-site conditions and visually pertinent off-site conditions should be shown during the workshop presentation with some verbal explanation of the designer's perceptions of important conditions. This information may also be sent to board members before review.
- Whereas the sketches should be complete and clear enough that the Design Council members can assess the intended aesthetic character and impact of the project, the consultant should bear in mind that Design Council members are accustomed to reviewing rough sketches. As long as the sketches are adequate to portray the project accurately and completely it is not necessary that they be fine renderings. No special consideration will be given to beautiful delineations.
- Color is necessary only if it is important to the visual impact of the project. Models are acceptable (preferred in some kinds of projects) but they need only be conceptual or study models which were built in the quickest and most economical way. The designers should be present at the review to present his or her design and answer questions.

*Designers may request to meet earlier on projects to receive guidance for design concepts.

- **Design Freeze Review and Presentation (65% - 80% Design Phase)**

Mayor and City Council members are invited to attend any Design Council meeting where projects of interest to them are presented. Minutes from all meetings are made available to them 10 days after the meetings.

As projects progress, City staff needs to approve the project on an agreed timeline before the project can proceed. The project should be presented again when the design of the project has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationships, amenities, budget, etc.) have been decided and tentatively approved by staff.

It should be noted it is in the consultant's best interest to reach design freeze and gain design approval as early in the project as possible. The Design Council does not presume to tell the consultant or staff when in the planning process design freeze should take place. The amount of time and effort which the consultant has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze Review.

Design Freeze presentation should include:

- Conceptual design sketches and/or models, which have previously been reviewed by the Design Council and approved by the City, should be brought along for reference.
- Final design drawings and/or models should be presented. They should be accurate, to scale and in color though they need not be fine renderings or presentation models.
- A schedule of exterior materials (including plants) should be presented.
- A color schedule of exterior colors should be presented.
- Samples of any materials which are important to the visual quality and with which an average individual might not be familiar should be presented.
- Budget should be reviewed with any add alternates explained.

Council Approval

Once the project has received final approval from the Design Council, the project is then submitted to the City Council member where the project is located by the project manager and City staff assigned to Design Council. Once the City Council member where the project is located has given approval, the project will then be submitted to the full City Council and the Mayor for their final approval.

- **Major Project Change Review**

Under exceptional circumstances, it is sometimes necessary that major changes be made in a project after a design review has been made. Depending upon the extent and scope of the proposed changes and the stage at which the project stands, the project should be resubmitted to the Design Council at the most appropriate stage. The project manager for the project and City staff assigned to the Design Council will review changes needed and determine if this meeting is necessary.

- **Review Report**

The Design Council will make its recommendations to the City Manager and City Council normally within 10 days of the project review by submission of the recorded minutes of the Design Council meeting. The project manager will inform the consultant of any requirements relating to the project.

The consultant is reminded that the Design Council's responsibility is simply to make recommendations to the City Manager and City Council on visual enhancements. All requirements placed on the consultant will come from the project manager assigned to the project. Design Council members are not to be contacted individually to get an opinion of what the consultant must do to obtain design approval for the project.

If you have any questions please contact:

John D'Angelo, Manager
Division of Arts & Cultural Services
225 W Douglas
Wichita, KS 67202
(316) 303-8600
jdangelo@wichita.gov

DRAFT

(DRAFT - 6/15/13)
SUPPLEMENTAL AGREEMENT NO. 2
CONTRACT FOR ARCHITECTURAL PROGRAMMING SERVICES
NEW CENTRAL LIBRARY

THIS SUPPLEMENTAL AGREEMENT No. 2, made and entered into this _____ day of _____, 2013,

BY AND BETWEEN

THE CITY OF WICHITA, KANSAS,
A Municipal Corporation, hereinafter
referred to as "**OWNER**"

AND

HOLZHEIMER BOLEK + MEEHAN
ARCHITECTS, LLC, hereinafter
referred to as "**CONSULTANT**"

WHEREAS, the **OWNER** and **CONSULTANT** entered into an Agreement between Owner and Consultant, dated April 21, 2009, "Contract For Architectural Programming Services For New Central Library", hereinafter referred to as the "AGREEMENT"; and

WHEREAS, the **OWNER** intends to select a separate architectural firm, hereinafter referred to as the "Design Team"; to provide architectural and engineering services for preparation of design and construction documents for the New Central Library, hereinafter referred to as the "PROJECT"; and

WHEREAS, the **OWNER** intends to appoint a Project Committee to oversee the work of the Design Team throughout the life of the **PROJECT**; and

WHEREAS, the **OWNER** desires to retain **CONSULTANT** to assist and advise the Project Committee throughout the life of the **PROJECT**; and

WHEREAS, **CONSULTANT** wishes to provide professional services to the **OWNER** by assisting and advising the Project Committee; and

WHEREAS, the **OWNER** desires to amend the **AGREEMENT** to include additional services related to the **PROJECT** as provided for in Section V, Paragraph C, Item 2 of said **AGREEMENT**; the amended agreement is hereinafter referred to as "SUPPLEMENTAL AGREEMENT No. 2".

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. The **AGREEMENT** is amended to include following supplemental provisions:

A. SCOPE OF SUPPLEMENTAL SERVICES:

CONSULTANT will be actively involved with the Project Committee throughout the life of the **PROJECT**. The Project Committee, **CONSULTANT** and Design Team will work together in a collaborative process to bring the best ideas forward in order to achieve the city's goal of both a great library and a great building. Therefore, **CONSULTANT** shall attend, either in person or through web-based computer conferencing, all regularly scheduled progress meetings with the Design Team throughout the design and construction document phases of the **PROJECT** and meetings during other phases as may be requested by the Project Committee.

CONSULTANT will utilize its library experience in offering thoughts and/or suggestions regarding how the Design Team's building design may affect library functions. **CONSULTANT** will advise the Project Committee if conflicts between the **PROJECT** design and the program are acceptable within the intent of the program or if they will have a negative impact on some aspect of the programmed operating efficiencies. In addition **CONSULTANT** will make recommendations to the Project Committee and the Design Team regarding interior finishes and furniture, furnishings and equipment (FF&E) for the new facility during design, construction and project closeout.

The specific duties included in this Scope of Services shall be as noted in the attached "Detailed Scope of Services," EXHIBIT A. This Detailed Scope of Services shall only be completed after the Design Team's contract has been finalized, approved and signed. The description and frequency of **CONSULTANT**'s services shall coordinate with and be complimentary to the Design Team's services and the project schedule.

B. PAYMENT FOR SUPPLEMENTAL SERVICES:

For all professional services as identified in SCOPE OF SUPPLEMENTAL SERVICES above, in "Detailed Scope of Services, Exhibit A", and in "Budget for Reimbursable Expenses, Exhibit B", **OWNER** agrees to pay an amount not to exceed _____ dollars (\$_____.00). An initial payment for Professional Services of _____ dollars (\$_____.00) shall be made upon execution of this Agreement and credited to the Owner's account at final payment. Additional payments for professional services and reimbursable expenses shall be paid monthly in response to invoices supplied by **CONSULTANT**.

C. TIME OF COMPLETION OF SUPPLEMENTAL SERVICES:

CONSULTANT agrees to provide its services in support of and in coordination with the project schedule and to not unnecessarily hamper or delay the progress of the project when performing duties as instructed/requested by the **OWNER** and/or the Project Committee.

2. The **OWNER**, either directly or through the Project Committee, agrees to cooperate with **CONSULTANT** in considering recommendations, documents, drawings and data submitted and to make necessary decisions promptly to facilitate the progress of the project in compliance with the Project Schedule, and **OWNER** agrees to furnish promptly to **CONSULTANT** upon written request any approvals and instructions required to be given by **OWNER** to **CONSULTANT** under the terms of the **AGREEMENT**.

3. In all other respects, the terms and provisions of the April 21, 2009 Agreement, between the parties hereto shall remain in force and effect as the same were originally approved by the parties.

IN TESTIMONY WHEREOF, the parties hereto have executed this SUPPLEMENTAL AGREEMENT the day and year first above written.

CITY OF WICHITA, KANSAS

 Carl G. Brewer
 Mayor

ATTEST:

HOLZHEIMER BOLEK + MEEHAN
 ARCHITECTS, LLC

 Karen Sublett
 City Clerk

by_____
 Daniel T. Meehan, Jr. AIA Principal

APPROVED AS TO FORM:

 Print Name

 Gary E. Rebenstorf
 Director of Law

 Title

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council

SUBJECT: Amending the Cultural Arts Plan
(All Districts)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: New Business

Recommendation: It is recommended that the City Council approve the addendum to the Cultural Arts Plan and the continuation of the current level of funding for five (5) years with review at that time.

Background: In 2008, a committee comprised of City of Wichita staff, community and civic leaders, philanthropists, educators, and art advocates met with members of the Hugo Wall School of Urban and Public Affairs to update the 1994 City of Wichita Cultural Arts Plan. This plan has provided the framework for the development and implementation of the City's arts funding policies and procedures.

A notable policy developed as a result of the 2008 Cultural Arts Plan was the identification of Group One organizations and the implementation of Operational Agreements between the City and those organizations. Group One City of Wichita organizations are defined by the Cultural Arts Plan as those that have City-owned property or facilities, City employees, or collections which are owned by the City. These organizations include Botanica, Wichita Art Museum, Wichita Historical Museum, Old Cowtown Museum and Mid-America All-Indian Center.

In 2010, the City of Wichita entered into Operating Agreements with four (4) Group One organizations. Old Cowtown Museum does not have an operating agreement with the City because the facility is currently under the management of the Division of Arts and Cultural Services. However, Old Cowtown Museum is held to the same criteria and reporting standards as the other Group One organizations.

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

In addition to the Operating Agreements, the Wichita City Council approved the Cultural Funding Operational Grant program which is a competitive grant application open to arts and cultural organizations within the City of Wichita. An 11 member Cultural Funding committee reviews both the grant applications and the Operating Agreements annually and makes recommendations to the Mayor and members of the City Council on funding amounts and performance for these organizations.

With the anticipated expiration of the current Operational Agreements at the end of 2014, a committee was formed in 2012 consisting of members of the Wichita City Council who are Ex-officio members of the Arts Council, the chair of the Arts Council board of directors, the chair of the Cultural Funding committee, and City staff. The purpose of the committee was to review the current policies and procedures for the Operating Agreements and to discuss the continuation of funding.

As discussions occurred during this review, it became apparent that the Cultural Arts Plan needed to be amended in order to address changes in Group One organization structures, facility maintenance issues and on-going continued arts funding support. On February 5, 2013, City Council voted approval for the committee to move forward with the Cultural Arts Plan Update.

Upon clarification and completion of the proposed amendments, further input and discussion on the proposed amendments was encouraged from all arts and cultural organizations in the City. A general consensus has been achieved on the proposed amended plan from both the committee members and the arts and cultural organizations.

Analysis: It was the determination of the committee that creating transparency and accountability were an important element in the update of this policy and process. As a result, the committee recommends that all City-owned arts and cultural facility operating budgets reside within the Division of Arts and Cultural Services. This would include moving CityArts and its respective budget to a line item under the Division of Arts and Cultural Services. In addition, the committee recommends that these arts and cultural organizations enter into three (3) year Operational Partnership Agreements as part of the Cultural Institutions Grant Program.

These agreements will outline fiduciary and maintenance roles and responsibilities for both the organization and the City. Each agreement will be negotiated individually to address the unique relationship the City has with each facility while outlining performance expectations and maintenance responsibilities.

As part of the transparency discussion regarding the Operational Partnership Agreement for Botanica, the committee had to address where this organization should reside within the City organizational structure. The committee recommends that Botanica remain under the management of the City's Park and Recreation Department and its historic budget for operations and maintenance be moved as a line item from the Division of Arts and Cultural Services to the Parks and Recreation Department. With this move, Botanica will no longer require an Operational Agreement and will no longer be eligible for Cultural Funding.

Other notable changes to the Cultural Arts Plan addendum include:

- A new definition for “arts and cultural organizations” which defines an arts and cultural organization as “an organization that provides education and artistic leadership to the public through the production, exhibition, advancement or preservation of visual or performing art, literature, film, science, natural or cultural history.”
- A restructure of the grant funding process to include:
 - Cultural Institutional Grant Program including organizations which are defined as “arts and cultural organizations owned and/or operated by the City and which produce or perform arts and cultural programs.
 - Cultural Funding Grant Program which would allow arts and cultural organizations within Wichita to apply for grant funding grouped by their annual operating budgets. This will allow like-sized organizations to compete for funding against other like-size organizations.
 - Developing Arts Grant Program which allows small and developing arts organizations to apply for funding.
 - Artist Access Grant Program which is designed to assist practicing, professional and emerging artists residing in Wichita Kansas.
 - Individual Artist Professional Development Program which will be designed to deliver skill-building opportunities to diverse communities of artists who originate works (composers, playwrights, visual artists, choreographers, etc).

Financial Consideration: The committee recommends the continuation of arts funding in an amount equivalent to a mill levy rate. Since the adoption of resolution 06-208 by the City Council in 2004,

approximately 1 mill annually has been allocated to cultural arts. With the changes in the definition of cultural arts entities, the estimated allocation for cultural arts is 1.30 mills in the 2013 Adopted Budget. This represents a re-characterization of General Fund expenditures for cultural arts, by omitting Botanica but including CityArts expenditures, and the entire City support of the Old Cowtown Museum. The Proposed Budget will include a summary page identifying the cultural arts spending as recommended and the mill levy equivalent rate, and these expenditures will be included as expenditures within the Division of Arts and Cultural Services.

Legal Consideration: Approved to form.

Recommendations/Actions: It is recommended that the City Council approve the addendum to the Cultural Arts Plan and commit to the continuation of the current level of funding to be reviewed in five (5) years.

CULTURAL ARTS PLAN ADDENDUM 2013



July 2013

City of Wichita
Department of Finance
Division of Arts & Cultural Services

Background

The need for updating the 2008 Arts and Cultural Plan arose as a committee comprised of the following was meeting to talk about the upcoming (end of 2014) expiration of the Tier/Group 1 Operating Agreements:

Bob Layton, the City Manager

Council Member Jeff Longwell (ex-officio on the Arts Council)

Council Member Lavonta Williams (ex-officio on the Arts Council)

John D'Angelo, Director of Arts and Culture

Steve Peters, Chair of the Cultural Funding Committee

Sharon Fearey, Chair of the Arts Council

Representative from the City Legal Department

Representative from the City Finance Department

As the committee met, many issues arose regarding such things as maintenance, emerging art groups, ADA requirements, collection ownership, city staff, etc. As the group looked for answers to the questions they were having, it became apparent that there were areas of the 2008 plan that did not allow for 2013 issues. At that time, the group took a step back and decided that City Council approval was needed in order to update the plan.

In the green sheet that went to the City Council on February 6, 2013, the following questions were included as things that might need to be dealt with in the update.

- **Do the current groupings of organizations still apply?**
- **Should new categories be created that look at all the unique qualities of currently funded organizations and group them in a logical and consistent manner to ensure a more equitable distribution of funds?**
- **How should an organization be treated when their circumstances change during the term of the agreement and the organization no longer meets the definition?**
- **What percentage of City subsidy should be optimal for each organization?**

As the committee continued to review the 2008 plan, the members agreed that it was important to achieve clarity and transparency for an organization's facility operations and maintenance budgets. Discussion determined that to achieve this objective, all arts and cultural budgets should reside in one division.

As a result of this discussion, it was determined that the inclusion of Botanica's budget in the arts and cultural budget needed to be addressed since Botanica is under the management of the Park and Recreation Department. Botanica also maintains a separate 501 (C)(3) status as Botanica, Inc. with a Board of Trustees. It became apparent that the current structure has Botanica providing annual performance reporting to yet another City department.

The committee agreed that Botanica should maintain its logical place under the management of the City's Park and Recreation Department and move their operating budget and maintenance support to Parks and Recreation. This move would allow Botanica to maintain the financial and maintenance support that they have historically received from the City but would remove another layer of performance review by another City department. The result of this reorganization will eliminate Botanica from the list of Cultural Institutions and the need to negotiate an Operating Partnership Agreement with the Board of Trustees for annual funding.

The intent financially of this move would be for the percentage of the mill levy that has traditionally been going to Botanica (as determined by the Finance Department) would move from the dedicated mill funding provided to Arts and Culture. It would become a line item in the Parks and Recreation budget. It is further recommended that this dedicated percentage of a mill remain the same or be increased over the years to incorporate growth in the City mill levy valuation.

Finally, the question was raised regarding the definition of an arts and cultural organization. The committee removed the word "zoological" as they agreed it did not fit the definition of an arts and cultural organization and to add the word "film".

Vision Statement

Arts and culture are essential to vital, healthy urban communities; we recognize that Wichita is home to people from throughout the world whose gifts of art, culture and customs are rich resources to be shared; we acknowledge that arts reflect the character of a city and its inhabitants, and that experiencing arts and culture is nourishing and life affirming; therefore, the mission of the City of Wichita through the Division of Arts and Cultural Services is as follows:

Mission Statement

- To establish a cultural system that ensures that ALL Wichita citizens and visitors have an opportunity to experience the finest in arts and culture.
- To oversee the Division of Arts and Cultural Services, which develops, implements, administers and promotes programs or initiatives that support this mission, and reflect the City's core values of integrity, leadership, innovation, commitment, sensitivity and teamwork.
- To provide the funds and other resources sufficient to ensure the accomplishment of this mission, including efforts that strengthen arts and cultural organizations by envisioning the arts as key elements in the City's Cultural Tourism and Economic Development efforts.
- To work cooperatively with the Arts Council which is designated by the City Council to be the focal point committed to arts and culture and who are representative of the community, to develop and oversee the policies necessary to meet the City's mission and shall include appointed City council members.

Arts and Cultural Organization Definition

“An organization that provides education and artistic leadership to the public through the production, exhibition, advancement or preservation of visual or performing art, literature, film, science, natural or cultural history.”

Guiding Principles for Planning:

- Recognition, preservation and celebration of the City's rich cultural heritage.
- Accessibility to artistic and cultural activities for citizens who might otherwise not be able to participate.
- Advocacy for capital and operating resources for arts and cultural organizations, programs and artists, which serve the community.
- Delivery of services and programs that address the needs of individuals, neighborhoods and

communities.

- Engagement of children, and their families, arts patrons, participants and artists.
- Reward for collaborations and community building between and among arts groups, educational institutions, civic organizations, public agencies and private enterprise.
- Creative expression, with the attendant risks of artistic failure, in a democratic society.
- Stewardship of city-owned and/or operated facilities and investments through long-range planning which addresses and funds capital needs on a continuous basis.
- Transparency that enables citizens or citizen groups to advise the City Council, the Arts Council, the City and the Division of Arts and Cultural Services in the refinement of the mission and in the execution of its policies and programs.
- Excellence that is supported by capital and operating resources for the arts that are equal to or better than those provided by other leading cities in the Nation.

Responsibility for Implementation Of Cultural Policy

Responsibility for the implementation of this Cultural Policy and Program will rest primarily with the Division of Arts and Cultural Services of the City Manager’s office, with the advice of the Arts Council, and with the Wichita City Council providing review and final approval.

A. City Manager shall:

Annually review the Division of Arts and Cultural Services management of arts and cultural programs, activities and facilities located on City property as necessary to carry out the duties and responsibilities assigned to it by City charter and other applicable law.

B. Arts Council with support from Division of Arts and Cultural Services shall:

- Review the Cultural Arts Plan annually at a general meeting and/or retreat at least once every five years, and more often if deemed necessary. The plan will undergo a complete review with input from the City Manager, the Division of Arts and Cultural Services, representative appointed by the Arts Council and approved by City Council and appointed members of the Wichita City Council in order to ensure its continued relevance and proper governance of arts and culture in the City of Wichita.
- Assist the Wichita City Council and the City Manager in developing and/or updating a long-range strategic plan for implementation of the Cultural Arts Plan as requested by the Wichita City

Council, the Wichita City Manager, the Division of Arts and Cultural Services or the Wichita Arts Council.

- Continue to facilitate and provide oversight support for the Cultural Funding committee which will include 11 members; seven (7) appointments by the Wichita City Council and four (4) appointments by the Arts Council. The Chairperson of the committee shall be appointed by the Arts Council. The Cultural Funding Committee shall review and make recommendations on funding allocations for all grant applications except the Cultural Institutions.

Facility Operation Costs

Newly constructed/renovated City-owned facilities managed by the participating cultural organization .

It is the City’s intent, subject to annual City Council appropriation and the availability of funds, to assist cultural organizations with certain facility-related costs either on an indirect basis or directly as defined and agreed to in Operating Partnership Agreements with the cultural organization itself. The specific nature of this assistance will be negotiated on a case-by-case basis and included in the Operating Partnership Agreement with each organization.

City services shall be used when necessary to maintain City owned facilities at a minimum level to ensure the organization’s:

- Collection is accessible to the citizens of Wichita
- Building is open to the public with adequate heating/air conditioning and is ADA compliant
- The facility is secure with adequate safeguards to protect the collection, staff and building

The City will encourage the following standardized level of services:

- **Maintenance of property site.**
- **Maintenance of City-owned collections (but not collections of plant life).**
- **Structural maintenance of buildings and improvements, to include maintenance of mechanical systems.**
- **Minor improvements to buildings.**
- **Insurance: City will procure and pay for all-risk property insurance for City-owned buildings, City-owned contents and City-owned improvements. The cultural organization may be required by contract to provide additional insurance coverage.**
- **Utilities: gas, electricity, water and sewer, waste disposal, but not telephone.**

Any additional payment that may be provided by the City for the cultural organization’s contractual services shall be determined on an annual basis by City Council appropriation upon recommendation of the Arts Council and the City Manager. However, under no circumstances shall the City’s annual direct payments to the cultural organization together with indirect support for utilities and structural maintenance exceed an amount greater than of the organization’s prior year operating expenses.

Newly constructed/renovated City-owned facilities managed by the City or on behalf of the City by a third party where the participating cultural organization becomes a major tenant:

- City responsibilities will be determined on a case-by-case basis and will be included in the management agreement with the third party organization.

C. Utilization of Existing City-Owned Facilities

The City will enter into Operating Partnership Agreements with cultural organizations for the management of existing City-owned cultural facilities, or may elect to manage such facilities itself. These facilities may be available for use on a rental basis by various cultural organizations and individuals.

D. Cultural Facility Operating Partnership Agreements

All organizations responsible for operating newly constructed, renovated or existing City-owned cultural facilities must enter into Operating Partnership Agreements with the City and follow the Cultural Institution Grants Program. One of the key obligations of these organizations is to demonstrate that they continue to achieve, separate from the City’s assets, increasing levels of financial stability through the growth in their own financial assets for operations, in order to provide for the continuity of its services.

Multiple forms of assistance may be provided by the City through these agreements, subject to annual appropriation by the City Council and the availability of funds. Organizations eligible to apply have operations and activities in Wichita, exclusive of tangible collections owned in part or whole by the City; and/or where City staff are part of the operations; and/or where the facility is owned and/or operated by the City of Wichita.

- **Indirect support** may include maintenance and utilities expenses paid. The cultural organization will include in their Operating Partnership Agreement a five (5) year maintenance plan to ensure that anticipated costs are planned for. The cultural organization will work with the Division of Arts and Cultural Services and various other city departments to identify work that will be provided by these departments to the organization and will include them in the Operating Partnership Agreement.
- **Direct support** to the organization for funding will be provided through **Cultural Institution Grants Program** with Operating Partnership Agreements. Agreement amounts may be tied to administrative, programmatic or facility-related costs and must be a part of the City of Wichita’s annual approved budget.

The **Cultural Funding Operational Grant Program** will provide operational funding for 501 (C)(3) organizations in the City of Wichita who do not have Operating Partnership Agreements with the City or fit the Cultural Institution Grant Program criteria. The objective is to provide fiduciary support to exemplary organizations who contribute to the quality of life and add to the economic growth and vitality of our community.

Operating Partnership agreements will be negotiated on a case-by-case basis. Each agreement will reflect the needs of the City and the cultural organization, and will specify the requirements and performance standards the cultural organization must meet with regard to the Operating Partnership Agreement.

Negotiations will be conducted by the organization's representatives and two members of the City Council who serve as ex-officio representatives to the Arts Council, a member of the Division of Arts & Cultural staff, the chairperson of the Arts Council, the chairperson of the Cultural Funding Committee, a representative from the City Legal and Finance Departments and a City Manager appointee.

The relationship does not create in the City any proprietary or supervisory authority over the organization's other activities unless directly stipulated in the contractual agreement between the City and the organization.

All revenues and private contributions generated by a cultural organization, which has a contract from the City to manage a City-owned facility, will accrue to that specific cultural organization. The City will have no direct claim against these revenues. The City, however, may from time to time, by contractual agreement, assess rental or other appropriate fees for the utilization of City-owned facilities.

The City encourages each cultural organization managing a city-owned facility to develop an operating endowment to cover future operating costs and no less than 3 months operating reserves.

In addition, the City of Wichita provides the following criteria for the organization's benefit in preparing for the annual review process. These criteria will give the organization guidance in preparing an annual State of the Organization report, and notice of the basis the City will use to evaluate the organization's performance for purposes of continuing funding consideration.

Performance Criteria

Quality of Organizations

- Demonstrates diversity of board members and rotation of members.
- Identifies staffing levels and demonstrates adequate staffing.
- Stewardship of collection (Identifies acquisitions, loans and deaccessions).
- Demonstrated record of producing/presenting arts which meet benchmarks of similar institutional peers over the past 2 or 3 years through attendance at events and participation in programs.
- Appropriateness of the program/projects to the organization's core values; mission, audience, community and/or constituency.
- Organization's commitment to programs and activities reflected through attendance data.
- Demonstrates a commitment to youth programming.
- Identifies programs and percentage of cost-recovery.

Community Impact

- Demonstrates an effort to reach wide audiences including underserved populations.

- Demonstrates ability to collaborate and create program partnerships with other organizations, local businesses and schools.
- Demonstrates ability to contribute to the quality of life for the citizens of Wichita through diversity and attendance of audience and participation in programs.
- Rotates offerings/exhibits to enhance the experience of visitors or audience.

Financial Stability

- Identifies different forms of financial support including grants, fundraisers and foundation.
- Explains how operating funds from the City of Wichita were used.
- Demonstrates public commitment to programs and activities reflected through earned income data. (Including total attendance, total paid admissions, total paid memberships and total attendance of school groups/tours.)
- Executes a strategic plan.
- Demonstrates 3 year growth in earned income.
- Maintains a 3 to 6 month operating reserve.
- Demonstrates sustainability.

E. Create a 5-year operating forecast and a 10-year capital forecast.

The process of creating and communicating an accurate and well-informed set of agreed-upon forecasts will clarify the specific needs of the cultural organizations, including the potential sources of increased operational revenue and the sources and uses of future capital. Forecasts such as these, within a public/private partnership are essential for the maintenance and health of the partnership. They could be seen as a civic responsibility in order to guarantee and communicate to the public the organization's permanence. The cultural organization must balance its day-to-day operating responsibilities while focusing on building its liquid operating reserves and attract long-term capital for future investments.

Ten (10) year capital forecasts shall be completed with assistance from the staff of the Division of Arts and Cultural Services with support from other City departments. These forecasts will be used for City and organization's planning purposes and will be reviewed and may be subject to change upon renewal of the Operating Partnership Agreements.

F. Cultural organizations must invest in innovative approaches to programming and community outreach that encourages increased participation and attendance by citizens and visitors.

Therefore, consideration should be given to using existing capital to create and sustain innovative programming, which will provide greater access and appreciation to all segments of the community.

Facilities Development and Administration

A. Cultural Facilities Planning Process

The City shall establish a planning process to ensure that:

- The interests of the City are adequately represented in the planning for any City-owned cultural facilities.
- Future City-owned cultural facilities are properly located and designed using LEED program guidelines and/or address efficient use of natural resources and utilities.
- City-owned cultural facilities are utilized, managed and programmed to be responsive to the needs of the local cultural community.
- All proposals for City-owned cultural facilities are given formal and equal consideration.
- The interests of the cultural community as a whole are served by the rational allocation of resources for planning and capital construction.
- A review process exists for the redeployment of city cultural facilities that may be available due to the relocation of a managing organization (i.e. to a new facility) to ensure that existing cultural facilities are available and accessible to the cultural community to the greatest extent possible.
- Projects may be initiated either by cultural organizations or by the City.
- The Division of Arts and Cultural Services, with the advice of the Arts Council, shall be responsible for cultural facility planning for the City and will work with other appropriate City departments to coordinate funding, design and construction of City-owned cultural facilities.
- The City may share planning costs with cultural organizations participating in specific facility projects.
- Final design and implementation plans for any City cultural facility project will be developed following a designation of funding by the City Council. Anticipated users of any new or renovated facility must be well represented throughout the design process to ensure an optimal facility plan. Detailed operating and maintenance plans will be developed, along with any required management agreements, prior to the completion of the facility.
- The Division of Arts and Cultural Services will provide oversight for all cultural facilities, existing and in development, and will undertake annual inspections and evaluations of all City-owned arts facilities for the purpose of identifying capital repair needs.
- The Division of Arts and Cultural Services will work with cultural organizations managing City-owned facilities to ensure that they are ADA compliant and will assist all facilities in achieving maximum accessibility for all citizens.

B. Public/Private Cost Sharing Program for Development and Operation of Cultural Facilities

This program is based upon the following basic principles:

- In order to qualify for the Public/Private Cost Sharing Program, all projects are subject to the review and approval of the Arts Council and Division of Arts and Cultural Services and the City Manager's office prior to project implementation. Participation is not confirmed until approved by the City Council.
- Facilities developed under this program will be constructed and owned by the City. The City may also maintain these facilities.
- Once established and agreed upon, the cost of acquisition of sites will be shared at a percentage to be negotiated.
- The City of Wichita may provide direct payment for services and/or indirect support to each managing organization as part of the general budget process.
- The following public/private cost-sharing principles apply to original construction as well as to additions/improvements to existing facilities:
 - Pre-construction Costs
 - Site acquisition
 - Clearance
 - Construction Costs
 - Preparation of architectural plans and specifications
 - Construction of building and parking
 - Site improvement: access and landscaping
 - Furniture and furnishings – less salvage

The Funding Process

As a result of the policy changes to the 2008 plan, the committee agreed they needed to bring clarity and transparency to the roles and responsibilities between the organizations and the City. The following process addresses the need to protect City assets by providing identified fiduciary and maintenance support. Operating Partnership Agreements will be negotiated with each organization to address both budgetary and maintenance support as well as addressing the unique relationship with each organization.

The new process will also allow for expansion of funding for both emerging and developing arts organizations as well as individual artists.

The Cultural Institutions (CI) Grants Program

The Cultural Institutions (CI) Grants Program is designed to provide stable and substantial funding to fully professional institutions with year-round programs and annual fiscal operations specifically in the City of Wichita, Kansas. The objective of this program is to help support the annual operations of and programming provided to the community and to protect the assets owned by the City of Wichita with the largest, exemplary cultural organizations. In so doing, the City through the Division of Arts and Cultural services reaffirms and carries out its fiduciary responsibility to maximize the impact of investing public tax dollars, and assures the outstanding cultural organizations throughout Wichita and contributes to the City’s overall vitality as a community as well as an attractive tourist destination for retaining and growing business.

CI organizations have a documented history of at least five years of providing high quality programming to large and diverse audiences from across the city and beyond. They also have a documented impact on the local economy and contribute to the growth and development of artistic excellence. These organizations provide a variety of programs to the public, implement outreach endeavors and provide services to a wide range of audiences and/or underserved communities. Programs supported by CI grants are multifaceted and demonstrate a sustained and significant commitment to achieving cultural and/or artistic excellence generally recognized throughout the local community, and within its discipline regionally, nationally and, often, internationally.

The Cultural Institutions Grants Program will operate on a three-year cycle with a full panel review completed in the first year and a more streamlined interim application form and review process for the subsequent two years. Currently designated CI organizations are eligible for renewed funding upon review and approval of the required interim application.

CI organizations will enter into three-year Operating Partnership Agreements in lieu of any current agreements the organization may have with the City. These partnership agreements will define maintenance responsibilities for both partners, outline partnership responsibilities for Capital Improvements and designate operational funding for budgetary purposes. Each partnership agreement will be negotiated on a case-by-case basis to identify and respect the intrinsic differences between the organizations.

Negotiations and the annual comprehensive review will be conducted by the organization’s representatives and two members of the City Council who serve as ex-officio representatives to the Arts Council , a member of the Division of Arts & Cultural staff, the chair of the Arts Council, the chair of the Cultural Funding Committee, a representative from the City Legal and Finance Departments and a City Manager appointee.

The CI Grants Program operates with two categories of eligibility for designation/funding consideration:

Cultural Institutions (CI) Grants Program

The CI Grants Program addresses arts and cultural organizations with operations and activities in a facility that is owned and/or operated by the City of Wichita. The organization’s audited annual revenues must be in excess of \$50,000 for at least two preceding years. (This would include: Wichita Art

Museum, Cowtown, Mid-America All-Indian Center, CityArts, Kansas Aviation Museum, Wichita Sedgwick County Historical Museum, Kansas Firefighters Museum and Museum of World Treasures.)

