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**ADDITION OF CONSENT ITEM II-21.**
**NEW BUSINESS ITEM IV-4.**

# FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. July 15, 2014

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 8, 2014

---

## AWARDS AND PROCLAMATIONS

Proclamations:
League 42
School Bus Driver Day

Service Award:
Gary Rebenstorf

Presentation to City of Wichita and Mayor from Mayor Goodwin, Burns, Kansas

## 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. Esau Freeman -Signature collection of the marijuana petition.

2. Janice Bradley - The petition to end criminal penalties on cannabis possession in Wichita.

## II. CONSENT AGENDAS

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, Bombardier Learjet. (District IV)

   RECOMMENDED ACTION: Close the public hearing and place on first reading the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Industrial Revenue Bonds for Learjet, Inc. in the amount not-to-exceed $13,796,819.79, release and convey the 2003 bond-financed property and authorize necessary signatures.

2. Alarm Systems Ordinance Chapter 3.41.

   RECOMMENDED ACTION: Adopt the Ordinance and place it on first reading.

3. Operating Partnership Agreement for Kansas Aviation Museum.

   RECOMMENDED ACTION: Approve the Operating Partnership Agreement with the Kansas Aviation Museum.

4. ***2015 Annual Operating Budget and 2014 Budget Revisions.***

   RECOMMENDED ACTION: Set the public hearing on the Proposed 2015 Budget (including the Tax Increment Financing Districts and the Self-Supporting Municipal Improvement District) and the revised 2014 Budget for August 12, 2014; authorize publication of the formal public hearing notice; approve first reading of the general budget, TIF district, and SSMID ordinances; set a maximum amount of taxes levied for the City of Wichita at $102,796,161, based on an anticipated mill levy of 32.509 mills (no change from the current mill levy) and an estimated assessed valuation of $3.162 billion; set the maximum amount of taxes levied for the Self Supporting Municipal Improvement District at **$569,781**, based on an estimate levy of 6.02 and an estimated assessed valuation of $94,653,168.

5. Water and Sewer Utility Refunding Revenue Bond Sale.

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

## 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

1. Wichita Airport Hotel, LLC, d/b/a Hampton Inn - Use and Lease Agreement - Wichita Mid-Continent Airport.

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

---

## COUNCIL AGENDA

### VIII. COUNCIL MEMBER AGENDA

1. Approval of travel expenses for Council Member Pete Meitzner to attend the Passenger Rail Meeting in Topeka, Kansas, July 18, 2014.

   RECOMMENDED ACTION: Approve the expenditures.

2. Approval of travel expenses for Mayor Carl Brewer to attend the Missouri Legislative Black Caucus Foundation Annual Conference in St. Louis, MO, July 24-26, 2014. Mayor Brewer will be the keynote speaker for the Mayor's Forum. All expenses will be reimbursed by the foundation.

   RECOMMENDED ACTION: Approve the expenditures.

## IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

Adjournment

**(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1THROUGH 21)**

## II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts
   a. Report of Board of Bids and Contracts dated July 14, 2014.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

| Renewal | 2014 | (Consumption on Premises) |
|---|---|---|
| Roberto Beltran | Tacos Mexican Food** | 1533 South Seneca |
| Wayne Woolsey | First Eagle Indoor Golf and Training** | 311 South Greenwich |

| Renewal | 2014 | (Consumption off Premises) |
|---|---|---|
| Cari Spainhour | Quik Trip #388R*** | 3820 North Rock Road |

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

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

3. Preliminary Estimates:
   a. Preliminary Estimates - None.

   RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:
   a. Revised Petition for Paving Improvements in Southern Ridge Fourth Addition. (District IV)
   b. Sanitary Sewer Improvements for The Ranch Addition and Stonebridge Second Addition. (District II)

   RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Statement of Costs:
   a. Statement of Costs.

   RECOMMENDED ACTION: Approve and file.

6. Consideration of Street Closures/Uses.
   a. Temporary Street Closure - 55th Street South, West of Seneca. (District IV)
   b. Community Events - Vacation Bible School Block Party. (District I)

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

7. Agreements/Contracts:
   a. Century II Planning and Design Study Contract Amendment No. 1.

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

8. Design Services Agreement:
   a. Capital Improvement Project Design Contracts. (Districts I and II)

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

9. Change Orders:
   a. Change Order for K-96 and Greenwich Interchange. (District II)

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

10. Minutes of Advisory Boards/Commissions

Wichita Employees' Retirement System, May 21, 2014

RECOMMENDED ACTION: Receive and file.

11. Emergency Solutions Grant Contracts.

RECOMMENDED ACTION: Approve the allocation of funds remaining from prior years, and authorize the necessary signatures and contracts as a supplement to the 2014-2015 One Year Action Plan.

12. Payment for Settlement of Claim.

RECOMMENDED ACTION: Authorize payment of $50,000 as full settlement of all possible claims arising out of the events which are the subject of this claim and adopt the resolution.

13. Veterinary Services Group LLC, DBA Veterinary Emergency and Specialty Hospital of Wichita Contract.

RECOMMENDED ACTION: Approve the contract with Veterinary Services Group LLC.

14. General Obligation Sales Tax Bond Sale.

RECOMMENDED ACTION: Approve the Financial Feasibility Study and adopt the resolution: 1) authorizing the sale of General Obligation Sales Tax Bonds; 2) approving the distribution to prospective bidders of the Preliminary Official Statement, subject to such minor revisions as may be determined necessary by the Director of Finance and Bond Counsel; 3) finding that such Preliminary Official Statement is in a form "deemed final" for the purpose of the Securities Exchange Commission's Rule 15c2-12(b)(l), subject to revision, amendment and completion in the final Official Statement; 4) authorizing distribution of the Notice of Sale; and 5) authorizing City staff, in consultation with Bond Counsel to take such further action reasonably required to implement this Resolution.

15. Network Firewall Replacement.

RECOMMENDED ACTION: Approve the expenditure; authorize the purchasing manager to issue a purchase order to Fishnet Security.

16. Telephone System Upgrade.

RECOMMENDED ACTION: Approve the contract and authorize the Purchasing Manager to sign.

17. Second Reading Ordinances: (First Read July 8, 2014)
    a. Second Reading Ordinances.

RECOMMENDED ACTION: Adopt the Ordinances.

## II. CONSENT PLANNING AGENDA ITEMS

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

18. *SUB2013-00046 -- Plat of West High School 2nd Addition located East of Seneca, on the South Side of Lincoln. (District IV)

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

19. *SUB2014-00001 -- Plat of Scholfield Honda Commercial Addition located on the South Side of Kellogg, East of Woodlawn. (District II)

RECOMMENDED ACTION: Approve the documents and plat, authorize the necessary signatures and place the Ordinance on first reading. Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

20. *SUB2014-00013 -- Plat of Ridge 400 3rd Addition located South of Maple, East of Ridge Road. (District IV)

RECOMMENDED ACTION: Approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and place the Ordinance on first reading. Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

## 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.**

## 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.

***21. *WAA Report of Board of Bids and Contracts dated July 11, 2014.***

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

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Public Hearing and Issuance of Industrial Revenue Bonds (Bombardier Learjet) (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 June 3, 2014, the City Council approved a Letter of Intent ("LOI") for Industrial Revenue Bonds ("IRBs") in an amount not-to-exceed $52,700,000 for Bombardier Learjet ("Learjet") to finance expansion and modernization of its aircraft manufacturing plant located at Mid-Continent Airport for a five-year term. The LOI is set to expire on December 31, 2018. The City Council also approved a 100% five-plus-five year property tax abatement on bond-financed property.

The City Council has approved a number of annual IRB issues for Learjet going back to 1961. In 2009, Learjet began requesting semi-annual issues. At this time, Learjet is requesting issuance of IRBs in the amount not-to-exceed $13,796,819.79 to finance its capital investments for the first half of 2014.

**Analysis**: Learjet is a wholly owned subsidiary of Bombardier, Inc. ("Bombardier"), a Canadian corporation headquartered in Montreal, Quebec. Bombardier is engaged in the design, development, manufacturing and marketing of transportation equipment, aerospace and defense products. Learjet is a member of the Bombardier Aerospace Group, and is engaged in the manufacturing and sales of business jet aircraft including the Learjet 40, the Learjet 60, the Learjet 45, and the newest models, the Learjet 70 and 75. Learjet's principal manufacturing facilities, corporate and marketing offices and the Bombardier Flight Test Center are located at One Learjet Way on Mid-Continent Airport.

On November 15, 2011, the City Council approved an Economic Development Grant Agreement in an amount of $1,000,000 (matched by Sedgwick County) for the purpose of incentivizing Learjet to invest nearly $53 million to build and create Centers of Excellence in engineering and information technology, as well as to build a new Bombardier Flight Test Center. Under the terms of the Grant Agreement, Learjet is committed to the creation of 450 new jobs not related to the new Learjet 85 Program by 2017.

The property tax abatement associated with the IRBs was originally approved by the City Council in 2011 as a provision of the Economic Development Grant Agreement, subject to the job creation requirements contained in that agreement. Monitoring of Learjet's expansion by City staff has indicated that Learjet is so far on pace to meet that commitment. Recently announced temporary layoffs are all related to delays in the Learjet 85 rollout and do not impact Learjet's compliance with incentive conditions.

Proceeds from the bonds will be used to finance capital investments made by Learjet in the first half of 2014 to expand and equip manufacturing facilities. Investments include real property improvements to the L85 flight hangar (paving/concrete, mechanical upgrades and structural work) as well as new machinery and equipment related to the C-Series and L85 programs.

In addition to authorizing the issuance of the Series 2014 Industrial Revenue Bonds, the attached bond ordinance also authorizes the release of property financed by Series 2003 Bonds, which have been retired.

The law firm of Gilmore & Bell, PC serves as bond counsel in the transaction. Learjet Inc. will purchase the bonds. Learjet has complied with the Standard Conditions contained in the City's IRB Policy.

**Financial Considerations**: Bombardier Learjet agrees to pay all costs of issuing the bonds and agrees to pay the City's $2,500 annual IRB administrative fee for the term of the bonds. The City Council has approved a 100% abatement of ad valorem property taxes on the expansion project for five years plus a second five years subject to review and approval by the City Council. Bond-financed purchases are also exempt from state and local sales tax. Learjet invested $13,597,608.28 on real property improvements. Based on the 2013 mill levy, the value of the abated taxes on that investment could be as much as $409,972. This estimate assumes that 100% of the $13,597,608.28 cost of improvements to real property will be reflected in a dollar-for-dollar increase in property value. The actual increase in valuation, if any, will be determined by the Sedgwick County Appraisers Office in the future as part of its on-going reappraisal process. The tax abatement would be shared among the taxing entities as follows:

| | | | |
|---|---|---|---|
| City | $ 110,511 | State | $ 5,100 |
| County | $ 99,864 | USD 259 | $ 194,497 |

A cost/benefit analysis ("CBA") was conducted by Wichita State University's Center for Economic Development and Business Research in 2011, in conjunction with the approval of the $1,000,000 economic development grant for Learjet's current expansion. This CBA reflects the fiscal impact of IRB property tax abatements on new facilities as well as the grant. The CBA calculated the following benefit/cost ratios:

| | |
|---|---|
| City overall | 1.60 to one |
| General Fund | 1.26 to one |
| Debt Service | 2.49 to one |
| County | 1.23 to one |
| USD 259 | 19.29 to one |
| State | 46.79 to one |

**Legal Considerations**: Bond documents required for the issuance of the bonds will be prepared by bond counsel. The form of bond documents will be subject to review and approval by the Law Department prior to the issuance of any bonds.

**Recommendations/Actions:** It is recommended that the City Council close the public hearing and place on first reading the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Industrial Revenue Bonds for Learjet, Inc. in the amount not-to-exceed $13,796,819.79, release and convey the 2003 bond-financed property and authorize necessary signatures.

**Attachments**: Bond Ordinance

Gilmore & Bell, P.C.
07/02/2014

(Published in the *Wichita Eagle* on July 25, 2014)

**ORDINANCE NO. 49-783**

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS, TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE THE INSTALLATION OF IMPROVEMENTS TO CERTAIN EXISTING AVIATION MANUFACTURING AND FLIGHT TESTING FACILITIES AND THE ACQUISITION OF CERTAIN MACHINERY AND EQUIPMENT FOR SUCH FACILITIES LOCATED IN THE CITY OF WICHITA, KANSAS; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH

**WHEREAS**, the City of Wichita, Kansas (the "Issuer") is authorized by K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the "Act"), to acquire, purchase, construct, install and equip certain improvements and additions (as defined in the Act) for commercial, industrial and manufacturing purposes, and to enter into leases and lease-purchase agreements with any persons, firm or corporation for said facilities, and to issue revenue bonds for the purpose of paying the cost of any such facilities and to refund such revenue bonds previously issued; and

**WHEREAS,** pursuant to the Act, the Issuer's Governing Body has heretofore: (1) expressed its intent to issue Taxable Industrial Revenue Bonds (Learjet Inc.), in the original aggregate principal amount not to exceed $86,000,000, pursuant to a Letter of Intent dated September 10, 1996; (2) expressed its intent to issue Taxable Industrial Revenue Bonds (Learjet Inc.), in the original aggregate principal amount not to exceed an additional $79,188,000, pursuant to a Letter of Intent dated November 16, 2007; and (3) expressed its intent to issue Taxable Industrial Revenue Bonds (Learjet Inc.) in the original aggregate principal amount not to exceed $52,700,000 dated June 3, 2014 (collectively, the "Letter of Intent"); all for the purpose of paying the cost of constructing, installing and equipping an expansion and improvements to existing aviation manufacturing and flight testing facilities (the "Project"); and

**WHEREAS**, pursuant to various ordinances of the Issuer, the Issuer has heretofore authorized the issuance of twenty-three series of such taxable industrial revenue bonds, in the original aggregate principal amount of $124,290,893.07 (the "Outstanding Bonds"), for the purpose of constructing, equipping and installing portions of the Project; and

**WHEREAS**, in connection with the issuance of the Outstanding Bonds, the Issuer has heretofore authorized (i) the execution and delivery of a Trust Indenture dated as of December 1, 1996, as supplemented and amended from time to time in accordance with the provisions thereof and together with the herein authorized and defined Twenty-Fifth Supplemental Indenture (collectively, the "Indenture") with The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri (as successor to INTRUST Bank, N.A., Wichita, Kansas), as trustee (the "Trustee"), for the purpose of issuing and securing the Outstanding Bonds and any Additional Bonds (as defined therein), and (ii) the execution and delivery of a Lease Agreement dated as of December 1, 1996, as supplemented and amended from time to time in accordance with the provisions thereof and together with the herein authorized and defined Twenty-Fifth Supplemental Lease (collectively, the "Lease"), by and between the Issuer, as lessor, and

Learjet Inc., a Kansas corporation (the "Tenant"), as lessee, under which the proceeds of the Outstanding Bonds were used to pay a portion of the costs of the Project; and

**WHEREAS,** the Issuer has heretofore and does hereby 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 a twenty-fifth series of its taxable industrial revenue bonds to be designated "City of Wichita, Kansas, Taxable Industrial Revenue Bonds, Series III, 2014 (Learjet Inc.)" (the "Series III, 2014 Bonds"), for the purpose of installing the improvements to certain existing aviation manufacturing and flight testing facilities, as well as to acquire certain machinery and equipment for the Project (the "Series III, 2014 Additions"); and

**WHEREAS,** the Series III, 2014 Bonds are more fully described in the Twenty-Fifth Supplemental Indenture and the Twenty-Fifth Supplemental Lease hereinafter authorized; and

**WHEREAS,** the Series III, 2014 Bonds and the interest thereon shall not constitute an indebtedness of the Issuer within the meaning of any constitutional provision or statutory limitation, shall not constitute nor give rise to a pecuniary liability of the Issuer, nor shall any Series III, 2014 Bond or the interest thereon be a charge against the general credit or taxing powers of the Issuer; and