- Organizations requesting funds in this grant category **may not** apply for funds in any other category. ***Support organizations for Cultural Institutions are not eligible to apply in any other grant program.***
- Organizations must enter into a three-year Operating Partnership Agreement in lieu of any current agreements with the City.
- Operating Partnership Agreements must include a ten-year Capital Improvement Plan agreed upon by both partners.
- Operating Partnership Agreements must define and determine a budget for maintenance responsibilities by both partners. The organization's board must provide a maintenance budget for building maintenance they are responsible for such as janitorial, security, event setup, exhibition setup, painting, etc. The City will provide a budget for City maintenance responsibilities such as mowing, HVAC, roof repairs, etc.
- The organization must produce or present arts or cultural programs.
- Organizations must demonstrate how they are protecting the City assets including collections owned by the City.
- Where applicable, organizations must demonstrate how they are utilizing their City Staff and prepare plans on how to maximize the resources to continue demonstrated measurable program outcomes.
- Organization must have full-time professional management and full-time professional cultural/artistic personnel.
- Organization must have a minimum of five years of operations history.
- Organization must present a full season of exhibitions or performances.
- Organization must have full-time professional management and full-time professional cultural/artistic personnel.
- Organization must have a minimum of three years of operations history.
- Organization must present a full season of exhibitions or performances.

Cultural Funding Operational Grants Program

The Cultural Funding Operational Grants Program provides operational funding for 501(C)(3) organizations in the City of Wichita. Cultural Funding organizations must have a documented history of providing high quality programming to a large, diverse audience of at least five (5) years. They must also have documentation supporting their impact on the local economy as well as growth and development of artistic excellence. The objective of this program is to support the annual operations of exemplary cultural organizations while reaffirming the fiduciary responsibility of the City of Wichita for investing tax dollars to develop and sustain the City's overall quality of life and economic vitality.

These grants will be given on an annual basis. The Cultural Funding Operational Grant Program addresses 501(C)(3) **arts and cultural organizations** with extensive public programming and outreach. **Only one application per organization.** **Cultural Funding organizations will be divided based on their annual operating revenues so organizations of similar size compete.** ***Support or-***

ganizations are eligible to apply.

- **Organizations with annual operating budgets of \$500,000 or more.**
- **Organizations with annual operating budgets of \$250,000 to 499,999.**
- **Organizations with annual operating budgets of \$249,999 or less.**
- Organizations requesting funds for Cultural Funding *may also* apply for funds in any other grant program other than Cultural Institutions.
- Primary purpose of the organization must be to produce or present arts or cultural programs.
- Organization must have full-time professional management and full-time professional cultural/artistic personnel.
- Organization must have a minimum of five years of operations history.
- Organization must present a full season of exhibitions or performances.

Organizations who would qualify in Cultural Funding would include Wichita Symphony, Wichita Grand Opera, Music Theatre of Wichita, Orpheum, Arts Partners, Wichita Children’s Theatre and Dance, Tallgrass Film Festival and Chamber Music at the Barn.

Developing Arts Grant Program

The Developing Arts Grant Program (DAG) provides funding and technical assistance support to small and/or developing cultural groups **with annual organizational budgets under \$50,000 that create, present or produce year-round cultural activities and arts programs in Wichita, Kansas** at the grassroots level, including underserved neighborhoods, communities or special populations. ***Support organizations are eligible to apply. Grant awards will not exceed \$10,000.***

- 501 (C)(3) Organizations requesting Developing Arts Grant funds *may also* apply for **Cultural Funding**.
- Applicants to this program must have at least a two year track record of creating, producing or presenting year-round cultural programs and activities.
- Organization must present a full season of exhibitions or performances.
- Primary purpose of the organization must be to produce or present arts or cultural programs.
- Organizations must have full-time professional management and full-time professional cultural/artistic personnel.

Organizations who might apply in the Developing Arts Grants Program include Lyric Opera, Griot’s Storytellers, Wichita Wind Ensembles, Heart of America’s Men’s Chorus, Gallery XII and Fisch Haus.

Artist Access Grant Program

The Artist Access Grants Program is designed to assist practicing, professional and emerging artists residing in Wichita, Kansas. The program provides support for artists to take advantage of specific and exceptional professional development, skill-building opportunities to advance their work and careers as working artists. Funds may be used for such endeavors as: attending advanced workshops, conferences, master classes or seminars; participating in artist residencies; engaging in activities that are specifically capable of advancing or propelling a professional career; etc. This program is not intended to provide assistance in funding project-oriented applications, the costs of creating or producing art or an artwork, equipment purchases, touring engagements or academic or certification conferring endeavors. Grant awards range from \$100 to \$1,000, depending on need

and program specifics.

Individual Artist Professional Development Program

The Professional Development Retreat is designed to deliver skill-building opportunities to diverse communities of artists who originate works (composers, playwrights, visual artists, choreographers, etc.) The goal of this retreat is to provide you, the individual artist, with the tools to organize, plan and sustain your creative career. These intensive weekend-long retreats cover the topics of marketing/public relations and fundraising with a particular emphasis on strategic planning. Interested organizations would apply on an annual basis for this retreat. Professional Development Retreats will be conducted through the Division of Arts & Cultural Services with the addition of outside consultants and experts when needed.

The retreat aims to help you:

- Break patterns of crisis management and increase satisfaction in your art practices and careers.
- Identify, acquire and build skills needed to reach goals with individual projects and/or career objectives.
- Communicate clearly and effectively about your work.

FUNDING FOR THE ARTS—THE FUTURE

Name	Pieces in Collection	City Owned Collection	Facility size	City Staff	Number of Staff	Valuation
Wichita Art Museum	8,500	Yes	120,000 sq. ft.	Yes	26	\$7,212,460
Botanica	N/A	Yes	26 themed gardens and exhibits, 5 permanent buildings on 7.5 acres	Yes	4	\$6,843,540
Cowtown	10,000	No	Visitor's Center, 54 buildings on 23 acres	Yes	6	\$1,979,380
Mid-America All-Indian Center	3,000	No	26,000 sq. ft building on seven acres	Yes	3	\$2,176,750
Wichita Sedgwick County Historical Museum	70,000	Yes-350 items	40,000 sq. ft. building on half acre`	No	0	\$1,489,650
Kansas Aviation Museum		No		No	0	\$205,170
Kansas Firefighter's Museum		No		No	0	\$185,570
Museum of World Treasures		No		No	0	\$1,198,210
CityArts	N/A	N/A	26,000 sq.ft	Yes	4 plus +or- 30 pt in-structors	\$2,681,170

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL JULY 9, 2013**

- a. 2013 Contract Maintenance Ecopave Surface Seal EGB73 (north of 63rd St South, east of 135th St West) (472-85091/132726/132726) Traffic to be maintained during construction using flagpersons and barricades. (District II,V) - \$21,193.44

CITY OF WICHITA
City Council Meeting
July 9, 2013

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 2932 North Amidon for the Amidon, 21st Street North to 29th Street North Improvement Project (District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On March 20, 2012, the City Council approved the design concept to improve Amidon Street between 21st Street North and 29th Street North. The project will require a partial acquisition of 30 properties together with the full taking of two additional properties. The tracts within the project corridor consist of commercial and residential. The proposed road improvement project includes widening Amidon to provide a continuous center turn lane, and the intersections at 21st Street, 25th Street and 29th Street will be reconstructed. The proposed partial acquisition of 2932 North Amidon consists of 460 square feet for road right-of-way. The taking is a ten foot wide strip of land adjacent to Amidon. The improvements are not impacted by the proposed project however the seller has improved the proposed right-of-way with a berm as a barrier to Amidon. The owner plans to replace the berm outside of the proposed right-of-way.

Analysis: The proposed acquisition was valued at \$580, or \$1.25 per square foot. Not included in the land value are the damages to the berm and mature landscaping located within the proposed right-of-way. The seller agreed to accept the appraised offer plus an additional \$2,420 (for a total of \$3,000) to recreate the berm outside of the proposed right-of-way.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$3,500 is requested. This includes \$3,000 for the acquisition and \$500 for title work, closing costs and other administrative fees.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) approve the real estate agreement; 2) approve the budget; and 3) authorize the necessary signatures.

Attachments: Real estate agreement, tract map and aerial map.

PROJECT: Amidon Avenue DATE: _____

COUNTY: Sedgwick TRACT NO.: 0029

THE CITY OF WICHITA, KANSAS

**CONTRACT FOR CONVEYANCE
OF REAL ESTATE BY WARRANTY DEED**

THIS AGREEMENT Made and entered into this 15 day of June, 2013, by and between

Dale E. Petersen

2932 N Amidon, Wichita, KS 67204

(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:		
460 (Sq. Ft.)	\$	580.00
Damages:		
landscaping ? perm	\$	2420.00
Temporary/Easement for construction:		
N/A (Sq. Ft.)	\$	N/A
Permanent Drainage Easement for construction:		
N/A (Sq. Ft.)	\$	N/A

Improvement & Buildings acquired with right of way:
 N/A

TOTAL: \$ 3000.00
~~580.00~~

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS: Dale E. Petersen

By: 
 Dale E. Petersen

By: _____

THE CITY OF WICHITA

ATTEST:

By: _____
 Carl Brewer, Mayor

By: _____
 Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

Dale E. Petersen

If mortgage or other liens, show names of holders:

Federal Tax Lien filed March 31, 1995 on Film 1513, Page 1062, Property taxes for 2010, 2011 and 2012 unpaid.

REMARKS:

PIN/APN 00114064
 Security Title File Number 2068400

APPROVED TO FORM:

 Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:


 Gerald Cain, Project Manager

A 14023 - Right of Way

The west 10.00 feet of the north 46.00 feet of Lot 9, Gilders Court, Sedgwick County, Kansas.



RIGHT OF WAY EXHIBIT

PETERSEN DALE E
 2932 N AMIDON
 WICHITA KS 67204-4908

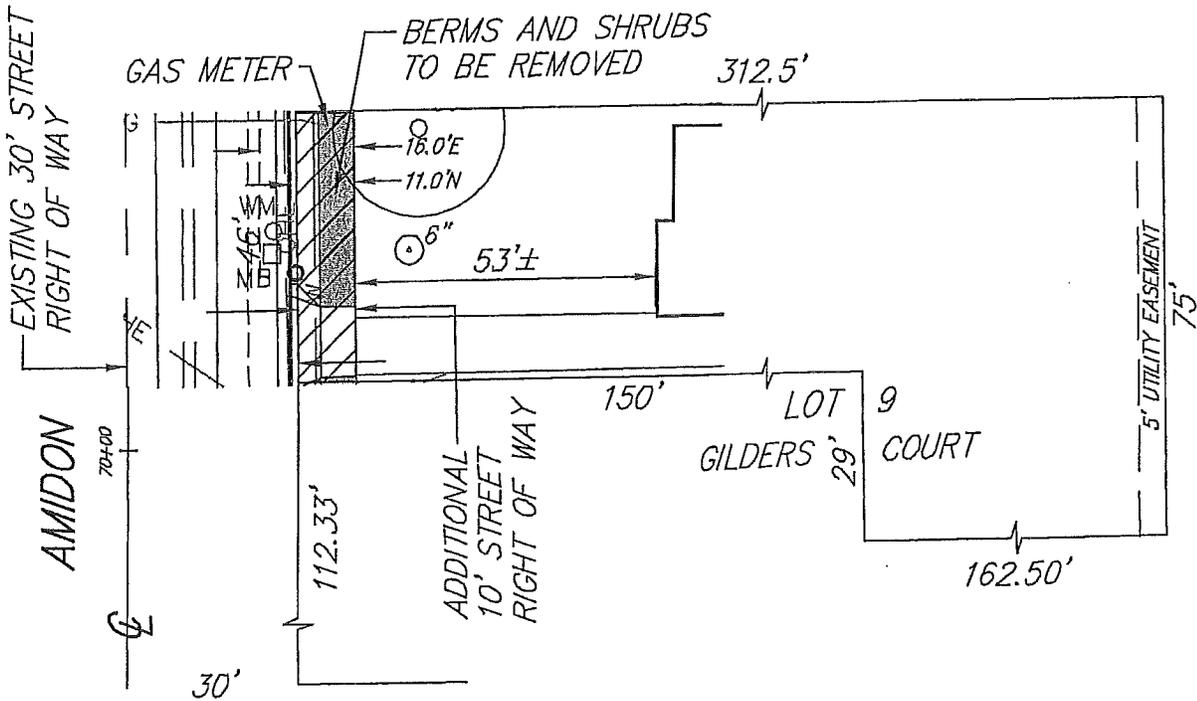
A 14023

Right Of Way Area: 460 Sq. Ft.±
 0.01 Acres±

-  = BRICK
-  = PROPOSED SIDEWALK
-  = PROPOSED STREET RIGHT OF WAY

(DISTANCE)E = EXISTING CURB TO NEW PROPERTY LINE

(DISTANCE)N = NEW CURB TO NEW PROPERTY LINE



Ruggles & Bohm, P.A.
 Engineering, Surveying, Land Planning

924 North Main
 Wichita, Kansas 67203
 www.rbkansas.com

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 (316) 264-4621 fax
 E-mail: info@rbkansas.com

3647T

A 14023

2932 N Amidon



Printed: 11/15/2012 10:17:38 A
powered By GeoSmart



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
July 9, 2013

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 2750 North Amidon for the Amidon, 21st Street North to 29th Street North Improvement Project (District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On March 20, 2012, the City Council approved the design concept to improve Amidon Street between 21st Street North and 29th Street North. The project will require a partial acquisition of 30 properties together with the full taking of two additional properties. The tracts within the project corridor consist of commercial and residential. The proposed road improvement project includes widening Amidon to provide a continuous center turn lane, and the intersections at 21st Street, 25th Street and 29th Street will be reconstructed. The proposed partial acquisition of 2750 North Amidon consists of 335 square feet for road right-of-way together with an 80 square foot temporary easement. The taking is a five foot wide strip of land adjacent to Amidon. The improvements are not impacted by the proposed project. The temporary easement during construction will allow for proper grading at the driveway approach.

Analysis: The proposed acquisition was valued at \$520, or \$420 (\$1.25 per square foot) for the right-of-way and \$100 for the temporary easement. The seller agreed to accept the appraised offer.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$1,020 is requested. This includes \$520 for the acquisition and \$500 for title work, closing costs and other administrative fees.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) approve the real estate agreement; 2) approve the budget; and 3) authorize the necessary signatures.

Attachments: Real estate agreement, tract map and aerial map.

PROJECT: Amidon Avenue DATE: June 19, 2013

COUNTY: Sedgwick TRACT NO.: 0012

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE
OF REAL ESTATE BY WARRANTY DEED AND TEMPORARY
EASEMENT

THIS AGREEMENT Made and entered into this 19 day of June, 2013, by and between

Alberta Simon, a widow by Sandra Sue Simon P.O.A.

2750 N Amidon Avenue, Wichita, KS 67204
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed and Temporary Easement to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

A 14121 - Right of Way

The west 5.00 feet of the north 67 feet of Lot 24, Gilders Riverside, Sedgwick County, Kansas.



RIGHT OF WAY EXHIBIT

SIMON ALBERTA / ETAL
 2750 N AMIDON
 WICHITA KS 67204-4904

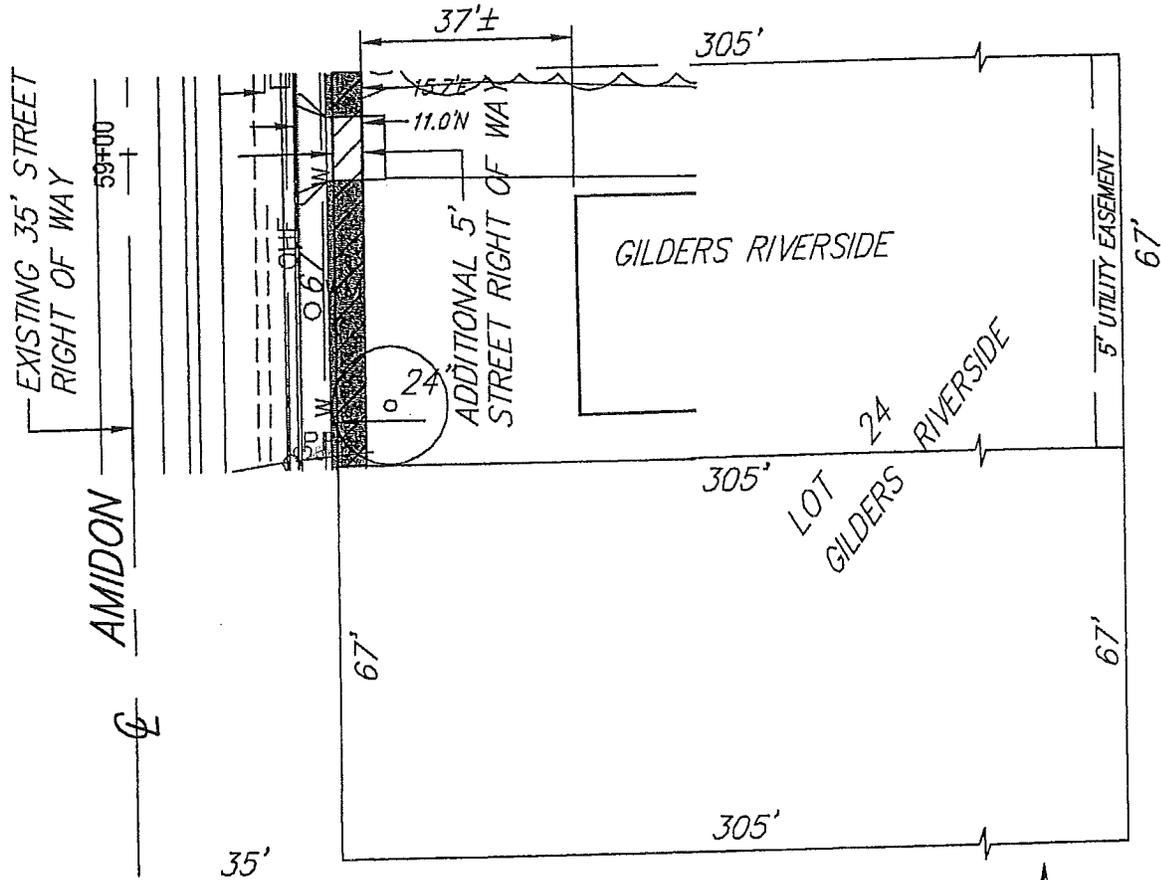
A 14121

Right Of Way Area: 335 Sq. Ft.±
 0.01 Acres±

-  = BRICK
-  = PROPOSED SIDEWALK
-  = PROPOSED STREET RIGHT OF WAY

(DISTANCE)E = EXISTING CURB TO NEW PROPERTY LINE

(DISTANCE)N = NEW CURB TO NEW PROPERTY LINE

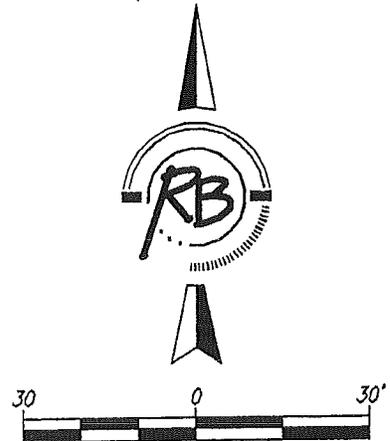


Ruggles & Bohm, P.A.

Engineering, Surveying, Land Planning

924 North Main
 Wichita, Kansas 67203
 www.rbkansas.com

(316) 264-8008
 (316) 264-4621 fax
 E-mail: info@rbkansas.com



3647T

TEMPORARY CONSTRUCTION EASEMENT EXHIBIT

SIMON ALBERTA I ETAL
2750 N AMIDON
WICHITA KS 67204-4904

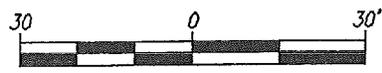
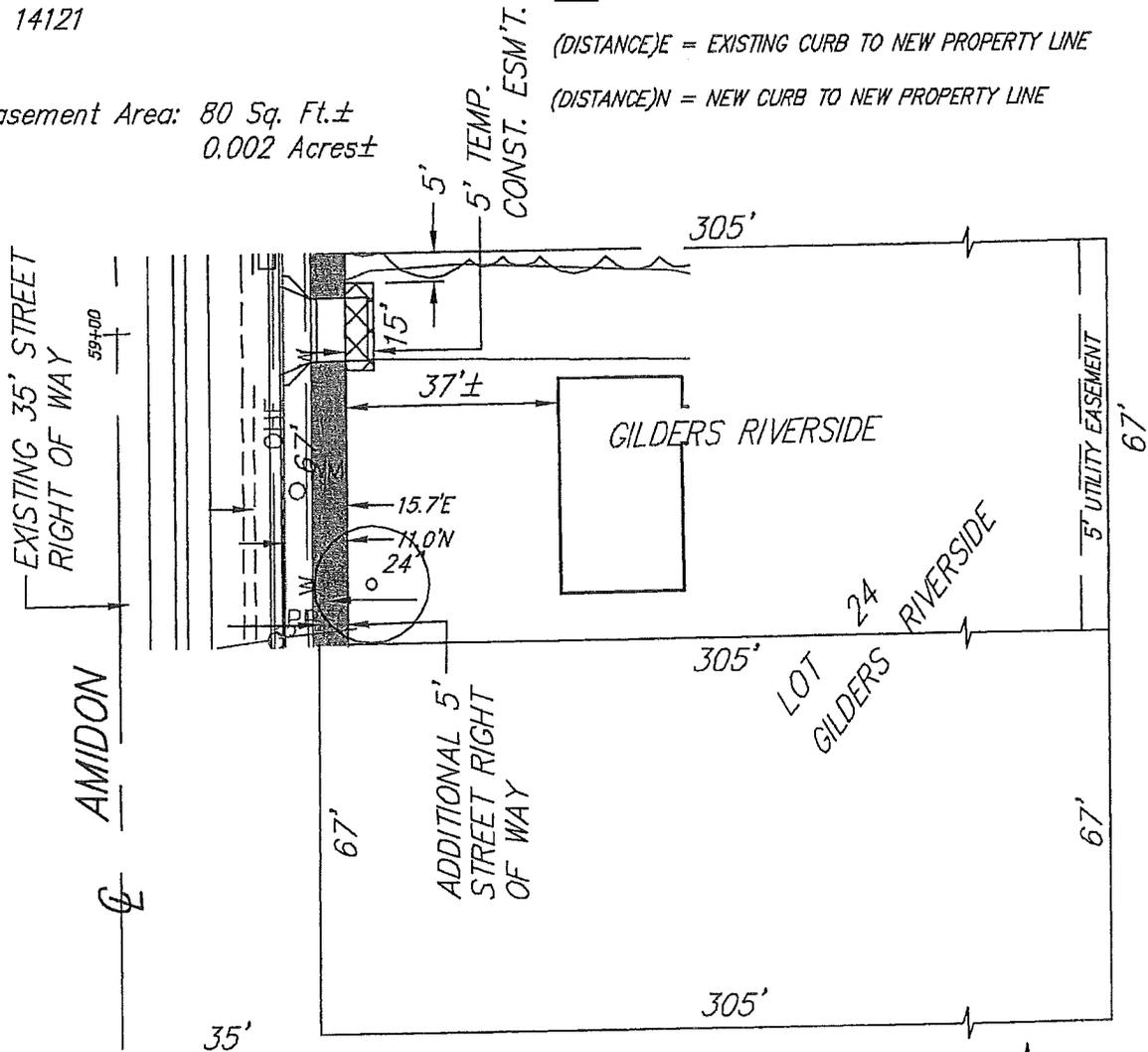
-  = BRICK
-  = PROPOSED SIDEWALK
-  = PROPOSED TEMPORARY CONSTRUCTION EASEMENT

A 14121

Easement Area: 80 Sq. Ft.±
0.002 Acres±

(DISTANCE)E = EXISTING CURB TO NEW PROPERTY LINE

(DISTANCE)N = NEW CURB TO NEW PROPERTY LINE



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(316) 264-4621 fax
E-mail: info@rbkansas.com

3647T

A 14121 – Temporary Construction Easement

The south 15.00 feet of the north 20.00 feet of the east 5.00 feet of the west 10.00 feet of Lot 24,
Gilders Riverside, Sedgwick County, Kansas.





A 14121

2750 N Amidon



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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
July 9, 2013

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 2856 North Amidon for the Amidon, 21st Street North to 29th Street North Improvement Project (District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On March 20, 2012, the City Council approved the design concept to improve Amidon Street between 21st Street North and 29th Street North. The project will require a partial acquisition of 30 properties together with the full taking of two additional properties. The tracts within the project corridor consist of commercial and residential. The proposed road improvement project includes widening Amidon to provide a continuous center turn lane, and the intersections at 21st Street, 25th Street and 29th Street will be reconstructed. The proposed partial acquisition of 2856 North Amidon consists of 700 square feet for road right-of-way together with a 100 square foot temporary easement. The taking is a ten foot wide strip of land adjacent to Amidon. The improvements are not impacted by the proposed project. The temporary easement during construction will allow for proper grading at the driveway approach.

Analysis: The proposed acquisition was valued at \$980, or \$880 (\$1.25 per square foot) for the right-of-way and \$100 for the temporary easement. The seller agreed to accept the appraised offer.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$1,480 is requested. This includes \$980 for the acquisition and \$500 for title work, closing costs and other administrative fees.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) approve the real estate agreement; 2) approve the budget; and 3) authorize the necessary signatures.

Attachments: Real estate agreement, tract map and aerial map.

PROJECT: Amidon Avenue DATE: _____

COUNTY: Sedgwick TRACT NO.: 0017

THE CITY OF WICHITA, KANSAS

**CONTRACT FOR CONVEYANCE
OF REAL ESTATE BY WARRANTY DEED AND TEMPORARY
EASEMENT**

THIS AGREEMENT Made and entered into this _____ day of _____, 2013, by and between

M. Luke Campbell and Jennifer M. Campbell, husband and wife

4033 Amidon, Wichita, KS 67204
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed and Temporary Easement to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
700 (Sq. Ft.) \$ 980.00
 Damages: \$ _____
 Temporary Easement for construction:
100 (Sq. Ft.) \$ 100.00
 Permanent Drainage Easement for construction:
N/A (Sq. Ft.) \$ N/A

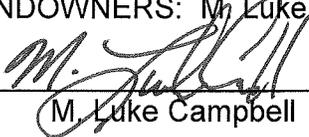
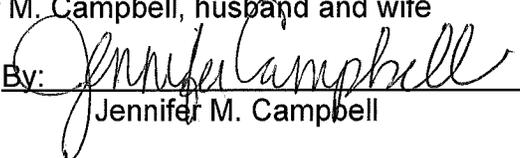
Improvement & Buildings acquired with right of way:
N/A

TOTAL: \$ 980.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS: M. Luke Campbell and Jennifer M. Campbell, husband and wife

By:  M. Luke Campbell
 By:  Jennifer M. Campbell

THE CITY OF WICHITA ATTEST:

By: _____
 Carl Brewer, Mayor

By: _____
 Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record: 
M. Luke Campbell and Jennifer M. Campbell, husband and wife
 If mortgage or other liens, show names of holders:
Fidelity Bank (MERS, as nominee for lender)

REMARKS:
 PIN/APN 00114069
 Security Title File Number 2068383

APPROVED TO FORM:

 Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

 Gerald Cain, Project Manager

A 14028 - Right of Way

The west 10.00 feet of the south 70.00 feet of Lot 12, Gilders Court, Sedgwick County, Kansas.



RIGHT OF WAY EXHIBIT

CAMPBELL M LUKE & JENNIFER M
 2856 N AMIDON
 WICHITA KS 67204-4906

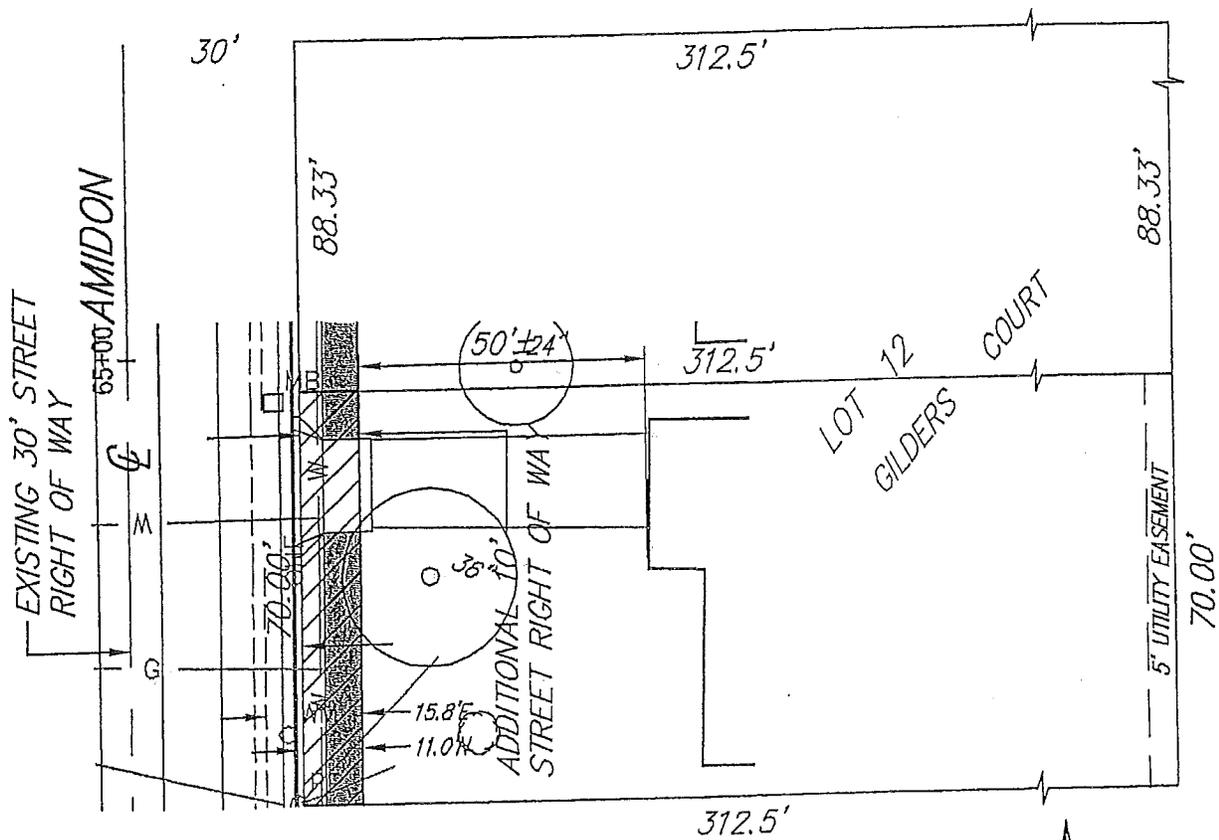
A 14028

Right Of Way Area: 700 Sq. Ft.±
 0.02 Acres±

-  = BRICK
-  = PROPOSED SIDEWALK
-  = PROPOSED STREET RIGHT OF WAY

(DISTANCE)E = EXISTING CURB TO NEW PROPERTY LINE

(DISTANCE)N = NEW CURB TO NEW PROPERTY LINE



Ruggles & Bohm, P.A.

Engineering, Surveying, Land Planning

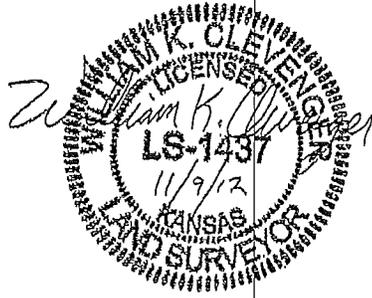
924 North Main
 Wichita, Kansas 67203
 www.rbkansas.com

(316) 264-8008
 (316) 264-4621 fax
 E-mail: info@rbkansas.com

3647T

A 14028 – Temporary Construction Easement

The north 20.00 feet of the south 64.00 feet of the east 5.00 feet of the west 15.00 feet of Lot 12,
Gilders Court, Sedgwick County, Kansas.