**WHEREAS,** the Series III, 2014 Bonds are not general obligations of the Issuer and are payable solely from certain fees, rentals, revenues and other amounts derived by the Issuer pursuant to the Lease, as the same may be further amended and supplemented and, under certain circumstances, from the proceeds of the Series III, 2014 Bonds and insurance and condemnation awards; and

**WHEREAS,** the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the Series III, 2014 Bonds (i) to execute and deliver a Twenty-Fifth Supplemental Trust Indenture (the "Twenty-Fifth Supplemental Indenture"), for the purpose of issuing and securing the Series III, 2014 Bonds as provided therein; and (ii) to enter into a Twenty-Fifth Supplemental Lease (the "Twenty-Fifth Supplemental Lease"), pursuant to which the Issuer shall cause the Series III, 2014 Additions to be leased to the Tenant in consideration of payments of Series III, 2014 Supplemental Basic Rent, Series III, 2014 Supplemental Additional Rent and other charges provided for therein; and

**WHEREAS,** the Series III, 2014 Bonds shall be equally and ratably secured and on a parity with the Outstanding Bonds and any Additional Bonds (collectively referred to hereinafter as the "Bonds") subject to any partial redemption or release of pledged property permitted by the Lease or Indenture;

**WHEREAS,** the Issuer has heretofore issued its Taxable Industrial Revenue Bonds Series XII, 2003 ("the Series 2003 Bonds") pursuant to a Seventh Supplemental Indenture and Seventh Supplemental Lease each dated as of December 1, 2003; and

**WHEREAS,** the Trustee has certified that the Series 2003 Bonds have been paid in full and no Series 2003 Bonds remain Outstanding; and

**WHEREAS,** the Company desires to exercise its option to purchase that portion of the Project financed with the Series 2003 Bonds (the “2003 Addition”), exclusive of the Issuer's interest in the Premises; and

**WHEREAS,** the City hereby waives the notice provisions of the Seventh Supplemental Lease with respect to the Company's exercise of its option to purchase the 2003 Additions and finds and

determines it necessary and desirable to execute a Bill of Sale conveying the 2003 Additions to the Company and to release the 2003 Additions from the Lease and from the pledge of the Indenture;

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

**Section 1. Definition of Terms.** All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Indenture and Lease.

**Section 2. Authority to Cause the Series III, 2014 Additions to be Constructed, Installed and Equipped.** The governing body of the Issuer hereby declares that the Series III, 2014 Additions, if in being, would promote the welfare of the City of Wichita, Kansas, and the Issuer is hereby authorized to cause the Series III, 2014 Additions to be constructed, installed and equipped all in the manner and as more particularly described in the Twenty-Fifth Supplemental Indenture and in the Twenty-Fifth Supplemental Lease hereinafter authorized.

**Section 3. Authorization of and Security for the Series III, 2014 Bonds.** There is hereby authorized and directed to be issued a series of the Issuer's taxable industrial revenue bonds for the purpose of installing the improvements to certain existing aviation manufacturing and flight testing facilities and additions, as well as acquiring certain machinery and equipment to the existing facilities located in the City of Wichita, Kansas, such series of such taxable industrial revenue bonds to be designated "City of Wichita, Kansas, Taxable Industrial Revenue Bonds, Series III, 2014 (Learjet Inc.)." The Series III, 2014 Bonds shall be dated and bear interest, shall be in an aggregate principal amount, 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 Series III, 2014 Bonds shall be equally and ratably secured and on a parity with the Outstanding Bonds and any Additional Bonds, subject to any partial redemption or release of pledged property permitted by the Lease or Indenture. The Series III, 2014 Bonds shall be special limited obligations of the Issuer payable solely from the revenues derived by the Issuer pursuant to the Lease, or otherwise in connection with the Project. The Series III, 2014 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the Issuer within the meaning of any constitutional or statutory provision and shall not be payable in any manner from tax revenues. The Series III, 2014 Bonds shall be secured under the provisions of the Indenture and are authorized hereby.

**Section 4. Authorization of Twenty-Fifth Supplemental Indenture.** The Issuer is hereby authorized to enter into the Twenty-Fifth Supplemental Trust Indenture under which the Issuer shall pledge and assign to the Trustee, for the benefit of the holders of the Bonds, the Trust Estate referenced herein, all upon the terms and conditions set forth in the Indenture.

**Section 5. Lease of the Series III, 2014 Additions.** The Issuer shall cause the Series III, 2014 Additions to be leased by the Issuer to the Tenant pursuant to and in accordance with the provisions of the Twenty-Fifth Supplemental Lease.

**Section 6. Authorization of Bond Purchase Agreement.** The Series III, 2014 Bonds shall be sold and delivered to Learjet Inc., upon the terms and subject to the provisions of the Bond Purchase Agreement herein authorized (the "Bond Purchase Agreement"), by and between the Issuer and Learjet Inc., as purchaser.

**Section 7. Approval of Guaranty Agreement.** The form of Guaranty Agreement pursuant to which the Tenant guarantees to the Trustee, for the benefit of the Owners of the Series III, 2014 Bonds,

the full and prompt payment of the principal of, redemption premium, if any, and interest on the Series III, 2014 Bonds, is hereby approved.

**Section 8. Authorization of Bill of Sale.** The City is hereby authorized to deliver a Bill of Sale conveying the 2003 Additions from the City to the Tenant.

**Section 9. Authority To Correct Errors, Etc**. The Mayor or member of the Issuer's governing body authorized to exercise the powers and duties of the Mayor in the Mayor's absence, the City Clerk and any Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed which may be necessary to correct errors or omissions therein or to conform the same to the other provisions of said instruments or to the provisions of this Ordinance.

**Section 10. Execution of Series III, 2014 Bonds and Agreements.** The Mayor of the Issuer is hereby authorized and directed to execute the Series III, 2014 Bonds and deliver the same to the Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor or Vice Mayor is hereby further authorized and directed to execute and deliver the Twenty-Fifth Supplemental Indenture, the Twenty-Fifth Supplemental Lease and the Bond Purchase Agreement for and on behalf of and as the act and deed of the Issuer with such minor corrections or amendments thereto as the Mayor or Vice Mayor shall 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. The City Clerk and any Deputy City Clerk of the Issuer are hereby authorized and directed to attest the execution of the Series III, 2014 Bonds, the Twenty-Fifth Supplemental Indenture, the Twenty-Fifth Supplemental Lease and the Bond Purchase Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 11. Pledge of the Project.** The Issuer hereby pledges the Series III, 2014 Additions and the net revenues therefrom to the payment of the Outstanding Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the Series III, 2014 Bonds shall be deemed to have been paid within the meaning of the Indenture, as the same may be amended.

**Section 12. Further Authority.** The Issuer shall, and 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 and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the Series III, 2014 Bonds, the Twenty-Fifth Supplemental Indenture, the Twenty-Fifth Supplemental Lease and the Bond Purchase Agreement all as necessary to carry out and give effect to the transaction contemplated hereby and thereby.

**Section 13. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City of Wichita, Kansas and publication once in the official newspaper of the Issuer.

*Remainder of the Page Intentionally Left Blank*

**PASSED** by the Governing Body of the City of Wichita, Kansas, on July 22, 2014.

CITY OF WICHITA, KANSAS

(Seal)

By_____
Carl Brewer, Mayor

Attest:

By_____
Karen Sublett, City Clerk

Approved as to form:

By_____
City Attorney

JLN\600809.128\BOND ORDINANCE

(Signature page to Bond Ordinance)

PROPOSED SUMMARY OF BOND ORDINANCE:

(Published in the *Wichita Eagle* on July 25, 2014)

**SUMMARY OF ORDINANCE NO. _____**

On July 22, 2014, the governing body of the City of Wichita, Kansas passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS, TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE THE INSTALLATION OF IMPROVEMENTS TO CERTAIN EXISTING AVIATION MANUFACTURING AND FLIGHT TESTING FACILITIES AND THE ACQUISITION OF CERTAIN MACHINERY AND EQUIPMENT FOR SUCH FACILITIES LOCATED IN THE CITY OF WICHITA, KANSAS; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH

The Ordinance authorizes the Issuer to issue its Taxable Industrial Revenue Bonds, Series III, 2014 (Learjet Inc.) (the "Bonds"), for the purpose of paying the costs of the constructing, installing and equipping an expansion and improvements to existing aviation manufacturing and flight testing facilities (the “Series III, 2014 Additions”), as more fully described in the Twenty-Fifth Supplemental Indenture and Twenty-Fifth Supplemental Lease authorized by the Ordinance. The Series III, 2014 Additions will be leased by the Issuer to Learjet Inc., a Kansas corporation. In connection with the issuance of the Bonds, the Issuer approves a 10 year exemption from ad valorem property taxes for the Series III, 2014 Additions, subject to certain conditions.

A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, City Hall, 455 N. Main, 13th Floor, Wichita, Kansas 67202 A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.wichita.gov.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: July 22, 2014

_____
City Attorney

JLN\600809.128\BOND ORDINANCE (07-02-14)

**City of Wichita**
**City Council Meeting**
July 15, 2014

**TO**: Mayor and City Council

**SUBJECT:** Alarm Systems Ordinance Chapter 3.41

**INITIATED BY:** Police Department

**AGENDA:** New Business

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**Recommendation:** Place Alarm Systems Ordinance Chapter 3.41 on first reading.

**Background:** Each year the City of Wichita responds to over 18,000 false alarms. These responses create a financial burden for the City, and also divert public safety resources from actual emergencies. To reduce the number of false alarms and their financial cost for City emergency service providers, the City of Wichita implemented the Alarm Systems Ordinance in 1999. The ordinance requires alarm companies to be licensed by the City, all alarm systems must be registered, and fees are assessed to alarm users who have false alarms.

In June 2010, the City Council revised the Alarm Systems Ordinance. In an effort to reduce false alarms and to partially offset the cost of responding to false alarms, the ordinance revisions increased the false alarm fees on a graduated schedule, but continued the practice of not charging for the first false alarm. The changes also included an annual $25 alarm registration fee, required from all alarm users. In December 2010, a waiver was added allowing that no registration fee shall be assessed for a registration renewal if the alarm user has not had a false alarm within the 12 months preceding the registration renewal date.

**Analysis**: Since the adoption of the new ordinance on August 1, 2010, alarm administration staff has continuously reviewed its implementation and effectiveness. Following the changes in 2010, a slight reduction in the number of false alarms did occur. However, in subsequent years, the number of false alarms has risen slightly each year. The significant reduction in false alarms anticipated with the adoption of the 2010 ordinance revisions has not occurred. Also, based on feedback from alarm users and alarm companies, the 2010 ordinance revisions made the ordinance confusing and were not user-friendly.

As a result, staff held multiple meetings with all involved City departments and the Sedgwick County Emergency Communication Center to identify areas of the ordinance for improvement. Based on these meetings, it was determined that the Alarm Systems Ordinance needs to be restructured, terminology and verbiage need to be updated, and enforcement capabilities need to be enhanced. Staff does not recommend changing any fees currently assessed by the ordinance, or adding new fees to the ordinance. Due to the number of changes recommended, the current ordinance Chapter 3.40 would be repealed in its entirety and replaced with the new version of the ordinance under Chapter 3.41. The proposed revisions were presented to alarm companies and alarm users during public meetings and in online forums.

There are three major changes proposed for the Alarm Systems Ordinance: restructuring the sections of the ordinance, transferring the responsibility of initial alarm system registration to the alarm user, and revising the non-response clause. The current ordinance is disjointed and confusing. Restructuring the sections of the alarm ordinance will make it easier for alarm companies and alarm users to read and understand the ordinance, and will eliminate duplicated information. Currently, alarm companies are responsible for completing the initial registration of the alarm system for their customers. By transferring the registration responsibility to the alarm user, the City will be able to gather additional information

specific to each alarmed location, which is unable to be provided by the alarm company, and ensure all information on the alarm user's permit is correct. In the 2010 ordinance revisions, a clause was added allowing the City to suspend response to alarm systems based on non-payment of false alarm fees. This clause has not been previously enforced due to unclear verbiage and no accountability for habitual alarm abusers. As part of the proposed changes, the non-response clause will include enhanced enforcement capabilities, clear verbiage, and a reinstatement processed designed not only to collect outstanding fees due to non-payment, but also to reduce the number of false alarms, which is the goal of the alarm ordinance.

**Financial Considerations**: The ordinance does not impact the current fee structure. The amount of false alarm revenue collected could decrease if the ordinance is successful in reducing the number of false alarms. However, any revenue loss would be offset by improved effectiveness of Police and Fire responders.

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

**Recommendations/Actions:** It is recommended that the City Council adopt the ordinance and place it on first reading.

**Attachments:** Alarm Systems Ordinance Chapter 3.41

First Published in The Wichita Eagle on July 25, 2014

06/12/14

083303

ORDINANCE NO. 49-785

AN ORDINANCE CREATING CHAPTER 3.41 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ALARM SYSTEMS AND REPEALING THE ORIGINAL OF CHAPTER 3.40 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1. Section 3.41.010 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Purpose.** The City Council has determined that the high number of false alarm responses being required of law enforcement, fire and emergency medical personnel in response to alarm system activations in the City requires adoption of the following regulations to reduce the number of such false alarms."

SECTION 2. Section 3.41.020 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Definitions.** As used in this Chapter, the following words shall have the following meanings:

*'Alarm Administrator'* means the person(s) designated by the Chief of Police to administer the provisions of this Chapter, and monitor, control and review alarm response procedures and alarm business activities.

*'Alarm Business'* means any individual, partnership, corporation or other entity which has as one of its principal business purposes the altering, installing, leasing, selling, maintaining, repairing or servicing an alarm system or fire alarm system or which

causes any of these activities to take place. Such term shall also include alarm monitoring companies who engage in the activity of monitoring alarm systems.

*'Alarm Monitoring Company'* means the person who shall be responsible for determining that an alarm system has been activated and notifying the communications center of the alarm activation and the need of an emergency response by law enforcement, fire or emergency medical personnel.

*'Alarm site'* means a single fixed premises or location served by an alarm system or systems. Each unit, if served by a separate alarm system in a multi-unit building or complex, shall be considered a separate alarm site.

*'Alarm System'* means an assembly of equipment, devices or a single device arranged to signal the presence of a hazard requiring urgent attention and to which law enforcement, fire or emergency medical personnel are expected to respond. The following devices shall not constitute an alarm system:

1. Smoke alarms;
2. Other alarms designated to merely give internal on-premises notification of an alarm condition;
3. Alarm devices affixed to motor vehicles;
4. Hand-held personal safety devices not connected to a central monitoring system or station;
5. Security alarm systems which are not monitored by an alarm monitoring company.

*'Alarm User'* means any person who has an operational alarm system on premises under the person's control.

*'ANSI/SIA Control Panel Standard CP-01'* means the ANSI - American National Standard Institute approved security industry association - SIA CP-01 Control Panel Standard, as may be updated from time to time, that details recommended design features

for security system control panels and their associated arming and disarming devices to reduce the incidence of false alarms. Control panels built and tested to this standard or any subsequent standard established by Underwriters Laboratory (UL), or other nationally recognized testing organizations, will be marked to state: "Design evaluated in accordance with SIA CP-01 Control Panel Standard Features for False Alarm Reduction."

*'Automatic Dialing Device'* means an alarm system which automatically sends over regular telephone lines, by direct dialing or otherwise, a prerecorded voice message or coded signal indicating the existence of the emergency situation the alarm system is designed to detect.

*'Board'* means the Board of Electrical Appeals.

*'Certified alarm installer'* means an individual who holds a certificate issued by the City of Wichita, evidencing such person to be qualified to install, service, maintain, repair and replace residential and commercial alarm systems.

*'Chief of Police'* means the Chief of Police of the City or a designated representative.

*'City'* means the City of Wichita, Kansas.

*'City Attorney'* means the City Attorney or Director of Law of the City or a designated representative.

*'City Manager'* means the City Manager of the City or a designated representative.

*'City Treasurer'* means the City Treasurer of the City or a designated representative.

*'Communications center'* means the Sedgwick County Department of Emergency Communications.

*'Direct connect'* means an alarm system which has the capability of transmission and reception of alarm system signals directly to the communications center.

*'Director of Emergency Communications'* means the Director of the Sedgwick County Department of Emergency Communications or a designated representative.

*'Director of Metropolitan Area Building and Construction Department (MABCD)'*means the Director of the Metropolitan Area Building and Construction Department (MABCD) of the City or a designated representative.

*'Emergency medical personnel'* means employees of the Sedgwick County Emergency Medical Service.

*'False alarm'* means: 1) the activation of an alarm system in the City resulting in a request for response by law enforcement, fire or emergency medical personnel when a situation requiring a response does not, in fact, exist at the time of activation of the alarm; or 2) an alarm system designed to be used to report a robbery or holdup, when used for any other purpose.

A false alarm may be the result of, but not limited to, mechanical or electronic failure, malfunction, improper installation, improper adjustment, accidental tripping, misoperation, misuse, defect or negligence of a person.

*'Fire alarm'* means an alarm to which fire personnel have been requested to be dispatched to respond.

*'Fire alarm system'* means an alarm system designed to signal the presence of a hazard requiring urgent attention and to which fire personnel are expected to respond.

*'Fire Chief'* means the Chief of the Wichita Fire Department or a designated representative.

*'Fire personnel'* means employees of the Wichita Fire Department.

*'Governmental building alarm system'* means any alarm system installed in any location owned or used by the United States government, the state and its political subdivisions, the City of Wichita or any agencies thereof. For the purposes of this Chapter, this shall include any location owned or used by public schools.

*'Law enforcement personnel'* means any person vested by law with a duty to maintain public order or to make arrests for violations of the laws of the state or ordinances of the City and includes regular and reserve personnel of the Wichita Police Department.

*'MABCD'* means the Metropolitan Area Building and Construction Department of the City.

*'Medical alarm system'* means an alarm system designed to signal the presence of a hazard requiring urgent attention and to which emergency medical personnel are expected to respond.

*'Multiple alarm system'* means any of the following:

a. Separate structures each having their own alarm system which are located at the same street address and are owned by the same person or business; or

b. A single structure which has more than one alarm system, or more than one alarm business monitoring alarms within the structure.

*'Person'* means any person, firm, partnership, association, corporation, company or organization of any kind.

''*Security alarm'* means an alarm to which law enforcement personnel have been requested to be dispatched to respond.

*'Security alarm system'* means an alarm system designed to signal the presence of a hazard requiring urgent attention and to which law enforcement personnel are expected to respond.

*'Smoke alarm'* means a single- or multiple-station alarm responsive to smoke and not connected to a system.

*'UBTC'* means the Wichita-Sedgwick County Unified Building and Trade Code."

SECTION 3. Section 3.41.025 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Direct connection and automatic dialing prohibited—Exceptions—Penalty.**

All direct connections, direct-dials, or automatic-dialing devices of alarm systems to the communications center shall be prohibited except governmental building alarm systems. It is unlawful for any person to use a randomized automatic dialing device to dial directly into the communications center whether by dialing 911 or otherwise. Every person who is convicted of violating this Section shall be guilty of a misdemeanor."

SECTION 4. Section 3.41.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"License required.**

(a) It is unlawful for any person to engage in the operation of an alarm business within the City without having first obtained a license to operate such a business from the City Treasurer.

(b) Any person who violates the provisions of this Section shall be guilty of a misdemeanor and shall be punished by a fine of not more than $500.00 or

imprisonment of a term not to exceed six (6) months or by both such fine and imprisonment."

SECTION 5. Section 3.41.035 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Certifications—Persons engaged in installation or repair of alarm systems.**

(a) It is unlawful for any person to engage in the altering, installing, maintaining, repairing or servicing of an alarm system within the City limits, or causing the same to take place without having been certified for the particular classification of system involved.

(b) Any person desiring to engage in or work in the business of installing, repairing or altering alarm systems shall make application to the MABCD for a certificate.

(c) A security alarm certificate issued to an individual wishing to engage in the business of or perform the act of installing, repairing or replacing security alarm systems shall authorize such individual to engage in such activities.

(d) No certificate shall be issued to any individual to install security systems who is not certified by the Kansas Electronic Security Alliance, Electronic Security Association, or other national testing agency with a test designed specifically for alarms.

(e) A fire alarm certificate issued to an individual wishing to engage in the business of or perform the act of installing, repairing or replacing fire alarm systems shall authorize such individual to engage in such activities.

(f) No certificate shall be issued to any individual to install, repair or replace fire alarm systems who is not certified by the National Institute for Certification in Engineering Technologies (NICET II, III or IV) or the International Municipal Signal Association (IMSA I or II).

(g) The fee for certificates shall be established by the Director of MABCD to cover the administrative costs of issuing such certificates. All such certificates shall be renewed every two (2) years upon payment of a fee established by the Director of MABCD to cover the administrative costs of issuing such certificates. All certificates expire on the thirty-first day of December of each odd-numbered year and no reduction shall be made for part of the year being elapsed. Certificates which have not been renewed by March 1st after their expiration, may be subject to appearance before the Board prior to reissuance of a certificate.

(h) The Board of Electrical Appeals is authorized to cancel, suspend and/or revoke the certificate of any alarm installer issued by the MABCD."

SECTION 6. Section 3.41.038 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Apprentice and/or helper.** An apprentice or helper shall be permitted to perform the act of installing, repairing or replacing any alarm system within the City when he or she is on the job site with and under the direct supervision of an alarm technician certified by Section 3.41.035 of this code. Both individuals must be employed by a licensed alarm contractor. If an apprentice or helper works without the required

supervision, both the alarm contractor and the apprentice/helper shall be guilty of violating the terms of this Chapter."

SECTION 7. Section 3.41.040 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"License fee.**

(a) Each application for an alarm business license, whether a new application, renewal, as a result of a license revocation, or due to a change in business ownership or other status shall be accompanied by an annual fee of $100.00."

SECTION 8. Section 3.41.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"License application—Form and content.**

(a) Any person wanting to obtain a license to operate an alarm business in the City shall make application on a form provided therefore to the City Treasurer. Said application shall be verified, accompanied by the required application fee and contain at a minimum the following information:

(1) Date of application;

(2) Name, address and telephone number of the business and type of business organization (individual, partnership, corporation or limited liability company). If an individual, the name, date of birth, race, sex, address, telephone number and email address of the proposed licensee; if the business is a partnership, corporation or limited liability company, the same information required of an

individual applicant is required of all partners, officers, or members of the business.

(3) The name, telephone number and email address of a primary contact person to whom any inquiries regarding the license application may be directed;

(4) Any name under which the applicant will be doing business as ("dba") if different from the name provided in subsection (2), however, a business shall be limited to only one "dba" name per license, and must obtain a separate license for any additional "dba" name.

(5) Name, address, telephone number and email address of the person certified, as required by Section 3.41.035 of this code, who is responsible for repair and maintenance of the alarm systems;

(6) A list of all felony convictions of any person required to be named on the application;

(7) A statement that monitoring for the alarm systems leased or installed by the alarm business will be offered on a 24-hour, seven-day-a-week basis;

(8) A statement that the applicant and all agents, representatives and employees of the applicant will, at all times, comply with all the laws of the United States and state, ordinances of the City and resolutions of Sedgwick County in the operation of the alarm business;

(9) The applicant will provide a statement that no agent, representative or employee of the applicant whose duties include entry into personal residences or any other premises is a registered sex offender, and that applicant has, subject to audit by the Chief of Police, performed the necessary background check of any agent, representative or employee to insure that such statement is correct.

(10) A copy of such person's certification as required by Section 3.41.035 if such person is also engaged in the business of or engages in the altering, installing, maintaining, repairing or servicing alarm systems. For purposes of this subsection, a license may be issued to any firm, co-partnership or corporation of which at least one active member or officer who devotes full-time to the firm, co-partnership or corporation has received such certification;

(11) A statement certifying that the alarm business has provided to the Alarm Administrator or his or her designee a complete and current customer list in a format acceptable to the Alarm Administrator or a designated representative;

(12) Proof of general liability insurance coverage. Such insurance policy shall be written with an insurance company licensed to do business in the state and shall have minimum limits of coverage of $300,000.00 per occurrence; and

(13) A Certificate of Good Standing from Kansas, or other state of incorporation or registration, if the applicant is a corporation, partnership or limited liability company.

(b) The application must be signed by an individual applicant personally; a partnership application must be signed and acknowledged by a partner; a corporation or limited liability company application must be signed by an officer of the corporation or a member of the limited liability company legally authorized to sign corporation or company documents.

(c) All applicants shall, in addition to the payment of the above fees, submit payment to the Alarm Administrator of all fees and/or penalties assessed under the terms of this Chapter prior to submitting the license application as a requirement of completing the application process."

SECTION 9. Section 3.41.060 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Investigation of application—Issuance, term, posting and renewal of license, license nontransferable.**

(a) Upon receipt of an application for an alarm business license and payment of the required fees, the City Treasurer shall refer the application to the Chief of Police, Director of MABCD and the City Attorney for investigation and recommendation regarding issuance of the license. Approval shall be recommended so long as the application is complete and provides all required information, except that no license shall be issued for any of the following reasons:

(1) Any individual applicant, or, if the applicant is a corporation, partnership or other business entity, any owner, manager, partner, director, officer or member of the business has ever been convicted of a felony;

(2) If the applicant, within two years immediately preceding the date of making application, has violated any provision or requirement of this Chapter;

(3) If the alarm business to be licensed owes any fees and/or penalties assessed in accordance with this Chapter.

(4) If the alarm business to be licensed has failed to provide to the Alarm Administrator, at the time of license application, a complete and current customer list in a format acceptable to the Alarm Administrator; or.

(5) If the alarm business to be licensed has failed to provide proof of current liability insurance as required by Section 3.41.050 by submitting such proof with the license application.

(6) If the applicant has failed to provide a statement that no agent, representative or employee of the applicant whose duties include entry into personal residences or any other premises is a registered sex offender, or has failed to perform the necessary background check of any agent, representative or employee to insure that such statement is correct.

(b) For the purposes of this Section, the filing of charges or a conviction in a court of law is not required to establish that a licensee or applicant has violated any of provisions or requirements of this Chapter. A copy of a journal entry showing the disposition of such a violation from any local or state court shall be considered *prima facia* evidence of a violation. A conviction shall include being adjudged guilty upon entering a plea of no contest, but shall not include being placed on diversion.

(c) Upon favorable recommendation of the Chief of Police, Director of MABCD, and the City Attorney, the City Treasurer shall issue an alarm business license to an applicant.

(d) A license issued pursuant to the terms of this Chapter shall be displayed and available for inspection on the business premises of the licensee.

(e) A license issued under the terms of this Chapter shall be for a term of one year from the date of issuance, which term or fee shall not be adjusted or extended for late renewal applications. Renewal of such license shall be accomplished in the same manner as issuance of the initial license.

(f) No license issued under this Chapter shall be transferable or assignable. Such license shall be issued for one particular business entity, which shall be stated in the application, and may not be transferred to any other business entity upon sale or change of ownership thereof.

(g) No license will be issued under this Chapter for more than one name under which the licensee will be doing business ("dba") if different from the name provided in Section 3.41.050(a)(2). A business shall be limited to

only one “dba” name per license and must obtain a separate license for any additional “dba” name.

(h) If an applicant is denied an alarm business license under this Section, the applicant has the right to appeal by following the procedure as set forth in Section 3.41.080. If an appeal is not filed within ten (10) business days, the denial shall be final.”

SECTION 10. Section 3.41.070 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**“Revocation or suspension of license.**

(a) Any license issued under this Chapter may be suspended, for a period not to exceed thirty calendar days, or revoked by the Chief of Police, the Director of MABCD, or the City Treasurer if it is determined that the licensee, or if the licensee is an organization, any of its officers, directors, partners, associates or employees has:

(1) Made any false statement or given any false information in connection with an application for a license or a renewal or a reinstatement thereof;

(2) Violated any provision of this Chapter;

(3) Committed any act which would be grounds for denial of an application for a license or otherwise becomes ineligible for a license;

(4) Failed to pay the annual license fee or any other fees or penalties assessed under this Chapter.

(b) If the Chief of Police, the Director of MABCD, or City Treasurer suspends or revokes an alarm business license under the provisions of this Section, the licensee shall be notified in writing, which notice shall be either personally served upon the licensee or sent by certified mail, return receipt requested. The written notice of the suspension or revocation shall include:

(1) The reason for suspension or revocation;

(2) The effective time and date of the suspension or revocation;

(3) If a suspension, the length of time of such suspension;

(4) If applicable, a statement regarding any action which may be taken so the license may be reinstated;

(5) The date by which the licensee must surrender the license to the City Treasurer; and

(6) A statement of the right to reconsideration of, and appeal from, the revocation and the procedure to be followed as required in Section 3.41.080.

(c) If an appeal is not filed within ten business days, the action of the Chief of Police, the Director of MABCD, or the City Treasurer shall be final.

(d) If a license is suspended under this Section, the license may be reinstated if the reason for suspension is removed and the Alarm Administrator is notified in writing of such removal.

(e) If a license is revoked under this Section, the former licensee shall not be issued a new license for a period of not less than two (2) years from the

date of revocation. Engaging in the operation of an alarm business within the City without a business license shall constitute a violation of Section 3.41.030 of this Chapter, and shall be punishable as set forth therein."

SECTION 11. Section 3.41.080 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Appeal procedure.**

(a) Any applicant or licensee aggrieved by the denial, suspension, or revocation of an alarm license may file with the City Clerk a written Notice of Appeal to the City Council within ten (10) business days of the decision by the Chief of Police, Director of MABCD or City Treasurer . The Notice of Appeal shall specify:

(1) The name and address of the appellant;

(2) The date of application;

(3) The date of the denial, suspension, or revocation of the license or application;

(4) The factual basis for the appeal.

(b) Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than thirty (30) calendar days from the date of the filing of the Notice of Appeal with the City Clerk The City Clerk shall also notify the Chief of Police, Director of MABCD, Law Department and/or City Treasurer who shall prepare the record of denial, suspension or revocation and forward all documentation for review to the City Clerk within ten (10) business days.

(c) Any appeal shall stay the only the suspension or revocation of the license until the matter is heard by the City Council.

(d) The City Council may approve the denial, suspension, or revocation, overrule the denial or suspension, or modify the decision of the Chief of Police, Director of MABCD, Law Department, or City Treasurer. The decision of the City Council shall be effective immediately. All appeals to the governing body shall be on the record.

(e) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, or suspension of the license by the City Council."

SECTION 12. Section 3.41.090 of the Code of the City of Wichita, Kansas, is hereby 1reated to read as follows:

**"Installation Requirements.**

(a) All alarm systems or any of its component parts shall be installed in accordance with Section 4 of the UBTC.

(b) Fire alarm systems shall be installed in accordance with the provisions of Title 15 of the City of Wichita Code and Sections 2 and 4 of the UBTC.

(c) Upon enactment of this ordinance, alarm installation companies shall use only ANSI/SIA CP-01 listed alarm control panels on new installations, panel replacements or upgrades of security alarm systems.

(d) It is unlawful for any person to install or replace a fire alarm system unless a permit has been issued for such work. Permits and inspection shall be obtained as required by Section 4 of the UBTC.

**Fire Alarm System Installation Permit Fee Schedule**

| | |
|---|---|
| 0—10 Devices | $50.00 |
| 11—25 Devices | $90.00 |
| 26—100 Devices | $140.00 |
| 101—200 Devices | $200.00 |
| 201—400 Devices | $350.00 |
| 401—600 Devices | $525.00 |
| Over 600 Devices | $525.00 plus $50.00 for each additional 100 devices or fraction thereof |

(1) Any person who installs any fire alarm devices for which a permit and inspection are required without first obtaining a permit shall pay a special permit fee of double the amount of the permit issuance as listed above.