TEMPORARY CONSTRUCTION EASEMENT EXHIBIT

CAMPBELL M LUKE & JENNIFER M
2856 N AMIDON
WICHITA KS 67204-4906

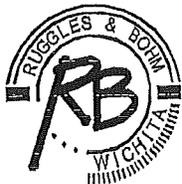
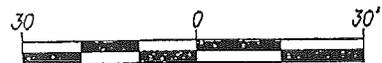
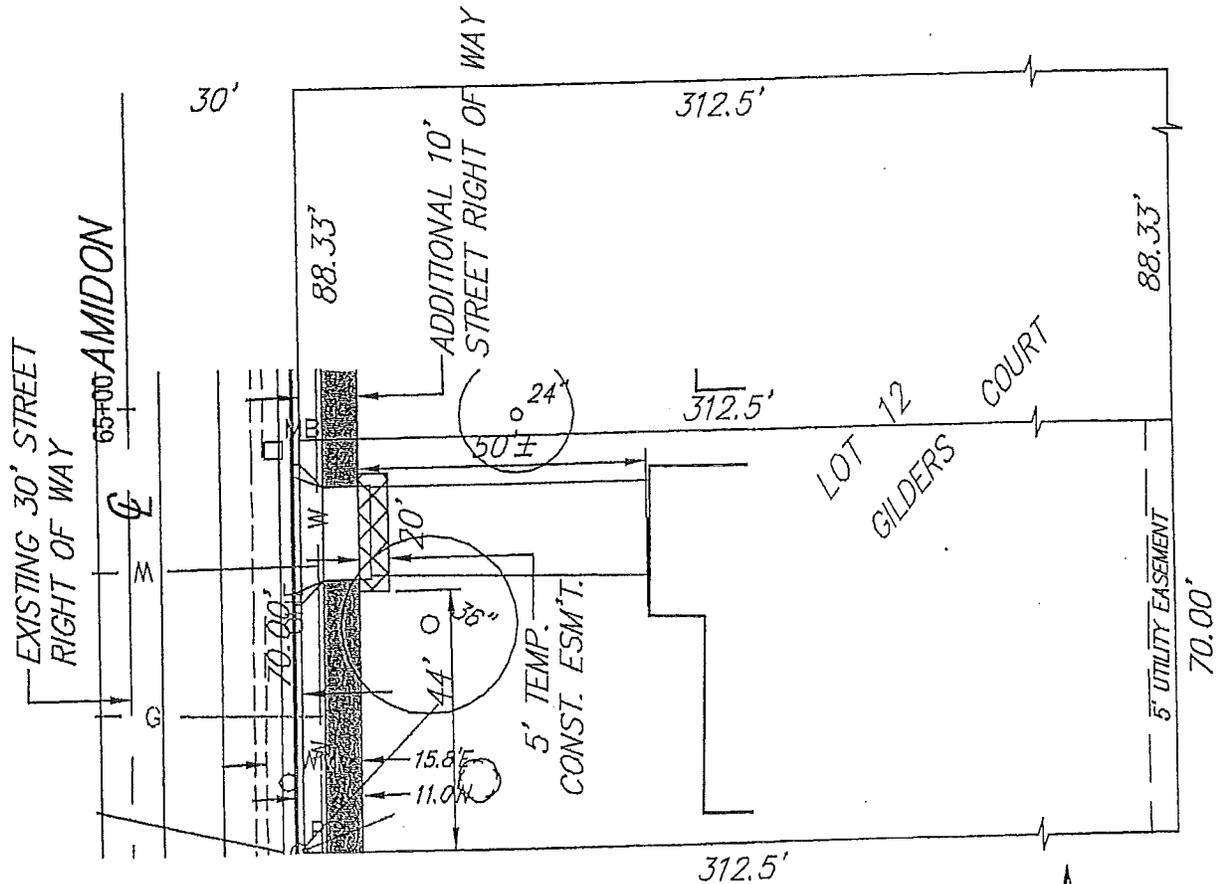
A 14028

Easement Area: 100 Sq. Ft.±
0.002 Acres±

-  = BRICK
-  = PROPOSED SIDEWALK
-  = PROPOSED TEMPORARY CONSTRUCTION EASEMENT

(DISTANCE)E = EXISTING CURB TO NEW PROPERTY LINE

(DISTANCE)N = NEW CURB TO NEW PROPERTY LINE



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3647T



A 14028

2856 N Amidon



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CITY OF WICHITA
City Council Meeting
July 9, 2013

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 431 North 135th Street West for the Maple to Central Improvement Project (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 8, 2013, the City Council approved the design concept to improve 135th Street from Maple to Central. The project requires the partial acquisition of two properties. The tracts consist of residential use. The proposed road improvement project includes widening 135th Street, improving area storm drainage, and adding sidewalks. The proposed acquisition at 431 North 135th Street West requires the east 20 feet of the site for road right-of-way. The acquisition area does not impact the residential improvements; however, the project does impact mature landscaping.

Analysis: The estimated market value for the 4,000 square foot taking was valued at \$4,000, or \$1 per square foot. The owner agreed to the offer plus an additional \$3,000 for the loss of mature trees within the proposed right-of-way. This amount was determined by an arborist's valuation of the impacted trees.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$7,500 is requested. This includes \$7,000 for the acquisition and \$500 for title work and other administrative fees.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) approve the real estate agreement; 2) approve the budget; and 3) authorize the necessary signatures.

Attachments: Real estate agreement, tract map and aerial map.

PROJECT: 135th Street: Maple to Central

DATE: June 18, 2013

COUNTY: Sedgwick

TRACT NO.: 02

CITY OF WICHITA, KANSAS

A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT made and entered into this ____ day of _____, 2013, by and between Loretta Marceau (Landowner(s)), and the City of Wichita, Kansas, a municipal corporation (Buyer),

WITNESSETH, For consideration as hereinafter set forth, Landowner(s) hereby agree to convey a road right-of-way to the City of Wichita by a warranty deed the following described real properties in Sedgwick County to wit:

The West 20.00 feet of the East 50.00 feet of the South 200 feet of the North 958 feet of the East 326.7 feet of the Northeast Quarter of Section 23, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas.

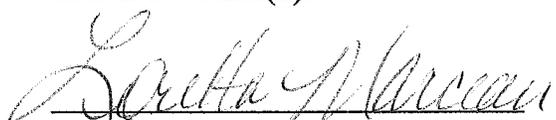
It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of fee title to the City. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City and its authorized representatives from any and all costs, liabilities, expenses, suits, judgements, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property until the relocation is completed. The City agrees to purchase the above described real estate, and to pay therefore, the following amount within 30 days after the conveyance documents of said property, free of any encumbrances, have been delivered.

- | | | |
|-----|---|-----------------|
| I. | 20 feet from the eastern edge of the property known as 431 N. 135 th Street West, totaling approximately 4,000 Sq. Ft. for Road Right of Way | \$4,000 |
| II. | Damages to: Two Austrian Pines, one on the south lot line, one on the north lot line, and one Globe Willow all within said proposed right-of-way | \$ 3,000 |
| | TOTAL | \$ 7,000 |

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out including claims that Landowner(s) may assert pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C.A. 4601, et. Seq.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNER(S):



Loretta Marceau

BUYER:

City of Wichita, KS, a municipal corporation

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

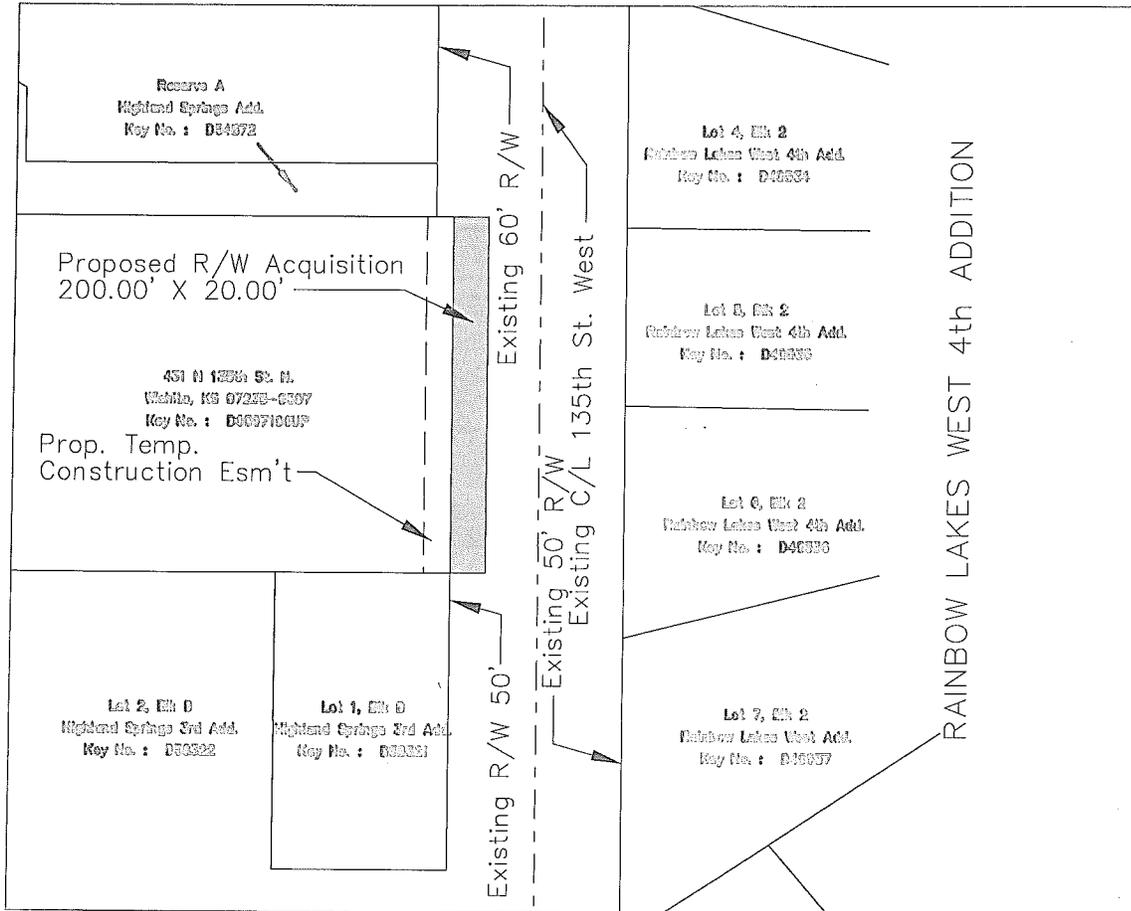
Gary E. Rebenstorf, Director of Law

RIGHT OF WAY EXHIBIT

TRACT NO. 3

Marceau, Loretta L.
 431 N. 135th St. W.
 Wichita, KS 67235-9507
 Right of Way Area : 4,000.0± sq. ft.
 (0.09± acres)

Right of Way Acquisition

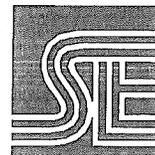


1" = 100'

Legal Description

The West 20.00 feet of the East 50.00 feet of the South 200 feet of the North 958 feet of the East 326.7 feet of the Northeast Quarter of Section 23, Township 27 South, Range 2 West, of the Sixth Principal Meridian, Sedgwick County, Kansas.

TRACT MAP



Schwab
Eaton

DATE :	01/23/13	Rev :	
	02/08/13		1
	04/03/13		2
	04/12/13		3



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Created By: GeoSmart.net

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**CONTRACTS & AGREEMENTS
BLANKET PURCHASE ORDERS RENEWAL OPTIONS
JUNE 2013**

COMMODITY TITLE	EXPIRATION DATE	VENDOR NAME	DEPARTMENT	ORIGINAL CONTRACT DATES	RENEWAL OPTIONS REMAINING
Alternative Correctional Housing Program Audit	6/30/2013	Wichita State University	MABCD	7/15/2011 - 6/30/2012	1 - 1 year option
Architectural Services (On-Call)	6/30/2014	Law/Kingdon Inc. DBA Law Kingdon Architecture	Public Works & Utilities	7/1/2012 - 6/30/2013	1 - 1 year option
Architectural Services (On-Call)	6/30/2014	Spangenberg Phillips Tice, LLC DBA Spangenberg Phillips Tice Architecture	Public Works & Utilities	7/1/2012 - 6/30/2013	1 - 1 year option
Closed Captioning Services for City 7	6/30/2014	Caption Colorado, LLC	City Manager	7/1/2009 - 6/30/2010	Last option
Controlled Substance & Alcohol Testing Program Third-Party Administrator	6/30/2013	Bird Dog Solutions, Inc. DBA Foley Carrier Services, LLC	Human Resources	7/10/2012 - 6/30/2013	4 - 1 year options
Cowskin Creek Wetlands Monitoring Services	6/30/2014	Burns & McDonnell	Public Works & Utilities	7/1/2010 - 6/30/2011	1 - 1 year option
Engineering & Management Bond Services	6/30/2014	Burns & McDonnell	Public Works & Utilities	6/26/2012 - 6/30/2013	Annual basis
Hardware Maintenance & Support Services	6/30/2014	SMS Systems Maintenance Services, Inc.	IT / IS	6/26/2012 - 6/30/2013	3 - 1 year options
Haunted Attraction at Watson Park	6/30/2014	Prairie Pines Festivals, LLC	Park & Recreation	7/21/2010 - 6/30/2011	1 - 1 year option
Industrial Pretreatment Wastewater Sampling	6/30/2014	A & E Analytical Laboratory, Inc.	Public Works & Utilities	7/10/2012 - 6/30/2013	1 - 1 year option
Maintenance Service on Power Files	6/30/2014	Records Retrieval Systems	Police	7/1/2002 - 6/30/2003	Annual basis
Methane (Surface) Monitoring & Reporting at Brooks Landfill	6/30/2014	SCS Engineers DBA SCS Aquaterra	Public Works & Utilities	8/1/2010 - 6/30/2011	1 - 1 year option
Paint - White and Yellow Pavement Marking	6/30/2014	Ennis Paint, Inc. dba Ennis Traffic Safety Solutions	Public Works & Utilities	7/1/2012 - 6/30/2013	1 - 1 year option
Paint, Exterior	6/30/2014	PPG Architectural Finishes, Inc. dba Porter Paints	Housing & Community Services	7/1/2012 - 6/30/2013	1 - 1 year option
Public Internet Services at Lionel Alford Regional and Central Branch Libraries	6/30/2014	Network Tool and Die Company, Inc.	Library	7/1/2012 - 6/30/2013	3 - 1 year options
Root Control Herbicide (Foaming)	6/30/2014	Dukes Sales & Service	Public Works & Utilities	7/1/2012 - 6/30/2013	1 - 1 year option
Structural Engineering On Call Services	6/30/2014	Mauler Engineering, LLC	Airport	6/26/2012 - 6/30/2013	1 - 1 year option
Traffic Signs	6/30/2014	Vulcan Signs	Public Works & Utilities	7/1/2012 - 6/30/2013	1 - 1 year option
Transcription Services	6/30/2014	Net Transcripts, Inc.	Police	7/10/2012 - 6/30/2013	1 - 1 year option
Uniforms - Fire Department	6/30/2014	Baysinger Police Supply, Inc.	Fire	7/21/2011 - 6/30/2012	Last option
Uniforms - Housing	6/30/2014	Industrial Uniform Co., LLC DBA Logo Depot	Housing & Community Services	7/1/2011 - 6/30/2012	Last option
Uniforms- Rental of Shop Uniforms-Wichita Transit	6/30/2014	Aramark Uniform & Career Apparel LLC DBA Aramark Uniform Services	Wichita Transit	7/1/2012 - 6/30/2013	1 - 1 year option
Veterinary Consulting Services	6/30/2014	RL Kutter DVM, PA dba Kutter Pet Care Center	Police	7/1/2012 - 6/30/2013	1 - 1 year option
Water Meter and AMR Replacement & Installation	6/30/2014	National Meter and Automation, Inc.	Public Works & Utilities	6/19/2012 - 6/30/2013	3 - 1 year options

**PROFESSIONAL CONTRACTS UNDER \$25,000
JUNE 2013**

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		

**ANNUAL MAINTENANCE CONTRACTS OVER \$25,000
DIRECT PURCHASE ORDERS FOR JUNE 2013**

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		
World Data Products, Inc.	DP340429	Software Maintenance/Support	35,070.00		
Cogsdale Holdings LTD	DP340421	Software Maintenance/Support	118,558.00		

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council

SUBJECT: Approval of IRB Subtenant Lease (Pulse Headquarters, LLC)
(District II)

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendation: Approve the sublease between Pulse Headquarters, LLC and Kansas Medical Mutual Insurance Company.

Background: On December 20, 2011, the City Council approved the issuance of Industrial Revenue Bonds (IRBs) in the amount not-to-exceed \$6,000,000, and a 100% five-plus-five-year property tax exemption for Pulse Headquarters, LLC. Pulse Headquarters, LLC (“Pulse”) subleases a portion of the property to Pulse Systems, Inc. Bond proceeds were used to acquire and improve property located at 3020 N. Cypress.

Analysis: Pulse has negotiated a sublease of approximately 4,601 usable square feet with Kansas Medical Mutual Insurance Company (“KMMIC”). KMMIC is not affiliated with Pulse. Pulse is required by the conditions of the bond documents to make a Payment-in-Lieu-of-Taxes (“PILOT”) for any portion of the building that is used by, or subleased to, entities not related to Pulse.

Financial Considerations: City staff and Pulse Headquarters have negotiated the terms of a property tax abatement designed to abate the taxes only on property actually occupied by Pulse Systems. Under this arrangement, all bond-financed improvements will be subject to 100% five-year abatement, plus a second five years subject to Council review and approval. Each year of the abatement period, Pulse will pay the City a “payment-in-lieu-of-taxes” (“PILOT”) equal to the prorated amount of taxes that would have been due on the portion of the building not occupied by Pulse, based on current appraised value and current tax rates.

Legal Considerations: The Law Department has approved the attached Sublease Agreement as to form. The City’s legal ability to require an IRB Tenant to enforce compliance by a subtenant of conditions set forth in the IRB Lease is reinforced if the City has also specifically approved a sublease which contains such conditions. The City retains the right to rescind the abatement or require a PILOT in the event of noncompliance, as a standard condition of the tax abatement.

Recommendations/Actions: It is recommended that the City Council approve the sublease between Pulse Headquarters, LLC and Kansas Medical Mutual Insurance Company.

Attachments: Sublease Agreement

6/19/13

SUBLEASE AGREEMENT
Summary

Date of Lease: June 21, 2013

Base Landlord: City of Wichita under IRB Lease

Landlord: Pulse Headquarters, LLC

Tenant: Kansas Medical Mutual Insurance Company

Property Located at: 3020 N. Cypress, Wichita, KS

Tenant's
"Leased Premises:": Approximately 4,601 usable square feet, 5,337 rentable square feet. RECITALS.

Load factor: 16%. RECITALS.

Original Term: 7 years. Section 2.

Options: 2 options of 5 years each. Section 31.

Commencement Date: October 1, 2013. Section 2.

Possession Date: September 1, 2013. Section 2.

Rent Starts: November 1, 2013 (October rent pre-paid on execution). Section 4.

Rent: \$112,077 per year, \$9,339.75 paid monthly. CPI adjustment annually. Section 4.

Option Rent: Current Market Rate. Section 31.

Security Deposit: One month Rent. Section 5.

Use of Leased Premises. General business office purposes. Section 1.

Brokers: J.P. Weigand & Sons — Marty Gilchrist (Landlord). Section 29(m).

Maintenance & Repairs: Tenant maintains Leased Premises. Landlord maintains Building, roof, foundation, exterior walls, load-bearing walls and structural portions of Building. Section 8.

Janitorial: Landlord. Section 8.

Operating Expenses: Tenant will be charged for its Pro Rata Share (16%) of Building Operating Expenses over Base Year 2013. Section 9.

Landlord's Work: Described on Exhibits B and C. To be completed by September 1, 2013. Section 3.

Taxes and Special Assessments: Included in Rent. Tenant pays 16% of increase after 2013. Section 9.

Utilities/HVAC: Included in Rent. Section 7.

This Summary to Lease Agreement (the "Summary") represents a part of the Sublease Agreement between the Landlord and Tenant. All capitalized terms used in this Summary shall have the meanings ascribed to them in the Sublease Agreement. In the event of any conflicts between this Summary and the terms of the Sublease Agreement, the Sublease Agreement shall control.

6/19/13

SUBLEASE AGREEMENT

This Sublease Agreement (this "**Lease**") is entered into as of June 21, 2013 (the "**Effective Date**") by and among **Pulse Headquarters, LLC**, a Kansas limited liability company, as sublessor ("**Landlord**"), and **Kansas Medical Mutual Insurance Company**, a Kansas corporation, as sublessee ("**Tenant**").

RECITALS

Whereas, Landlord is the tenant under a certain lease dated as of December 15, 2011 (the "**City Lease**") between the City of Wichita ("**Issuer**") and Landlord, with respect to approximately 46,277 square feet of office space (the "**Building**") on real property legally described as Parcel 50, otherwise known as Lot 10, Block 2, Mediterranean Plaza, an addition to the City of Wichita, Sedgwick County, Kansas, and commonly known as 3020 N. Cypress, Wichita, Kansas, 67226.

Landlord desires to sublease to Tenant, and Tenant desires to sublease from Landlord, approximately **4,601 of usable square feet** as shown on Exhibit A attached hereto (the "**Leased Premises**") as expressed herein and upon the terms and conditions as contained in this Lease. For purposes of the computation of Monthly Rent, the Leased Premises consists of **5,337 rentable square feet**, determined as follows: the product of (i) usable square feet of the Leased Premises (4,601), multiplied by (ii) the agreed load factor of 1.16.

1. Leased Premises and Use. Landlord by these presents hereby rents, leases and lets unto Tenant, and Tenant hereby rents, leases and hires from Landlord, for the rentals and upon and subject to the terms and conditions hereinafter set forth, the land, buildings and improvements constituting the Leased Premises as described on Exhibit A, attached hereto. During the Term (as defined below) Tenant shall use the Leased Premises for general business office purposes and purposes incidental to that use, and for no other purpose without Landlord's prior written consent, which would not be unreasonably withheld. Tenant will not use or permit the Leased Premises to be used or occupied for any purpose or in any manner prohibited by any applicable law, rule, regulation or deed covenant, condition and restriction concerning the Leased Premises. Tenant will not commit waste or suffer or permit waste to be committed in, on, or about the Leased Premises. Tenant will conduct its business and will control its employees, agents, and invitees in such a manner as not to create any nuisance or interfere with, annoy, or disturb any other tenant or occupant of the Building in its use or operation of the Leased Premises.

2. Term. For purposes of paying the Monthly Rent, the term of this Lease shall be for seven (7) years (the "**Term**") which shall commence on midnight October 1, 2013 (the "**Commencement Date**"), and end at midnight on September 30, 2020 (the "**Termination Date**"), unless otherwise sooner terminated in accordance with the provisions of this Lease. Possession of the Leased Premises shall be delivered to Tenant at midnight on September 1, 2013 (the "**Possession Date**") to allow Tenant to install Tenant's data center and Tenant's furnishings, data cabling, and phone systems. For all purposes other than payment of the Monthly Rent, this Lease, and the terms and conditions contained herein shall be from the Effective Date.

3. Landlord's Work. Landlord shall enter into a construction contract or contracts for the purpose of constructing the Landlord's Work which is described on Exhibit C attached hereto and

made a part hereof by this reference, or at \$20 per square foot, whichever is less (the "Allowance"). If Tenant wishes any modifications to the Landlord's Work which exceed the Allowance, then Tenant agrees that Tenant shall pay all such additional costs in advance to Landlord, including but not limited to, installation of a floor drain in the server room. Tenant shall not make any payment directly to any contractor, vendor, or supplier for costs associated with the Landlord's Work without Landlord's prior written consent.

4. Rent. Tenant shall pay to Landlord, in addition to the other sums provided herein, annual rent of One hundred twelve thousand seventy-seven dollars and 00/100 (\$112,077), payable as monthly rent (the "Monthly Rent") in the amount of Nine thousand three hundred thirty-nine dollars and 75/100 (\$9,339.75) (based upon \$21.00 x 5,337 per square foot of rentable space per year), the first month of which is payable upon the execution of this Lease and, thereafter, payable in advance on November 1, 2013 and the first day of each month thereafter during the Term of this Lease.

Effective on the first day of each October beginning in 2014, and continuing each year thereafter so long as this Lease remains in effect, the Monthly Rent shall be increased on an annual basis; and Tenant thereafter shall pay Landlord, during each ensuing calendar year, newly adjusted Monthly Rent in an amount which, in each instance, shall be the amount determined by multiplying the Monthly Rent payable at the end of the preceding calendar year, by a fraction, the numerator of which shall be the Consumer Price Index ("CPI"), now known as the "United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, U. S. City Average for all Urban Consumers, Seasonally Adjusted, All items, (1982-84=100)", for the month of June of the most recent calendar year and denominator shall be the month of June of the year immediately prior to the preceding calendar year ("Prior Year June CPI"). For example, the formula for rent beginning October 1, 2014 will be as follows: Most Recent June CPI (2014) and Prior Year June CPI (2013).

$$\text{Current Monthly Rent} \times \frac{\text{Most Recent June CPI}}{\text{Prior Year June CPI}} = \text{Next Monthly Rent}$$

In the event that the Consumer Price Index is converted to a different standard reference base or otherwise revised, the determination of the Annual Rent Fee Adjustment shall be made with the use of such conversion factor, formula or table for converting the Consumer Price Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice-Hall, Inc., or any other nationally recognized publisher of similar statistical information. If the Consumer Price Index ceases to be published, and there is no successor thereto, such other index as Landlord and Tenant shall agree upon in writing shall be substituted for the Consumer Price Index. If Landlord and Tenant are unable to agree as to such substituted index, such matter shall be submitted to arbitration in accordance with the Kansas Uniform Arbitration Act.

Except as otherwise expressly provided in this Lease, all rental payments shall be made, without deduction, set-off, notice or demand, to Landlord at Landlord's principal place of business at:

Pulse Headquarters, LLC
P.O. Box 780085
Wichita, KS 67278.

If Landlord does not receive the Monthly Rent or any other Lease costs in full on or before the seventh (7th) day of the month it becomes due (provided that the amount is not disputed reasonably

and in good faith), Tenant shall pay Landlord a late charge which shall constitute liquidated damages, equal to \$500 plus \$25 a day for each day rent is late beginning on the eighth (8th) day of the month ("**Late Charge**") which shall be paid to Landlord together with such Monthly Rent and other Lease costs then in arrears. The parties agree that such Late Charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment.

5. Security Deposit. Tenant shall deposit with Landlord, concurrently with the execution of this Lease, the sum of **\$9,339.75** to be held and applied by Landlord as a Security Deposit for the full and timely performance and observance of any and all of the terms and conditions of this Lease on Tenant's part to be performed and observed. Landlord in its discretion and from time to time and at any time shall be entitled to any portion or all of said Security Deposit for reimbursement or satisfaction of any and all defaults in Tenant's performance and observance of this Lease and/or any and all damages, losses, attorney's fees, costs or expenses incurred to be incurred by Landlord as to any default or defaults in the Lease by Tenant. Upon Landlord's giving Tenant notice of any such application of the Security Deposit, Tenant shall within twenty (20) days thereafter pay to Landlord a sum sufficient to restore the amount of such Security Deposit to its original amount. Within thirty (30) days next following expiration of the Term (or the final Option Term) of this Lease, Landlord shall refund to Tenant any balance of the Security Deposit remaining on deposit with Landlord which has not been applied to reimbursement or satisfaction of the foregoing items and Landlord shall have no further liability with respect to such Security Deposit. Interest shall not be payable or paid as to the Security Deposit or any balance thereof.

6. Insurance. Landlord shall maintain, at all times during this Lease, such insurance as is commercially reasonable and appropriate with respect to the Leased Premises (full replacement value). Tenant, at all times during the Term of this Lease, will carry and maintain, at Tenant's expense, the following insurance, in at least the amounts specified below, with insurance companies rated A- (A minus) VII or better by Best's Insurance Rating System or its equivalent:

(a) Commercial General Liability "occurrence form," or equivalent, covering the Leased Premises and operations of Tenant, including personal injury and contractual liability, with combined single limit for bodily injury and property damage of not less than \$2,000,000 per occurrence, \$2,000,000 annual aggregate, naming Landlord as an additional insured under such policy. Such policy will be primary insurance, and any similar insurance which may be maintained by Landlord shall be in excess of Tenant's policy and not contributory therewith.

(b) Special form causes of loss property insurance covering all of Tenant's furniture and fixtures, machinery, equipment, stock, and any other personal property owned and used in Tenant's business and found in, on, or about the Property, if any, in an amount not less than the full replacement value and providing Business Income and Extra Expense coverage. Property forms will provide coverage on a broad form basis insuring against "all risks of direct physical loss." All policy proceeds will be used for the repair or replacement of the property damaged or destroyed; however, if this Lease ceases under the provisions of Section 18, Tenant will be entitled to any proceeds resulting from damage to Tenant's furniture and fixtures, machinery, equipment, stock, and any other personal property.

(c) Worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the Worker's Compensation laws of the state of Kansas, including Employer's Liability insurance with a limit of not less than \$1,000,000.

(d) If Tenant operates owned, hired, or non-owned vehicles, Automobile Liability insurance with limits not less than \$1,000,000.

Tenant will not do or permit to be done any act or thing upon the Leased Premises or in or around the Leased Premises which would: (i) jeopardize or be in conflict with fire insurance policies covering the Leased Premises and personal property in the Leased Premises; or (ii) increase the rate of insurance applicable to the Leased Premises to an amount higher than it would otherwise be for commercial office use.

7. Utilities. Landlord will furnish the Leased Premises with those services customarily provided comparable office buildings in the vicinity of the Leased Premises, including:

- (i) electricity for lighting and the operation of low-wattage office machines (such as desktop personal computers, desktop calculators, and typewriters) during business hours (as that term is defined below), although Landlord will not be obligated to furnish more power to the Leased Premises than is proportionately allocated to the Leased Premises under the Leased Premises Building design;
- (ii) heat and air-conditioning reasonably required for the comfortable occupation of the Leased Premises; although Landlord will not be obligated to furnish more heating or air-conditioning to the Leased Premises than is proportionately allocated to the Leased Premises under Building design;
- (iii) trash removal, and
- (iv) water.

These services will be charged as Operating Expenses.

Tenant will have the right to purchase electricity for use during business hours and non-business hours in excess of the amounts Landlord has agreed to furnish, so long as Tenant gives Landlord reasonable prior written notice of its desire to do so, the excess services are reasonably available to Landlord and to the Leased Premises, and Tenant pays as additional Monthly Rent (at the time the next payment of Monthly Rent is due) the cost of such excess service from time to time charged by Landlord. There is no additional charge for HVAC use during non-business hours.

The term "**business hours**" means 7:00 AM to 8:00 PM on Monday through Friday and 8:00 AM to 1:00 PM on Saturdays, except the following holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving and Christmas.

Landlord will not be in default under this Lease or be liable to Tenant or any other person for direct or consequential damage, or otherwise, for any failure to supply any heat, air-conditioning, cleaning, lighting or security; for surges or interruptions of electricity; or for other services Landlord has agreed to supply during any period when Landlord uses reasonable diligence to supply such services. Landlord will use commercially reasonable efforts to diligently remedy any interruption in the furnishing of such services. Landlord reserves the right temporarily to discontinue such services at such times as may be necessary by reason of accident; repairs, alterations or improvements; strikes; lockouts; riots; acts of God; earthquakes; governmental preemption in connection with the national or

local emergency; any rule, order, or regulation of any governmental agency; conditions of supply and demand that make any product available; or any other happening beyond the control of Landlord. Landlord will not be liable to Tenant or any other person or entity for consequential damages resulting from the admission to or exclusion from the Leased Premises or the Leased Premises of any person. In the event of invasion, mob, riot, public excitement, strikes, lockouts, or other circumstances rendering such action advisable in Landlord's sole opinion, Landlord will have the right to prevent access to the Leased Premises during the continuance of the same by such means as Landlord, in its sole discretion, may deem appropriate, including without limitation locking doors and closing parking areas and other common areas. Landlord will not be liable for damages to person or property or for injury to, or interruption of, business for any discontinuance permitted under the provisions of this paragraph, nor will such discontinuance in any way be construed as an eviction of Tenant or operate to release Tenant from any of Tenant's obligations under this Lease. Notwithstanding anything herein to the contrary, (a) if any interruption or curtailment of services or utilities renders the Leased Premises untenable for more than five (5) consecutive days, the Rent shall abate until such service, maintenance, repair or replacement is restored.

8. Maintenance, Repairs and Janitorial.

(a) Tenant will maintain the Leased Premises in their condition at the time they were delivered to Tenant, reasonable wear and tear and damage by casualty excluded. Tenant will as soon as possible advise Landlord of any damage to the Leased Premises. All damage or injury to the Building, the Leased Premises, or the fixtures, appurtenances, and equipment in the Leased Premises that is caused by Tenant, its agents, employees, or invitees may be repaired, restored, or replaced by Landlord, at the expense of Tenant.

(b) Landlord will maintain, repair and restore the common areas serving the Building and the roof, foundation, exterior walls, load-bearing interior walls, HVAC and other structural portions of the Building in reasonably good order and condition.

(c) Landlord will provide janitorial services (including replacement of light bulbs) to the Leased Premises consistent with the other areas of the Building.

9. Operating Expenses. Tenant agrees to pay as additional rental Tenant's "**Pro Rata Share**" (16%) of the increase in the operating expenses defined below ("**Operating Expenses**") over the Base Year 2013. For purposes of this calculation, "**Base Year 2013**" means those Operating Expenses incurred between October 1, 2012 and September 30, 2013, except real estate taxes and special assessments shall mean those incurred in tax year 2012.

Landlord may, within six (6) months following the close of any lease year for which additional rental is due under this paragraph, invoice Tenant for Tenant's Pro Rata Share of the Operating Expenses. The invoice shall include in reasonable detail all computations of the additional rental, and Tenant agrees to make payment of the additional rental to Landlord within thirty (30) days following receipt of the invoice and computations. In the year in which this Lease terminates, Landlord, in lieu of waiting until the close of the lease year in order to determine Operating Expenses, has the option to invoice Tenant for Tenant's Pro Rata Share of the Operating Expenses based upon the previous year's Operating Expenses and then bill or refund Tenant for any difference after close of the lease year in the manner described above; Landlord shall invoice Tenant under this option within thirty (30) days prior to the termination of this Lease or at any time thereafter. Landlord may at any time during the

Term of this Lease increase the Monthly Rent to an amount which reflects Tenant's Pro Rata Share of the Operating Expenses based upon the previous year's excess Operating Expenses after giving Tenant thirty (30) days' notice. The Monthly Rent and any additional rental for Tenant's Pro Rata Share of the excess Operating Expenses are collectively referred to in this Lease as the "Rent."