(2) Where extra inspections are made because of faulty construction or failure to make necessary repairs, a fee established by the Director of MABCD to cover the administrative costs may be charged for each inspection.

(3) Reserved.

(4) Every permit issued by MABCD under the provisions of this Code shall expire by limitation and become null and void if the work authorized by the permit is not commenced within 180 calendar days from the date of such permit, or if the work authorized by such permit is suspended or abandoned at any time after the work

is commenced for a period of 180 calendar days, or 180 calendar days have expired since an inspection, as required by Section 4 of the UBTC was requested and such inspection was approved by the building authority."

SECTION 13. Section 3.41.100 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Alarm business required operational practices.** Each alarm business licensed under this Chapter will be required to conduct its operations in compliance with the following standards and practices:

(a) It shall be the responsibility of the alarm business, at time of installation of an alarm system, to:

(1) Offer service either directly or through an agent for that alarm system on a 24-hour, seven-day-a-week basis for the purposes of repairing or servicing the system to correct any malfunctions which may occur. This information shall be provided in writing at the time of the lease or installation. The alarm business shall have a person certified, pursuant to Section 3.41.035, who is responsible for repair and maintenance of the alarm system.

(2) Provide the Alarm User written instructions on how to operate the system and any user maintenance which may be required. These instructions shall be clear, concise and in language the Alarm User can read and understand.

(3) Provide the Alarm User a written copy of the City of Wichita's false alarm penalties and procedures, provided by the Alarm Administrator.

(b) An alarm monitoring company, at the time of alarm activation, shall attempt to verify each alarm signal, utilizing ECV (Enhanced Call Verification) before contacting the communications center for a response; except hold-up, panic, medical or fire alarm signals, which must be dispatched immediately upon receipt of such signals per City Code 15.01.010.

(c) An alarm monitoring company, when contacting the communication center regarding an alarm, shall provide the Alarm User's name, address, permit number, and a description of the zone coverage for the alarm. For the purpose of clarity and uniformity in the reporting of alarm conditions to the communications center by alarm monitoring companies, the Director Of Emergency Communications shall establish such rules and regulations as are reasonably necessary.

(d) At the time of licensing or renewal of a license issued pursuant to this Chapter, each alarm business shall submit to the Alarm Administrator, or a designated representative, a current and complete customer list in a format acceptable to the Alarm Administrator. Such information shall remain confidential, shall not be released to the public and shall be used to assist in creating tracking and response data by the Alarm Administrator."

SECTION 14. Section 3.41.110 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Alarm System Registration Fee.**

(a) Each alarm system for which the Alarm User elects to have law enforcement or fire personnel response must be registered with the Alarm Administrator for a fee of $25.00. Renewals shall be subject to the same fee as initial registrations. No registration or renewal fees shall be charged for governmental building alarm systems."

SECTION 15. Section 3.41.115 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Alarm system registration and annual renewal by Alarm User.**

(a) It shall be the responsibility of the Alarm User to register their alarm system(s) with the Alarm Administrator within five (5) business days of installation. Registration shall be completed using a form provided by the Alarm Administrator and shall be subject to the registration fee set forth in Section 3.41.110.

(b) Medical alarm systems shall not be required to be registered with the Alarm Administrator. However, if an alarm activation from a medical alarm system is received by the communication center requesting law enforcement personnel response for any situation other than a medical emergency, the system shall then be subject to registration with the Alarm Administrator and all fees and/or penalties shall also apply as set forth in this Chapter.

(c) All registrations shall include the following information:

(1) The address of the Alarm Site where the alarm system is located;

(2) The name, complete address, and telephone number of the Alarm User or designated representative who will be responsible for the proper maintenance and operation of the alarm system;

(3) The classification of the Alarm Site as residential, commercial, medical only, or government alarm system;

(4) Mailing address, if different from the address of the Alarm Site;

(5) The name, complete address and telephone number of the designated representative(s) who respond to the Alarm Site in the event the Alarm User is unable to respond to allow law enforcement, fire or emergency medical personnel access to the location;

(6) The name, complete address and telephone number of the alarm business responsible for the installation of the alarm system;

(7) The name, complete address and telephone number of the alarm business responsible for monitoring the alarm system, if different from the installation business.

(d) Alarm registrations shall expire one (1) year after the date of issuance, which term or fee shall not be adjusted or extended for late renewals. The Alarm Administrator shall notify the Alarm User of the necessity to renew the alarm registration 30 calendar days prior to the expiration date.

(e) No fee shall be assessed for registration renewals if the Alarm User has not had a false alarm, as defined by this Chapter, within the twelve (12) months preceding the registration renewal date.

(f) On the renewal form provided by the Alarm Administrator, the Alarm User shall verify that all contact and alarm business information on file with the Alarm Administrator is correct. All incorrect information must be corrected with the Alarm Administrator within ten business days of the renewal notification.

(g) No registrations issued under this Chapter shall be transferable. Any change of address or ownership of a business or residence shall require the alarm system to be re-registered and shall be subject to the fee set forth in Section 3.41.110.

(h) It is unlawful for any Alarm User or the owner of any premises with an alarm system to operate or use an alarm system or allow operation or use of an alarm without the alarm being registered. Pursuant to Section 3.41.120(b), an administrative penalty of $150.00 shall be assessed against the Alarm User for failure to register or renew the registration of the system after being notified by the Alarm Administrator of the need to register or renew the alarm system.

(i) All information provided on registration and renewal forms shall remain confidential, shall not be released to the public and shall be used to assist in creating tracking and response data by the Alarm Administrator. The

Alarm Administrator shall have the right to audit the information provided to verify its accuracy."

SECTION 16. Section 3.41.118 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Duties of Alarm Users.** It shall be the responsibility of the Alarm User to:

(a) Register and annually renew their alarm system with the Alarm Administrator as set forth in Section 3.41.115;

(b) Maintain the premises and alarm system in a manner that will reduce or eliminate false alarms;

(c) Respond or cause a representative to respond to the alarm system's location within 30 minutes upon notification of an alarm activation, to provide the right of entry to the premises for law enforcement, fire, or emergency medical personnel, or to provide alternative security for the premises;

(d) Ensure that an alarm is not manually activated by the Alarm User or any other person for any reason other than an occurrence of an event that the alarm system was intended to report;

(e) Notify the Alarm Administrator if there is a change of address or ownership of a business or residence, change of alarm monitoring company for the location or if there is updated information, within ten (10) business days of the change occurring."

SECTION 17. Section 3.41.120 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"False alarm fee and disputes.**

(a) Except as otherwise provided in this Chapter, an Alarm User to which law enforcement personnel or fire personnel are requested to respond to a false alarm, shall be charged a false alarm fee. The Alarm User shall be assessed the following fees for each false alarm:

| Number Of Alarms | False Alarm Fee—Security Alarms | False Alarm Fee—Fire Alarm |
|---|---|---|
| 1 | $0.00 | $0.00 |
| 2 | $40.00 | $100.00 |
| 3 | $40.00 | $100.00 |
| 4 | $60.00 | $150.00 |
| 5 | $60.00 | $150.00 |
| 6 | $120.00 | $300.00 |
| 7—9 | $200.00 | $500.00 |
| 10th or more | $350.00 | $750.00 |

Graduated false alarm fees will be based only on the same type of previous false alarm. No response fee shall be charged for the first false alarm, regardless of type, each registration year.

False alarms resulting from the following shall not be counted against the Alarm User and no response fee shall be charged:

(1) When it is reasonable to assume that the alarm was due to violent conditions of nature including an electrical storm which have been verified by the National Weather Service to have been in the area where the alarm system is located at the time of the activation;

(2) Cable, line or power failure which has been specifically verified by the appropriate utility company serving the alarm location;

(3) For those alarms where the communications center is notified within four (4) minutes of receipt of notification of the alarm that emergency medical, law enforcement or fire personnel are not required;

(4) For those alarms resulting from valid situations requiring an urgent response by law enforcement, fire or emergency medical personnel as verified by a report filed by such personnel; or

(5) For those alarms received from a medical alarm system;

(6) For alarms from governmental building alarm systems.

(b) If an alarm is received by the communications center from an alarm system which has not been registered or renewed with the City, as required in Section 3.41.115, an administrative penalty of $150.00 shall be assessed against the Alarm User for having failed to register or renew the system. Such penalty shall be in addition to the false alarm charges assessed to the alarm user.

(c) Should a disagreement arise over whether any particular false alarm fee or administrative penalty should be assessed, the facts surrounding the circumstances of the alarm activation shall, within 30 calendar days of the date of the first invoice for the alarm, be presented in writing by the Alarm User, along with a $10.00 administrative fee for each false alarm being disputed, to the Alarm Administrator. The Alarm Administrator shall

promptly forward the written fee dispute to the Chief of Police or for fire alarms, the Chief of the Wichita Fire Department. The Chief of Police or the Fire Chief shall, after consideration of all the information presented, determine whether a false alarm fee should be assessed. In the event of determination that no false alarm fee should be assessed, the $10.00 administrative fee shall be refunded to the Alarm User or alarm business, provided the Alarm User does not have any other outstanding fees owed. Failure to submit an appeal within 30 calendar days of notification shall constitute a waiver of the right to contest the assessment of the fees or penalties.

(d) If disagreement still exists after consideration by the Chief of Police or the Fire Chief, the facts surrounding the alarm activation shall be presented to the City Manager who shall, after consideration of all the information presented, determine whether a false alarm fee should be assessed. All such disagreements must be presented in writing by the Alarm User or alarm business to the City Manager within 30 days after the date of notification of the Chief of Police's or Fire Chief's determination that a false alarm fee is due as a result of the particular alarm being questioned; otherwise the determination that the fee is due shall be deemed correct.

(e) In making the determinations required by subsections (d) and (e) of this Section, the Chief of Police, Fire Chief or the City Manager shall give consideration to the following, if presented, in addition to all other information presented:

(1) The purpose of this Chapter as expressed in Section 3.41.010 of this Code;

(2) The Alarm User's history of valid and false alarms;

(3) Violent conditions of nature, including electrical storms, existing at the time of the activation;

(4) Other circumstances not reasonably subject to control by the Alarm User or alarm business;

(5) Information from utility companies concerning cable, line or power failures or problems;

(6) Information from law enforcement, fire or emergency medical personnel who responded to the alarm activation; and

(7) The presence or absence of any direct or indirect evidence that a situation requiring an urgent response existed at the time of the alarm activation.

(f) The false alarm fee or administrative penalty under this Section shall be due and payable to the Alarm Administrator or a designated representative within 30 days after receipt of notification that such fee is due. Further, if the fee is not paid within 60 days of such notification, a late fee in the amount of $10.00 per alarm call shall be added to the amount due. An additional late fee of $10.00 will be assessed on each false alarm fee which remains unpaid 90 days following notification. After 90 days, following notice to the Alarm User, the account may be turned over for

collection. The City Attorney is authorized to use any legal means to recover the administrative penalties and fees assessed by this Chapter."

SECTION 18. Section 3.41.123 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Suspension of response.**

(a) Response to alarm systems by law enforcement or fire personnel may be suspended if:

(1) An alarmed location has more than six (6) false alarms during the 12-month registration period; and/or

(2) An alarmed location fails to pay fees or penalties as set forth in this Chapter.

(b) Written notice that the communication center will not respond to further alarms will be mailed to the Alarm User and any alarm monitoring company via certified mail, and shall specify the date on which response will be suspended, which date shall be no less than 30 calendar days from the date of the notice.

(c) Response may be reinstated if the alarm user:

(1) Pays, or otherwise resolves to the satisfaction of the Alarm Administrator, all fees and/or penalties: and

(2) Submits a certification from an alarm company, properly licensed by City of Wichita, stating that the alarm system has been inspected and repaired (if necessary), is in proper working order,

and that the Alarm User has been re-trained on the proper use of the alarm system.

(d) Reinstatement of response will be effective within five (5) business days of the Alarm Administrator's receipt of payment and certification by the alarm company."

SECTION 19. Section 3.41.125 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Duties and authority of the Alarm Administrator.** The Alarm Administrator shall:

(a) Establish a procedure for the notification to an Alarm User of a false alarm. The notice shall include the following information:

1. the date and time of law enforcement response to the false alarm; and

2. A statement urging the Alarm User to ensure that the alarm system is properly operated, inspected, and serviced in order to avoid false alarms and resulting fines.

(b) The Alarm Administrator may require a conference with an Alarm User and the alarm installation company and/or monitoring company responsible for the repair or monitoring of the alarm system to review the circumstances of each false alarm. For these purposes, the alarm company must have a designated contact on record with the Alarm Administrator.

(c) The Alarm Administrator may create and implement an on-line Alarm User Awareness Class. The Alarm Administrator may request the

assistance of alarm associations, alarm companies and law enforcement agencies in developing and implementing the class. The class shall inform alarm users of the problems created by false alarms and teach Alarm Users how to avoid generating false alarms. Providing that the Alarm User does not have outstanding fees owed to the City of Wichita, A passing test score on the on-line test may be used to satisfy fees and/or penalties incurred for one false alarm per registration year. The class must be completed by the Alarm User within sixty (60) days of receiving notification or assessment of a false alarm fee and/or penalty.

(d) The Alarm Administrator shall maintain statistics and records which may be utilized to determine the effectiveness of this Code in reducing false alarms. Such records shall include the number of registered alarm systems, the increase or decrease of registered alarm systems from the previous year, the number of false alarms each year, the decrease or increase in the number of false alarms and the total of all false alarm fees assessed and the amount of false alarm fees collected each year."

SECTION 20. Section 3.41.128 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Confidentiality of information.** All information submitted in compliance with this Chapter shall be held in strictest confidence; shall be deemed a public record exempt from disclosure; and shall be kept so the contents thereof shall not be known except to persons responsible for administration and enforcement of this Chapter. Nothing herein, however, shall prevent the use of such information for law enforcement purposes."

SECTION 21. Section 3.41.130 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Ad hoc committee.**

(a) The City Council may appoint an ad hoc committee to advise the council on matters relating to alarm regulation.

(b) The membership of the ad hoc committee shall be as determined by the City Council.

(c) Upon completion of the work for which the committee was requested and submission of its report, the committee shall be dissolved."

SECTION 22. Section 3.41.135 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Penalty.** Except as otherwise provided for by this Chapter, every person who violates any of the provisions of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than $500.00. Each day any violation of this Chapter continues shall constitute a separate offense."

SECTION 23. Section 3.41.140 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Validity.** Should any section, paragraph, sentence, clause or phrase of this Chapter be declared unconstitutional or invalid for any reason, the remainder shall not be affected thereby and shall remain in full force and effect, and the same shall not affect the validity of the remaining portions."

SECTION 24. Section 3.41.145 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Government immunity.** Alarm registration is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, of response. Any and all liability and consequential damage resulting from the failure to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. By applying for an alarm registration, the Alarm User acknowledges that the Wichita Police Department response may be influenced by factors such as: the availability of police units, priority of calls, weather conditions, traffic conditions, emergency conditions, staffing levels and prior response history."

SECTION 25. Section 3.41.150 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Enforcement.** The Wichita Police Department, Wichita Fire Department and Metropolitan Area Building and Construction Department and the authorized representatives of such departments shall be responsible for the enforcement of all provisions of this Chapter."

SECTION 26. The original of chapter 3.40 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 27. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon October 1, 2014, and upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 22nd day of July, 2014.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

**Agenda Item No. IV-3**

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Operating Partnership Agreement for Kansas Aviation Museum (All Districts)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** New Business

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**Recommendation:** It is recommended that the City Council approve the Operating Partnership Agreement with the Kansas Aviation Museum.

**Background:** On July 16, 2013, the City Council approved the addendum to the 2008 Cultural Arts Plan. A notable policy that developed as a result of the addendum was the identification of the Cultural Institutions and the recommendation for the implementation of Operational Partnership Agreements between the City and the Cultural Arts organizations. A Cultural Institution as defined by the Cultural Arts Plan is an arts and cultural organization with operations and activities in a facility that is owned and/or operated by the City of Wichita.