"Operating Expenses" includes all expenses incurred with respect to the maintenance and operation of the Building and the Leased Premises, including, but not limited to, parking lot and landscaping maintenance and repair costs; water, sewer, gas, electric and other utility charges; snow removal, security (if provided), window washing, window and door repair and replacement; trash removal, pest control and janitorial and security services; insurance; property management; lake maintenance; amounts paid to any manager to supervise operation of the Leased Premises or other improvements on the land; amounts paid to contractors or subcontractors for work or services performed in connection with the operation of the Leased Premises, the Building or other improvements on the land; and all services, supplies, repairs, replacements or other expenses for maintaining and operating the Building and the Leased Premises and other improvements on the land, including common and parking areas. The maximum share of lake maintenance allocated to Tenant in any one year shall not exceed \$2,000. If Tenant's share of maintenance exceeds \$2,000 in any one year, the excess over \$2,000 shall be carried forward from year to year, except that in no event shall the total amount due pursuant to this paragraph exceed \$14,000 during the base term of this Sublease.

The term "Operating Expenses" also includes all real property taxes and installments for special assessments for the Leased Premises and all insurance premiums Landlord is required to pay or deems necessary to pay (acting reasonably and in good faith), including but not limited to public liability insurance with respect to the Building, the Leased Premises, the land and other improvements on the land. Operating Expenses do not include any capital improvements to the Building or other work occasioned by fire, windstorm or other casualty, income and franchise taxes of Landlord, expenses incurred in leasing to or procuring of tenants, leasing commissions, advertising expenses, expenses for renovating of space for new tenants, interest or principal payments on mortgage or other indebtedness of Landlord, nor depreciation allowance or expense.

Nothing herein contained shall require, or be construed to require, Tenant to pay any inheritance, estate, succession, transfer, gift, franchise, corporation, income or profit tax, or capital levy that is, or may be, imposed upon Landlord, or (to the extent applicable) Landlord's stockholders, successors, or assigns; provided, however, that if at any time during the term of this Lease the methods of taxation prevailing at the commencement of the term hereof shall be altered so that in lieu of, or as a substitute for, the whole or any part of the taxes, assessments, levies, impositions, or charges now levied, assessed, or imposed on real estate and the improvements thereon, there shall be levied, assessed, or imposed any such substitute tax, assessment, or charge upon Landlord or Landlord's interest in the Leased Premises or Building, Tenant shall pay and discharge the same as herein provided.

10. General Requirements of Law. At its sole cost and expense, Tenant will promptly comply with all material laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or in force after the commencement of the Term, with any direction or occupancy certificate issued pursuant to any law by any public officer or officers, as well as with the provisions of all recorded documents affecting the Leased Premises, insofar as they relate to the condition, use, or occupancy of the Leased Premises, excluding requirements of structural changes to the Building or the Leased Premises, unless required by the unique nature of Tenant's use or occupancy of the Leased Premises.

11. Hazardous Materials.

(a) “**Hazardous substance**” shall mean the substances included or which hereafter may be included with the definitions of the terms “**hazardous substance**” and “**hazardous material**” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.*, the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801 *et seq.*, and to regulations promulgated under those various statutes as amended, and petroleum. “**Hazardous waste**” shall mean any waste listed as or meeting the identified characteristics of a “**hazardous waste**” under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 *et seq.*, and regulations promulgated thereunder, collectively “**RCRA**,” as amended. Also, any other federal, state, or local statute law, ordinance, code, rule, regulation, or order to decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, waste, or substances now or at any time hereafter in effect (collectively, with all other federal, state, or local statutes, laws, ordinances, codes, rules, regulations, order or decree described in this Section 11, “**Hazardous Materials Laws**”). Notwithstanding anything to the contrary in this Section 11, common cleaning chemicals shall be excluded from the coverage of this Section provided that they are properly used and stored.

(b) Tenant will not cause or permit the storage, use, generation, or disposition of any hazardous materials in, on, or about the Leased Premises. In addition, Tenant will not permit the Leased Premises to be used or operated in a manner that may cause the Leased Premises to be contaminated by any Hazardous substance in violation of any Hazardous Materials Laws. Tenant will immediately advise Landlord in writing of: (1) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed, or threatened pursuant to any Hazardous Materials Laws relating to any Hazardous substance affecting the Leased Premises; and (2) all claims made or threatened by any third party against Tenant, Landlord, or the Leased Premises relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from any hazardous materials on or about the Leased Premises. Tenant will not, without Landlord’s prior written consent, take any remedial action or enter into any agreements or settlements in response to the presence of any Hazardous substance in, on, or about the Leased Premises.

(c) Tenant will be solely responsible for and will defend, indemnify and hold Landlord, its agents, and employees harmless from and against all claims, costs, and liabilities, including attorney’s fees and costs, arising out of or in connection with Tenant’s breach of its obligations in this Section 11. Tenant will be solely responsible for and will defend, indemnify, and hold Landlord, its agents, and employees harmless from and against any and all claims, costs, and liabilities, including attorneys’ fees and costs, arising out of or in connection with the removal, cleanup, and restoration work and materials necessary to return the Leased Premises and any other property of whatever nature located on the project to their condition existing prior to the appearance of Tenant’s Hazardous substance on the Leased Premises. Tenant’s obligations under this Section 11 will survive the expiration or other termination of this Lease.

(d) Landlord shall not knowingly permit or cause any Hazardous Substance to be used, stored, generated, or disposed on, in or about the Building by Landlord, its agents, employees, representatives, contractors, suppliers, subtenants, concessionaires, licensees or invitees (collectively, “Landlord’s Agents”). If Hazardous Substances are used, stored, generated, or disposed on or in the Building by Landlord’s Agents, or if the Leased Premises are currently contaminated, Landlord will be solely responsible for and will defend, indemnify and hold Tenant, its agents, and employees harmless from

and against all claims, costs, and liabilities, including attorney's fees and costs, arising out of or in connection with such occurrence or contamination. Landlord will be solely responsible for and will defend, indemnify, and hold Tenant, its agents, and employees harmless from and against any and all claims, costs, and liabilities, including attorneys' fees and costs, arising out of or in connection with the removal, cleanup, and restoration work and materials necessary to return the Leased Premises and any other property of whatever nature located on the project to their condition existing prior to the appearance of such occurrence or contamination. To the extent applicable and relevant, Landlord's obligations under this Section will survive the expiration or other termination of this Lease.

The words "knowledge" and "best of knowledge" or words of similar effect signify that, no facts have come to Landlord's attention which would give Landlord actual knowledge or actual notice that any such statements, opinions or other matters are not accurate, and that Landlord has not undertaken any investigation or verification of such matters.

12. Alterations. Tenant may make alterations and improvements to the Leased Premises at Tenant's sole cost and expense and only with Landlord's prior consent of the proposed plans of alterations and improvements. Such plans shall be in detail as reasonably required by Landlord, and such consent shall not be unreasonably withheld, conditioned or delayed.

13. Lease or Assignment by Tenant; Landlord. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors, and assigns, covenants that it will not assign, mortgage, or encumber this Lease, nor lease, nor permit the Leased Premises or any part of the Leased Premises to be used or occupied by others, without the prior written consent of Landlord in each and every instance, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment or lease in violation of the provisions of this Section 13 will be void. Landlord may freely assign this Lease or any of its interest therein at any time without the consent of Tenant.

14. Rules and Regulations. Although there are no rules and regulations in effect at this time, Landlord may, at its sole discretion, from time to time adopt, amend, delete, or modify reasonable rules and regulations for the use, safety, cleanliness, and care of the Building, the Leased Premises, and the comfort, quiet, and convenience of occupants. Tenant and its employees, agents, licensees and visitors will at all times observe faithfully, and comply strictly with, such rules and regulations. In the event the rules and regulations are amended or modified, such amendments and/or modifications will become effective as to all occupants in the Leased Premises. Modifications or additions to the rules and regulations will be effective upon thirty (30) days' prior written notice to Tenant from Landlord. In the event of any breach of any of the rules or regulations or any amendments or additions to such rules and regulations, Landlord will have all remedies available that this Lease provides for default by Tenant, and will in addition have any remedies available at law or in equity, including the right to enjoin any breach of such rules and regulations. Landlord will not be liable to Tenant for violation of such rules and regulations by any other occupants of the Leased Premises, their employees, agents, visitors, or licensees or any other person. In the event of any conflict between the provisions of this Lease and the rules and regulations, the provisions of this Lease will govern. Landlord agrees to enforce its rights under such rules and regulations against Tenant in a manner consistent with its enforcement of such rights, rules and regulations respecting other tenants of the Building.

15. Common Areas. As used in this Lease, the term "common areas" means, without limitation, the hallways, entryways, driveways, walkways, terraces, trash facilities, and all other areas

and facilities in and around the Building that are provided for or designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant with other tenants of the Building and their respective employees, invitees, licensees, or other visitors. Landlord grants Tenant, its employees, invitees, licensees, and other visitors a non-exclusive license for the Term to use the common areas in common with others entitled the use the common areas, subject to the terms and conditions of this Lease. In the event of an emergency, without advance written notice to Tenant, and without liability to Tenant in any respect, Landlord will have the right to: (i) temporarily close any of the common areas for maintenance, alteration, or improvement purposes; and (ii) change the size, use, shape, or nature of any such common areas.

16. End of Lease Term. At the end of this Lease, Tenant will promptly quit and surrender the Leased Premises broom-clean, in good order and repair, ordinary wear and tear and damage by casualty excepted. If Tenant is not then in default, Tenant may remove from the Leased Premises any trade fixtures, equipment, and movable furniture placed in the Leased Premises by Tenant, whether or not such trade fixtures or equipment are fastened to the Building. Tenant will not remove any trade fixtures or equipment without Landlord's prior written consent if such fixtures or equipment are used in the operation of the Building, or if the removal of such fixtures or equipment will result in impairing the structural strength of the Building. Tenant will fully repair any damage occasioned by the removal of any trade fixtures, equipment, furniture, alterations, additions, and improvements. All trade fixtures, equipment, furniture, inventory, effects, alterations, additions, and improvements on the Leased Premises after the end of the Term will be deemed conclusively to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without written notice to Tenant or any other person and without obligation to account for them. Tenant will pay Landlord for all reasonable expenses incurred in connection with the removal of such property, including but not limited to the cost of repairing any damage to the Leased Premises or Leased Premises caused by the removal of such property. Tenant's obligation to observe and perform this covenant will survive the expiration or other termination of this Lease.

17. Eminent Domain. If all of the Leased Premises are taken by exercise of the power of eminent domain (or conveyed by Landlord in lieu of such exercise) this Lease will terminate on a date (the "**Termination Date**") which is the earlier of the date upon which the condemning authority takes possession of the Leased Premises or the date on which title to the Leased Premises is vested in the condemning authority. If more than 25% of the rentable area of the Leased Premises is so taken, Tenant will have the right to cancel this Lease by written notice to Landlord given within thirty (30) days after the Termination Date. If less than 25% of the rentable area of the Leased Premises is so taken, or if Tenant does not cancel this Lease according to the preceding sentence, the Rent will be abated in the proportion of the rentable area of the Leased Premises so taken to the rentable area of the Leased Premises immediately before such taking, and Tenant's share will be appropriately recalculated. If 25% or more of the Building is so taken, Landlord may cancel this Lease by written notice to Tenant given within thirty (30) days after the Termination Date. In the event of any such taking, the entire award will be paid to Landlord and Tenant will have no right or claim to any part of such award; however, Tenant will have the right to assert a claim against the condemning authority in a separate action, so long as Landlord's award is not otherwise reduced, for Tenant's moving expenses and leasehold improvements owned by Tenant.

18. Damage and Destruction.

(a) If the Leased Premises or the Building are damaged by fire or other insured casualty, Landlord will give Tenant written notice of the time which will be needed to repair such damage, as determined by Landlord in its reasonable discretion, and the election (if any) which Landlord has made according to this Section 18. Such notice will be given before the thirtieth (30th) day (the “**Notice Date**”) after the fire or other insured casualty.

(b) If the Leased Premises or the Building is damaged by fire or other insured casualty to an extent which may be repaired within one hundred twenty (120) days after the Notice Date, as reasonably determined by Landlord, Landlord will promptly begin to repair the damage after the Notice Date and will diligently pursue the completion of such repair, without delay or interruption. In that event this Lease will continue in full force and effect except that Rent will be abated on a pro rata basis from the date of the damage until the date of the completion of such repairs (the “**Repair Period**”) based on the proportion of the rentable area of the Leased Premises Tenant is unable to use during the repair period.

(c) If the Leased Premises or the Building are damaged by fire or other insured casualty to an extent that may not be repaired within one hundred twenty (120) days after the Notice Date, as reasonably determined by Landlord, then: (1) Landlord may cancel this Lease as of the date of such damage by written notice given to Tenant on or before the Notice Date; or (2) Tenant may cancel this Lease as of the date of such damage by written notice given to Landlord within fifteen (15) days after Landlord’s delivery of a written notice that the repairs cannot be made within such one hundred twenty- (120) day period. If neither Landlord nor Tenant so elects to cancel this Lease, Landlord will diligently proceed to repair, without delay or interruption, the Building and Leased Premises and Rent will be abated on a pro rata basis during the repair period based on the proportion of the rentable area of the Leased Premises Tenant is unable to use during the repair period.

(d) Notwithstanding the provisions of subparagraphs (a), (b), and (c) above, Landlord shall have no obligation whatsoever to repair, reconstruct, or restore the Leased Premises and/or the Building if any of the following occurs:

- (1) The damage or destruction is not fully covered by insurance maintained by Landlord for Landlord’s benefit;
- (2) The damage or destruction occurs during the last 12 months of the Term or any renewal or extension thereof;
- (3) Tenant is in default of the Lease as described in Section 23; or
- (4) Tenant has abandoned or vacated the Leased Premises.
- (5) The Building vacancy is greater than 50% of rentable space at the time of the damage or destruction.

In any such event, Landlord may terminate this Lease by written notice to Tenant given within thirty (30) days after the damage or destruction.

(e) If any such damage by fire or other casualty is the result of the willful conduct or sole gross negligence or failure to act of Tenant, its agents, contractors, employees, or invitees, there will

be no abatement of Rent or any other sum due hereunder as otherwise provided for in this Section 18. Tenant will have no rights to terminate this Lease on account of any damage to the Leased Premises or the Building, except as set forth in this Lease.

19. Subordination. This Lease and Tenant's rights under this Lease are subject and subordinate to any ground or underlying lease, mortgage, indenture, deed of trust, or other lien or encumbrance (each a "**superior lien**"), together with any renewals, extensions, modifications, consolidations, and replacements of such superior lien, now or after the date affecting or placed, charged or enforced against the Leased Premises, or all or any portion thereof or any interest of Landlord in them or Landlord's interest in this Lease and the leasehold estate created by this Lease (except to the extent any such instrument expressly provides that this Lease is superior to such instrument). This provision will be self-operative and no further instrument of subordination will be required in order to affect it. Notwithstanding the foregoing, Tenant will execute, acknowledge, and deliver to Landlord, within twenty (20) business days after written demand by Landlord, such documents as may be reasonably requested by Landlord or the holder of any superior lien to confirm or effect any such subordination, provided that any such superior lien holder agrees that this Lease shall remain in effect and Tenant's right to possession and quiet enjoyment will not be disturbed for the full Term (as may be extended) as long as Tenant is not in default under this Lease. Landlord covenants to timely perform the terms of the City Lease such that Tenant shall enjoy peaceful possession of the Leased Premises throughout the Term of this Lease. Landlord warrants there are no mortgages on the Leased Premises prior to the interests of Tenant at the execution of this Lease.

20. Entry by Landlord. Landlord, its agents, employees, and contractors may enter the Leased Premises at any time in response to an emergency and upon 24-hour notice from Landlord to Tenant at reasonable hours to:

- (a) Inspect the Leased Premises;
- (b) Exhibit the Leased Premises to prospective purchasers, lenders, or tenants;
- (c) Determine whether Tenant is complying with all its obligations in this Lease;
- (d) Post written notices of non-responsibility or similar notices; or
- (e) Make repairs required of Landlord under the terms of this Lease or make repairs to any adjoining space or utility services or make repairs, alterations, or improvements to any other portion of the Leased Premises; however, all such work will be done as promptly as reasonably possible and so as to cause as little interference to Tenant as reasonably possible.

Landlord will at all times have and retain a key with which to unlock all of the doors in, on, or about the Leased Premises (excluding Tenant's vaults, safes, and similar areas designated in writing by Tenant in advance). Landlord will have the right to use any and all means Landlord may deem proper to open doors in and to the Leased Premises in an emergency in order to obtain entry to the Leased Premises, provided that Landlord will promptly repair any damages caused by any forced entry. Any good faith entry to the Leased Premises by Landlord in accordance with this Section 20 will not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Leased Premises or an eviction, actual or constructive, of Tenant from the Leased Premises or any portion of the Leased Premises.

21. Indemnification. As used in this Section, “**Claims**” means any claims, suits, proceedings, actions, cause of action, mechanics’ or materialman’s liens, liability, demands, judgments, and executions.

Indemnification by Tenant. Tenant agrees to indemnify and hold Landlord harmless against all Claims arising from Tenant’s conduct, management of Tenant’s business, use and occupancy of the Leased Premises, construction of any alterations, breach of any of the terms and conditions of this Lease, or the negligence or willful misconduct of Tenant. Notwithstanding anything to the contrary contained herein, the foregoing provision shall not be construed to hold Tenant responsible for any loss, damage, liability or expense resulting from injuries caused by any negligence or intentional misconduct of Landlord, its agents, servants, contractors or employees. In case of any action or proceeding brought against Landlord by reason of such claim as is described in the initial sentence of this paragraph, Tenant, upon written notice from Landlord, covenants to defend such action or proceeding by counsel reasonably acceptable to Landlord.

Indemnification by Landlord. Landlord agrees to indemnify and hold Tenant harmless against all Claims arising from Landlord’s conduct, management of Landlord’s business, construction of improvements by Landlord’s Work, breach of any of the terms and conditions of this Lease, or the negligence or willful misconduct of Landlord. Notwithstanding anything to the contrary contained herein, the foregoing provision shall not be construed to hold Landlord responsible for any loss, damage, liability or expense resulting from injuries caused by any negligence or intentional misconduct of Tenant, its agents, servants, contractors or employees. In case of any action or proceeding brought against Tenant by reason of such claim as is described in the initial sentence of this paragraph, Landlord, upon written notice from Tenant, covenants to defend such action or proceeding by counsel reasonably acceptable to Tenant.

Waiver of Subrogation. Landlord and Tenant now waive any rights of subrogation or recovery against the other for damage or loss to their respective property which is covered by policies of insurance obtained (or which should have been obtained) pursuant to this Lease to the extent of the damage or loss covered. Landlord and Tenant shall be entitled to reimbursement from the other for the cost of any deductible paid on a claim in which a waiver of subrogation or recovery applies.

The foregoing indemnities shall include attorneys’ fees, investigation costs and all other reasonable costs and expenses incurred by the indemnified party in any connection therewith. The provisions of this Section shall survive the expiration or termination of this Lease with respect to any damage, injury or death occurring before such expiration or termination. If an indemnified party is made a party to any litigation commenced by or against the indemnifying party or relating to this Lease or to the Leased Premises, and provided that in any such litigation the indemnified party is not finally adjudicated to be solely at fault, then the indemnifying party shall pay all reasonable costs and expenses, including attorneys’ fees and court costs, incurred by or imposed upon the indemnified party because of any such litigation, and the amount of all such costs and expenses, including attorneys’ fees and court costs, shall be a demand obligation owing by the indemnifying party to the indemnified party. Each party, when indemnified hereunder, reserves the right to retain counsel of its choice, at the indemnified party’s expense, to defend against any such Claims or actions. Notwithstanding anything in this Section to the contrary, a party shall not be liable to an indemnified party for any Claims resulting from the gross negligence or willful misconduct or any other act or omission of such indemnifying party, its agents, employees, or contractors to the extent such Claims

are covered by the insurance required to be maintained pursuant to this Lease, and under no circumstances shall either party ever be liable for consequential damages or special damages.

22. Quiet Enjoyment. Landlord covenants and agrees with Tenant that so long as Tenant pays the Monthly Rent and the other sums due hereunder and observes and performs all the terms, covenants, and conditions of this Lease on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoyed the Leased Premises.

23. Events of Default. The following events are referred to, collectively, as "**events of default**" or, individually, as an "**event of default:**"

(a) Tenant defaults in the due and punctual payment of Monthly Rent or any other sum due hereunder, and such default continues for ten (10) business days after written notice from Landlord; however, Tenant will not be entitled to more than one (1) written notice for monetary defaults during any twelve-(12) month period, and if after such written notice any Monthly Rent or any other sum due hereunder is not paid when due, an event of default will be considered to have occurred without further notice;

(b) Tenant vacates or abandons the Lease Premises for a continuous period in excess of forty-five (45) business days;

(c) This Lease or the Leased Premises or any part of the Leased Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subject to any attachment by any creditor of Tenant or claimant against Tenant, and said attachment is not discharged or disposed of within fifteen (15) days after its levy;

(d) Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the Tenant States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors;

(e) Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of the property of Tenant, and such proceeding is not dismissed or such receivership or trusteeship vacated within ninety (90) days after such institution or appointment; or

(f) Tenant breaches any of the other agreements, terms, covenants, or conditions that this Lease requires Tenant to perform, and such breach continues for a period of thirty (30) days after written notice from Landlord to Tenant or, if such breach cannot be cured reasonably within such thirty (30) day period, if Tenant fails to diligently commence to cure such breach within thirty (30) days after written notice from Landlord and to complete such cure within a reasonable time thereafter.

24. Landlord's Remedies. If any one or more events of default set forth in Section 23 occur then Landlord has the right, at its election:

(a) To give Tenant written notice of Landlord's intention to terminate this Lease on the earliest date permitted by law or on any later date specified in such notice, in which case Tenant's right to possession of the Leased Premises will cease and this Lease will be terminated as if the

expiration of the Lease term fixed in such notice were the end of the Lease Term in which event Landlord's damages shall be calculated pursuant to Section 25 below.

(b) Without further demand or notice, but in accordance with the law, to reenter and take possession of the Leased Premises or any part of the Leased Premises, repossess the same, expel Tenant and those claiming through or under Tenant, and remove the effects of both or either, using such force for such purposes as may be necessary, without being liable for prosecution, without being deemed guilty of any manner of trespass and without prejudice to any remedies or any preceding breach of covenants or conditions; or

(c) Without further demand or notice to cure any event of default and to charge Tenant for the cost of effecting such cure, including without limitation reasonable attorneys' fees and interest on the amount so advanced, provided that Landlord will have no obligation to cure any such event of default of Tenant.

Should Landlord elect to reenter as provided in subsection (b), or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided by law, Landlord may, from time to time, without terminating this Lease, relet the Leased Premises or any part of the Leased Premises in Landlord's or Tenant's name, but for the account of Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions and upon such other terms (which may include concessions of free rent and alteration and repair of the Leased Premises) as Landlord, in its reasonable discretion, may determine, and Landlord may collect and receive the rent. Landlord will undertake reasonable efforts to mitigate its damages in the event of default by Tenant, but Landlord will in no way otherwise be responsible or liable for any failure to relet the Leased Premises, or any part of the Leased Premises, or for any failure to collect any rent due upon such reletting. No such reentry or taking possession of the Leased Premises by Landlord will be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant. No written notice from Landlord under this Article or under a forcible or unlawful entry and detainer statute or similar law will constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Landlord reserves the right following any such reentry or reletting to exercise its right to terminate this Lease by giving Tenant such written notice, in which event this Lease will terminate as specified in such notice.

25. Certain Damages. In the event that Landlord does not elect to terminate this Lease as permitted in Section 24(a), but on the contrary elects to take possession as provided in Section 24(b), Tenant will pay to Landlord Monthly Rent and other sums as provided in this Lease that would be payable under this Lease if such repossession had not occurred, less the net proceeds (such payments of Monthly Rent balance or deficiency being made on the rent days herein specified), if any, of any reletting of the Leased Premises after deducting all of Landlord's reasonable expenses arising from with such reletting, including without limitation all repossession costs, brokerage commissions, reasonable attorneys' fees, expenses of employees, alteration and repair costs, and expenses of preparation for such reletting. If, in connection with any reletting, the new Lease term extends beyond the existing Term, or the Leased Premises covered by such new lease include other subleased premises not part of the Leased Premises, a fair apportionment of the rent received from such reletting and the expenses incurred in connection with such reletting, and any rent concessions will be equally apportioned over the term of the new lease. Tenant will pay such rent and other sums to Landlord monthly on the day on which the Monthly Rent would have been payable under this Lease

if possession had not been retaken, and Landlord will be entitled to receive such rent and other sums from Tenant on each such day.

26. Continuing Liability after Termination. In the event this Lease is terminated on account of the occurrence of an event of default, Landlord will be entitled to recover against Tenant as damages for loss of the bargain and not as a penalty:

(a) The worth at the time of award of the unpaid Monthly Rent and other sums due hereunder that have been earned at the time of termination; and

(b) The worth at the time of award of the amount by which the unpaid Monthly Rent and other sums due hereunder that would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided by Landlord.

The “**worth at the time of award**” of the amounts referred to in clauses (a) and (b) above is computed by adding interest at the per annum base interest rate of UMB Bank, Wichita, Kansas plus two percent (2%) on the date on which this Lease is terminated from the date of termination until the time of the award.

27. Cumulative Remedies. Any suit or suits for the recovery of the amounts and damages set forth in Sections 24 and 25 may be brought by Landlord, from time to time, at Landlord’s election, and nothing in this Lease will be deemed to require Landlord to await the date upon which this Lease or the Term would have expired had there occurred no event of default. Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for in this Lease or now or after the Lease date existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or after the Lease date existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or after the Lease date existing at law or in equity or by statute or otherwise. Provided however, nothing herein shall be construed to permit Landlord to recover multiple rent for the same month or other time period. All costs incurred by Landlord in collecting any amounts and damages owing by Tenant pursuant to the provisions of this Lease or to enforce any provision of this Lease, including reasonable attorneys’ fees from the date any such matter is turned over to an attorney, whether or not one or more actions are commenced by Landlord, will also be recoverable by Landlord from Tenant. Tenant waives any right of redemption arising as a result of Landlord’s exercise of its remedies in the event of any default. Notwithstanding anything in this Lease to the contrary, in no event shall Tenant or Landlord be liable for, and the other party waives the right to seek, any consequential, speculative or punitive damages.

28. Parking and Signage.

Parking. Landlord will make available to Tenant on a non-exclusive basis with other Tenants of the Building at no additional cost to Tenant (other than maintenance, repair and related costs which are included in Operating Costs), 4 parking spaces for every 1,000 square feet of rentable square feet.

Tenant will use available parking spaces serving the Leased Premises during the Term subject to such rules and regulations as may be established. In order to protect persons and property from injury or damage due to fire or other casualty and to provide suitable parking for visitors and the

handicapped, Tenant agrees to restrict the parking of its motor vehicles and the motor vehicles of all of its employee, agents, contractors, customers, guests and invitees to those striped, designated parking areas provided at the Building site as the same may be configured from time to time by Landlord, so that all roadways, driveways, aisles and entry ramps shall remain open and unobstructed at all times for use as fire lanes and those parking spaces reserved for visitors and the handicapped will be available to those for whom they are intended.

Tenant shall not use the front entrance of the Building for loading and unloading activities. Tenant acknowledges that Landlord had made no allowance for any specific parking needs of Tenant's potential concessionaires, independent contractors or business entities. Accordingly, to the extent parking may become inadequate to accommodate such concessionaires, independent contractors or business entities, Landlord shall not be in default of the Lease and Landlord shall have the right to make demand on Tenant to terminate the rights of those entities from parking in the parking area and causing a burden on the parking area.

Should a motor vehicle be parked by Tenant or by any of its employees, agents, contractors, customers, guests and invitees other than in such designated parking areas, Tenant covenants and agrees that Landlord may, after providing reasonable notice to Tenant, remove or cause the removal of such motor vehicle from the parking area at the cost of the owner thereof, and Landlord shall not be liable to such owner or any other person for any loss or damage which may result therefrom. Landlord reserves the right to make such additional rules and regulations pertaining to parking as may be reasonably necessary for the orderly use, maintenance and ownership of the Building.

Signage. Tenant may, at its cost, place and maintain at its expense during the term of this Lease, a panel on the free-standing monument identification sign in front of the Building, available for the use of all occupants of the Building. The color, size, and material of the sign shall be compatible with the existing signage and subject to Landlord's prior approval which shall not be unreasonably withheld.

Tenant shall also have the right to be identified on the Building's main lobby directory at no cost to the Tenant.

29. Miscellaneous.

(a) No Construction against Drafting Party. Landlord and Tenant acknowledge that each of them and their counsel have had an opportunity to review this Lease and that this Lease will not be construed against Landlord merely because Landlord has prepared it.

(b) Time of the Essence. Time is of the essence of each and every provision of this Lease.

(c) No Waiver. The waiver by Landlord of any agreement, condition, or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease, nor will any custom or practice that may grow up between the parties in the administration of the terms of this Lease be construed to waive or to lessen the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms of this Lease. The subsequent acceptance of Monthly Rent or any other sum due hereunder by Landlord will not be deemed to be a waiver of any preceding breach by Tenant of any agreement, condition, or provision of this Lease, other than the failure of Tenant to pay the particular Monthly

Rent or any other sum hereunder so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Monthly Rent or other payment.

(d) Estoppel Certificates. At any time and from time to time but within thirty (30) days after prior written request by Landlord, Tenant will execute, acknowledge, and deliver to Landlord, promptly upon request, a certificate certifying: (i) that this Lease is unmodified and in full force and effect or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification; (ii) the date, if any, to which Monthly Rent and other sums payable under this Lease have been paid; (iii) that no written notice of any default has been delivered to Landlord which default has not been cured, except as to defaults specified in said certificate; (iv) that there is no event of default under this Lease or an event which, with notice or the passage of time, or both, would result in an event of default under this Lease, except for defaults specified in said certificate; and (v) such other matters as may be reasonably requested by Landlord.

(e) Holding Over. Except for the first three months after the end of the Term, as stated below, Tenant will have no right to remain in possession of all or any part of the Leased Premises after the expiration of the Term. If Tenant remains in possession of all or any part of the Leased Premises after the expiration of the Term, with the express or implied consent of Landlord: (i) such tenancy will be deemed to be a periodic tenancy from month-to-month only; (ii) such tenancy will not constitute a renewal or extension of this Lease for any further term; and (iii) such tenancy may be terminated by Landlord upon earlier of thirty (30) days' prior written notice or the earliest date permitted by law. In such event, Monthly Rent for the first two months will be an amount equal to the Monthly Rent payable during the last month of the Term, and thereafter 125% of the Monthly Rent payable during the last month of the Term, and any other sums due under this Lease will be payable in the amount and at the times specified in this Lease. Landlord may accept any such sums from Tenant without prejudice to Landlord's right to evict Tenant from the Leased Premises by any lawful terms. Such month-to-month tenancy will be subject to every other term, condition, and covenant contained in this Lease. Provided however; if Tenant does not timely exercise an available option, it may hold over for three (3) months after the end of the Term at the same Rent that existed at the end of the Term.

(f) Notices. Any notice, request, demand, consent, approval, or other communication required or permitted under this Lease must be in writing and will be deemed to have been given when personally delivered; sent by facsimile with receipt acknowledged; deposited with any nationally-recognized overnight carrier that routinely issues receipts; or deposited in any depository regularly maintained by the United States Postal Service, postage prepaid, certified mail, return receipt requested, addressed to the party for whom it is intended, as set forth below. Either Landlord or Tenant may add additional addresses or change its address for purposes of receipt of any such communication by giving ten (10) days' prior written notice of such change to the other party in the manner prescribed in this Section 29(f).

If to Landlord: Pulse Headquarters, LLC
Attn: Alif Hourani
P.O. Box 780085
Wichita, KS 67278
Telephone: (316) 655-5008
Facsimile: (316) 634-0294

If to Tenant: Kansas Medical Mutual Insurance Company
Attn: Catherine Walberg
623 SW 10th Ave
Topeka, Kansas 66612
Telephone: (785) 232-2224, Ext. 2720
Facsimile: (785) 232-4704

(g) Severability. If any provision of this Lease proves to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected by such finding, and in lieu of each provision of this Lease that is illegal, invalid, or unenforceable a provision will be added as a part of this Lease as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

(h) Written Amendment Required. No amendment, alteration, modification of, or addition to this Lease will be valid or binding unless expressed in writing and signed by Landlord and Tenant.

(i) Entire Agreement. This Lease, the exhibits and addenda, if any, contain the entire agreement between Landlord and Tenant. No promises or representations, except as contained in this Lease, have been made to Tenant respecting the condition or the manner of operating the Leased Premises, or the Building.