In the fall of 2013, the City of Wichita began negotiations with various Cultural Institutions. Due to the previous historical agreements between the City of Wichita and the various Cultural Institutions, it was imperative to retain and recognize the unique differences between the various agreements while trying to standardize the expectations for City owned and/or operated facilities. The Kansas Aviation Museum has completed negotiations that define the City's expectations for this organization and identified anticipated funding amounts.

**Analysis:** The purpose of having the Operational Partnership agreement is to outline fiduciary and maintenance roles and responsibilities for both the organization and the City. This agreement has been negotiated individually to address the unique relationship the City has with this facility while outlining performance expectations and maintenance responsibilities.

Notable points in the agreement include:

- Identify major system maintenance items such as HVAC systems or other systems outlined by City staff during a joint inspection. Maintenance that is identified as the responsibility of the City will be completed at the City's discretion.
- Identify regular system maintenance for minor and routine maintenance the organization will be responsible for performing.
- Agree that the organization shall be responsible for payment of utility services.
- Identify performance measures that are to be reviewed and adjusted after completion and filing of an annual Operating Agreement Report and that address the following:
    - Establish and annually review and report its identified mission and core goals, which should be supportive of the goals set out in the City's Cultural Arts Plan; and
    - Analyze and demonstrate how its annual programming activities and functions are appropriate and supportive of its mission and core goals; and
    - Maintain the vitality of its governing board by demonstrating how the board attendance and participation requirements have been enforced; how its adherence to established term limits has been met; and how racial, geographical, and economic diversity has been

sought; and
    - Demonstrates progress satisfactory to the City toward attainment of its Agreed Performance Measures which will be an attached as Exhibit C to the contract.
- Identify direct payment of funds that may be used by the organization for operations.
- Prepare an evaluation and review of needs for capital improvements for the facility.

**Financial Consideration:** The individual Operating Partnership Agreement identifies the direct payment of funds which may be used for the organization's operations. Funding in the operating agreement will change annually based on the estimated change in the City's assessed valuation. This will provide the same approximate mill levy equivalent for the organization each year of the agreement.

**Legal Consideration:** The Operating Partnership Agreement has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the Operating Partnership Agreement with the Kansas Aviation Museum.

Attachments: Operating Partnership Agreements
Exhibit A – Lease Agreement
Exhibit B - Operating Agreement Report form
Exhibit C – Performance Measures

**LEASE AGREEMENT**

AGREEMENT and LEASE made this 30th day of October, 1990, by and between THE CITY OF WICHITA, a municipal corporation, hereinafter called "Lessor", and THE KANSAS AVIATION MUSEUM, INC., hereinafter called "Lessee."

WITNESSETH:

WHEREAS, Pursuant to Section 203(k)(3) of the Federal Property and Administrative Services Act of 1949 as amended (40 U.S.C. 484[k][3]), and in accordance with the rules and regulations of the General Services Administration, Lessor intends to acquire a portion of McConnell Air Force Base, commonly referred to as "Building 1," which is located on a tract of land in the Northwest Quarter of Section Twelve (12), Township Twenty-eight (28) South, Range One (1) East of the Sixth Principal Meridian, legally described as:

> Commencing at the northeast corner of said Northwest Quarter, thence west 497.38 feet on an assumed bearing of North 90 degrees West along the north line of said Northwest Quarter to a point 2,170.42 feet from the northwest corner of said Northwest Quarter; thence 30.00 feet on a bearing of South 00 degrees West to the south right-of-way line of Hamilton Road (31st Street South) and to the point of Beginning; thence with the following distances and bearings from the preceding course; thence 490.25 feet on a bearing of South 00 degrees 00 minutes 00 seconds West; thence 253.90 feet on a bearing of South 18 degrees 46 minutes 00 seconds West; thence 389.40 feet on a bearing of South 50 degrees 29 minutes 00 seconds West; thence 285.26 feet on a bearing of South 62 degrees 51 minutes 00 seconds West; thence 26.76 feet on a bearing of South 68 degrees 07 minutes 15 seconds West; thence 553.32 feet on a bearing of South 34 degrees 39 minutes 05 seconds East; thence 529.18 feet on a bearing of NOrth 73 degrees 30 minutes 20 seconds East; thence 377.90 feet on a bearing of North 13 degrees 25 minutes 00 seconds East; thence 176.92 feet on a bearing of North 76 degrees 35 minutes 45 seconds West; thence 100.00 feet on a bearing of

North 01 degrees 19 minutes 30 seconds East; thence 146.51 feet on a bearing of North 07 degrees 44 minutes 55 seconds West; thence 89.02 feet on a bearing of North 65 degrees 26 minutes 40 seconds West to a point of intersection with a curve; thence Northerly 421.20 feet along a curve to the left having a central angle of 19 degrees 56 minutes 45 seconds with a radius of 1,209.92 feet, and with a great chord of 419.08 feet having a bearing of North 12 degrees 50 minutes 55 seconds East to a point of intersection with a radial line or said curve; thence 6.59 feet on a bearing of North 87 degrees 07 minutes 30 seconds West along the radial line of said curve to a point of intersection with a curve; thence Northerly 294.20 feet along a curve to the left having a central angle of 11 degrees 20 minutes 05 seconds with a radius of 1,489.52 feet, and with a great chord of 294.20 feet having a bearing of North 02 degrees 47 minutes 30 seconds West to a point of tangency; thence 30.33 feet on a bearing of North 08 degrees 27 minutes 25 seconds West along the tangent to the preceding curve to the south right-of-way line of said Hamilton Road; thence 46.25 feet on a bearing of North 90 degrees West along said south right-of-way line to the point of beginning. Said tract contains 54,570 Sq. Yds. or 11.275 Acres, hereinafter referred to as the "Premises"; and,

WHEREAS, at such time as Lessor acquires title to said building and parcel of land Lessee is desirous of leasing the same for use as an aviation museum.

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

1. **GRANT OF LEASEHOLD.** At such time as Lessor acquires title to the Premises, Lessor by these presents rents, leases and lets unto Lessee, for the rentals and upon the terms and conditions hereinafter set forth, the Premises.

2. **TERM.** The term of this lease shall be for thirty (30) years (the Primary Term), commencing on the date that Lessor acquires title to the Premises and ending on the thirtieth anniversary of such date; provided, however, that this lease shall be automatically extended for a term of ten (10) years from the date

of the expiration of the Primary Term (the Extended Term) and for up to six (6) additional ten (10) year extensions unless sooner terminated by the parties in accordance with the terms of this Lease.

3. **RENT.** Lessee shall pay as rent the sum of TEN DOLLARS ($10.00) per year, payable in advance on the first day of the Primary Term of this lease and on each subsequent anniversary of that date so long as this lease remains in force and effect.

4. **REPRESENTATIONS BY LESSEE.** Lessee represents that it is a not for profit corporation duly organized and existing under the laws of the State of Kansas, duly authorized and qualified to do business in the State of Kansas, with lawful power and authority to enter into this lease, acting by and through its duly authorized officers. Lessee shall maintain and preserve its existence and organization as a not for profit corporation and its authority to do business in the State of Kansas.

5. **USE OF PREMISES.** Lessee shall use the Premises for an air museum, and such use shall be in conformance with the requirements set forth in the Program of Preservation and Utilization, attached hereto as Exhibit A and incorporated herein, as the same may from time to time be amended with the concurrence of the United States Government and with the requirements set forth in Lessor's Application for Obtaining Real Property for Historic Monument Purposes which is attached and incorporated herein as Exhibit B. Lessee understands and agrees that in all respects use of the Premises as an air museum shall be governed by the Program of Preservation and utilization and any reservations,

restrictions and conditions which are placed upon the property in the deed of conveyance to Lessor by the General Services Administration which is attached hereto as Exhibit C and incorporated herein.

6. **LESSEE'S COVENANTS.**

A. That it will be the Lessee's responsibility and obligation to perform, meet and comply with all requirements of the Program of Preservation and Utilization, attached as Exhibit A, which was a part of Lessor's application to obtain the property, as the same may be from time to time amended to include rehabilitation, maintenance, and repair of the leased Premises. In addition Lessee shall comply with each and every term and condition upon which Lessor obtained the said property, regardless of whether such term or condition is set forth in the Application for Obtaining Real Property for Historic Monument Purposes (Exhibit B, hereto), the Program of Preservation and Utilization, deed of conveyance (Exhibit C, hereto), or otherwise, all of which are attached and incorporated herein by reference, and Lessee shall indemnify and hold Lessor harmless from any liability in the event of failure to do so, including any liability to the United States Government.

B. (1) The Lessee shall protect, indemnify, and save harmless the LESSOR from and against any and all losses, damages, and claims, for personal injury, property damage, or otherwise which may be incurred by the Lessor or asserted against it, arising out of the use and occu-

pancy of the demised Premises by the Lessee, their sub-lessees, or permitees, or in any manner arising out of a breach or default in the performance of this lease by the Lessee, whether such losses, damages, or claims shall occur on or outside of the demised premises.

(2) The Lessee shall protect, indemnify, and save harmless the Lessor from and against any and all losses, damages, and claims, for personal injury, property damage, or otherwise which may be incurred by the Lessee or asserted against it, arising out of the use and occupancy of the demised premises by the Lessee, their sub-lessees, or permitees, or in any manner arising out of a breach or default in the performance of this lease by the Lessor, including, but not limited to, the Lessee's obligation to make major repairs to the Premises and to perform maintenance obligations, and whether such losses, damages, or claims shall occur on or outside of the demised premises.

(3) The Lessee shall, at its own expense, procure and at all times during the terms of this lease and extensions thereof maintain insurance with one or more companies permitted to do business in the State of Kansas, as follows:

(a) Workmen's Compensation and Disability Benefits Insurance such as will protect the Lessee from any and all claims under the Workmen's Compensation Act of the State of Kansas;

(b) Comprehensive general liability insurance including bodily injury and property damage coverage which shall name the Lessor as an additional insured and shall have limits of not less than $500,000, or such other amount as is established by the Kansas legislature as the maximum amount for which a municipality can be held liable under the Kansas Tort Claims Act, for injuries or death of one person and $500,000, or such other amount as may from time to time be established by the Kansas legislature as the maximum amount for which a municipality can be held liable under the Kansas Tort Claims Act for injuries to or death of more than one person in any one accident, and $500,000, or such other amount as is established by the Kansas legislature as the maximum amount for which a municipality can be held liable under the Kansas Tort Claims Act, aggregate for property damage resulting from any one occurrence. Such insurance shall include (a) broad form contractual liability insurance, (b) products and completed operations liability insurance, and (c) elevator liability insurance.

(c) The Premises shall at all times be insured by Lessee against loss or damage by fire, lightning and other risks covered by broadest form extended coverage insurance endorsement then in use

in the State of Kansas in an adequate amount to cover the full replacement cost of the premises and any improvements thereto.

(d) The Lessor and Lessee waive all rights against each other for damage caused by fire or other perils to the extent covered by insurance obtained pursuant to this subparagraph or any other property insurance purchased by either party.

(e) All policies and certificates of renewal covering the aforesaid insurance shall be subject to the approval of the Lessor. Copies of all such insurance policies shall be filed with the Lessor and shall be endorsed to require the insurer to furnish the Lessor thirty (30) days' prior written notice of any cancellation of or material changes in such policies.

The Lessee may, at its own expense, carry such other insurance in its own name as it may deem desirable.

C. Lessee shall have and is hereby given the right, at its sole cost and expense, to make such additions, changes and alterations in and to any part of the Premises as Lessee from time to time may deem necessary or advisable; provided, however, Lessee shall not make any major addition, change or alteration which is not in compliance with the Program of Preservation and Utilization or other limitation under which Lessor acquired the property as it may be amended from time

to time. All additions, changes and alterations made by Lessee pursuant to the authority of this paragraph shall (a) be made in a workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, shall be deemed a part of the leased property; provided, however, that additions of machinery, equipment and/or personal property of Lessee and not considered a part of the property shall remain the separate property of Lessee and may be removed by Lessee prior to expiration of the Term of this Lease; provided further, however, that all such additional machinery, equipment and/or personal property which remain on the property after the termination of this Lease for any cause shall, upon and in the event of such termination, become the separate and absolute property of Lessor.

D. Lessee shall have and is hereby given the right, at its sole cost and expense, to construct on the Premises, or in airspace above the Premises, such additional buildings and improvements as Lessee from time to time may deem necessary or advisable so long as the same are within the approved Program of Rehabilitation and Utilization under which Lessor acquired the property as it may from time to time be amended. All additional buildings and improvements constructed by Lessee pursuant to the authority of this paragraph shall, during the term of this Lease, remain the property of Lessee and may be added to, altered or razed and removed by Lessee

at any time during the Term hereof. Lessee covenants and agrees (a) to make all repairs and restorations, if any, required to be made to the property because of the construction of, addition to, alteration or removal of, said additional buildings or improvements, (b) to keep and maintain said additional buildings and improvements in good condition and repair, ordinary wear and tear excepted (c) to promptly and with due diligence either raze and remove from the Land, in a good, workmanlike manner, or repair, replace or restore such of said additional buildings or improvements as may from time to time be damaged by fire or other casualty, and (d) that all additional buildings and improvements constructed by Lessee pursuant to this Section which remain in place after the termination of this Lease shall, upon and in the event of such termination, become the separate and absolute property of Lessor.

E. Lessee shall not do or permit others under its control to do any work in or in connection with the Premises or related to any repair, rebuilding, restoration, replacement, alteration of or addition to the Premises, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have first been procured and paid for. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental

regulations and requirements and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease.

F. Lessee shall not do or suffer anything to be done whereby the Premises or any part thereof, may be encumbered by any mechanic's or other similar lien and if, whenever and so often as any mechanics' or other similar lien is filed against the Premises, or any part thereof, Lessee shall discharge the same of record within Thirty (30) days after the date of filing. Notice is hereby given that Lessor does not authorize or consent to and shall not be liable for any labor or materials furnished to Lessee or anyone claiming by, through or under Lessee upon credit, and that no mechanics' or similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of Lessor in and to the Premises, or any part thereof.

G. Lessee, notwithstanding the above, shall have the right to contest any such mechanics' or other similar lien if within said Thirty (30) day period stated above it (i) notifies Lessor in writing of its intention so to do, and if requested by Lessor, deposits with the Lessor a surety bond issued by a surety company acceptable to Lessor as surety, in favor of Lessor or cash, in the amount of the lien claim so contested, indemnifying and protecting Lessor from and against any liability, loss, damage, cost and expense of whatever kind or nature growing out of or in any way con-

nected with said asserted lien and the contest thereof, and (ii) diligently prosecutes such contest, at all times effectively staying or preventing any official or judicial sale of the Premises or any part thereof or interest therein, under execution or otherwise, and (iii) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof.

H. All utilities and utility services used by Lessee in, on or about the Premises shall be contracted and paid for by Lessee in Lessee's own name and Lessee shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

I. That it shall not make or allow to be made any unlawful, improper, or offensive use of the leased Premises.

J. That it shall indemnify and hold harmless the Lessor from any and all claims, demands, obligations, or requirements arising out of the presence of any asbestos or hazardous waste present or exposed in the leased Premises. The parties to this lease recognize and agree that asbestos may be present within the leased Premises and that Lessee will be responsible for the removal thereof, provided however, that if Lessee is unable to comply with regulatory and financial aspects of containing and removing said asbestos, it will be the option of Lessee to cancel and terminate this Lease. Furthermore, in the event that hazardous waste is discovered in, upon, or around the leased Premises, thereby

obligating Lessee to take measures and action as dictated by state or federal regulatory bodies, Lessee may terminate this Lease in the event Lessee is unable financially or for whatsoever reason to fulfill said obligations and requirements.