(j) Captions. The captions of the various articles and sections of this Lease are for convenience only and do not necessarily define, limit, describe, or construe the contents of such articles and sections.

(k) Authority. Tenant and the party executing this Lease on behalf of Tenant represent to Landlord that such party is authorized to do so by requisite action of the board of directors or partners, as the case may be, and agree upon request to deliver to Landlord a resolution or similar document to that effect.

(l) Liability of Landlord. Except as expressly provided in this Lease, Landlord, and in case Landlord shall be a joint venture, partnership, limited liability company, tenancy-in-common, association or other form of joint ownership, and the members of any such joint venture, partnership, limited liability company, tenancy-in-common, association or other form of joint ownership (collectively for purposes of this paragraph "Landlord"), shall have absolutely no personal liability with respect to any provision of this Lease or any obligation or liability arising from this Lease or in connection with this Lease in the event of a breach or default by Landlord of any of its obligations. Tenant shall look solely to the equity of the owner of the Premises in the Premises at the time of the breach or default for the satisfaction of any remedies of Tenant. Such exculpation of liability shall be absolute and without any exception whatsoever.

(m) Brokers. Landlord and Tenant respectively represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Leased Premises, except that Marty Gilchrist of J.P. Weigand represents the Landlord. Each of them will indemnify the other against, defend and hold the other harmless from any claims, demands, actions, liabilities, damages, costs and expenses (including reasonable attorneys' fees), fees or commissions arising from either:

(1) A claim for a fee or commission made by any broker claiming to otherwise have acted by or on behalf of Tenant or Landlord in connection with this Lease; or

(2) A claim of, or right to, lien under the Statutes of the state of Kansas relating to real estate broker liens.

(n) Governing Law and Venue. This Lease will be governed by and construed pursuant to the laws of the state of Kansas. Exclusive jurisdiction for litigating and resolving any dispute under this Lease lies in Kansas, and exclusive venue lies only in Sedgwick County, Kansas, whether in state or federal court.

(o) Omitted.

(p) Binding Effect. The covenants, conditions, and agreements contained in this Lease will bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and, except as otherwise provided in this Lease, their assigns.

(q) Attorney's Fees. If either Landlord or Tenant commences, engages in, or threatens to commence or engage in any legal action or proceeding against the other party (including, without limitation, litigation or arbitration) arising of or in connection with this Lease or the Leased Premises including, without limitation: (i) the enforcement or interpretation of either party's rights or obligations under this Lease (whether in contract, tort, or both); or (ii) the declaration of any rights or obligations under this Lease, the prevailing party shall be entitled to recover from the losing party reasonable attorney's fees, together with any costs and expenses, incurred in any such action or proceeding, including any attorney's fees, costs, and expenses incurred on collection and on appeal.

(r) Notice of Landlord's Default. In the event of any default by Landlord under this Lease, Tenant will deliver to Landlord written notice of such default and Landlord will have thirty (30) days after receipt of such notice to cure such default or, in the event such default cannot reasonably be cured within a thirty- (30) day period, to commence action within such thirty- (30) day period and proceed diligently to cure such default.

30. Representations and Covenants. Tenant makes the following covenants and representations as the basis for the undertakings on its part herein contained:

(a) Due Organization and Authority of Tenant. Tenant represents that it is a Kansas corporation duly authorized and qualified to do business in the State of Kansas, with lawful power and authority to enter into this Lease.

(b) No Conflicts. Tenant represents that neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of this Lease contravenes the Articles of Organization or Bylaws of Tenant, or conflicts with or results in a breach of the terms, conditions or provisions of any mortgage, debt, agreement, indenture or instrument to which Tenant is a party or by which it is bound, or constitutes a default (disregarding any required notice or the passage of any period of time) under any of the foregoing, or violates any existing law, administrative regulation or court order or consent decree to which Tenant is subject.

(c) Valid Obligations. This Lease constitutes a legal, valid and binding obligation of Tenant enforceable in accordance with its terms.

Landlord makes the following covenants and representations as the basis for the undertakings on its part herein contained:

(d) Due Organization and Authority of Landlord. Landlord represents that it is a Kansas limited liability company duly authorized and qualified to do business in the State of Kansas, with lawful power and authority to enter into this Lease.

(e) No Conflicts. Landlord represents that neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of this Lease contravenes the Certificate of Organization or Operating Agreement of Landlord, or conflicts with or results in a breach of the terms, conditions or provisions of any mortgage, debt, agreement, indenture or instrument to which Landlord is a party or by which it is bound, or constitutes a default (disregarding any required notice or the passage of any period of time) under any of the foregoing, or violates any existing law, administrative regulation or court order or consent decree to which Landlord is subject.

(f) Valid Obligations. This Landlord constitutes a legal, valid and binding obligation of Landlord enforceable in accordance with its terms.

31. Options to Renew. If Tenant timely performs all terms, covenants, and conditions of Tenant under this Lease, then Tenant shall have two (2) consecutive options to renew this Lease for a term of five (5) years each by delivering to Landlord written notice of its election of the option at least 90 days before the end of the term of this Lease, or before the end of a renewal term, as the case may be. Tenant waives its option and all remaining options to renew if it fails to deliver to Landlord timely notice of its election.

Rent for the renewal periods shall be at the Current Market Rate. The current market rental rate, and other terms and conditions necessary to establish the rent when Tenant is exercising an option, shall be determined as follows:

(a) **“Current Market Rate”** shall be defined as the bona fide rates, terms and conditions then being offered in “arm’s length” transactions to prospective tenants for comparable space in comparable buildings in the same geographic submarket as the Building, recognizing that there shall be no brokerage fees in the transaction.

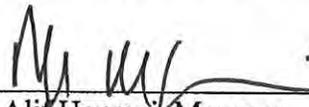
(b) Landlord shall notify Tenant in writing of Landlord’s determination of the Current Market Rate within thirty (30) days following receipt of Tenant’s notice. If, within fifteen (15) days after receipt of such market rate notice, Tenant fails to notify Landlord in writing of Tenant’s objections to Landlord’s proposed Current Market Rate, Tenant shall be deemed to have accepted Landlord’s Current Market Rate and Landlord will prepare an appropriate amendment to this Lease. If, within the 15-day period, Tenant notifies Landlord in writing of its objections to Landlord’s proposed Current Market Rate, the parties agree to negotiate their differences in good faith within thirty (30) days following Tenant’s notice of objections to Landlord. If the parties fail to agree on a Current Market Rate within the 30-day period, then Tenant shall have ten (10) days thereafter within which to withdraw its notice or to notify Landlord of its desire to arbitrate the Current Market Rate. If

Tenant fails to notify Landlord of its election within the 10-day period, Tenant shall be deemed to have elected to arbitrate as of the last day of the 10-day period, and the determination of Current Market Rate shall be settled by arbitration in accordance with the provisions of subparagraph c) below.

(c) In the event of a continuing dispute concerning Current Market Rate, Tenant and Landlord shall each appoint a local appraiser who is a member of the American Institute of Real Estate Appraisers, or if it shall not then be in existence, a member of the most nearly comparable organization, and who has a minimum of five (5) years' experience in the Wichita, Kansas commercial office leasing market who is licensed by the State of Kansas, and who is not affiliated with either party or involved in an active transaction in which either party is also involved. Each party shall notify the other as to the name and address of the appraiser selected within ten (10) days after the arbitration election date. Each appraiser shall, during the next five (5) days, calculate the Current Market Rate and notify both parties of said determination of Current Market Rate. If the two appraisers agree upon a Current Market Rate, such determination shall be final and binding on the parties. If the two appraisers do not agree upon a Current Market Rate, the parties may mutually agree to elect to average the rates calculated by the two appraisers, such option to be exercised by written notice from each party to the other party and to the appraisers within five (5) days after receipt of notice by the appraisers of their Current Market Rate calculations. If both parties do not elect to average, the rates calculated by the two appraisers will not be so averaged. If Landlord and Tenant agree to such an averaging, the resulting figure shall be the agreed-upon Current Market Rate. If Landlord and Tenant fail to agree to such an averaging within the 5-day notice period, the two appraisers shall select a third appraiser, who shall satisfy the same professional qualification requirements set forth above, and the appraisers will then notify Landlord and Tenant of such appraiser's name, address and selection within five (5) days following the failure of the parties to agree upon an averaged rate. The third appraiser will select one or the other of the two calculations of Current Market Rate submitted by the other two appraisers and will notify the parties and the appraisers within ten (10) days of being selected to make the Current Market Rate determination. The determination of the third appraiser shall be final and binding on Landlord and Tenant. The costs of arbitration shall be shared equally by Landlord and Tenant.

32. Contingency. Landlord's obligations under this Lease are contingent upon approval of the Lease by the City of Wichita and the Owners of the Bonds required by the City Lease. Landlord is the Owner of the Bonds and shall endeavor to obtain the City's consent as soon as reasonably possible.

Landlord:
Pulse Headquarters, LLC

By: 
Alif Hourani, Manager

Tenant:
Kansas Medical Mutual Insurance Company

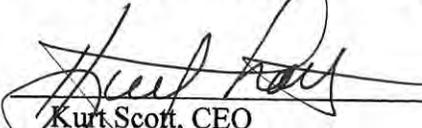
By: 
Kurt Scott, CEO

Exhibit "A"

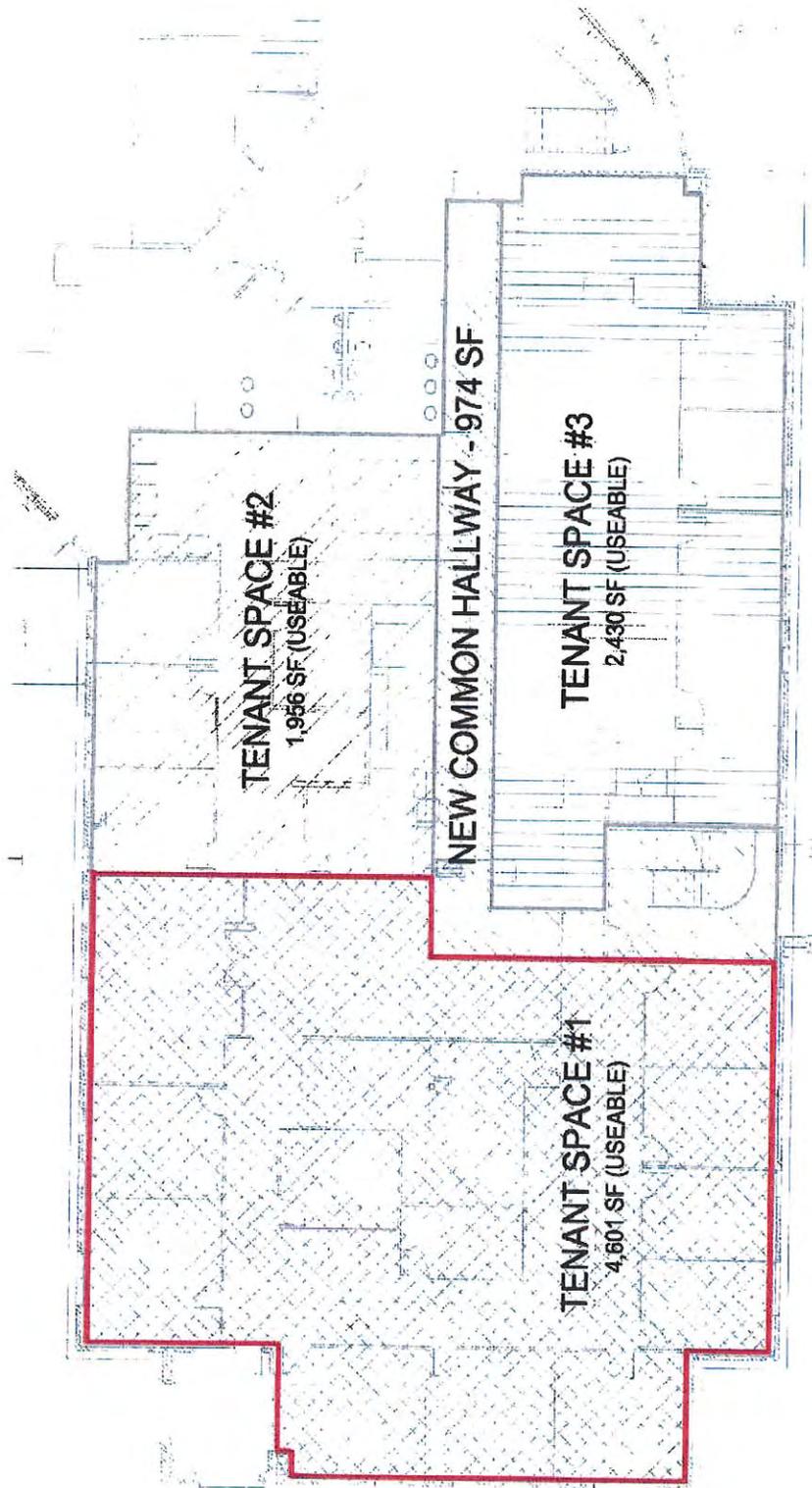
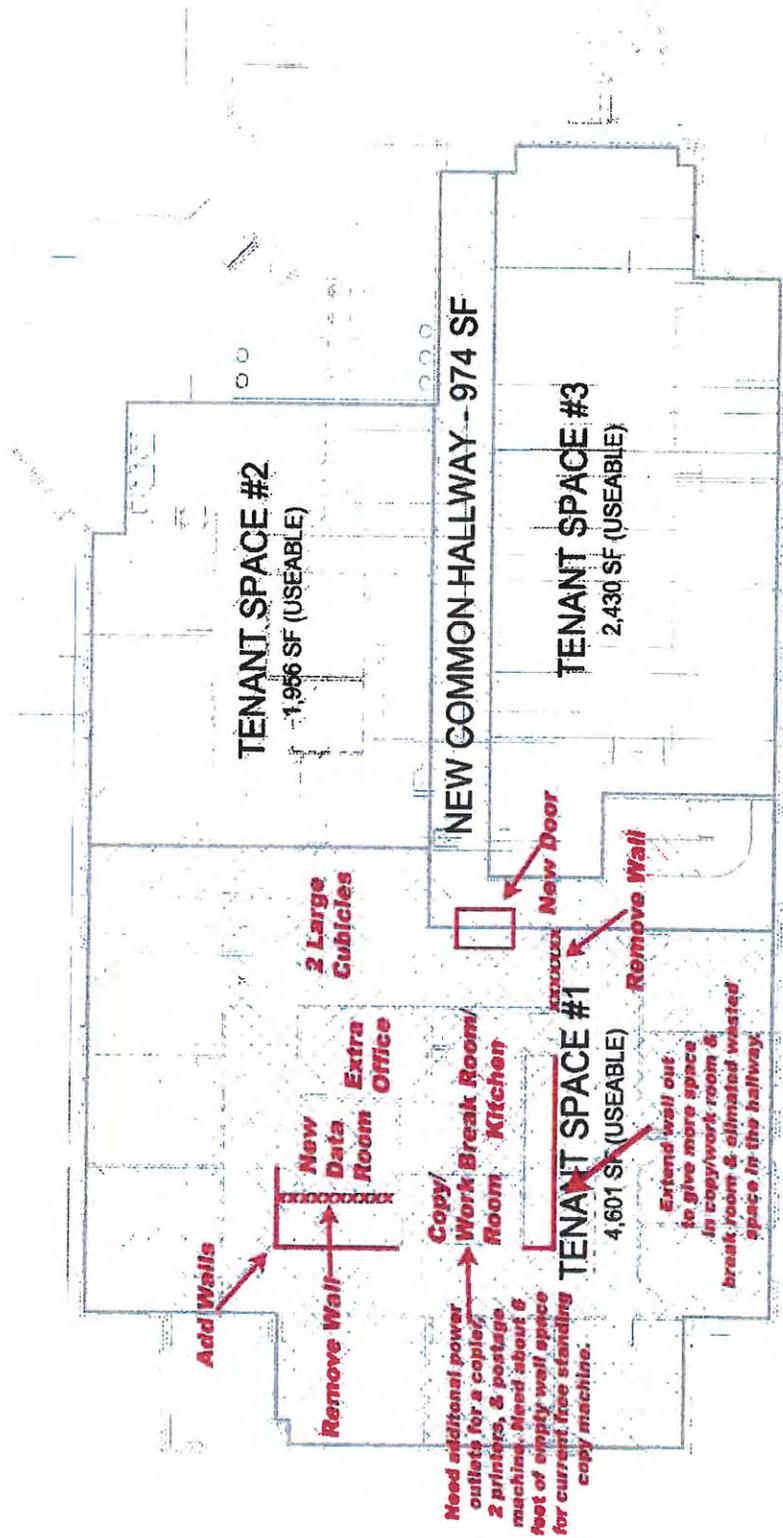


Exhibit "B"



In Break room/Kitchen need to add upper and lower cabinets garbage disposal, dishwasher & plumbed fridge (Tenant has fridge).



Exhibit C

Description of Landlord's Work

- New door to common hallway.
- Remove wall between break room/kitchen and common hallway.
- Extend wall out to give more space in copy/work room and break room and eliminate wasted space in hallway.
- In break room/kitchen add upper and lower cabinets, garbage disposal, dishwasher, and plumbed fridge (Tenant has fridge).
- Need additional lower outlets for a copier, two printers and postage machine in copy/work room installed in cooperation with the tenant. Provide approximately six feet of empty wall space for current free standing copy machine. Provide additional lower cabinetry for storage and work space.
- Remove wall to new data room and add walls further out in to hallway.
- Construct new common hallway.
- New carpet and paint.
- All improvements will be mutually agreeable between Tenant and Landlord including, but not limited to finishes, receptacle placement, additional receptacles, cabinetry, carpet, other flooring, paint, HVAC, and all other improvements within the Allowance for reasonable use and enjoyment by the Tenant. Tenant shall timely respond to all requests from Landlord in order to not impede the construction schedule.
- Finish space to reasonable satisfaction of Tenant within Allowance.

Additional work requested by Tenant in addition to the Allowance which will be paid by Tenant:

- a. Tenant has the need, simultaneous to the Landlord's Work, to complete and pay for, at Tenant's cost, the addition of a floor drain system, which connects to the sanitary sewer system, in the server room to accommodate the climate controlled server cabinet.
- b. Simultaneous to Landlord's Work, Tenant has the need to work with outside contractors of its choice to install and pay for a climate controlled server cabinet at Tenant's cost.
- c. Tenant will install and pay for wiring for cable and computer systems at Tenant's cost.

All such work shall be coordinated with Landlord and shall not interfere with or delay Landlord's schedule of work.

**City of Wichita
City Council Meeting
July 9, 2013**

TO: Mayor and City Council

SUBJECT: North Industrial Corridor (NIC) Groundwater Contamination Project – Remedial Design Contract

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the contract for completion of the Remedial Design phase for the NIC Project *and adopt the bonding resolution.*

Background: The NIC project is a very large and complex groundwater pollution site with over 4,000 acres of commercial, industrial and residential properties within its boundaries. The major contaminants in the groundwater of the NIC Site are chlorinated solvents and petroleum constituents. The groundwater pollution is a result of historical industries' use of the chemicals in their various processes. Because of the need for a more concerted and coordinated effort, and based on the success of the Gilbert & Mosley Project, the City, by written agreement with the Kansas Department of Health & Environment (KDHE) and 28 area businesses, known as North Industrial Corridor Participants, took over the management of the NIC Site. To date, the City has accomplished three major milestones in the project's path to cleanup – 1) April 26, 2007 KDHE approved the Site-Wide Remediation Investigation (RI) Report and Addendum Report as well as the Base Line Risk Assessment; 2) August 12, 2011 KDHE approved the NIC Site-Wide Groundwater Feasibility Study (FS); and 3) March 28, 2012 KDHE approved the final Corrective Action Decision (CAD) which identifies the site-wide groundwater remediation required for the NIC Site. The next step of the project is to conduct the remedial design work which will include a remedial design work plan, field data for design, and the remedial design.

The remedial design will consist of the plans and specifications for constructing the groundwater cleanup systems. Per the City/KDHE Settlement Agreement, KDHE required tasks include 1) the remedial design work plan that outlines the design approach, necessary data, and data collection methods, 2) data collection efforts and a data summary of the pre-design data, and 3) design documents. The design documents will include detailed engineering plans (i.e. detailed drawings and cut sheets) and construction specifications that contractors will use to bid and construct the remedial systems.

Analysis: The City is actively working toward implementing remediation of the groundwater contamination in the NIC Site. SCS Aquaterra was selected through the City's competitive procurement process by a selection committee comprised of City staff. The selection committee reviewed all six proposals submitted in response to the RFP and selected three firms for a formal presentation and interview. SCS Aquaterra was selected to provide the technical work required for meeting the remedial design requirements in accordance with the Settlement Agreement between the City and the KDHE and the CAD. Additional technical work per the direction of the KDHE will be required on the NIC project.

This contract will be in effect through the initial phase of the remedial design efforts and includes the tasks summarized in the following table. These efforts are critical for the successful implementation of the environmental cleanup.

CONTRACT for REMEDIAL DESIGN

Task No.	Description	Requested Contract Amendment No. 5 Budget
1	Remedial Design Work Plan	\$25,000
2	Pre-design Data Acquisition	\$225,298
3	Remedial Design	\$211,000
	Total Contract	\$461,298

Additional phases of the project to be awarded and contracted in the future will include:

- Remedial design bid documents,
- Construction and startup of the system,
- Construction oversight (construction inspection and engineering documentation),
- Construction quality assurance report (KDHE required construction documentation that must be certified by an engineer),
- Groundwater monitoring,
- Additional site investigation (KDHE is requiring the surface water and groundwater near 17th and Chisholm Creek be investigated and a monitored natural attenuation study be initiated), and
- Source remediation.

Financial Considerations: Based upon the specific tasks to be performed under the Scope of Services, the not-to-exceed cost is \$461,298 for environmental consulting and design services. These costs are budgeted in the fund that includes the NIC TIF allocation and settlements.

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

Recommendation/Action: It is recommended that the City Council approve the contract with SCS Aquaterra, authorize the necessary signatures, ~~and~~ approve any necessary budget adjustments .

Attachment: Contract between the City of Wichita and SCS Aquaterra for the remedial design phase of the North Industrial Corridor Site Project and bonding resolution.

CONTRACT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

**STEARNS, CONRAD & SCHMIDT CONSULTING ENGINEERS, INC.
d/b/a SCS AQUATERRA**

THIS CONTRACT, made this _____ day of _____, 2013, by and between THE CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and Stearns, Conrad & Schmidt, Consulting Engineers, Inc. dba SCS Aquaterra, party of the second part, hereinafter called the "CONSULTANT".

WITNESSETH:

WHEREAS, The CITY has entered into a Settlement Agreement with the Kansas Department of Health and Environment ("KDHE"), designated as Case No. 95-E-0321, under which the CITY is obligated to perform investigations and to conduct remedial activities to address groundwater contamination within an area the KDHE defines as the North Industrial Corridor Site ("the NIC Site") in Wichita, Kansas, which requires the CITY to conduct a Remedial Design with respect to groundwater contamination in the NIC Site as documented in the KDHE approved Remedial Investigation Report, Remedial Investigation Addendum Report, Baseline Risk Assessment Report, Feasibility Study Report, and in accordance with the KDHE

Corrective Action Decision (CAD) (hereinafter collectively referred to as the PROJECT). The Remedial Design work must be completed to initiate the required Remedial Action; and

WHEREAS, the CITY entered into the North Industrial Corridor Participation Agreement with private Participants who undertake certain activity or assist the CITY with respect to activities required by the Settlement Agreement, and some of the Participants have previously conducted or funded environmental investigations and remediation at or near their individual facilities or properties in the NIC Site. CONSULTANT may be required to consult with said Participants during the Remedial Design phase of this PROJECT; and

WHEREAS, CONSULTANT has available and offers to provide the necessary professional services to accomplish the Remedial Design work within the required time; and

WHEREAS, the CITY is authorized by law to employ consultants to assist with the completion of this PROJECT.

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

I. **SCOPE OF SERVICES**

A. The CONSULTANT shall furnish professional services as set out in Exhibit "A", which is attached hereto and incorporated herein by reference.

B. In the event of delays in the performance by the CONSULTANT due to circumstances caused by CITY, the CONSULTANT'S schedule of performance shall be equitably adjusted to account for such delay.

II. **IN ADDITION, THE CONSULTANT AGREES**

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in SCOPE OF SERVICES in Exhibit "A" attached hereto and fully incorporated herein by this reference.

B. To attend meetings with the CITY, Participants, and other local, state and federal agencies as described by the SCOPE OF SERVICES (Exhibit "A").

C. To make available during regular office hours at its Wichita office all records,

documents and other written material covering the services described in Exhibit "A" as the CITY may wish to examine periodically during performance of this Contract.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by negligent errors, omissions or acts of CONSULTANT, its agents, servants, employees, or subcontractors occurring in the performance of its service under this Contract.

E. To maintain field notes, calculations, sketches, drawings, books, electronic documents, papers, accounting records, and evidence pertaining to costs incurred by CONSULTANT and to make such material available to the CITY periodically as required by the CITY and to deliver such documents upon request of the CITY during the Contract period, and for three (3) years from the date of final payment under the Contract.

F. To comply with all federal, state and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1974, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "C" which is attached hereto and adopted by reference as though fully set forth herein.

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

H. To submit periodic billings to the CITY of the costs accrued in the performance of the services herein described.

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

Penalties ultimately assessed against the City under ¶130 of the Settlement Agreement with KDHE (for failure to submit reports or deliverables in the time required or failure to follow the notice of deviation requirements of the Quality Assurance section) to the extent that such Stipulated Penalties result from negligent actions or inactions of the CONSULTANT and are not occasioned in whole or in part by any delays or non-performance resulting from Force Majeure events, occurrences or conditions; or any actions or inactions of the CITY, Participants, KDHE, or any other regulatory agency having jurisdiction over the project.

J. (i) Covenants and represents to be responsible for the professional and technical accuracies of the work or material furnished by the CONSULTANT under this Contract; and (ii) CONSULTANT further agrees, covenants and represents that all work or material furnished by CONSULTANT, its agents, employees and subcontractors, under this Contract, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

K. CONSULTANT shall procure and maintain such insurance as will protect the CONSULTANT from damages resulting from negligent acts of the CONSULTANT, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this Contract. Such policy of insurance (including any excess liability coverage) shall be in an amount not less than \$3,000,000 aggregate. In addition, a Worker's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment which, for any reason, may not fall within the provisions of the Worker's Compensation Law. The liability limit shall be not less than:

Workman's Compensation - Statutory

Employer's Liability - \$500,000.00 each occurrence

Further, a comprehensive general liability policy shall be procured and maintained by the CONSULTANT that shall be written in a comprehensive form and shall protect CONSULTANT against all claims arising from injuries to persons (other than CONSULTANT'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of CONSULTANT, its agents, officers, employees or subconsultants in the performance of CONSULTANT services under this Contract. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time CONSULTANT starts any work under this Contract. The CONSULTANT shall furnish the CITY copies of all insurance policies or certificates of insurance that relate to the insurance policies that must be maintained hereunder. 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.

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

M. If authorized in writing by CITY, CONSULTANT agrees to prepare to serve or to serve as a consultant or expert witness for CITY in any litigation, administrative hearing, or other legal proceedings involving this PROJECT. Compensation for such services (including responding to any subpoenas) shall be compensated as provided in Exhibit "B".

III. **THE CITY AGREES:**

A. To furnish all available data pertaining to the PROJECT now in the CITY's files at no cost to the CONSULTANT. Confidential material so furnished and marked will be kept confidential by the CONSULTANT.

B. To pay the CONSULTANT for its services in accordance with the requirements of this Contract.

C. To provide right of entry for CONSULTANT'S personnel in performing the services hereunder.

D. To designate a Project Manager for the coordination of the work that this Contract requires to be performed. The CITY agrees to advise the CONSULTANT in writing of the person(s) designated as Project Manager with the issuance of notice to proceed on the work required by this Contract. The CITY shall also advise the CONSULTANT of any changes in the person(s) designated Project Manager. Written notification shall be provided to the CONSULTANT for any changes exceeding one week in length of time.

E. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by CONSULTANT in a timely fashion.

IV. **PAYMENT PROVISIONS**

A. Payment to the CONSULTANT for the performance of its services shall be based on the actual hours of work performed and on the schedule of fees set out in Exhibit "B", which is attached hereto and incorporated herein by reference. In addition, CITY will reimburse CONSULTANT for its out-of-pocket expenses at the actual cost to CONSULTANT of such expenses. In no event will the total of all payments to CONSULTANT hereunder exceed the sum of Four hundred sixty one thousand two hundred ninety eight dollars (\$461,298.00). Invoices shall be submitted on a monthly basis for review and approval. Time is of the essence in payment of invoices and timely

payment is a material part of the consideration of this Contract. Payment is due upon presentation of invoice and is past due 45 days from the date of invoice approval by City staff. CITY agrees to pay a finance charge of one and one half percent per month, on past due accounts. Failure of CITY to abide by the provisions of this section will be considered grounds for termination by CONSULTANT.

B. If additional work should be necessary, by virtue of a major change in the scope of the proposed PROJECT, the CONSULTANT will be given written notice by the CITY along with a request for an estimate of the time and materials costs to complete the specified additional work; but no additional work shall be performed nor shall additional compensation be paid except following the execution of a Supplemental Agreement duly entered into by the parties.

V. **THE PARTIES HERETO MUTUALLY AGREE:**

A. That the right is reserved to the CITY to terminate this Contract at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the CONSULTANT'S inability to proceed with the work, or because the services of the CONSULTANT, in the sole opinion of the CITY, are unsatisfactory; PROVIDED, however, that in any case the CONSULTANT shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this Contract, but in no case shall payment be more than the CONSULTANT'S Time and Materials costs based on the units rates outlined in Exhibit "B".

B. That the services to be performed by the CONSULTANT under the terms of this Contract are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

C. In the event of unavoidable delays in the progress of the work contemplated by this Contract, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the CONSULTANT shall request extensions in writing giving the reasons therefor.

D. It is further agreed that this Contract and all other contracts entered into under the provisions of this Contract shall be binding upon the parties hereto and their successors and assigns.

E. Neither the CITY'S review, approval or acceptance, nor payment for, any of the work or services required to be performed by the CONSULTANT under this Contract shall be construed to operate as a waiver of any right under this Contract or any cause of action arising out of the performance of this Contract.

F. The rights and remedies of the CITY provided for under this Contract are in addition to any other rights and remedies provided by law.

G. 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.

H. CITY agrees that CONSULTANT will not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the sole negligence of CONSULTANT or its subcontractors. At no time shall title to hazardous substances, solid wastes, petroleum contaminated soil or other regulated substances pass to CONSULTANT, nor shall any provision of this Contract be interpreted to permit or obligate CONSULTANT to assume the status of a "generator," "owner," "operator," "transporter," "arranger" or "treatment, storage or disposal facility" under state or federal law. The provisions of this Article V.H. shall survive any termination of this Contract.

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

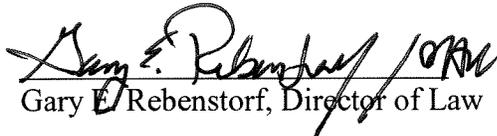
CITY OF WICHITA, KANSAS

BY _____
Carl Brewer, Mayor

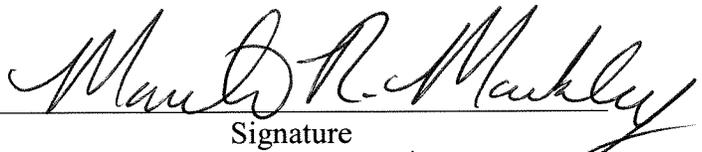
ATTEST:

Karen Sublett
City Clerk

Approved as to Form:


Gary E. Rebenstorf, Director of Law

STERNS, CONRAD & SCHMIDT CONSULTING
ENGINEERS, INC. d/b/a SCS AQUATERRA

BY 
Signature

MONTE R. MARULLEY
Print Name

VICE PRESIDENT
Title (President or Corporate Officer)

ATTEST:

Exhibit A

Scope of Services

Exhibit A
North Industrial Corridor Environmental Consulting Services
Scope of Services

General Approach and Project Understanding:

SCS AQUATERRA (Aquaterra) is pleased to present this scope of services for environmental remediation services proposed in our clarification letter submitted June 3, 2013 submitted in response City's May 20, 2013 request for additional information. This scope of services has been prepared as Exhibit A the contract to provide environmental remediation services for three North Industrial Corridor (NIC) tasks:

- NIC Remedial Design (RD) Work Plan
- NIC Pre-Design Data Acquisition (PDA) Investigation and Data Summary
- NIC Remedial Design

Detailed descriptions of our scope of services and cost estimates for each component are attached. The table below summarizes the net cost for each Task.

Task	Cost
Task 1 - RD Work Plan	\$25,000
Task 2 - PDA Investigation and Data Summary	\$225,298
Task 3 - Remedial Design	\$211,000

These costs are a maximum not to exceed based on unit rates, so if there are scope reductions, they will be realized as cost savings to the City. As noted in our proposal, portions of this work will be conducted by members of our project team from TranSystems Corporation, (TranSystems) and GSI Engineering, LLC (GSI).

The Aquaterra Team's original proposal included the development of an RD work plan that meets KDHE requirements. The scope for this item was briefly discussed in our approach for Task 2 – Program Management and Task 3 – Pre-Design Data Acquisition (PDA). KDHE Policy (BER-RS-026) defines the requirements for an RD work plan if a PDA investigation phase is necessary. We plan to utilize a proven approach for the NIC site to eliminate unnecessary PDA investigation efforts and guide TAC and KDHE involvement to provide an RD/PDA work plan that clearly defines the remedial objectives for each Groundwater Unit (GWU) in the NIC site, and the necessary PDA data collection efforts required to support a design that meets the objectives outlined in the CAD.

The City specified a well-defined technical approach for the PDA activities and Data Summary Report based on a work plan developed for the 2007-2008 groundwater sampling event. The Aquaterra Team has prepared a detailed scope of services and cost estimate to perform the requested activities including monitoring well and surface water gauging; temporary monitoring well, extraction well, and piezometer installation; groundwater and surface water sampling and analysis; Geoprobe investigation; aquifer pump testing; and a comprehensive data report.

The scope of services in our original proposal (Task 1B – Remedial System Designs) included the scope for developing the remedial design as outlined in the CAD for each GWU, in accordance with the KDHE policy for remedial design (BER RS-026). Task 1B of our proposal included the design preparation requested in the May 20 letter (30, 60, and 90 percent completion reviews, and final design documents). At this time, we do not recommend additions or deletions from the previously provided scope.

Task 1- NIC Remedial Design Work Plan:

The remedial design (RD) work plan is the first regulatory deliverable noted in the Kansas Department of Health and Environment (KDHE) final Corrective Action Decision (CAD) for the North Industrial Corridor (NIC) site. The Aquaterra Team's original proposal included the development of an RD work plan that meets KDHE requirements. The scope for this item was briefly discussed in our approach for Task 2 – Program Management and Task 3 – Pre-Design Data Acquisition (PDA). KDHE Policy (BER-RS-026) defines the requirements for an RD work plan if a PDA investigation phase is necessary. It is our intent to provide an RD/PDA work plan that clearly defines the remedial objectives for each Groundwater Unit (GWU) in the NIC site, and the necessary PDA data collection efforts required to support a design that meets the objectives outlined in the CAD.

In our experience, one of the main objectives of the RD work plan is to manage regulatory expectations throughout the life of the project by providing a higher level of detail on investigation goals, rationale, and various submittal requirements early in the design process. Because the RD work plan has significant impacts on the approval of the PDA investigation and scope, we combine them into an RD/PDA work plan document that provides cohesiveness to the approval process, and allows the regulators to understand the City's overall approach to meeting the remedial objectives. This high level overview and integrated approach to data collection and design will meet the RD objectives specified in the CAD, thereby minimizing investigation costs and allowing for a more efficient design process.

Technical Approach

We plan to utilize a proven approach for the NIC site to eliminate unnecessary PDA investigation efforts and guide TAC and KDHE involvement. Additionally, the NIC RD/PDA work plan will be prepared in accordance with the above referenced KDHE guidance, and contain the following components:

- Work plan objectives (clearly identified).
- A detailed project schedule in Gantt chart format which breaks down the work structure for the project. We expect this schedule will be developed collaboratively with the City and include the Technical Advisory Committee (TAC) input as relevant.
- A summary of PDA investigation goals, objectives and activities, and specific components for other anticipated work plans such as MNA and surface water/groundwater interactions.
- Supporting Project Plans (Sampling and Analysis Plan, Health and Safety Plan, Quality Assurance Project Plan).
- A summary of PDA data reporting requirements.
- An outline of permitting requirements.
- An outline of Remedial Design Report contents.
- Recommended enhancements to refine the proposed groundwater treatment and discharge systems to reduce capital and O&M costs.

SCS Aquaterra will attend three scope development meetings with the City, TAC, and KDHE to develop a collaborative approach to integrate the TAC and City comments in accordance with the City's schedule and the TAC participant agreement. We expect the work plan will propose a PDA investigation scope that is smaller than what is included in the current Task 2 level of effort. Our review of the existing data suggests this will be sufficient to support an approvable remedial design, but the final scope will be subject to regulatory approval.

Schedule

We anticipate the RD/PDA work plan can be developed and submitted to KDHE within 60 of Contract Approval and/or receiving Notice-to-Proceed. This timeframe is fairly aggressive, and will require prompt reviews by the City and TAC in order to meet the deadline.

Estimated Fee

An RD/PDA work plan including the detail outlined above is expected to cost approximately \$25,000, and includes the noted meetings and scope development time requested.

Task 2 – NIC Pre-Design Data Acquisition (PDA Investigation and Data Summary:

The final Corrective Action Decision for Interim Groundwater Remediation (CAD) of the North Industrial Corridor (NIC) site in Wichita, Kansas was provided by the Kansas Department of Health and Environment (KDHE) on March 28, 2012. The selected and

preferred corrective actions were specified in the CAD. As part of the selected corrective action, KDHE indicated pre-design data acquisition (PDA) activities are to be performed to optimize the selected corrective action remedy for each groundwater unit. The CAD indicates five groundwater extraction wells will be located throughout the NIC project area, with six contingency locations for additional extraction wells. The well locations are primarily based on data collected within the project area through 2007 and 2008. Because this information is now four to five years old, PDA activities are intended to confirm the plume delineation and migration of groundwater units GWU-1 through GWU-4, confirm and/or determine appropriate locations for groundwater extraction wells, and provide needed data for the design of groundwater extraction and treatment systems. Therefore, minor changes to the design scope may require such as modification of well locations, pumping rates and treatment system buildings. The scope outlined below is based on the PDA scope requested by the City in the May 20, 2013 clarification letter. However, we are going to propose a reduced level of investigation that will still meet the requirements for supporting a remedial design. The final investigation scope may vary from the scope outlined below since it will be based on the RD/PDA work plan approval.

Technical Approach

The City specified a well-defined technical approach for the PDA activities and Data Summary Report based on a work plan developed for the 2007-2008 groundwater sampling event. The Aquaterra Team has prepared the following scope of services and cost estimate to perform the requested activities.

Monitoring Well and Surface Water Gauging

The Aquaterra Team understands that 301 monitoring wells and 10 surface water locations will need to be gauged as part of the requested PDA activities. We propose to utilize 8 two-person teams to accomplish this task within one day, as requested by the City. By utilizing two-person teams, one person will be able to gain access to each location, record observed groundwater and/or surface water data, and secure each location while the second team member prepares the water level indicator for measurement and also decontaminates after each measurement has been completed.

Each team will be outfitted with a water level indicator capable of measuring to within 0.01', nitrile gloves, decontamination fluids consisting of a Liquinox type solution and rinse water prepared from a potable supply, field log book, and other tools necessary to gain access to monitoring wells and surface water locations.

Groundwater depth and surface water will be recorded from a known or observed mark such as a v-notch in a well casing or paint mark on a bridge railing. This will allow for the establishment of a datum reference to mean sea level and also provide reproducible data collection.

The water level indicator will be decontaminated with the Liquinox type solution and then rinsed with potable water immediately following each groundwater or surface water level measurement.

Groundwater and surface water levels will be recorded in dedicated field log books to the nearest 0.01'.

Based on the provided scope of services, the estimated cost to complete this sub-task is \$10,560.

Groundwater and Surface Water Sample Collection

The Aquaterra Team understands that 236 monitoring wells and 11 surface water locations will need to be sampled as part of the PDA activities. We propose to utilize 3 two-person teams to complete this task within one week. Groundwater and surface water samples will be collected with a peristaltic pump and new poly tubing. All of the samples will be analyzed for volatile organic compounds (VOC's) utilizing EPA Method 8260 modified low level. 57 of the groundwater samples will be analyzed for monitored natural attenuation (MNA) parameters as follows:

- Oxidation Reduction Potential (eH field measurement)
- Dissolved Oxygen (field measurement by Chemetrics test Kits)
- Nitrate/Nitrite (EPA MCAWW 353.2)
- Sulfate (EPA MCAWW 300-field filtered)
- Dissolved iron, manganese, and arsenic (EPA 6010-field filtered)
- Chloride (EPA MCAWW 300-field filtered)
- Alkalinity (SM 2320B)
- Carbon dioxide (SM 4500-CO2 D)
- Dissolved organic carbon (SM5310C)
- Volatile fatty acids (SM 5560C)
- Sulfide (SM 4500-S-2 D or F)
- Methane, ethane, and ethene (RSK 175)

The sub-contracting laboratory has indicated that analytical methods for four of the analytes, alkalinity, dissolved organic carbon, sulfide, and methane, ethane, and ethene, are different

than what the City has requested, and has therefore proposed alternative methods. The laboratory maintains KDHE certification for these proposed alternative methods.

Based on the provided scope of services, the estimated cost to complete this sub-task is \$46,422.

Temporary Monitoring Well Installation

The Aquaterra Team understands that twelve temporary monitoring wells will be installed and sampled as part of the PDA Activities. These temporary wells will be installed by GSI utilizing a Geoprobe® outfitted with hollow stem augers. The temporary wells will be constructed with 1" PVC well screen and riser material according to KDHE guidelines. Monitoring well design will be determined upon identifying the well locations and reviewing the site specific hydrogeologic conditions. Groundwater samples will be collected with peristaltic pumps and analyzed for VOC's as previously discussed.

Based on the provided scope of services, the estimated cost to complete this sub-task is \$10,546.

Geoprobe® Groundwater Samples

The Aquaterra Team understands that groundwater samples will be collected from 200 locations utilizing direct push drilling technologies (Geoprobe®). Three groundwater samples will be collected from each boring at shallow, intermediate, and deep groundwater intervals. These intervals will be determined upon a review of sample collection locations and site specific hydrogeologic conditions. Groundwater samples will be collected with peristaltic pumps and analyzed for VOC's as previously discussed.

Based on the provided scope of services, the estimated cost to complete this sub-task is \$69,080.

Aquifer Pump Testing

The Aquaterra Team understands that aquifer pump tests will be completed at 6 locations across the NIC study area. One groundwater extraction well and three groundwater piezometers will be installed by GSI at each location. The extraction wells will be constructed of 6-inch PVC well screen and riser material and will be installed utilizing a CME-75 drilling rig and hollow stem augers. In addition, a 1-inch PVC measuring tube will be installed within the annular space of the extraction well. The measuring tube will be constructed with the same screen and riser intervals as the extraction well. The groundwater piezometers will be constructed of 1-inch PVC screen and riser material and will be installed utilizing a Geoprobe® outfitted with hollow stem augers. Groundwater extraction well and piezometer design will be determined upon identifying the well locations and reviewing the site specific hydrogeologic conditions.

The aquifer pump tests will be conducted over a 12- to 24-hour time interval. Submersible pressure transducers will be installed in each piezometer and extraction well measuring tube approximately 2-days prior to initiating the test to allow for equilibration, calibration, and to

monitor static groundwater conditions. The transducers will remain deployed for approximately 2-days to monitor aquifer recovery after each pumping test. Recovered groundwater will be discharged through a custody meter to the City's sanitary sewer through a temporary permit issued by the City and a temporary NPDES permit as necessary.

Based on the provided scope of services, the estimated cost to complete this sub-task is \$54,930.

Comprehensive Data Report

A comprehensive data report will be submitted upon completion of all field activities and data review. The report will include discussions of all of the sub-tasks described under the PDA scope of services and will include, but not be limited to:

- Documentation of all field activities, groundwater data, analytical parameters, as well as source area data provided by responsible parties
- Data analysis to provide a comparative assessment of current groundwater conditions to historic groundwater conditions, and a summary of the results

The comprehensive data report will undergo a collaborative effort of input, review, and comment as previously described for the work plan phase.

Based on the provided scope of services, the estimated cost to complete this sub-task is \$33,760.

Schedule

Regardless if the scope of services outlined by the City in the May 20, 2013 letter is performed, or the reduced scope of services recommended by the Aquaterra Team in our June 3, 2013 clarifying proposal, the PDA activities will require a significant field effort. SCS Aquaterra and GSI will provide the labor manpower necessary to complete the field activities within the timeframes needed and specified in the RD/PDA work plan, including collecting water measurements from all gauging locations within one day as required by KDHE.

Estimated Fee

The cost to complete this revised PDA and Data Reporting scope of services is \$225,298. If SCS Aquaterra and the City are successful in negotiating a reduced PDA investigative effort as will be outlined in the RD/PDA work plan, the scope for this task could be reduced significantly. SCS Aquaterra will invoice for actual services rendered based on the final KDHE approved work plan.

Task 3 – NIC Remedial Design:

The Kansas Department of Health and Environment (KDHE) final Corrective Action Decision (CAD) for Interim Groundwater Remediation of the North Industrial Corridor (NIC) site outlines the preferred remedial action alternatives for six groundwater monitoring units (GWUs) within the site. Four of the six GWUs are to be addressed by the City and the remaining two GWUs will be addressed by KDHE separately, under consent agreements with the associated responsible parties. The remedial systems as outlined in the CAD include groundwater extraction wells, treatment system equipment and controls, pipeline alignment plan and details, and treatment system building plan and details. Upon approval of the Pre-Design Data Acquisition (PDA) report, the Aquaterra design team will meet with City personnel to discuss final conceptual design plans.

Technical Approach

The scope of services for the Remedial System Design includes the scope, approach, and costs for developing the remedial design as outlined in the CAD for each GWU, in accordance with the KDHE policy for remedial design (BER RS-026), and incorporating the PDA results and collaborative interactions with the TAC. This includes the design preparation requested in the May 20 letter (30, 60, and 90 percent completion reviews, and final design documents). In addition, as previously presented, the City may consider evaluating existing equipment formerly used at the Brooks Landfill to potentially reduce design and capital costs of new treatment system equipment.

The remedial systems will include groundwater extraction wells, treatment system equipment and controls, the pipeline alignment plan and details, and treatment system building plan and details. Historical performance information from the Gilbert and Mosley (GM) system will be used as guidance for the NIC design. Upon approval of the Pre-Design Data Report, as outlined in Task 2, the design team will meet with City personnel to discuss final conceptual design plans and changes to the GM design that should be incorporated into the NIC remedial system.

The typical extraction well design procedure for each GWU will include the following:

- Determining well locations based upon results of the pre-design data acquisition activities outlined in Task 3 and groundwater modeling efforts outlined in Task 5 of this proposal;
- Designing the extraction well configuration, including specifying well components such as casing diameter, material type, screen depth, and other well construction and completion details;
- Sizing and specifying the extraction well pump;
- Designing recovery well termination details; and
- Designing the pumping system controls.

The typical treatment system and pipeline design procedure will include the following:

- Determining locations of treatment systems and buildings;
- Developing the pipeline alignment from extraction wells to treatment buildings;
- Sizing air stripper or other treatment devices;
- Designing the treatment system controls;
- Designing the treatment system buildings; and
- Developing pipeline alignments from treatment buildings to the discharge locations.

In addition to the typical design procedures outlined previously, the design of the extraction wells and treatment systems will include surveying to establish or provide the following:

- Survey controls and benchmarks, as necessary, to facilitate design and construction of the remedial systems;
- Existing topographical information at the proposed extraction well and treatment sites to facilitate the development of well, treatment system, and building design plans;
- Existing ROW, utilizing County quarter section maps and plats;
- Existing topography along the pipeline corridor will be developed using City LIDAR data and aerial mapping;
- Location of existing utilities and other potential obstructions to the proposed wells, treatment systems, and/or pipeline, utilizing the Kansas One-Call system, and the City's monthly ULCC meeting; and
- Property boundaries and ROW limits at the proposed extraction well and treatment sites.

Aquaterra is equipped to conduct field surveying activities utilizing the Wichita/Sedgwick County GPS CORS Network. Our team will use the City's GPS network to the extent possible to maximize the efficiency of field surveys and provide direct integration with the City's Geographic Information System (GIS).

As stated above, the field surveying activities will also be used to identify potential surface and subsurface conflicts with utilities or other obstructions. Our team will contact Kansas One-Call and additional utilities, as necessary, to perform a design locate for existing underground utilities prior to conducting field surveying activities. If City utilities are not located in the field during the design process, the Team will coordinate with the City's GIS department to obtain available GIS data. The GIS data will be imported into the design plans to provide the best available information about the location of existing City utilities. Field

check plans identifying potential problem areas will be developed and provided to the City for review and we will attend two ULCC meetings to coordinate with the private utilities.

Surveying tasks will be completed by or under the direct supervision of a Kansas professional licensed surveyor (PLS). In our experience, it is highly advantageous in terms of expediency, cost, and quality control to have in-house surveying capabilities with the ability to collaborate and communicate directly with the design team.

The technical approach specific to the NIC Site remedial system design for each GWU was developed with the preferred remedial action alternative outlined in the CAD and NIC Site Site-Wide Groundwater Feasibility Study (NIC Feasibility Study), prepared by CDM in 2011, as guidelines. The scope of work and associated design fees are based upon these preferred remedial action alternatives and are summarized below for each GWU.

GWU-1

The preferred remedial action alternatives outlined in the CAD for GWU-1 are source abatement and MNA. The technical approach for MNA of GWU-1 is provided in the scope of work for Task 9 of this proposal.

In the event MNA is ineffective in achieving the RAOs, the contingency remedial action alternative is to implement a pump and treat system. The contingency groundwater recovery system (GWR) is anticipated to consist of one extraction well on 29th Street North with a stand-alone treatment system co-located with the extraction well. The treated groundwater is proposed to discharge into an unnamed tributary of the West Fork of Chisholm Creek, and the transmission pipe is proposed to run east to west along 29th Street North from I-135 to just east of Mead Street. It is assumed that City property will be available for the treatment system and building. The characteristics of the GWR are described as follows:

- One 50 gallons per minute (gpm) extraction well;
- One air stripper sized to accommodate 100 gpm in the event that a second contingency well is necessary;
- A 15-foot by 15-foot engineered steel building with 10-foot high side walls situated on a reinforced concrete slab foundation in close proximity to the extraction well;
- Approximately 500 feet of single-walled, high density polyethylene (HDPE) transmission piping; and
- Pumping and treatment system controls, valves and appurtenances, and other incidentals.

GWU-2

The remedial design for GWU-2 is anticipated to consist of one extraction well located south of 21st Street North and a stand-alone treatment system co-located with the extraction well. The treated groundwater is proposed to discharge into Chisholm Creek with the transmission piping proposed to run north to south along North Mosley Street. It is assumed that City property will be available for the treatment system and building. The characteristics of the treatment system for GWU-2 are similar to GWU-1, except as noted below:

- One extraction well designed to extract 150 gpm;
- One air stripper sized to treat 200 gpm, in the event the contingency extraction well is necessary; and
- Approximately 500 feet of single-walled HDPE piping.

GWU-3

The remedial design for GWU-3 is anticipated to consist of two extraction wells with the water being conveyed to the GM Groundwater Treatment Plant (GWTP). The two extraction wells are to be located near the intersections of 3rd Street North and North Washington Avenue (NIC #3-1), and East Central Avenue and Indiana Street (NIC #3-2). The extraction wells are planned to tie-in to a proposed 8-inch diameter pipeline starting near NIC #3-1 and running south to the intersection of North Santa Fe Avenue and Zimmerly. Connecting to the existing GM remedial system will likely require upgrades or modifications to the existing pumping system. This design is considered to be the most cost-effective over the long-term by utilizing existing City infrastructure for transmission and treatment. It is assumed that the pipelines would be installed utilizing direction drilling. The characteristics of the GWR discharging to the GM GWTP are described as follows:

- Two extraction wells with a combined pumping rate of 205 gpm (one at 140 gpm and one at 65 gpm);
- Approximately 3,000 feet (combined) of single-walled HDPE transmission piping from the extraction wells to the tie-in location;
- Approximately 9,350 feet of 8-inch diameter HDPE transmission piping from the tie-in location on Santa Fe Street to the GM GWTP;
- Pumping system controls, valves and appurtenances, and other incidentals; and
- Radio connection of the GWU-3 remedial system to the upgrades for the GM GWTP control system.

A contingency for GWU-3 consists of a stand-alone extraction well and treatment system proposed to be located on 13th Street North between Ohio Street and North Wabash Avenue.

The treated groundwater is proposed to discharge into Chisholm Creek with the transmission piping running west to east along 13th Street North. It is assumed that City property will be available for the treatment system and building. The characteristics of the interior extraction well are described as follows:

- One extraction well with a pumping rate of 110 gpm;
- One air stripper sized to accommodate the stand-alone extraction well;
- A treatment system building similar to that described for GWU-1;
- Approximately 1,400 feet of single-walled, HDPE piping; and
- Pumping and treatment system controls, valves and appurtenances, and other incidentals.

GWU-4

The remedial system for GWU-4 is proposed to consist of one extraction well located near the intersection of 3rd Street North and North Topeka and a stand-alone treatment system discharging to the City's storm sewer system. The NIC Feasibility Study indicates that connecting the GWU4 groundwater to the proposed GWU3 transmission pipeline, as described above, presents the lowest net present value. Under this scenario, the recovered groundwater from GWU4 would be treated by the GM GWTP. However, a preliminary evaluation of this option by our design team indicates that it is likely not feasible to utilize the existing GM remediation system for treatment of GWU4.

Although several wells within the GM remediation system are no longer active (A-1, A-2, and A-3), the GM remediation would likely require extensive retrofits to accommodate the conveyance and treatment of both the GWU3 and GWU4 groundwater. The capital cost estimates presented in the NIC Feasibility Study do not indicate that the possibility for significant retrofits and upgrades were considered in the net present value evaluations. Additionally, the proposed treatment and discharge location for the treated effluent were not specifically outlined in the NIC Feasibility Study or CAD, but the treatment system was assumed to be located within 1,000 feet of the well location with a discharge location less than 300 feet from the treatment equipment. The characteristics of the treatment system for GWU-4 are similar to GWU-1 and GWU-2, except as noted below:

- One extraction well with a pumping rate of 120 gpm;
- One air stripper sized to accommodate the stand-alone extraction well;
- Single-walled HDPE piping from the extraction well to the treatment building and treatment building to the discharge location; and

- Pumping and treatment system controls, valves and appurtenances, and other incidentals.

A cursory review of the area indicates that several City-owned properties are located within the vicinity of the proposed extraction well and City storm sewers should be available for discharge of the treated effluent. It is likely that the City storm sewer system receiving the effluent would ultimately discharge to the Arkansas River, approximately 3,000 feet west of the recovery well. The proposed location of the treatment system, building, and pipeline corridors will be a part of the design process for this task.

Optional Design Considerations

In an effort to streamline the design, contracting, and implementation of the pump and treat remediation systems, we propose to perform construction and completion of the groundwater extraction wells in-house by using our project team member GSI Engineering. The ability to utilize in-house project team capacity to install the groundwater extraction wells will provide added expediency, cost savings, and quality control for this portion of the remediation system construction. Cost savings provided by this option would result from reducing (or eliminating) bid preparation and solicitation efforts, mobilization and demobilization of an outside contractor, and additional subcontractor markups for labor, materials, and equipment.

If desired by the City, Aquaterra proposes to conduct a limited cost and feasibility evaluation of an alternative remedial system design option. The City owns a Hazelton Environmental Maxi-Strip® Hydraulic Venturi stripper system no longer in use. The system was previously utilized for the Phase 1 remediation system for Brooks Landfill. The stripper system is still functional and may have sufficient capacity to be implemented at the NIC Site. The system was decommissioned in 2003 due to the effectiveness of the comprehensive groundwater remediation program implemented at the site. The ability to utilize the Brooks Landfill Phase 1 remediation system equipment may prove to be a cost-effective method for remediation of the NIC Site groundwater by reducing the capital costs for new treatment systems. However, further evaluation of this is option would be necessary to determine the existing condition, capacity, applicability, and cost-benefit of utilizing the Phase 1 treatment equipment for the NIC Site.

Schedule

We anticipate the remedial design will be developed and submitted to KDHE within four to five months of KDHE approval of the PDA Data Report. This timeframe is moderately aggressive, and can be expedited if necessary. We have anticipated the necessary time for

the City and TAC to review and comment on draft versions of the remedial design at 30, 60, 90, and 100 percent completion. As with the Remedial Design (RD)/PDA work plan, frequent communication and diligent project management will be crucial to maintain progress, particularly related to public relationships and perceptions as the design is developed.

Estimated Fee

Our estimated fee for the Remedial Design services outlined above is \$211,000.

Exhibit B

Fees Schedule

**EXHIBIT B
FEE SCHEDULE***(Effective March 1, 2013 through December 31, 2013)*

Personnel Level	Hourly Rate
Administrative I.....	\$50.00 per hour
Administrative II	\$60.00 per hour
Technician I.....	\$55.00 per hour
Technician II	\$60.00 per hour
Technician III.....	\$65.00 per hour
Technician IV.....	\$70.00 per hour
Professional I.....	\$60.00 per hour
Professional II	\$70.00 per hour
Professional III.....	\$80.00 per hour
Professional IV.....	\$90.00 per hour
Project Manager I.....	\$90.00 per hour
Project Manager II.....	\$100.00 per hour
Project Manager III	\$110.00 per hour
Project Manager IV	\$120.00 per hour
Project Manager V	\$130.00 per hour
Air Professional I	\$125.00 per hour
Air Professional II.....	\$150.00 per hour
Survey Crew Leader.....	\$85.00 per hour
Licensed Land Surveyor.....	\$110.00 per hour
Senior Licensed Land Surveyor	\$125.00 per hour
Senior Project Manager I.....	\$140.00 per hour
Senior Project Manager II	\$145.00 per hour
Senior Technical Professional.....	\$165.00 per hour
Principal	\$175.00 per hour
Expert Witness (Depositions/Litigation).....	\$200.00 per hour

Note: Increase hourly rate by 1.5 for Saturday, Sunday, and holiday work or off-shift work when required by client.

Subcontracted Services, Office Equipment/Expenses

Subcontracted Services	Cost
CADD Equipment	\$20.00 per hour
Telephone, Fax, Printing, Copying, Postage.....	1% of project labor

Note: The rates shown above are effective through December 31, 2013 and are subject to revision thereafter.



FEE SCHEDULE

(Effective March 1, 2013 through December 31, 2013)

Printing Services

24-inch by 36-inch plots.....	\$25.00 each
36-inch by 48-inch plots.....	\$25.00 each
Additional Report Copies (varies depending on report)	\$25.00 - \$50.00 per report

Support Vehicles

Support Vehicle.....	\$0.70 per mile
SCS Aquaterra Support Truck.....	\$40.00 per day plus \$0.70 per mile
SCS Aquaterra Support Truck with Sampling Trailer	\$60.00 per day plus \$0.85 per mile
SCS Aquaterra Utility Truck.....	\$60.00 per day plus \$0.70 per mile
Rental Vehicle.....	Cost

Per Diem and Travel

Hotel, Airfare	Cost
Full-Day Meal Allowance.....	\$46.00 per day
Half-Day Meal Allowance	\$23.00 per day

Field Equipment and Supplies

Track-mounted Geoprobe®	\$750.00 per day
All Terrain Vehicle (ATV/UTV)	\$100.00 per day
Field Sampling Trailer	\$350.00 per day
GPS Surveying System	\$225.00 per day
Total Station Survey Equipment	\$120.00 per day
Misc. Survey Tools/Equipment.....	\$10.00 per day
Nuclear Density Gauge	\$100.00 per day
Photoionization Detector (PID).....	\$100.00 per day
Water Level Indicator (≤300 foot)	\$30.00 per day
Oil/Water Interface Probe	\$60.00 per day
pH/Temperature/Conductivity Meter (for water).....	\$20.00 per day
Peristaltic Pump.....	\$40.00 per day
Hand Augers (10-foot)	\$15.00 per day
Measuring Tape/Wheel	\$5.00 per day
Hand-held GPS Unit.....	\$25.00 per day
Generator.....	\$75.00 per day
Air Compressor (5 gallon).....	\$25.00 per day
Electro fusion Machine	\$120.00 per day
Flow-Thru Multi-Parameter Meter.....	\$150.00 per day
Turbidimeter.....	\$35 per day
Composite Sampler	\$75 per day
QED Pump Controller.....	\$100 per day
GEM 2000.....	\$150 per day
Flow Probe (15-foot).....	\$150 per day
Digital Camera	\$10 per day
Expendable Equipment, Supplies & Rentals.....	Cost

Note: The rates shown above are effective through December 31, 2013 and are subject to revision thereafter.



Exhibit C

Equal Employment Opportunity

Equal Employment Opportunity (EEO)

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.

RESOLUTION NO. 13-126

RESOLUTION AUTHORIZING THE EXECUTION OF A REMEDIAL DESIGN CONTRACT RELATING TO THE NORTH INDUSTRIAL CORRIDOR CONTAMINATION PROJECT; AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.

WHEREAS, the City Council (the “Governing Body”) of the City of Wichita, Kansas (the “City”), has heretofore, pursuant to K.S.A. 12-1770 *et seq.* (the “Act”) and Resolution R-96-072 (adopted March 5, 1996) designated the North Industrial Corridor Redevelopment District Area to be a blighted area and proposed a district plan for the redevelopment of such district, and, pursuant to Ordinance No. 43-009 (adopted March 19, 1996) approved the creation and set the boundaries of such district; and,

WHEREAS, Resolution R-96-283 (adopted July 9, 1996) set for August 13, 1996 the public hearing for consideration of the redevelopment project plan for the North Industrial Corridor Redevelopment District, and Section 6 of such Resolution contained language stating that it was determined and notice thereby given that the City may, as part of the redevelopment project plan, issue full faith and credit tax increment bonds to finance the costs of such plan, in whole or on part; and,

WHEREAS, the Governing Body conducted such public hearing on August 13, 1996, and following such hearing, adopted an Ordinance approving the redevelopment project plan for the project area within the North Industrial Corridor Redevelopment District; and,

WHEREAS, the Governing Body has been presented a proposed contract with SCS Aquaterra for the preparation of remedial design work associated with the North Industrial Corridor Redevelopment Project in the total contract amount of \$461,298 (the “Contract”); and

WHEREAS, the Governing Body is authorized by the Act to issue special obligation and/or full faith and credit bonds (the “Bonds”) to pay the remediation costs of the North Industrial Corridor Redevelopment Project, including the Contract.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute the Contract in substantially the form submitted to the City Council this date with such minor modifications thereto as may be approved by the Law Department.

Section 2. The costs of the Contract and associated costs of issuance and interest on interim financing are hereby authorized to be paid from the proceeds of Bonds of the City. The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation § 1.150-2.

Section 3. This Resolution shall be in full force and effect from and after its adoption.

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ADOPTED by the City Council of the City of Wichita, Kansas, on July 9, 2013.

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

ORDINANCES SECOND READ JULY 2, 2013

ORDINANCE NO. 49-528

AN ORDINANCE AMENDING ORDINANCE NO. **49-019** OF THE CITY OF WICHITA, KANSAS DECLARING **29TH ST. NORTH, BETWEEN RIDGE AND HOOVER (472-84691)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENT TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

ORDINANCE NO. 49-529

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE COST OF **CUTTING WEEDS** IN THE CITY OF WICHITA, KANSAS.

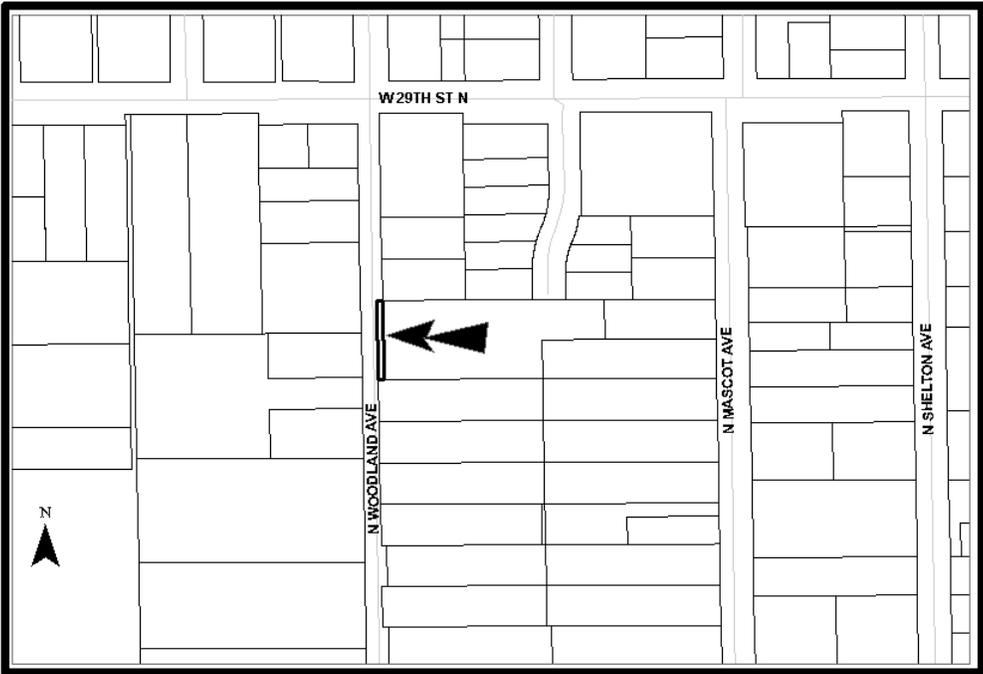
ORDINANCE NO.49-530

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE COST OF ABATING CERTAIN PUBLIC HEALTH NUISANCES (**LOT CLEAN UP**) UNDER THE PROVISION OF SECTION 7.40.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS. BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council
SUBJECT: DED2013-00001 - Dedication of Street Right-of-Way located south of 29th Street North, West of Broadway (District VI)
INITIATED BY: Metropolitan Area Planning Department
AGENDA ACTION: Planning (Consent)

Staff Recommendation: Accept the Dedication.