Inasmuch as Lessor is leasing the Premises to Lessee for the purposes of rehabilitation, repair, and restoration for the establishment of an aviation museum, it is clearly understood that Lessor is relying upon the Lessee to undertake all responsibility for making appropriate disposition of any discoverable asbestos or hazardous waste pursuant to Lessee's ability to fulfill said obligations. In the event Lessee is unable to fulfill said obligations, Lessee will immediately notify Lessor. It is clearly understood by the parties hereto that Lessor is not assuming or accepting any responsibility, liability, or obligation as the same may apply to asbestos or hazardous waste. Furthermore, Lessor assumes no liability for any property damage or personal illness, injury, disability, or death to Lessee's employees or representatives or other persons under Lessee's control arising from or instant to their presence in the leased Premises and potential exposure (accidental or intentional) to "asbestos" or "asbestos-bearing materials."

7. **NO WARRANTY OF CONDITION OR SUITABILITY BY LESSOR.** Lessor makes no warranty, either express or implied, as to the Premises or the condition thereof, or that the Premises will be suitable for the purposes or needs of the Lessee.

8. **PAYMENT OF TAXES.** Lessee shall, during the term of this lease, bear, pay and discharge, before the delinquency thereof, any and all taxes, whether general or special, and all other governmental charges of whatever kind or nature. Lessee shall have the right, in its own or Lessor's name or both, to contest the validity or amount of any such tax by appropriate legal proceedings instituted before the tax complained of becomes delinquent if, and provided, Lessee (i) before instituting any such contest, shall give Lessor written notice of its intention to do so and, if requested in writing by Lessor, shall deposit with Lessor a bond in favor of Lessor with a surety company acceptable to Lessor as surety, or cash, in a sum of at least the amount of the tax so contested, assuring the payment of such contested tax, together with all interest and penalties that accrue thereon and costs of suit, and (ii) shall diligently prosecute any such contest and at all times effectively stay or prevent any official or judicial sale therefor, under execution or otherwise, and (iii) promptly pays any final judgment enforcing the tax so contested and thereafter promptly procures record release or satisfaction thereof. Lessee shall hold Lessor harmless from any costs and expenses Lessee may incur related to any such contest.

9. **SUBLEASE.** Lessee may sublease the Premises to a single party or entity, with the prior written consent of Lessor and the United States Government as provided in the Application for Obtaining Real Property for Historic Monument Purposes, Program of Preservation and Utilization and deed of conveyance attached

hereto and incorporated herein. In the event of any such subleasing, Lessee shall remain fully liable for the performance of its duties and obligations hereunder, and no such subleasing and no dealings or transactions between Lessor and any such subtenant shall relieve Lessee of any of its duties and obligations hereunder. Any such sublease shall be subject and subordinate to the provisions of this lease.

10. **INDEMNITY.** Lessee shall and covenants and agrees to indemnify, protect, defend and save Lessor harmless from and against any and all claims, demands, liabilities and costs, including attorneys' fees, arising from damage or injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Premises during the term of this Lease and upon timely written demand from Lessor, Lessee shall defend Lessor in any action or proceeding brought thereon; provided, however, that nothing contained in this section shall be construed as requiring Lessee to indemnify Lessor for any claim resulting from any act or omission of Lessor or its agents and employees.

11. **CONDEMNATION.** If, during the term of this Lease, title to substantially all of the Premises be condemned by any authority having the power of eminent domain, this lease shall terminate on the date possession of substantially all of the Premises is required to be surrendered to the condemning authority. A condemnation which in the Lessee's judgment renders the Premises untenantable or impairs the efficient utilization of the Premises by Lessee shall be deemed a condemnation of substantially all of

the Premises; provided, however, Lessee agrees to be reasonable in exercising its judgment. In the event this lease shall terminate pursuant to the provisions of this lease, all awards received from the condemnation of all or any part of the Premises during the term of this lease shall become the absolute property of the Lessor, except that Lessee shall receive that portion of the condemnation award which is represented by any improvements Lessee has made to the Premises.

Except as provided above, a condemnation of a part of the Premises shall not cause a termination of this lease and shall not be cause for any reduction in rent to be paid hereunder. All awards for such a condemnation shall be the absolute property of the Lessor and Lessee hereby assigns and transfers to Lessor any and all such awards.

12. **REMEDIES ON DEFAULT.** In the event of any default by Lessee in its duties and obligations herein, Lessor may take any one or both of the following remedial actions:

A. Give Lessee written notice of its intention to terminate this lease on a date specified therein, which date shall not be earlier that ten (10) days after such notice is given and, if all defaults have not then been cured on the date so specified, Lessee's rights to possession of the Premises shall cease, and this lease shall thereupon be terminated, and Lessor may re-enter and take possession of the Premises; or

B. Without terminating this lease, re-enter the Premises and/or take possession thereof pursuant to legal

proceedings or pursuant to any notice provided for by law, and having elected to re-enter or take possession of the Premises without terminating the term of this lease. No such re-entry or taking of possession of the Premises by Lessor shall be construed as an election on Lessor's part to terminate this lease, and no such re-entry or taking of possession by Lessor shall relieve Lessee of its obligation to pay rent or of any of its other obligations under this lease, all of which shall survive such re-entry or taking of possession.

13. **PROVISO FOR RE-ENTRY.** The Lessee shall, at the expiration of said term, peaceably yield to the said Lessor all and singular the Premises in such repair as the same are in at the commencement of said term, reasonable wear and use thereof and such other damage the obligation to repair which has hereinbefore been specifically provided for in this Lease excepted.

14. **QUIET ENJOYMENT.** Lessor hereby covenants and agrees that it will not take any action to prevent Lessee from having quiet and peaceable possession and enjoyment of the Premises during the lease term and will, at the request of the Lessee, and at the Lessee's cost, to the extent that it may lawfully do so, join in any legal action in which Lessee asserts its right to such possession and enjoyment.

15. **NET LEASE.** This lease shall be deemed and construed to be a "net lease," and Lessee shall pay absolutely net during the lease term the rent and all other payments required hereunder,

free of any deductions, and without abatement, deduction or setoff, other than those herein expressly provided.

16. **NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any agreement contained in this lease should be breached by either party and thereafter waived by the other party such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

17. **NOTICES.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, addressed as follows: if to Lessor, City of Wichita, Kansas, City Hall, 455 North Main, Wichita, Kansas 67202, Attention: City Clerk; if to Lessee, Kansas Aviation Museum, Inc., P.O. Box 485, Wichita, Kansas 67201.

18. **BINDING EFFECT.** This lease shall inure to the benefit of and shall by binding upon the Lessor and Lessee and their respective successors and assigns subject to Section 9.

16. **APPLICABLE LAW.** This lease shall be governed and construed in accordance with the Laws of the State of Kansas.

17. **CAPTIONS.** The captions or headings in this lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions of sections of this lease.

18. **INVALIDITY OF PROVISIONS OF LEASE.** If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

19. **EXECUTION OF COUNTERPARTS.** This Lease may be executed

simultaneously in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

20. **EQUAL EMPLOYMENT OPPORTUNITY.** Lessee covenants and agrees for itself, its principals, if any, successors and assigns that it shall not discriminate against any person or group thereof upon the basis of race, color, religion, sex or national origin in its use or occupancy of the Project, and Lessee further agrees that, without limitation, it shall be bound by, among others, the following duties and obligations in its use or occupancy of the Premises:

A. The Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Lessee will take affirmative action to insure that the applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: 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 Lessee agrees to post in conspicuous places available to employees and applicants for employment notice setting forth the provisions of this nondiscrimination clause.

B. The Lessee will, in all solicitation or advertisements for employees placed by or on behalf of the Lessee,

state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.

C. The Lessee will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding a notice to be provided advising the labor union or worker's representative of the Lessee's commitments to Equal Employment Opportunity and nondiscriminatory treatment of persons or groups of persons as above defined, and Lessee shall post copies in conspicuous places available to employees and applicants for employment.

D. The Lessee will comply with all provisions of the Civil Rights Act of 1964, as amended, 42 United States Code 2000, et seq.; Executive Order 11246, as well as the rules and regulations issued pursuant thereto; the Kansas Act against Discrimination, K.S.A. 44-1001, et seq., as amended; and any ordinances of the City of Wichita presently existing or to be hereinafter enacted providing for Equal Employment Opportunity and Nondiscrimination for all persons.

E. The Lessee will furnish all information and reports required by the federal, state and municipal laws last above mentioned, and by the rules, regulations and orders issued pursuant thereto, and will permit access to is books, records and accounts by Lessee for the purpose of investigation to ascertain compliance with such laws.

IN WITNESS WHEREOF, the parties to this agreement have hereunto set their hands to duplicate originals, the day and year first above written.

CITY OF WICHITA, KANSAS

By _____

"Lessor"

THE KANSAS AVIATION MUSEUM, INC.

By _____

"Lessee"

Approved as to Form:

Thomas R. Powell by DW

Thomas R. Powell, Director of Law

APPROVED:

UNITED STATES DEPARTMENT OF THE INTERIOR

By _____

**Exhibit B**

# Operational Agreement Annual Report

## For Time Period January 1, 2014 through December 31, 2014

In order to obtain consistent information from the organizations that received Operational Agreement Funding for Fiscal Year (FY) 2014, please use the following form as a template for your Annual Report due **ON or BEFORE March 15, 2015 at 5 p.m.**

**Please use the attached template for your annual report in the exact order as listed. For narratives, please type the question as written and then address the answer.**

## Board of Directors

List your current Board of Directors and contact information; identify officers, and terms of office.

## Staff

List your current staff for the past three (3) years, identify their positions and whether they are full-time or part-time employees. Also list any open positions.

## Exhibitions (Museums Only)

What is the size of the collection?

What is the percentage of collection owned by Museum?

The number of new exhibits per year the Museum creates?

## Education and Public Programs

On no more than three (3) separate sheets, please address the following questions. List the question first; followed by your response.

1. Describe the various educational and public programs offered by your organization.

2. How do these programs correspond with your organization's mission and core values?

3. What methods do you use to identify and measure success with these programs?

4. Who are your target participants?

5. What has your organization done to encourage participation from all ethnic groups, ages, genders, socio-economic groups etc?

6. What programming partnerships and resource sharing or collaborations has your organization developed in the past three years?

7. Describe your organization's contribution to the City of Wichita and the citizens at large.

## Attendance and Membership

| | Membership and Volunteers | | |
|---|---|---|---|
| | 2010 | 2011 | 2012 |
| **Total Paid Memberships** | | | |
| **Total Membership Revenue** | | | |
| **Total Number of Volunteers** | | | |
| **Total Number of Volunteer Hours** | | | |

| | Attendance | | |
|---|---|---|---|
| | 2010 | 2011 | 2012 |
| **Total Attendance** | | | |
| **Total Paid Admissions** | | | |
| **Total school groups or tours** | | | |

On no more than one (1) separate sheet, please address the following questions. List the question first; followed by your response.

1. What steps does your organization take to increase membership?

2. What is the percentage free admission of total attendance?

3. How does the organization use new technology?

## Financial revenue and expenses

| | Total Operating Revenue | | | |
|---|---|---|---|---|
| | 2010 | 2011 | 2012 | % of Total Budget |
| Total City and County Support | | | | |
| Total Facility Rental Revenue | | | | |
| Total Admissions Revenue | | | | |
| Total Membership Revenue | | | | |
| Total Grant, Foundation, and Corporate Support | | | | |
| Total Gift Shop Sales | | | | |
| Total Fundraising and Event Revenue | | | | |
| Total Revenue from Investment/Endowment | | | | |
| TOTAL SUPPORT AND REVENUE | | | | |

| Total Operating Expenses | | | | |
|---|---|---|---|---|
| | 2010 | 2011 | 2012 | % of Total Expenses |
| **Total Salaries and Benefits** | | | | |
| **Total Building Repairs and Maintenance** | | | | |
| **Total Utilities** | | | | |
| **Total Marketing** | | | | |
| **Total Other** | | | | |
| **Total Operating Expenses** | | | | |

## Financial Narrative

On no more than three (3) separate sheets, please address the following questions. List the question first; followed by your response.

1. List the successful grants and foundations requests the organization applied for and received in the last 3 years.

2. How many months of operating reserve does your organization currently maintain?

3. Provide a copy of your most current 990.

4. Provide a copy of your annual operating budget for the current year.

## Capital Improvements

On a separate sheet please list the Capital Improvements for the next 5 to 10 years with estimated expenditures.

## Facility Maintenance

On a separate sheet please list facility maintenance including major systems and grounds maintenance the organization will provide for the next three years. List facility maintenance including major systems and grounds maintenance the organization expects the City to provide service, repair and maintenance.

## Kansas Aviation Museum, INC, (Museum)

### Exhibit C

**Performance Standards:**

i. Museum shall establish a financial operating reserve to ensure Museum's financial security.

ii. Museum shall demonstrate average annual growth over three years (including historical performance prior to this Agreement) in earned income and/or private contributions. Restricted giving shall not be included in this calculation.

iii. Museum shall demonstrate average annual growth over three years (including historical performance prior to this Agreement) in total attendance, paid attendance, school group attendance and attendance or outreach to identified underserved populations.

iv. Museum shall demonstrate average annual growth over three years (including historical performance prior to this Agreement) in collaborative partnership participation to share resources among multiple cultural arts organizations.

v. Museum shall demonstrate average annual growth over three years (including historical performance prior to this Agreement) in meeting comparative benchmarks determined by analysis of like-sized facilities, which benchmarks are identified in collaboration with Division of Cultural Arts and Services staff.

vi. Museum shall establish and then annually review its identified mission and core goals, which should be supportive of the goals set out in the City's Cultural Arts Plan.

# OPERATING PARTNERSHIP AGREEMENT BETWEEN THE CITY OF WICHITA, KS (CITY) AND THE KANSAS AVIATION MUSEUM, INC, (MUSEUM)

Whereas, The Kansas Aviation Museum, Inc., hereafter "Museum" is a not-for-profit Arts and Cultural Organization which provides education and artistic leadership to the public, and does so in part by stewardship of City-owned facilities and City grants toward the operations of Museum; and

Whereas, it is the City's intent, subject to annual City Council appropriation and the availability of funds, to assist Museum to maintain the City-owned facility from which it operates in a manner such that the facility is well maintained and is open, accessible and secure for public use and benefit, while identifying future anticipated funding amounts to assist Museum to create long range plans.

Therefore, the parties agree to the terms of the following Operating Partnership Agreement (the "Agreement"), negotiated and executed annually to address a rolling, three-year operational plan:

1. **Term**. The Term of this Agreement shall commence on January 1, 2014, and shall continue for a period of three years, unless otherwise terminated under provisions agreed to herein. The parties agree to participate in annual performance reviews, the results of which shall be considered during discussions for extension of this Agreement. The parties anticipate entering into successive extensions or renegotiations of this Agreement, unless Museum is in default of this Agreement or its Lease with City. In the event that the parties fail to formalize or conclude negotiations prior to the expiration of the Term, this Agreement shall continue in full force and effect beyond the initial Term unless cancelled under the provision set out in this Agreement or as otherwise amended.

2. **The City Facility**. City has provided to the Museum, by long term leasehold for a fee of $1.00 per year, the property located at 3350 S. George Washington Boulevard, Wichita Kansas which includes the original Wichita Municipal Air Terminal building, surface parking, sidewalks and related hardscaping. The entire property is of recognized cultural and/or historical importance and is dedicated through the leasehold granted to be used for museum purposes. The lease between City and Museum is attached as Exhibit A to this Agreement (the "Lease").