Background: The Dedication is associated with Lot Split Case No. LSP2013-00001 (Gould Gardens Addition) and was requested by the City’s Traffic Engineer.

Analysis: The Dedication DED2013-00001 is for additional street right-of-way for Woodland Avenue.

Financial Considerations: There are no financial considerations associated with the Dedication.

Legal Considerations: The Law Department has approved the Dedication as to form and the document will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedication.

Attachment: Dedication of Right-of-Way.

COPY

DEDICATION OF RIGHT-OF-WAY

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, David E. Mohr, being the owner of the following described real estate in Wichita, Sedgwick County, Kansas, to wit:

LEGAL

The west 10 feet of part of Lot 6, Beginning at the NW Corner, thence South 142.9 feet, thence east 296 Feet, thence North 71 feet, thence East 114 feet, thence North 71.9 feet, thence West to point of beginning, Gould's Gardens Addition, Wichita, Sedgwick County, Kansas.

do hereby dedicate the above-described real estate to the public for street right-of-way purposes.

Executed this 22 day of April, 2013.

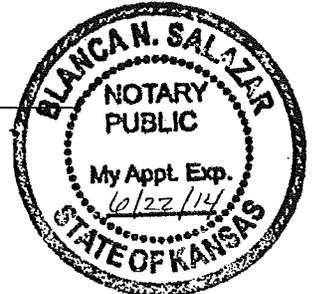
By: David E Mohr
David E. Mohr

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 22 day of April 2013, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came David E. Mohr personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Blanca N. Salazar
Notary Public



(My Appointment Expires: 6/22/14)

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

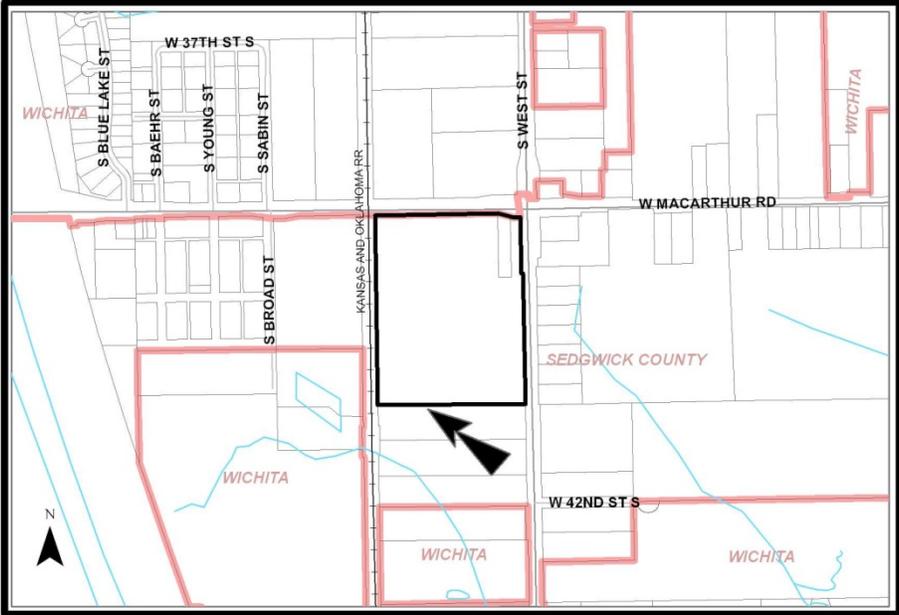
DED2013-01
LSP2013-01

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council
SUBJECT: SUB2013-00005 -- Plat of Mac West Addition located on the southwest corner of West Street and MacArthur Road (District IV)
INITIATED BY: Metropolitan Area Planning Department
AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (9-0)



Background: The site, consisting of one lot on 28 acres, adjoins Wichita’s City limits. Since annexation is a condition for approval of this plat, the corresponding annexation case is on the same agenda.

Analysis: Water service is available to serve the site. The applicant has submitted a 100 percent Petition and a Certificate of Petition for sewer improvements.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Financial Considerations: There are no financial considerations associated with the plat.

Legal Considerations: The Law Department has reviewed and approved the Certificate of Petition and Resolution as to form and the documents will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the document and plat, authorize the necessary signatures, and adopt the Resolution.

Attachments: Certificate of Petition.
Resolution.

132019

First Published in the Wichita Eagle on

RESOLUTION NO. 13-124

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 541, SOUTHWEST INTERCEPTOR SEWER (SOUTH OF MACARTHUR, WEST OF WEST ST.) 468-84898** 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 541, SOUTHWEST INTERCEPTOR SEWER (SOUTH OF MACARTHUR, WEST OF WEST ST.) 468-84898** 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 541, Southwest Interceptor Sewer (south of MacArthur, west of West St.) 468-84898**.

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 **Ten Thousand Dollars (\$10,000)** 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 **November 1, 2013**, 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 Sixty One Thousand One Hundred Seventy Dollars (\$61,170)

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:

MAC WEST ADDITION

Lot 1, Block 1

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lot 1 shall pay 1,000/1,000 of the total cost of the improvements.

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 _____ day of _____, 2013.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF, DIRECTOR OF LAW

CERTIFICATE OF PETITION

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

We, the undersigned owner of MacWest Addition, do hereby certify that petition(s) for the following improvements have been submitted to the city council of the City of Wichita, Kansas:

1. Sanitary Sewer Petition

As a result of the above-mentioned petition(s) for improvements, all lots or portions thereof within the MacWest Addition may be subject to special assessments assessed thereto for the cost of constructing the above described improvements.

Signed this 4th day of June, 2013

MacWest, LLC

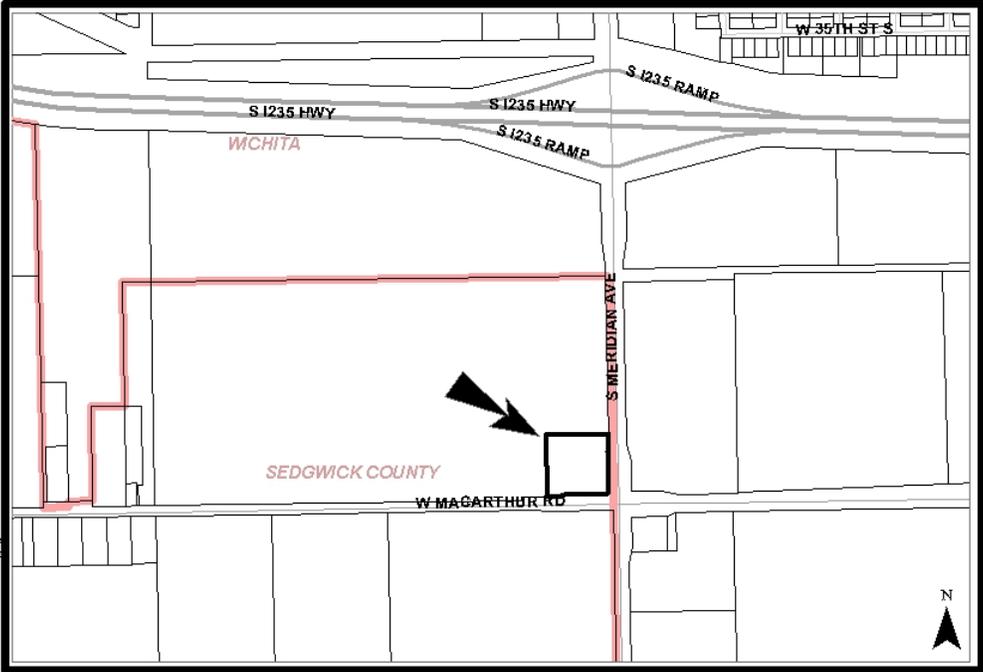
By: 
Name: Dan P. Unruh
Managing Member

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council
SUBJECT: SUB2013-00024 -- Plat of QuikTrip 13th Addition located on the northwest corner of Meridian and MacArthur Road (District IV)
INITIATED BY: Metropolitan Area Planning Department
AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)



Background: The site, consisting of one lot on 2.9 acres, is zoned LC Limited Commercial. The property adjoins Wichita’s City limits and the corresponding annexation case is on the same agenda.

Analysis: Water service is available to serve the site. Sewer improvements will be constructed by a private project. The applicant has submitted a Restrictive Covenant to provide for the ownership and maintenance responsibilities of the reserves being platted.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Financial Considerations: There are no financial considerations associated with the plat.

Legal Considerations: The Law Department has reviewed and approved the Restrictive Covenant as to form and the document will be recorded with the Register of Deeds.

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

Attachments: Restrictive Covenant.

COPY

RESTRICTIVE COVENANT

This covenant, executed this 17th day of June, 2013.

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 QuikTrip 13th 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 ownership and maintenance of reserves being platted, the establishment of an owners association, and providing for the maintenance of drainage reserves being platted.

NOW, THEREFORE, the undersigned does hereby subject QuikTrip 13th 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. 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.
6. In the event that the Undersigned or the association, its' successors or assigns, shall fail to maintain the Reserves dedicated for Drainage or fail in any manner to fulfill their obligation relating to said Reserves dedicated for Drainage, the 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 said 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 said 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 17th day of June, 2013.

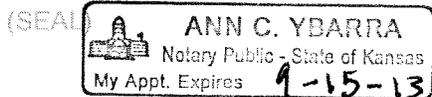
LORETTA MARY ZELLER REVOCABLE TRUST

By: Gerald A. Zeller
Gerald A. Zeller, Co-Trustee

By: Eugene A. Zeller
Eugene A. Zeller, Co-Trustee

Sedgwick County) SS
State of Kansas)

Be it remembered that on this 17th day of June, 2013, before me a Notary Public in and for said State and County, came Gerald A. Zeller and Eugene A. Zeller, Co-Trustees, Loretta Mary Zeller Revocable Trust, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.



Notary Public: Ann C. Ybarra

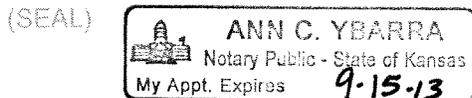
My Appointment Expires: September 15, 2013

Gerald A. Zeller
GERALD A. ZELLER, CO-OWNER

Eugene A. Zeller
EUGENE A. ZELLER, CO-OWNER

Sedgwick County) SS
State of Kansas)

Be it remembered that on this 17th day of June, 2013, before me a Notary Public in and for said State and County, came Gerald A. Zeller and Eugene A. Zeller, Co-Owners, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.



Notary Public: Ann C. Ybarra
Approved as to form

My Appointment Expires: September 15, 2013

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council

SUBJECT: ZON2013-09 - City zone change from SF-5 Single-family Residential to TF-3 Two-family Residential, generally located west of Young Street and three blocks south of West Central. (District VI)

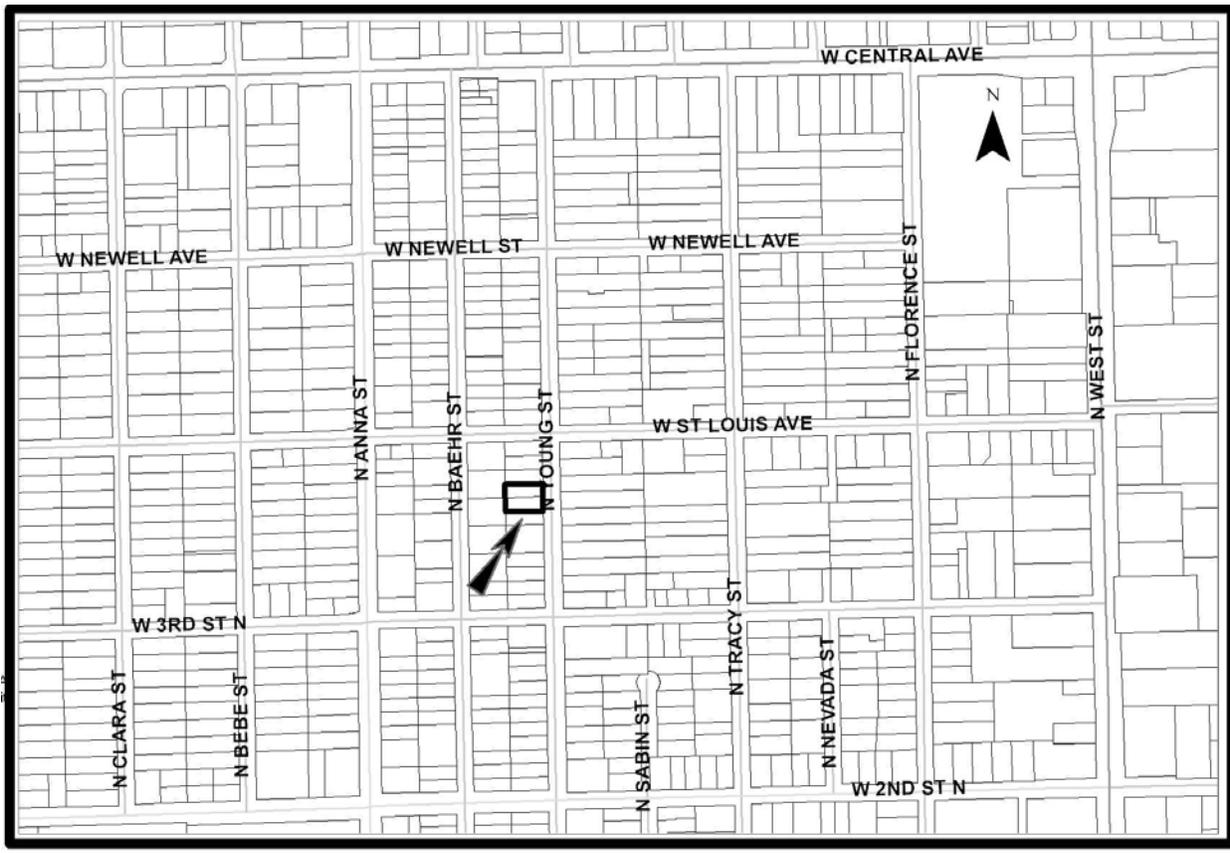
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

DAB Recommendation: DAB VI recommended approval (5-0).

MAPC Recommendation: Approve (11-0).

MAPD Staff Recommendations: Approve.



BACKGROUND: The applicant requests TF-3 Two-Family Residential zoning on two vacant, platted lots. The .3 acre site is currently zoned SF-5 Single-Family Residential. The Unified Zoning Code requires a minimum lot size of 3,000 square feet per dwelling unit for duplex development. The site's 13,500 square feet could accommodate two duplexes with a total of four dwelling units.

The surrounding neighborhood is primarily zoned SF-5 and developed with single-family residences. A mixture of TF-3 zoning, commercial zoning, and commercial non-conforming uses exist within surrounding blocks. North of the site on Young Street are SF-5 zoned single-family residences and a non-conforming vehicle repair business. South of the site on Young Street are SF-5 zoned single-family residences and a TF-3 zoned multiple dwelling lot. East of the site are SF-5 zoned single-family residences; further east, Tracy Street is zoned TF-3 and developed with single-family residences and manufactured residences. West of the site, on Baehr Street are SF-5 zoned single-family residences and a non-conforming commercial activity.

Analysis: On June 6, 2013, the MAPC reviewed the application and voted (11-0) to approve the application. No citizens spoke at the MAPC hearing regarding this request and no protests were received during the two-week protest period following the MAPC hearing. On June 3, 2013, DAB VI reviewed the application and voted (5-0) to approve the request. No citizens spoke at the DAB hearing regarding this request.

Financial Considerations: There are no financial considerations associated with this request.

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

Recommendation/Actions: Adopt the findings of the MAPC and approve the zone change to TF-3 Two-family Residential; authorize the Mayor to sign the zone change ordinance and place the ordinance on the first reading (simple majority required).

Attachments:

- Ordinance
- MAPC minutes
- DAB report

(150004) Published in The Wichita Eagle on July 12, 2013

ORDINANCE NO.49-533

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. ZON2013-00009

Zone change request from SF-5 Single-family Residential to TF-3 Two-family Residential, on property described as:

Lots 4 and 5, Block 5, Orchard Park Addition to the City of Wichita, generally located west of Young Street and three blocks south of West Central.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this ____ day of _____, 2013.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

Approved as to form:

Gary E. Rebenstorf, Director of Law

**EXCERPT MINUTES OF THE JUNE 6, 2013 WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION HEARING**

Case No.: ZON2013-09 – BATC LLC c/o Tim Chadd (owner) requests a City zone change from SF-5 Single-family Residential to TF-3 Two Family Residential on property described as:

Lots 4 and 5, Block 5, Orchard Park Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant requests TF-3 Two-Family Residential (“TF-3”) zoning on two vacant, platted lots. The .3 acre site is currently zoned SF-5 Single-Family Residential (“SF-5”). The Unified Zoning Code requires a minimum lot size of 3,000 square feet per dwelling unit for duplex development. The site’s 13,500 square feet could accommodate two duplexes with a total of four dwelling units.

The surrounding neighborhood is primarily zoned SF-5 and developed with single-family residences. A mixture of TF-3 zoning, commercial zoning, and commercial non-conforming uses exist within surrounding blocks. North of the site on Young Street are SF-5 zoned single-family residences and a non-conforming vehicle repair business. South of the site on Young Street are SF-5 zoned single-family residences and a TF-3 zoned multiple dwelling lot. East of the site are SF-5 zoned single-family residences; further east, Tracy Street is zoned TF-3 and developed with single-family residences and manufactured residences. West of the site, on Baehr Street are SF-5 zoned single-family residences and a non-conforming commercial activity.

CASE HISTORY: The site was platted as Lots 4 and 5, Block 5, of the Orchard Park Addition in 1929. Aerial photographs show that Lot 4 had a residence on the property at one time.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family residences, non-conforming vehicle repair
SOUTH:	SF-5	Single-family residences, multi-family residence
EAST:	SF-5, TF-3	Single-family residences, manufactured housing
WEST:	SF-5	Single-family residences, non-conforming business

PUBLIC SERVICES: Young Street is a paved, two-lane local street at this location with a 64-foot right-of-way. All public services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan identifies the site as “urban residential.” The urban residential category encompasses areas that reflect the full diversity of residential development densities and types, including duplexes, typically found in large urban municipality. The UZC identifies TF-3 zoning as being generally compatible with the urban residential category.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**.

This recommendation is based on the following findings:

- (1) The zoning, uses and character of the neighborhood:** The surrounding neighborhood is primarily zoned SF-5 and developed with single-family residences. A mixture of TF-3 zoning, commercial zoning, and commercial non-conforming uses exist within surrounding blocks. North of the site on Young Street are SF-5 zoned single-family residences and a non-conforming vehicle repair business. South of the site on Young Street are SF-5 zoned single-family residences and a TF-3 zoned multiple dwelling lot. East of the site are SF-5 zoned single-family residences; further

east, Tracy Street is zoned TF-3 and developed with single-family residences and manufactured residences. West of the site, on Baehr Street are SF-5 zoned single-family residences and a non-conforming commercial activity.

- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is currently zoned SF-5 and could be developed with a single-family residence, similar to most surrounding properties.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** Impact on surrounding property due to the requested zone change should be minimal; duplexes and TF-3 zoning are common within the surrounding blocks. A duplex on the site is better for the neighborhood than a vacant lot.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan identifies the site as “urban residential.” The urban residential category encompasses areas that reflect the full diversity of residential development densities and types, including duplexes, typically found in large urban municipality. The UZC identifies TF-3 zoning as being generally compatible with the urban residential category.
- (5) **Impact of the proposed development on community facilities:** All services are in place, any increased demand on community facilities can be handled by existing infrastructure.

JESS MCNEELY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

B. JOHNSON moved, MCKAY seconded the motion, and it carried (11-0).

FOSTER asked since staff recommended to disapprove, would it be reasonable for the Planning Commission to hear the case.

DIRECTOR SCHLEGEL commented that action would be considered reasonable and appropriate.



INTEROFFICE MEMORANDUM

TO: MAPC Members

FROM: Terri Dozal, Neighborhood Assistant, District VI

SUBJECT: ZON2013-00009 City request for a zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential, generally located ¼ mile west of West Street, between St. Louis Avenue and 3rd Street, on the west side of Young Street.

DATE: June 4, 2013

On Monday June 3, 2013 the District VI Advisory Board (DAB) considered a City request for a zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential, generally located ¼ mile west of West Street, between St. Louis Avenue and 3rd Street, on the west side of Young Street.

The members were provided the MAPD staff report for review prior to the meeting. *Jess McNeely, Planner* presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked/made the following questions/comments:

- Were there any calls about this from the neighbors?
- Was a MAPD sign posted?

There were no public to speak in favor or opposition of this request.

******Action:** The District VI Advisory Board members made a motion to recommend to City Council **Approval (5-0)** for the zone change, subject to the findings listed in the staff report.

Please review this information when ZON2013-00009 is considered.

mtd

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council

SUBJECT: ZON2013-00011 and CON2013-00011 – City zone change from Single-Family Residential (SF-5) to GO General Office (GO), with a Conditional Use for “safety services,” specifically young victims of abuse; on property generally located south of Lincoln Street, between Topeka and Emporia Avenues. (District III)

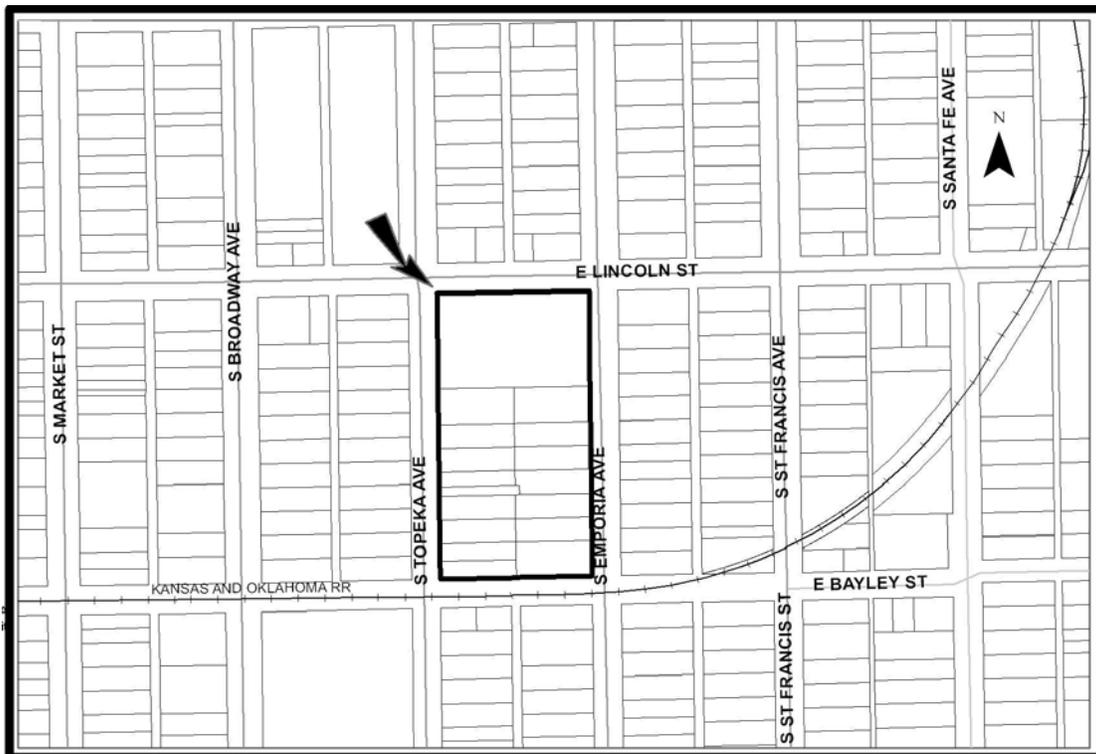
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: Approve (11-0).

DAB II Recommendation: Approve (8-0)

MAPD Staff Recommendation: Approve.



Background: The applicants are requesting GO General Office (GO) zoning with a Conditional Use for “safety services” on the SF-5 Single-Family Residential (SF-5) zoned Lincoln Elementary School site. The site is located on the south side of Lincoln Street between Topeka and Emporia Avenues and a railroad right-of-way/track. The Unified Zoning Code (UZC) defines safety services as “...a facility for conduct of public safety and emergency services, including fire and police protection services and emergency medical and ambulance services.” The Child Advocacy Center of Sedgwick County (CAC) provides immediate services for the young victims of sexual abuse, physical abuse and neglect and their caregivers. The CAC’s services include prosecution: medical, therapy, law enforcement, social services, the advocacy component and mental health. The former school building and its physical site will provide a single facility for the CAC’s +/-60 staff members and the children in need. Safety services are not a permitted use in the SF-5 zoning district. Safety services can be considered in the GO zoning district with a Conditional Use.

The site is located in an older, mostly single-family residential neighborhood that has developed under a mix of SF-5, TF-3 Two-Family Residential (TF-3), MF-29 Multi-Family Residential (MF-29) and B Multi-Family Residential (B) zoning. Most of the neighborhood’s houses were built between 1900-1920. The immediate exceptions are a B and GC General Commercial (GC) zoned church and another B zoned church, both located north of the site across Lincoln Street. Broadway Avenue (previous US 81) and its GC and LC Limited Commercial (“LC”) zoned businesses are located a block west of the site. Active railroad right-of-way/tracks abut the south side of the site. Recent improvements along the north side of the railroad tracks include ornamental but functional metal fencing and pole lights, plus a sidewalk. South of the railroad tracks is a continuation of the older mostly single-family residential neighborhood, plus a small park all contained within a mix of SF-5, TF-3 and MF-29 zoning.

The applicant has proved a site plan that shows extensive redevelopment of the site, including renovation of the existing building, relocation and expansion of parking, and new internal vehicular circulation. Redevelopment of the site will trigger compliance with, but not limited to, landscaping and parking standards.

Analysis: At the June 5, 2013, DAB III meeting, the DAB voted, unanimously (8-0), to approve the requested GO zoning and the Conditional Use for safety services, with the following conditions:

1. The Conditional Use will be for a facility that will house staff for prosecution, medical, therapy, law enforcement, social services, the advocacy component and mental health, as needed for young victims of sexual abuse, physical abuse and neglect and their caregivers.
2. All applicable site development standards of the UZC, Art. IV, Sec. IV shall be applied.
3. Signs shall be a monument type; otherwise all signs shall be as permitted in the GO zoning district. No off-site, billboard, temporary or portable signs shall be permitted. No LED signs.
4. All utilities will be underground.
5. The site shall be developed in general conformance with the approved site plan.
6. 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 the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

At the June 6, 2013, MAPC meeting, the MAPC voted unanimously (11-0) to approve the requested GO zoning and the Conditional Use for safety services, with the above noted conditions. There were no citizens who spoke against the request at the MAPC or DAB meetings. Planning has received no phone calls protesting the request. There have been no valid protest petitions filed with the City Clerk.

Financial Considerations: There are no financial considerations in regards to the zoning request.

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

Recommendation/Actions: It is recommended that the City Council adopt the findings of the MAPC and approve the zone change and the Conditional Use subject to the recommended conditions, authorize the Mayor to sign the ordinance and the resolution and place the ordinance establishing the zone change on first reading (simple majority required).

Attachments:

- Ordinance
- Resolution
- MAPC minutes
- DAB memo

ORDINANCE NO. 49-534

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. ZON2013-00011

Zone change from Single-Family Residential (“SF-5”) to General Office (“GO”) on an approximately 4.9-acre property described as:

All that part of Zimmerly’s 2nd Addition to the City of Wichita, Sedgwick County, Kansas, bounded on the North by Lincoln Street, on the South by Bayley Street, on the West by Topeka Avenue, and on the East by Emporia Avenue, including School Reserve, all Lots, and all Alleys; generally located south of Lincoln Street, between Emporia and Topeka Avenues.

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.

Carl Brewer - Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form: _____
Gary E. Rebenstorf, City Attorney

RESOLUTION No. 13-125

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO PERMIT SAFETY SERVICES, SPECIFICALLY A FACILITY FOR THE YOUNG VICTIMS OF ABUSE ON APPROXIMATELY 4.9-ACRES ZONED GO GENERAL OFFICE (“GO”), GENERALLY LOCATED SOUTH OF LINCOLN STREET, BETWEEN EMPORIA AND TOPEKA AVENUES, IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 44-975 AS AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS:

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, for a Conditional Use to allow Safety Services, specifically a facility for the young victims of abuse, on approximately 4.9-acres zoned GO General Office (“GO”) legally described below:

Case No. CON2013-00011

A Conditional Use to allow Safety Services, specifically a facility for the young victims of abuse, on approximately 4.9-acres zoned GO General Office (“GO”) described as:

All that part of Zimmerly’s 2nd Addition to the City of Wichita, Sedgwick County, Kansas, bounded on the North by Lincoln Street, on the South by Bayley Street, on the West by Topeka Avenue, and on the East by Emporia Avenue, including School Reserve, all Lots, and all Alleys; generally located south of Lincoln Street, between Emporia and Topeka Avenues.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. The Conditional Use will be for a facility that will house staff for prosecution, medical, therapy, law enforcement, social services, the advocacy component and mental health, as needed for young victims of sexual abuse, physical abuse and neglect and their care givers
2. All applicable site development standards of the UZC, Art.IV, Sec.IV shall be applied.
3. Signs shall be a monument type, otherwise all signs shall be as permitted in the GO zoning district. No off-site, billboard, temporary or portable signs shall be permitted. NO LED signs.
4. All utilities will be underground.
5. The site shall be developed in general conformance with the approved site plan.
6. 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 the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

SECTION 2. That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the “Official Zoning District Map” on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION 3. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, City Attorney

**EXCERPT MINUTES OF THE JUNE 6, 2013 WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION HEARING**

Case No.: ZON2013-11 and CON2013-11 - USD 259 (owner) Child Advocacy Center of Sedgwick County, c/o Diana Schunn (applicant) WDM Architects, P.a. c/o Emily Patterson request a City zone change from SF-5 Single-family Residential to GO General Office and a Conditional Use for Safety Services on property described as:

All that part of Zimmerly's 2nd Addition to the City of Wichita, Sedgwick County, Kansas, bounded on the North by Lincoln Street, on the South by Bayley Street, on the West by Topeka Avenue, and on the East by Emporia Avenue, including School Reserve, all Lots, and all Alleys.

BACKGROUND: The applicants are requesting GO General Office ("GO") zoning with a Conditional Use for "Safety Services" on the SF-5 Single-Family Residential ("SF-5") zoned Lincoln Elementary School site. The site is located on the south side of Lincoln Street between Topeka and Emporia Avenues and a railroad right-of-way/track. The Unified Zoning Code ("UZC") defines Safety Services as "...a facility for conduct of public safety and emergency services, including fire and police protection services and emergency medical and ambulance services." The Child Advocacy Center of Sedgwick County (CAC) provides immediate services for the young victims of sexual abuse, physical abuse and neglect and their caregivers. The CAC's services include prosecution, medical, therapy, law enforcement, social services, the advocacy component and mental health. The former school building and its physical site will provide a single facility for the CAC's +/-60 staff members and the children in need; KWCH report, April, 23, 2013. Safety Services are not a permitted use in the SF-5 zoning district. Safety Services can be considered in the GO zoning district with a Conditional Use.

This is an older, mostly single-family residential neighborhood that has developed under a mix of SF-5, TF-3 Two-Family Residential (TF-3"), MF-29 Multi-Family Residential ("MF-29") and B Multi-Family Residential ("B") zoning. Most of the neighborhood's houses were built between 1900-1920. The immediate exceptions are a B and GC General Commercial ("GC") zoned church and another B zoned church, both located north of the site across Lincoln Street. Broadway Avenue (old US 81) and its GC and LC Limited Commercial ("LC") zoned businesses are located a block west of the site. Active railroad right-of-way/track abuts the south side of the site. Recent improvements along the north side of the railroad track include ornamental but functional metal fencing and pole lights, plus a sidewalk. South of the railroad track is a continuation of the older mostly single-family residential neighborhood, plus a small park all contained within a mix of SF-5, TF-3 and MF-29 zoning.

The applicant has proved a site plan that shows extensive redevelopment of the site, including renovation of the existing building, relocation and expansion of parking, and new internal vehicular circulation. Redevelopment of the site will trigger compliance with, but not limited to, landscaping and parking standards.

CASE HISTORY: The property is platted as part of Zimmerly's 2nd Addition, recorded June 4, 1885. Lincoln Elementary School was built in 1938, with expansions in 1975 and 2004. There have been vacation cases involving alleys and utilities; V-0575, VAC2003-26, and VAC2013-00016. VAC2013-00016 is on today's agenda. There have also been adjustments to parking; BZA2003-13 and BZA2003-36.

ADJACENT ZONING AND LAND USE:

NORTH: B, GC	Single-family residential, churches
SOUTH: SF-5, TF-3, MF-29	Railroad right-of-way/track, single-family residential, park
EAST: SF-5, TF-3, MF-29	Single-family residential
WEST: SF-5, TF-3, MF-29	Single-family residential

PUBLIC SERVICES: Lincoln Street is a four-lane minor arterial. Both Topeka and Emporia are collector streets. All services are available at this location.

CONFORMANCE TO PLANS/POLICIES: The “2013 Land Use Guide of the Comprehensive Plan” (Plan) identifies the north portion of the site, where the school building is located as “Major Institutional” and the south, playground portion as “Urban Residential.” The Major Institutional category includes uses such as government facilities, military bases, libraries, schools, cemeteries/churches, hospital and medical facilities. The proposed facility with its mix of staff from, but not limited to, government and medical fits this profile; prosecution, medical, therapy, law enforcement, social services, the advocacy component and mental health (Safety Services). The proposed GO zoning district allows this type of facility with a Conditional Use. The Urban Residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in large urban municipality. Elementary and middle school facilities, churches, playgrounds, parks, and other similar residential-serving uses may also be found in this category. The current SF-5 zoning needs to be change to allow the proposed facility. The UZC identifies GO zoning as appropriate for office development and generally compatible with the “local commercial” or “regional commercial” categories of the Plan.

The site is located within the “South Central Neighborhood Plan;” City Council Ordinance No.47-033, May 16, 2006, and County Commission Resolution No.72-06, May 19, 2006. Lincoln Elementary School is identified as one of three schools in the Plan’s area, the others being Harry Street Elementary and Hamilton Middle School. USD 259 has redrawn its boundaries and Lincoln no longer serves the district’s need, thus its proposed sale and conversion. The proposed facility will offset the loss of the neighborhood school and keep the school building and its site occupied and connected to the neighborhood and the greater Wichita-Sedgwick County Community.

RECOMMENDATION: Based on the information available prior to the public hearing, planning staff recommends that the request for GO zoning with a Conditional Use for Safety Services be APPROVED, subject to the following conditions:

1. The Conditional Use will be for a facility that will house staff for prosecution, medical, therapy, law enforcement, social services, the advocacy component and mental health, as needed for young victims of sexual abuse, physical abuse and neglect and their caregivers
2. All applicable site development standards of the UZC, Art.IV, Sec.IV shall be applied.
3. Signs shall be a monument type, otherwise all signs shall be as permitted in the GO zoning district. No off-site, billboard, temporary or portable signs shall be permitted. NO LED signs.
4. All utilities will be underground.
5. The site shall be developed in general conformance with the approved site plan.
6. 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 the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** This is an older, mostly single-family residential neighborhood that has developed under a mix of SF-5, TF-3 Two-Family Residential (TF-3”), MF-29 Multi-Family Residential (“MF-29”) and B Multi-Family Residential (“B”) zoning. Most of the neighborhood’s houses were built between 1900-1920. The immediate exceptions are a B and GC General Commercial (“GC”) zoned church and another B zoned church, both located north of the site across Lincoln Street. Broadway Avenue (old US 81) and

its GC and LC Limited Commercial (“LC”) zoned businesses are located a block west of the site. Active railroad right-of-way/track abuts the south side of the site. Recent improvements along the north side of the railroad track include ornamental but functional metal fencing and pole lights, plus a sidewalk. South of the railroad track is a continuation of the older mostly single-family residential neighborhood, plus a small park all contained within a mix of SF-5, TF-3 and MF-29 zoning.

- (2) **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned SF-5, which restricts its development to primarily single-family residential and some complementary development such as an elementary school; the site’s former development. In the past, schools sold by USD 259 have been converted to other uses, with most of them becoming apartments, typically after a zone change from SF-5 to some type of multi-family zoning. If approved the request will allow the conversion of the school building into a community oriented use. If not approved the school building will remain vacant until another possible conversion opportunity presents itself or it is torn down and the site is developed as single-family residential.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The proposed facility will be open more days and for longer hours than a school, which will impact the adjacent single-family residences. The conditions of the Conditional Use will help minimize the impact of the development.
- (4) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2013 Land Use Guide of the Comprehensive Plan” (Plan) identifies the north portion of the site, where the school building is located as “Major Institutional” and the south, playground portion as “Urban Residential.” The Major Institutional category includes uses such as government facilities, military bases, libraries, schools, cemeteries/churches, hospital and medical facilities. The proposed facility with its mix of staff from, but not limited to, government and medical fits this profile; prosecution, medical, therapy, law enforcement, social services, the advocacy component and mental health (Safety Services). The proposed GO zoning district allows this type of facility with a Conditional Use. The Urban Residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in large urban municipality. Elementary and middle school facilities, churches, playgrounds, parks, and other similar residential-serving uses may also be found in this category. The current SF-5 zoning needs to be changed to allow the proposed facility. The UZC identifies GO zoning as appropriate for office development and generally compatible with the “local commercial” or “regional commercial” categories of the Plan.
The site is located within the “South Central Neighborhood Plan;” City Council Ordinance No.47-033, May 16, 2006, and County Commission Resolution No.72-06, May 19, 2006. Lincoln Elementary School is identified as one of three schools in the Plan’s area, the others being Harry Street Elementary and Hamilton Middle School. USD 259 has redrawn its boundaries and Lincoln no longer serves the district’s need, thus its proposed sale and conversion. The proposed facility will offset the loss of the neighborhood school and keep the school building and its site occupied and connected to the neighborhood and the greater Wichita-Sedgwick County Community.
- (5) **Impact of the proposed development on community facilities:** Impact on community facilities will be minimal.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

B. JOHNSON moved, **MCKAY** seconded the motion, and it carried (11-0).



**INTEROFFICE
MEMORANDUM**

TO: City Council
FROM: Janet Johnson, Neighborhood Assistant, District III
SUBJECT: ZON20013-00011 & CON2013-00011 – Child Advocacy Center
DATE: June 6, 2013

On Wednesday, June 5, 2013, the District III Advisory Board considered a request for: General Office zoning with a Conditional Use for “Safety Services” on the SF-5 Single-Family Residential zoned Lincoln Elementary School site.

The Child Advocacy Center of Sedgwick County (CAC) provides immediate services for the young victims of sexual abuse, physical abuse and neglect and their care givers. The CAC’s services include prosecution, medical, therapy, law enforcement, social services, the advocacy component and mental health. The former school building and its physical site will provide a single facility for the CAC’s +/-60 staff members and the children in need. Safety Services are not a permitted use in the SF-5 zoning district. Safety Services can be considered in the GO zoning district with a Conditional Use.

The DAB members were provided the MAPD staff report for review. The DAB was informed that the South Central Neighborhood Association enthusiastically supports the Child Advocacy Center going in at the old Lincoln School site.

The DAB members voted 8-0 to recommend that City Council approve the request with the six listed conditions.

Please review this information when ZON20013-00011 & CON2013-00011 – Child Advocacy Center is considered.

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council

SUBJECT: A13-02: Request by Loretta M. Zeller Revocable Trust to annex lands generally located at the northwest corner of MacArthur and Meridian (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Recommendation: Approve the annexation request.

Background: The City has received a request to annex approximately 2.9 acres of land generally located at the northwest corner of MacArthur and Meridian. The annexation area abuts the City of Wichita east of the subject property. On June 6, 2013, the Metropolitan Area Planning Commission approved the Quiktrip 13th Addition plat, subject to the condition of annexation.

Analysis:

Land Use and Zoning: The annexation area consists of approximately 2.9 acres zoned “LC” Limited Commercial and is used for agriculture. The adjacent properties to the north, south, and west are zoned “LC” Limited Commercial and “SF-20” Single Family Residential and are used for agriculture. The adjacent property to the east is zoned “MH” Manufactured Housing and is developed with a mobile home park.

Public Services: Water service is available to serve the annexation area from a main located in Meridian. Sanitary sewer service is available to be extended to serve the annexation area. The Quiktrip 13th Addition plat requires the applicant to pay in-lieu of assessment fees to connect to water service and to guarantee the extension of sanitary sewer to the site.

Street System: The subject property has access to MacArthur and Meridian, both five lane arterial streets. The Quiktrip 13th Addition plat approves two access drives along MacArthur and one access drive along Meridian and restricts one access drive to MacArthur to right turns only.

Public Safety: Fire protection is currently provided to the area on the basis of a first-responder agreement between the City and County, and that service will continue following annexation. The nearest City station is Fire Station No. 12 at 3443 S. Meridian. Upon annexation, police protection will be provided to the area by the Patrol South Bureau of the Wichita Police Department, headquartered at 211 E. Pawnee.

Parks: The nearest park is Southview Park at 2215 W. 45th Street South, which is located approximately three-quarters of a mile south of the subject property. The Parks, Recreation and Open Space Plan recommends major renovation Southview Park.

School District: The annexation property is part of Unified School District 261 (Haysville School District). Annexation will not change the school district.

Comprehensive Plan: The proposed annexation is consistent with the Wichita-Sedgwick County Comprehensive Plan. The annexation property falls within the Wichita 2030 Urban Growth Area as shown in the Plan.

Financial Considerations: The current approximate appraised value of the proposed annexation lands cannot be determined as the applicant is annexing a portion of an existing tax parcel. The future assessed value of this property will depend on the type and timing of any other developments on the proposed annexation property and the current mill levy. At this time, the property owner is anticipating to develop 5,858 square feet of office and commercial uses on the site. The total appraised value of the after completion is estimated at approximately \$500,000. Assuming the current City levy remains about the same, this would roughly yield a total of \$4,034 in City annual tax revenues.

Legal Considerations: The property is eligible for annexation under K.S.A. 12-517, *et seq.* The annexation ordinance has been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended that the City Council approve the annexation request, place the ordinance on first reading, authorize the necessary signatures and instruct the City Clerk to publish the ordinance after approval on second reading.

Attachment: Map Sheet
Ordinance

Planning Agenda

Item: _____

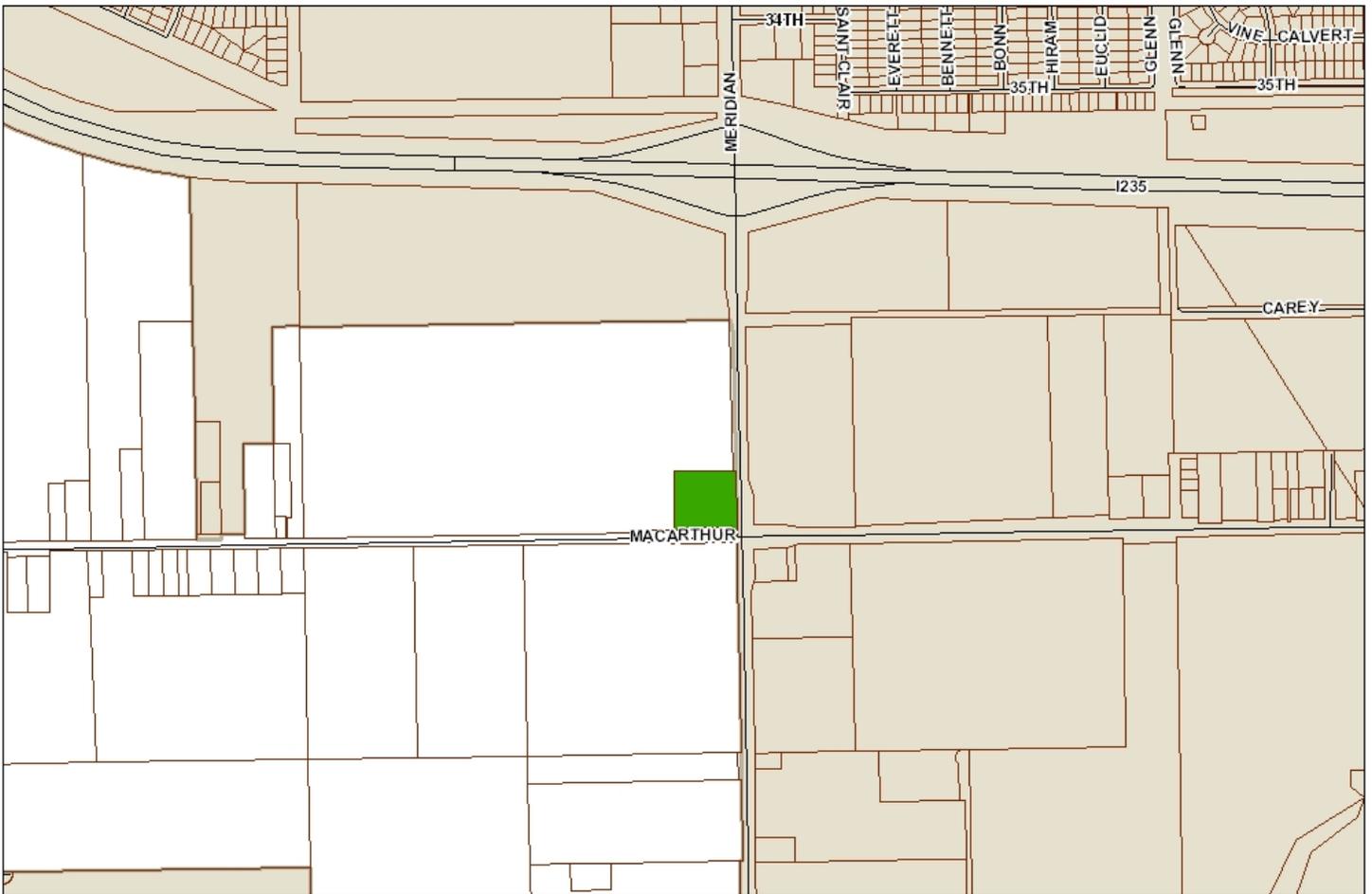
A13-02

Attachment No. 1

An ordinance including and incorporating certain blocks, parcels, pieces, and tracts of land within the limits and boundaries of the City of Wichita, Kansas, and relating thereto.

General Location: Northwest corner of MacArthur and Meridian

Address: _____ N/A _____		Reason(s) for Annexation:	
2.9	Area in Acres	<input checked="" type="checkbox"/>	Request
0	Existing population (est.)	<input type="checkbox"/>	Unilateral
0	Existing dwelling units	<input type="checkbox"/>	Island
0	Existing industrial/commercial units	<input type="checkbox"/>	Other:
Existing zoning: LC Limited Commercial			



- ANNEXATION AREA
- WICHITA
- UNINCORPORATED



Software: ArcGIS
 Map Data Source: City of Wichita
 Sedgwick County
 Prepared: 2/2019

I do understand that while the City of Wichita Data Center Geographical Information Systems Department have no intention and reason to believe that there are inaccuracies in information incorporated in the base map, the Data Center-GIS personnel make no warranty or representation, either expressed or implied, as to the accuracy or data displayed.
 Note: Public property represented on this map is not intended to be inclusive.

PUBLISHED IN THE WICHITA EAGLE ON JULY 12, 2013

ORDINANCE NO. 49-535

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS. (A13-02)

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

SECTION 1. The governing body, under the authority of K.S.A. 12-517, et seq, hereby annexes the following blocks, parcels, pieces and tracts of land and they are hereby included and brought within the corporate limits of the City of Wichita, Kansas and designated as being part of City Council District IV:

BEGINNING at the Southeast corner of said Southeast Quarter of Section 12, Township 28 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence along the south line of said Southeast Quarter on a Kansas coordinate system 1983 south zone bearing of S89°12'52"W, 411.00 feet; thence N01°08'25"W, 411.00 feet; thence N89°12'52"E, 411.00 feet to the east line of said Southeast Quarter; thence along said east line S01°08'25"E, 411.00 feet to the POINT OF BEGINNING, EXCEPT that part designated as MacArthur Road right-of-way lying west of the west right-of-way line of Meridian Avenue.

SECTION 2. That if any part or portion of this ordinance shall be held or determined to be illegal, ultra vires or void the same shall not be held or construed to alter, change or annul any terms or provisions hereof which may be legal or lawful. And in the event this ordinance in its entirety shall be held to be ultra vires, illegal or void, then in such event the boundaries and limits of said City shall be held to be those heretofore established by law.

SECTION 3. That the City Attorney be and he is hereby instructed at the proper time to draw a resolution redefining the boundaries and limits of the City of Wichita, Kansas, under and pursuant to K.S.A. 12-517, et seq.

SECTION 4. This ordinance shall become effective and be in force from and after its adoption and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this _____.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
July 9, 2013

TO: Mayor and City Council

SUBJECT: A13-03: Request by MacWest LLC to annex lands generally located at the southwest corner of MacArthur Road and West Street (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Recommendation: Approve the annexation request.

Background: The City has received a request to annex approximately 28.63 acres of land generally located at the southwest corner of MacArthur Road and West Street. The annexation area abuts the City of Wichita on the north side and at southwest corner of the subject property. On February 21, 2013, the Metropolitan Area Planning Commission approved the MacWest Addition plat, subject to the condition of annexation.

Analysis:

Land Use and Zoning: The annexation area consists of approximately 28.63 acres zoned “LI” Limited Industrial and is used for agriculture. The adjacent properties to north are zoned “LI” Limited Industrial and are used for salvage and contractor services. The adjacent property to the south is zoned “LI” Limited Industrial and is vacant industrial land. The adjacent properties to the east are zoned “LC” Limited Commercial and “SF-20” Single-Family Residential and are developed with an electrical substation and single family residences. The adjacent properties to the west are zoned “LI” Limited Industrial and are vacant industrial land.

Public Services: Water service is available to serve the annexation area from a main located in West Street. Sanitary sewer service is available to be extended from a main located along the south property line. The MacWest Addition plat requires the applicant to pay in-lieu of assessment fees to connect to water service and to guarantee the extension of sanitary sewer to the site.

Street System: The subject property has access to MacArthur Road and West Street, both two lane arterial streets. The MacWest Addition plat approves access drives along both MacArthur Road and West Street in accordance with the Wichita/Sedgwick County Access Management Standards.

Public Safety: Fire protection is currently provided to the area on the basis of a first-responder agreement between the City and County, and that service will continue following annexation. The nearest City station is Fire Station No. 12 at 3443 S. Meridian. Upon annexation, police protection will be provided to the area by the Patrol South Bureau of the Wichita Police Department, headquartered at 211 E. Pawnee.

Parks: The nearest parks are Southview Park at 2215 W. 45th Street South and South Lakes Park at 2211 W. 47th Street South. Both parks are located approximately one mile east of the subject property. The Parks, Recreation and Open Space Plan recommend major renovation or development of both parks.

School District: The annexation property is part of Unified School District 261 (Haysville School District). Annexation will not change the school district.

Comprehensive Plan: The proposed annexation is consistent with the Wichita-Sedgwick County Comprehensive Plan. The annexation property falls within the Wichita 2030 Urban Growth Area as shown in the Plan.

Financial Considerations: The current approximate appraised value of the proposed annexation lands, according to County records, is \$198,270 with a total assessed value of \$24,613. Using the current City levy (\$32.359/\$1000 x assessed valuation), this property roughly yields \$796 in City annual property tax revenues upon annexation. The future assessed value of this property will depend on the type and timing of any other developments on the proposed annexation property and the current mill levy. At this time, the property owner does not have an estimate of the future value of development on the property.

Legal Considerations: The property is eligible for annexation under K.S.A. 12-517, *et seq.* The annexation ordinance has been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended that the City Council approve the annexation request, place the ordinance on first reading, authorize the necessary signatures and instruct the City Clerk to publish the ordinance after approval on second reading.

Attachment: Map Sheet
Ordinance

Planning Agenda

Item:

A13-03

Attachment No. 1

An ordinance including and incorporating certain blocks, parcels, pieces, and tracts of land within the limits and boundaries of the City of Wichita, Kansas, and relating thereto.

General Location:

Southwest corner of MacArthur Road and West Street

Address: 4001 & 4015 W. MacArthur Rd.

Reason(s) for Annexation:

28.62

Area in Acres

X

Request

0

Existing population (est.)

Unilateral

2

Existing dwelling units

Island

0

Existing industrial/commercial units

Other:

Existing zoning:

LI Limited Industrial



- ANNEXATION AREA
- WICHITA
- UNINCORPORATED



Software: ArcGIS
 Map Data Source: City of Wichita Geospatial Information Systems Department
 Prepared: 2/20/09
 It is understood that while the City of Wichita Data Center Geospatial Information Systems Department have no indication and reason to believe that there are inaccuracies in information incorporated in the base map, the Data Center-GIS personnel make no warranty or representation, either expressed or implied, with respect to the information or data displayed.
 Note: Public property represented on this map is not intended to be inclusive.

PUBLISHED IN THE WICHITA EAGLE ON JULY 12, 2013

ORDINANCE NO. 49-536

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS. (A13-03)

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

SECTION 1. The governing body, under the authority of K.S.A. 12-517, et seq, hereby annexes the following blocks, parcels, pieces and tracts of land and they are hereby included and brought within the corporate limits of the City of Wichita, Kansas and designated as being part of City Council District IV:

The north 1322 feet of the Northeast Quarter lying east of the Missouri Pacific Railroad right-of-way, and except roads on the north and east, in Section 14, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas.

SECTION 2. That if any part or portion of this ordinance shall be held or determined to be illegal, ultra vires or void the same shall not be held or construed to alter, change or annul any terms or provisions hereof which may be legal or lawful. And in the event this ordinance in its entirety shall be held to be ultra vires, illegal or void, then in such event the boundaries and limits of said City shall be held to be those heretofore established by law.

SECTION 3. That the City Attorney be and he is hereby instructed at the proper time to draw a resolution redefining the boundaries and limits of the City of Wichita, Kansas, under and pursuant to K.S.A. 12-517, et seq.

SECTION 4. This ordinance shall become effective and be in force from and after its adoption and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this _____.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, Director of Law

CITY OF WICHITA
City Council Meeting
July 9, 2013

TO: Wichita Airport Authority

SUBJECT: LeaseCorp, Inc. Assignment of Lease at ICT (District IV)

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve LeaseCorp, Inc. ICT Lease Assignment.

Background: The Wichita Airport Authority entered into a lease of real estate at Mid-Continent Airport to LeaseCorp, Inc. on June 12, 2012 for construction and operation of private hangar facilities for general aviation use. LeaseCorp, Inc. has constructed hangar facilities, title to which, upon completion, vested in the Wichita Airport Authority. LeaseCorp, Inc. desires to assign its leasehold rights to INTRUST Bank, N.A. as security for project financing.

Analysis: Federal grant assurances and federal regulations generally restrict transfer to third parties of any interest in real estate included in the Airport Layout Plan, and require tenant business entities to be engaged in or operate in support of aeronautical activities. However, this type of assignment of leasehold interest (sometimes referred to as a mortgage of leasehold) is anticipated and expressly permitted by Federal Aviation Administration regulations. This financing opportunity is specifically approved as a standard provision in Wichita Airport Authority lease documents.

Financial Considerations: None. This assignment is revenue and expenditure neutral to the Wichita Airport Authority. Any exercise of this assignment would require INTRUST Bank, N.A. to undertake the scheduled lease payments owed by LeaseCorp.

Legal Considerations: This approval process exercises a right reserved to the Wichita Airport Authority in the underlying lease. The above assignment has been negotiated by and is approved by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the LeaseCorp, Inc. Lease Assignment to INTRUST Bank, N.A.

Attachments: LeaseCorp, Inc./INTRUST Bank, N.A. Lease Assignment.

COLLATERAL ASSIGNMENT OF LEASE

THIS COLLATERAL ASSIGNMENT OF LEASE (this "Assignment") is entered into as of the ____ day of _____, 2013, by and between LeaseCorp Aviation, LLC, a Kansas limited liability company, and INTRUST Bank, N.A., a national banking association ("Assignee").

WITNESSETH

WHEREAS, The Wichita Airport Authority, Wichita, Kansas ("Lessor"), and LeaseCorp Financial, Inc., a Kansas corporation, entered into that certain Use and Lease Agreement dated June 12, 2012, which was assigned by Lease Corp Financial, Inc. to LeaseCorp Aviation, LLC ("Lessee"), as may be amended, incorporated herein by reference (together, the "Lease"), covering certain aircraft hangar operation facilities located at Wichita Mid-Continent Airport, Wichita, Kansas, further described on Exhibit "A" attached hereto and incorporated by reference, and any and all improvements now or hereafter located thereon (such land and improvements being herein referred to collectively as the "Subject Property"); and

WHEREAS, Assignee, as Lender, has agreed to make a loan to Lessee, as Borrower (the "Loan"), evidenced by a promissory note (the "Note") and other related loan documents of even date herewith (collectively, the "Loan Documents"); and

WHEREAS, to secure the Loan, Lessee has agreed to assign to Assignee, and Assignee has agreed to take from Lessee, an assignment of the Lease for collateral purposes, on the terms and conditions set forth herein,

NOW, THEREFORE, the parties hereto agree as follows:

1. Assignment. Lessee, in consideration of the Loan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby absolutely and unconditionally GRANT, CONVEY, ASSIGN, TRANSFER, and SET OVER unto Assignee all rights, interests and estates of Lessee in, to and under the Lease, together with all renewals and extensions of the Lease and other agreements and all other leases or agreements that may hereafter be entered into which cover all or any portion of the Subject Property. This is a present transfer to such lender of all of Lessee's rights to collect and receive rents and charges from approved users, operators, sublessees and permittees.

2. Representations and Warranties of Lessee. Lessee hereby represents and warrants to Assignee that:

(a) Lessee has the right to assign the Lease and the Rents hereby assigned and no other person or entity has any right, title or interest therein, subject to the provisions of Section 16 below, Federal Aviation Administration regulations, and airport grant assurances;

(b) Lessee has performed and will duly and punctually perform all of the terms, covenants, conditions and warranties of the Lease;

(c) Lessee has not at any time prior to the date hereof exercised any right to subordinate any Lease to any deed of trust or mortgage or any other encumbrance of any kind;

(d) Lessee has not executed any prior assignments of the Lease or the Rents;

(e) Lessee has performed no act or executed any other instrument which might prevent Assignee from enjoying and exercising any of its rights and privileges evidenced hereby;

(f) The Lease is valid and subsisting and in full force and effect and unmodified;

(g) There are no rent receipts owed to Lessee under the Lease with Lessor; and

(h) There are no defaults now existing under the Lease and no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default.

3. Limitation of Assignee's Liability. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Lease by reason of this Assignment or the exercise of rights or remedies hereunder. Lessee shall and does hereby agree to indemnify, defend and hold Assignee harmless from and against any and all liability, loss or damage incurred under the Lease by reason of this Assignment or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever that may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Lease. Should Assignee incur any such liability under the Lease by reason of this Assignment or the exercise of rights or remedies hereunder, or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney fees, shall be secured hereby and Lessee shall reimburse Assignee therefor immediately upon demand, failing which Assignee may, at its option, declare all indebtedness secured hereby and by the Loan Documents to be immediately due and payable. This Assignment shall not operate to place responsibility upon Assignee for the control, care, management or repair of the Subject Property, nor for the carrying out of any of the terms and conditions of the Lease; nor shall it operate to make Assignee responsible or liable for any waste committed on the Subject Property or for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair, or control of the Subject Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger.

4. Assignee's Remedies. This Assignment is primary in nature to the obligation evidenced and secured by the Loan, the Loan Documents and any other document given to secure and collateralize the indebtedness secured by the Loan Documents. Lessee agrees that Assignee may enforce this Assignment without first resorting to or exhausting any other security

or collateral; provided, however, that nothing herein contained shall prevent Assignee from suing on the Loan, foreclosing the Loan Documents or exercising any other right under any document securing the payment of the Loan.

5. No Waiver. Nothing contained herein and no act done or omitted by Assignee pursuant to the powers and rights granted hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Documents or a waiver or curing of any default hereunder or under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms of the Loan Documents. The right of Assignee to collect the interest and indebtedness evidenced by the Loan Documents and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

6. Term of Assignment. If the Loan and all other indebtedness secured hereby and by the Loan Documents are paid as the same become due and payable and if all of the covenants, warranties, undertakings and agreements made in the Loan Documents and in this Assignment are kept and performed, this Assignment shall become null and void and of no further force and effect but the affidavit, certificate, letter or statement of any officer, agent or attorney of Assignee showing any portion of the Loan or such other indebtedness to remain unpaid or any of such covenants, warranties, undertakings and agreements not to be kept or performed shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon.

7. Additional Rights of Assignee.

(a) Assignee may take or release other security for the payment of the Loan and other indebtedness secured by the Loan Documents, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of the Loan and such other indebtedness without prejudice to any of its rights under this Assignment.

(b) Assignee may at any time and from time to time in writing: (i) waive compliance by Lessee with any covenant herein made by Lessee to the extent and in the manner specified in such writing; (ii) consent to Lessee doing any act that hereunder Lessee is prohibited from doing, or consent to Lessee failing to do any act which hereunder Lessee is required to do, to the extent and in the manner specified in such writing; or (iii) release any portion of the Subject Property and/or the Lease, or any interest therein, from this Assignment. No such act shall in any way impair the rights of Assignee hereunder except to the extent specifically agreed to by Assignee in such writing.

(c) The rights and remedies of Assignee hereunder shall not be impaired by any indulgence, including, but not limited to, (i) any renewal, extension, or modification that Assignee may grant with respect to any indebtedness secured hereby; (ii) any surrender, compromise, release, renewal, extension, exchange, or substitution that Assignee may grant in respect of any item of the Subject Property and/or the Lease or any part thereof or any interest therein; or (iii) any release or indulgence granted to any endorser, guarantor or surety of any indebtedness secured hereby.

8. Severability. A determination that any provision of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Assignment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

9. No Merger. Notwithstanding (a) the fact that any Lease or the leasehold estate created thereby may be held, directly or indirectly, by or for the account of any person or entity that shall have an interest in the fee estate of the Subject Property; (b) the operation of law; or (c) any other event, the lessee's leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such Lease as assigned by this Assignment.

10. Binding. The terms, provisions, representations, and warranties herein contained shall inure to the benefit of, and bind, the parties hereto and their respective heirs, representatives, successors and assigns, all Lessor approved subtenants and assigns of this Lease, and subsequent holders of the Loan Documents. All references in this Assignment to Lessee or Assignee shall be deemed to include all such heirs, representatives, successors and assigns of such respective party.

11. Additional Documentation. Lessee agrees to and shall promptly execute or cause to be executed and deliver to Assignee a specific assignment of each and every lease hereafter executed and covering all or a portion of the Subject Property, such specific assignment to be in the form of this Assignment.

12. Construction. Within this Assignment, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. The provisions of this Assignment are intended to supplement the provisions contained in the Loan Documents. In the event of any conflict between the terms of this Assignment and the terms of the Loan Documents, the terms of this Assignment shall prevail insofar as the Lease is concerned, but the terms of the Loan Documents shall prevail in all other respects.

13. Counterparts. This Assignment may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument.

14. No Third Party Beneficiaries. It is expressly agreed by the parties hereto that this Assignment shall not be construed or deemed made for the benefit of any third party or parties.

15. Entire Agreement. This Assignment and the Loan Documents contain the entire agreement concerning the assignment of the Lease between the parties hereto. No variations, modifications or changes herein or hereof shall be binding upon any party hereto, unless set forth in a document duly executed by both parties.

16. Use of Subject Property. The parties agree that the Subject Property will be used only for aeronautical purposes, and that further assignment or subletting shall be subject to the prior written consent of Lessor, which shall not be unreasonably denied.

THIS ASSIGNMENT, THE LOAN DOCUMENTS AND OTHER WRITTEN DOCUMENTS EXECUTED CONTEMPORANEOUSLY HERewith REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first written above.

LeaseCorp Aviation, LLC

By its sole Member, LeaseCorp Financial, LLC

By: _____
Raymond L. Koenig, President

INTRUST Bank, N.A.

By: _____
Jack J. Roberts, Senior Commercial
Relationship Manager

LESSOR'S CONSENT

The undersigned, being the Lessor under the Lease described above, does hereby consent to the terms and conditions of the foregoing Assignment. Further, Lessor covenants to Assignee that Lessor shall give notice to Assignee when and as given to Lessee for any event of default by Lessee under the Lease, and Assignee, at its option, shall have the right to correct any condition or to cure any default. Nothing in this instrument shall relieve Lessee of its obligations under the Lease. This Consent is given as of the date first written above.

LESSOR:
The Wichita Airport Authority

By: _____
Carl Brewer, President

Attest:

Karen Sublette, City Clerk

Victor D. White, Director of Airports

Approved as to form:

Gary E. Rebenstorf, Director of Law

STATE OF KANSAS)
COUNTY OF SEDGWICK)

The foregoing Assignment was duly acknowledged before me by Raymond L. Koenig, President of LeaseCorp Financial, Inc., a Kansas corporation, the sole member of LeaseCorp Aviation, LLC, a Kansas limited liability company, on the ___ day of _____, 2013.

Notary Public
My commission expires: _____

STATE OF KANSAS)
COUNTY OF SEDGWICK)

The foregoing Assignment was duly acknowledged before me by Jack J. Roberts, Senior Commercial Relationship Manager of INTRUST Bank, N.A., a national banking association, on the ___ day of _____, 2013.

Notary Public
My commission expires: _____

STATE OF KANSAS)
COUNTY OF SEDGWICK)

The foregoing Assignment was duly acknowledged before me by Carl Brewer, as President of The Wichita Airport Authority, Wichita, Kansas, a Kansas municipal corporation, on the ___ day of _____, 2013.

Notary Public
My commission expires: _____

EXHIBIT A
(Legal Description)