3. **Maintenance of the City Facility**. Responsibility for maintenance of this property is allocated between the parties in the following manner:

   a. **Major Systems Maintenance.** Major systems maintenance items, relating to the building envelope and HVAC systems and other systems as outlined by City staff during a joint inspection of the facility are the responsibility of the City. The City retains discretionary control over the means, manner and timing of that maintenance.

   b. **Regular Systems Maintenance.** Minor and routine maintenance items relating to interior fit and finish, wear and tear, lighting, plumbing systems, security systems, housekeeping, etc. are the responsibility of the Museum. The Museum's

maintenance regimen shall include observation, inspection and timely notice to the City of actual or impending Major System repair needs. Any failure to perform Regular Systems maintenance or provide notice of Major System repair needs leading to exacerbation of Major System Maintenance will be considered in future operations allocations.

c. **Landscaping Maintenance.** The improvements to the property may include landscaping, through use of ornamental plantings, lawn, shrubs and trees. The property also includes hardscaping areas such as sidewalks, surfaced parking, and areas used for static exhibition. It shall be Museum's responsibility to maintain all such areas in a manner that is clean and aesthetically pleasing. All organic material shall be appropriately irrigated, fertilized and otherwise maintained in a healthy condition. Debris, leaves, ice, snow and any other material that creates a potentially hazardous or unsightly condition shall be removed by Museum with reasonable haste. Museum has ultimate responsibility for the safety of pedestrian path of travel while persons are on the leased property.

d. **Allocation of Maintenance Responsibility.** Unless otherwise agreed in writing, Museum, as the occupant with continual opportunity to evaluate property conditions, has responsibility for notice to City of all maintenance needs, and should anticipate bearing financial responsibility for that maintenance unless and until it is budgeted by the City.

e. **Property Insurance.** The Museum will procure and pay for an all-risk property insurance policy, providing coverage appropriate for functional repair or replacement of the City's building and other improvements, and any artifacts or other personal property owned by the City. City acknowledges that repair or replacement with identical or similar materials, and with identical or similar levels of skilled labor or craftsmanship may not be available or may not be economically feasible. The obligations of the Museum and City for restoration and repair continue to be set out in the lease agreement approved by the United States Department of Interior.

f. **Utilities.** Museum shall pay all costs for utility services (whether for installation, service, administration, connection, or maintenance thereof) used at the facility or upon the premises, with no responsibility or expense accruing or inuring to City, including all permits, licenses or authorizations necessary in connection therewith. Such payments by Museum shall be made directly to the utility supplier or service provider. Unless otherwise agreed upon in writing, if Museum requires utilities beyond that currently provided or that are available to be extended to the premises boundary, Museum agrees to pay the full cost and expense associated with the upgrade/extension/installation of all such utilities related to its use of the premises, and to comply with all provisions for maintaining such utilities.

g. **Modifications to the Facility.** The Museum shall obtain prior approval from the Division of Cultural Arts and Services before making any modifications to the City facility, whether such modification is intended for preservation, operational

efficiency, aesthetic improvement or other purpose. The City retains discretion on the approval decision subject to the lease. Any such change, if allowed, shall be for the benefit of the Museum only, and not on behalf of or for the benefit of the City. Any modification shall be secured before commencing the work by a public works bond for both performance and payment from a surety approved by the City Attorney. The Museum indemnifies the City against the imposition of any mechanic's lien for work done on the leasehold property. The parties acknowledge that any such improvement is for the sole benefit of the Museum, and shall be removed and the original condition restored on lease termination, unless this requirement is waived in writing by the City. Upon completion, any modification, other than approved and acknowledged trade fixtures, shall become immediately the property of the City.

h. **Cooperation with Maintenance**. Museum agrees to work cooperatively and in good faith with City and contractors in facility improvement and maintenance activities to minimize any disruptions. If requested by the City, Museum shall cooperate with and assist City to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such facility development, improvement, and maintenance activities.

i. **Waste Prohibited.** Museum acknowledges that the facility is itself a significant part of the City's cultural heritage, and must be protected. Museum will guard against and not commit waste of the facility by action or neglect, and will cooperate with City to allow inspections at all reasonable times, and will report all instances of property damage regardless of cause, in a timely fashion. Should Museum fail to so report or allow inspection, or be known to have committed waste, the parties recognize that the facility is unique property of substantial value, and stipulate that injunctive relief is appropriate to enforce the provisions of this Agreement.

4. **Museum Governance and Operation:**

a. **Governance**. The Museum shall maintain its status as a non-profit organization, and demonstrate at the request of the City that this status is current. The Museum shall establish and maintain a governing board that operates under reasonable procedural standards that promote transparency for both stakeholders and the public. The governing board of the Museum should be comprised of individuals reflecting the interests and perspectives of both stakeholders and the general public. Board service should be subject to reasonable term limits. The governing board shall include as a voting member a City Council member or a City staff person designated by the City Council.

b. **Identity**. Museum must retain its status as a not-for-profit corporation under State of Kansas Law with a specific legal identity and business purpose as registered with the Secretary of State.

c. **Operation.** Museum shall perform conservation, curation, public education and other activities and duties consistent with its mission and the goals of the City's Cultural Arts Plan. These activities shall be reported to the City for evaluation annually using the Operational Agreement Annual Report form attached as Exhibit B. This form shall be progressively modified as required on a yearly basis to allow current reporting of data.

d. **Performance Measures:**

i. Museum shall establish and then annually review and report its identified mission and core goals, which should be supportive of the goals set out in the City's Cultural Arts Plan.

ii. Museum shall analyze and demonstrate how its annual programming, activities and functions are appropriate and supportive of its identified mission and core goals.

iii. Museum shall maintain the vitality of its governing board by demonstrating how the board attendance and participation requirements has been enforced; how its adherence to established term limits has been met; and how racial, geographical and economic diversity has been sought.

iv. Museum shall demonstrate attainment or progress satisfactory to the City toward attainment of its Agreed Performance Measures, attached at Exhibit C. These Performance Measures are to be reviewed and adjusted after completion and filing of the Operating Agreement Annual Report.

e. **Corporate Independence** Nothing in this Agreement shall be deemed to create an agency or joint venture relationship. Both parties are, and shall remain, separate, independent corporate entities. No employee of either shall be deemed to be the employee or agent of the other. Should any corporate officer or elected official of either body participate as a member of the governing body of the other, that officer or elected official shall only be deemed to be acting on behalf of the individual deliberative body for which he or she is then currently engaged.

f. **Nondiscrimination.** The Museum agrees that it will not discriminate or permit discrimination against any person on the basis of race, color, sex, religion, disability, age (except where age is a bona fide occupational qualification), national origin or ancestry in its operations or services, and its use or occupancy of property under this Agreement. The Museum agrees to comply with all applicable provisions of federal and state laws, regulations, or executive orders prohibiting discriminatory conduct.

5. **Financial Stability.** Museum recognizes that one of its key obligations is to demonstrate the ability to achieve, separate from City support, growth in its direct fundraising capacity or in

other financial assets that allow it to provide increasingly independent continuity of services for all Wichita citizens and visitors.

a. **Planning**. The Museum shall include in its Operational Agreement Annual Report (the template for which is shown as Exhibit B to this Agreement) a five (5) year maintenance and operating forecast and a ten (10) year capital improvement forecast, prepared after a careful premises inventory. These forecasts should clarify the needs of the Museum for both premises and program, and include statements of the anticipated revenue sources for operations and capital. The Museum should seek input from City Cultural Arts and Services staff when preparing these documents, and anticipate that they may be subject to change upon annual renewal of the Operating Partnership Agreements.

b. **Capital Expenditure Funding.** Museum agrees to prepare, as part of its annual report to City, and City agrees to review and evaluate an updated evaluation and needs assessment for capital improvements for the facility. However, Museum agrees to pay all costs incurred in connection with the construction of the new structures, facilities and improvements, unless otherwise expressly agreed to in writing by the Museum and City. In any case of construction, Museum agrees to make direct payment to all materials, product and service providers for all such costs as they are incurred. Museum shall have no right, authority, or power to bind City for the payment of any claim for labor or material or for any charge or expense incurred in the erection, construction, operation, or maintenance of said improvements. Museum agrees to require contractors to name the City as beneficiary of the required original performance bond and the City as additional insured in any comprehensive accident or general liability insurance; builder's risk insurance; or any other policies obtained by the Museum relating to the approved construction.

c. **City Indirect Support**. The City provides to Museum a City facility at nominal rent, and major systems maintenance of that facility. Through its planning process, Museum will work with City staff to identify work that will be provided by the City for the benefit of Museum. The value of these services will be included in the evaluation of Museum's total City support.

d. **Direct Support**. Through this Agreement, the City will provide to Museum direct payment of funds that may be used by Museum for its operations. This funding is tied to the fraction of the Cultural Arts mill levy that is allocated to Museum by City Council. The allotment fraction will remain fixed for the three years covered by this Agreement. The absolute dollar amount provided to Museum will fluctuate from year to year during this Agreement, as do the revenues obtained by the applicable tax mill levy. However, the annual direct support provided by the City to Museum for the three years of this Agreement can be approximated at $32,000.

e. **Rent Adjustment**. To the extent that Museum has an existing lease with the City for its facility that calls for rent at an amount greater than $1.00 per year, this Agreement serves as formal written waiver of the rent due in excess of $1.00 per

year, effective as of January 1, 2014 , through the term of this Agreement, and any renewal hereof unless modified by City and Museum through amendment to this Agreement.. All other terms and conditions of the existing lease shall remain in effect during the term of this Agreement.

6. **Assignment**. Museum shall have no right to assign or delegate any of its rights or duties pursuant to this Agreement without the prior written consent of City. Any assignment or delegation so made and so permitted shall be subject to all terms, conditions and other provisions of this Agreement.

7. **Indemnification.** Each party shall protect, defend and hold the other, its officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury to or death of any person or damage to any property, or other liability loss, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), of any nature whatsoever arising out of or incident to the use or occupancy of the facility or premises or the acts or omissions of that party's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death, damage or liability loss may occur, except to the extent such injury, death, damage or liability loss is caused by the negligence of the indemnified party. Each party shall give the other reasonable notice of any such claims or actions. The provisions of this section shall survive the expiration or termination of this Agreement to the extent that they relate to liabilities, losses, suits, claims, judgments, fines or demands arising from or incident to events occurring during the effective term of this Agreement or an extension or modification thereof.

8. **Insurance Requirements**. Museum shall procure, maintain and carry, at its sole cost in accordance with this Agreement, all insurance as required per the amounts as set forth below. Insurance shall be furnished by a company meeting with the reasonable approval of the City Attorney. The requirements, procurement and carrying of the required insurance shall not limit any of the Museum's obligations or liability under this Agreement or as a matter of law. Where "minimum limits" of insurance are specified, such minimum insurance limits are required and considered by City to be the lowest insured amounts acceptable under this Agreement. The Museum is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at Museum's determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and higher limits are necessary and appropriate.

Insurance shall include the following terms, conditions and minimum limits:

a. **WORKERS' COMPENSATION**

Museum shall maintain Workers' Compensation insurance to cover the statutory requirements of the Workers' Compensation laws of the State of Kansas for its operations on the Premises, and when applicable, to Federal Laws and Voluntary Compensation and Employer's Liability (including occupational disease) coverage.

b. **AUTOMOBILE LIABILITY**

Museum shall maintain automobile insurance, which shall include all owned, non-owned and hired automobiles used on the premises, and shall have minimum bodily injury and property damage limits as outlined herein.

| | |
|---|---|
| Combined Single Limit | $500,000 Each Accident |

c. **COMMERCIAL GENERAL LIABILITY**

Museum shall maintain Commercial General Liability insurance on an occurrence form. Minimum limits, as outlined herein, shall be:

| | |
|---|---|
| Annual Aggregate | $500,000 |
| Each Occurrence | $500,000 |

The City of Wichita shall be added as a primary and non-contributory additional insured, and Museum acknowledges the contractual responsibility to respond in defense and indemnity for any claims raised by third parties resulting from the negligent acts or omissions of Museum's officers, employees, agents or invitees.

d. **UMBRELLA/EXCESS LIABILITY COVERAGE**

The Museum shall provide minimum Umbrella/Excess liability limits (excess of all automobile and commercial general liability) of:

| | |
|---|---|
| Each Occurrence Limit | $1,000,000 |
| Annual Aggregate Limit | $1,000,000 |

The City of Wichita shall be added as primary and non-contributory additional insured covered under this umbrella/excess liability coverage.

Museum agrees that in the event of future changes in the law or upon notice by the City, the minimum levels of insurance required by this section may be increased within the bounds of commercial reasonableness.

9. **Personal Property**. Any personal property of Museum or others placed in or upon the premises shall be at the sole risk of the Museum, and City shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the Museum waives all rights of recovery from or subrogation against the City for such loss or damage unless such loss or damage is the result of the City's negligence. Museum shall be solely responsible for obtaining insurance policies that provide coverage for losses of Museum-owned property. The City shall not be required to provide such insurance coverage or be responsible for payment of Museum's cost for such insurance.

10. **Cancellation**. The City, in addition to any other rights to which it may be entitled by law or otherwise, may cancel this Agreement by giving Museum sixty (60) days written notice, in order to assure compliance with Kansas Cash Basis and Budget law requirements. During this

notice period, management from both parties shall confer in an attempt to determine if the dispute may be mitigated sufficiently or resolved prior to expiration of the sixty (60) day period. Barring such satisfactory resolution, the termination shall be effective at the end of the originally noticed sixty (60) day period. Additionally, this Agreement shall terminate in conjunction with termination of the underlying Lease, when accomplished by either party.

11. **Waste Management**. Museum shall be responsible for the removal and disposal of garbage, debris, contaminants and any other waste material (whether solid or liquid) arising out of its occupancy of the facility or out of its operation. Such removal shall conform to all governmental requirements and regulations. Such removal and disposal of garbage, debris, contaminants, or other waste material is understood to include routine clean-up of the facility and premises. Museum shall immediately react and take prompt corrective actions to remove and dispose of any paper, garbage and debris on the premises upon demand of City. Museum shall provide, and screen from public view, suitable covered receptacles for all garbage, trash and other refuse. Piling of boxes, cartons, barrels, pallets or other similar items in an unsightly or unsafe manner on or about the premises is forbidden. In the event Museum shall fail to perform its upkeep, maintenance and repair responsibilities, City may, but is not obligated to, perform maintenance and make repairs thereon and thereto which it determines to be necessary, charging the same cost to the expense of Museum, to include a twelve percent (12%) administrative fee, upon thirty (30) days prior written notice of its intent to do so.

12. **Severability and Invalid Provisions.** In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained; provided, however, that the invalidity of any such term, covenant, condition or provision does not materially prejudice either the City or the Museum in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this Agreement.

13. **Cash Basis and Budget Laws**. The right of the City to enter into this Agreement is subject to the provision of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-29350), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the reasoned opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

14. **Non-Waiver of Rights**. No waiver or default by either party of any of the terms, covenants and conditions to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

This Agreement is executed and effective this _____day of_____, 2014.

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

Wichita Aviation Museum, Inc

_____
, President

5/23/14
Lon Smith, Executive Director

Exhibit A – Lease Agreement

Exhibit B – Operational Agreement Annual Report template

Exhibit C – Agreed performance standards

**REVISED** **Agenda Item No. IV-4**

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

| | |
|---|---|
| **TO:** | Mayor and City Council |
| **SUBJECT:** | 2015 Annual Operating Budget and 2014 Budget Revisions |
| **INITIATED BY:** | City Manager's Office |
| **AGENDA:** | New Business |

**Recommendation:** Set the public hearing date, authorize the **publication of the public hearing** notice, **and** place the ordinances on first reading.~~, and approve the notice of vote publication~~.

**Background:** The 2015 – 2016 Proposed Budget has been developed over the past several months based on input from the public and direction from the City Council. Staff met with neighborhood associations and District Advisory Board members in each district. In addition, staff hosted two social media town hall sessions and received over 1,000 comments on Facebook. Budget information and presentations have been posted on the City's website. An employee Ad Hoc committee participated in the budget development process.

**Analysis:** The local operating budget totals $577,877,808 (which does not include internal service funds, capital projects, grant funds, trust funds or interfund transactions). Interfund transactions and appropriated reserves increase this amount to $732,052,107. The inclusion of trust funds, as required by law, is an additional $87,456,239 increasing the total to $819,508,346. The 2015 Proposed General Fund budget totals $218,172,209 (not including appropriated reserves) and is balanced. General Fund reserve levels for 2015 are estimated at $25,339,974, or 11.6% of expenditures, in accordance with policy.

The 2015 Proposed Budget requires a tax levy of $102,796,161, including $75,918,454 for the General Fund and $26,877,707 for the Debt Service Fund. This compares to a total levy of $101,569,480 in 2014. An estimated mill levy rate of 32.509 (24.009 mills for the General Fund and 8.5 mills for the Debt Service Fund) is required based an estimated valuation of $3,162,083,144. This mill levy rate equals the 2014 mill levy rate of 32.509.

Assessed valuation is projected to increase by $37,752,652, or 1.2%, to a total of $3,162,083,144. The valuation changes include an increase of $40,810,962 due to new improvements and $487,839 due to annexation. The value of personal property fell by ~~$21,584,480~~ **$14,437,383**, reflective of the continual decline in the assessed value based on Legislative action in 2006 to exempt new purchases of machinery and equipment. **Change in use added $4,044,614 to valuation.** Finally, the valuation of property increased ~~$18,038,331~~ **$6,846,620**.

The Self Supported Municipal Improvement District (SSMID) Fund is included in the 2015 Proposed Budget with a property tax levy **of** $~~571,705~~ **569,781**, compared to a levy of $564,989 in 2014. The estimated mill levy required in 2015 is 6.0~~40~~**2**, **slightly less than** ~~equal to~~ the 2014 mill levy rate. Assessed valuation of the SSMID increased by $1,117,776, to an estimated $94,653,168. New improvements added an estimated $1,173,522 in valuation, while personal property fell by $1,794,650. Other changes in value added a net of $1,738,904.

There are a total of nine Tax Increment Financing (TIF) Funds included in the 2015 Proposed Budget. These include two environmental TIFs (Gilbert & Mosley and North Industrial Corridor) and seven economic TIFs (East Bank, 21st & Grove, Old Town Cinema, Northeast Redevelopment, Ken Mar, Center City, and Douglas and Hillside). The combined resources of the nine TIF funds are $6,923,291, of which

$6,308,965 is derived from property tax increments.

The dollar amounts for fund expenditures or taxes levied, after they are set in the published notice of hearings on the proposed budget, cannot be exceeded; however, the City Council may determine subsequently to reduce the taxes levied or expenditure levels. The formal hearing and adoption of the budget is scheduled for August 12th. After the adoption of the budget, if subsequent actions result in an increase to budgeted expenditure levels, a process of re-publication, including additional public hearings and re-certifications will be required.

In addition to funding recommendations for 2015, the Proposed Budget also includes revisions to funding levels included in the 2014 Adopted Budget, which was approved last year. In most cases, these revised recommendations are lower than the 2014 Adopted Budget. However, in the case of the Sewer Fund, the recommended expenditure level is above the 2014 Adopted level set last year. This requires the Sewer Fund expenditure level to be re-certified (at a higher level). Sewer Fund expenditures will increase by $1,264,959 in 2014, due to additional contractual costs associated with sewage treatment improvements. These costs are the result of an agreement with KDHE.

The proposed tax levies for the 2015 Proposed Budget are the first to be impact**ed** by 2014 HB 2047. This bill, passed by the Kansas Legislature earlier this year, includes certain publication requirements if the amount of taxes levied due to assessed valuation growth (not including growth components due to personal property, new construction and annexation) increases at a rate greater than the Consumer Price Index (CPI) inflation rate. The proposed City of Wichita levy is nearly $1 million below the statutory limit; no "notice of vote publication" would be required. **In addition, the proposed levy for the SSMID is within the statutory limit.** ~~However, as included in the Proposed Budget, the SSMID property tax levy is $1,924 more than the statutory limit. If the SSMID budget is adopted by the City Council as proposed, a "notice of vote publication" would be published after budget adoption. SSMID valuation not associated with new construction, annexation, or personal property is estimated to increase by 1.9%, or more than the CPI rate of 1.5%, necessitating the notice and publication requirement. Overall, valuation of the SSMID is estimated to increase only 1.2%, since valuation losses due to the exemption of machinery and equipment (1.9%) were not offset by increases due to new improvements (1.2%).~~

**Financial Considerations:** Publication of the notice of formal hearing will set the maximum amount that may be expended in each fund. The City Council may subsequently reduce expenditures required (and proposed tax dollars to be levied), but not increase them.

**Legal Considerations:** State statutes require the City Council to publish notice of the public hearing scheduled for approval of the annual operating budget and for budget amendments of published funds. This publication must be made at least 10 days prior to the budget adoption public hearing. In addition, this publication must set the maximum proposed tax levies, as well as the maximum proposed expenditures (including appropriated balances) for each certified fund. The 2015 Budget is scheduled to be adopted by the City Council on August 12.

State statutes also limit the amount of taxes that can be levied without specific notification requirements. These requirements are outlined in KSA 79-2925b, and were amended by 2014 HB 2047 in the most recent Legislative session. The statute requires a "notice of vote publication" if the governing body approves the levy of property taxes at a growth rate greater than the CPI. The Law Department has reviewed the attached ordinances and approved them as to form.

**Recommendation/Action:** It is recommended that the City Council set the public hearing on the Proposed 2015 Budget (including the Tax Increment Financing Districts and the Self-Supporting

Municipal Improvement District) and the revised 2014 Budget for August 12, 2014; authorize publication of the formal public hearing notice; approve first reading of the general budget, TIF district, and SSMID ordinances; set a maximum amount of taxes levied for the City of Wichita at $102,796,161, based on an anticipated mill levy of 32.509 mills (no change from the current mill levy) and an estimated assessed valuation of $3.162 billion; set the maximum amount of taxes levied for the Self Supporting Municipal Improvement District at ~~$571,705~~ **$569,781**, based on an estimated levy of 6.0~~40~~**2** mills and an estimated assessed valuation of $94,653,168.

Attachments:
Notice of budget hearing – Proposed Budget 2015 Expenditures
Notice of budget hearing – Amending the 2014 Budget
Notice of budget hearing – Proposed Budget 2015 Tax Increment Financing Funds (TIF)
Notice of budget hearing – Proposed Budget 2015 Expenditures - SSMID
Ordinance – Fixing General Tax levy – City of Wichita
Ordinance – Fixing General Tax Levy - Downtown Wichita Self Supported Municipal Improvement District
Ordinance – East Bank Redevelopment TIF
Ordinance – Old Town Cinema TIF
Ordinance – 21st and Grove Redevelopment TIF
Ordinance – Northeast Redevelopment TIF
Ordinance – Ken Mar Redevelopment TIF
Ordinance – Center City Redevelopment TIF
Ordinance – Douglas and Hillside Redevelopment TIF
Ordinance – Gilbert and Mosley Site Redevelopment TIF
Ordinance – North Industrial Corridor Redevelopment TIF
~~Notice of Vote Publication - sample~~

(Published in The Wichita Eagle on August 15, 2014) 037002

ORDINANCE NO. 49-787

AN ORDINANCE MAKING AND FIXING GENERAL TAX LEVY FOR THE CITY OF WICHITA, KANSAS, FOR THE YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015, AND RELATING THERETO, AND CONCURRENTLY APPROVING CERTAIN AMENDMENTS TO THE 2014 ADOPTED BUDGET.

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

SECTION 1. The City of Wichita, Kansas has adopted a budget requiring $102,796,161, in general taxes to be levied for the funds as specified below.

There is hereby levied by the City of Wichita, Kansas on all taxable tangible property in the City of Wichita, Kansas, according to the estimated assessed valuation thereof, a mill levy rate for the City of Wichita, Kansas, and said mill levy rate is subject to the actual determination of assessed valuation by the County Clerk. It is the intention of the City of Wichita to set a levy sufficient to raise the above amounts; PROVIDED, that said levy must remain within those limitations set by statute or charter ordinance.

SECTION 2. That in accordance with Section 1 hereof, there be and hereby is levied by the City of Wichita, Kansas, upon all the taxable property in the City of Wichita, Kansas, according to the assessed valuation thereof, the following amount for the use of the City of Wichita, Kansas, for the year 2015, which begins January 1, 2015, and ends December 31, 2015, for the following purposes, to wit:

CALCULATION OF TAX DOLLARS TO BE LEVIED

| | **City of Wichita** | **Mill Levy** |
|---|---|---|
| Assessed Valuation | $3,162,083,144 | |
| Taxes to be Levied: | | |
| General Fund | 75,918,454 | 24.009 |
| Debt Service Fund | 26,877,707 | 8.500 |
| **Total:** | **102,796,161** | **32.509** |

SECTION 3. It is hereby attested that in order to maintain the public services essential for the citizens of this city, it will be necessary to utilize property tax revenue in an amount exceeding the revenues expended in the budget year 2014. The estimated amount of increased property tax revenue is $183,707.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the property taxes required in this ordinance to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. That the amendments to the 2014 Adopted Budget of the City of Wichita, Kansas, as proposed for consideration and noticed for public hearing concurrently with the proposed 2015 Budget, be, and the same (together with any modifications thereto as may have been made following the public hearing) hereby are, approved and adopted.

SECTION 6. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of August, 2014.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Brian K. McLeod, Deputy City Attorney

(Published in The Wichita Eagle on August 15, 2014) 037002

ORDINANCE NO. 49-788

AN ORDINANCE MAKING AND FIXING GENERAL TAX LEVY FOR THE DOWNTOWN WICHITA SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT FOR THE YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015.

WHEREAS, the City of Wichita, Kansas, has established the Downtown Wichita Self-Supported Municipal Improvement District ("District") by Ordinance No. 44-895 under the authority of K.S.A. 12-1794, et seq., effective March 24, 2001, and the governing body of the City serves as the governing body of the District; and,

WHEREAS, on February 12, 2008, the City of Wichita, Kansas established the term of the District Ordinance to the year 2012, and then automatically for one more year, for each year the City adopts a District budget; and

WHEREAS, pursuant to K.S.A. 12-17,102, the governing body of the District is authorized to levy taxes annually within the District to carry out the purposes of the District; and

WHEREAS, the Downtown Wichita Self-Supported Municipal Improvement District Advisory Board has submitted a proposed budget to the governing body of the District as required by law;

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

SECTION 1. The governing body of the Downtown Wichita Self-Supported Municipal Improvement District ("District") has adopted a budget requiring $569,781 in general taxes to be levied for the fund of the District for the year 2015, which begins January 1, 2015, and ends December 31, 2015. The boundaries of the District are as follows:

> Beginning at the east bank of the Arkansas River and the Kellogg Street Fly Over, eastward to Washington Street; North along Washington Street to Central Avenue; West along Central Avenue to its intersection with Greenway Boulevard; and along a line south through the War Memorial Park to the east bank of the Arkansas River; South along the east bank of the Arkansas River to the point of beginning at the Kellogg Street Fly Over, all in Wichita, Sedgwick County Kansas, EXCEPT AND EXCLUDING THEREFROM THE REAL PROPERTY DESCRIBED AS Lot 2, Emerson Addition to the City of Wichita, Sedgwick County, Kansas.

And as shown upon the map attached as Exhibit A and made a part of this ordinance.

SECTION 2. There is hereby levied by the governing body of the District on all taxable tangible property in the District, according to the estimated assessed valuation thereof, a mill

levy rate for the District, and said mill levy rate is subject to the actual determination of assessed valuation by the County Clerk. It is the intention of the City of Wichita to set a levy sufficient to raise the above amounts; PROVIDED, that said levy must remain within those limitations set by statute or ordinance.

SECTION 3. That in accordance with Section 2 hereof, there be and hereby is levied upon all the taxable property in the District, according to the assessed valuation thereof, the following amount for the use of the District, for the year 2015, which begins January 1, 2015, and ends December 31, 2015, to wit:

CALCULATION OF TAX DOLLARS TO BE LEVIED

| | District | Mill Levy |
|---|---|---|
| Assessed Valuation | $94,653,168 | |
| Taxes to be Levied: | $569,781 | 6.020 |

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the property taxes required in this ordinance to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. It is hereby attested that in order to maintain the public services essential for the citizens of this city, it will be necessary to utilize property tax revenue in an amount exceeding the revenues expended in the budget year 2014. The estimated amount of increased property tax revenue is $8,475.

SECTION 6. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of August, 2014.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Brian K. McLeod, Deputy City Attorney

# DESCRIPTION OF THE DOWNTOWN SELF-SUPPORTING MUNICIPAL IMPROVEMENT DISTRICT (SSMID)

Within the City of Wichita, Sedgwick County, Kansas, beginning at the east bank of the Arkansas River and the Kellogg Street Fly Over, eastward to Washington Street; north along Washington Street to Central Avenue; west along Central Avenue to its intersection with Greenway Boulevard; and along a line south through the War Memorial Park to the east bank of the Arkansas River; south along the east bank of the Arkansas River to the point of beginning at the Kellogg Street Fly Over, all in Wichita, Sedgwick County, Kansas, EXCEPT AND EXCLUDING THEREFROM THE REAL PROPERTY DESCRIBED AS Lot 2, Emerson Addition to the City of Wichita, Sedgwick County, Kansas.

**THE DOWNTOWN SELF-SUPPORTING MUNICIPAL IMPROVEMENT DISTRICT (SSMID)**

(Published in The Wichita Eagle on August 15, 2014) 037002

ORDINANCE NO. 49-789

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE EAST BANK REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the East Bank Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the East Bank Redevelopment District, the District being created in 1995; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the East Bank Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the City has by ordinance removed property and reduced the District boundaries, the District boundaries being modified in 2002; and,

WHEREAS, the City has by ordinance expanded the District boundaries, the District boundaries being modified in 2004; and,

WHEREAS, the boundaries of the East Bank Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $1,497,048 of increment funds in ad valorem taxes from the East Bank Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the East Bank Redevelopment District at $1,497,048 for the year beginning January 1, 2015, and ending December 31, 2015.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2015, and December 31, 2015, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the East Bank Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of August 2014.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Brian K. McLeod, Deputy City Attorney

# EXHIBIT "A"

## DESCRIPTION OF THE EAST BANK REDEVELOPMENT DISTRICT (TIF DISTRICT #3)

Within the City of Wichita, Sedgwick County, Kansas, beginning at the intersection of Main Street and Kellogg Avenue, thence north on Main Street to the intersection of Main Street and Douglas Avenue, thence west on Douglas Avenue to the intersection of Douglas Avenue and Waco Street, thence north on Waco to the intersection of Waco Street and Greenway Boulevard, thence north on Greenway Boulevard to Central Avenue, thence west on Central Avenue to Seneca Street, thence south on Seneca Street to the intersection of Seneca Street and McLean Boulevard, thence south on McLean Boulevard to Kellogg Avenue, thence east on Kellogg Avenue to Main Street, being the point of beginning, plus an approximately five-acre parcel located at the southwest corner of Maple Street and McLean Boulevard.

## THE EAST BANK REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #3)

(Published in The Wichita Eagle on August 15, 2014) 037002

ORDINANCE NO. 49-790

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE OLD TOWN CINEMA REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Old Town Cinema Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Old Town Cinema Redevelopment District, the District being created in 1999; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Old Town Cinema Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the City has by ordinance reduced the District boundaries, the District boundaries being modified in 2001; and,

WHEREAS, the boundaries of the Old Town Cinema Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $297,894 of increment funds in ad valorem taxes from the Old Town Cinema Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Old Town Cinema Redevelopment District at $297,894 for the year beginning January 1, 2015, and ending December 31, 2015.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2015 and December 31, 2015 including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure

improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the Old Town Cinema Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of August, 2014.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Brian K. McLeod, Deputy City Attorney

# EXHIBIT "A"

## DESCRIPTION OF THE OLD TOWN CINEMA REDEVELOPMENT DISTRICT (TIF DISTRICT #7)

Within the City of Wichita, Sedgwick County, Kansas, beginning at the intersection of East 3rd Street North and Washington Street, thence south along the centerline of Washington Street to the intersection of Washington Street and East 2nd Street North, thence west along the centerline of East 2nd Street North to the intersection of East 2nd Street North and Santa Fe Street, thence north along the centerline of Santa Fe Street to the intersection of Santa Fe Street and East 3rd Street North, thence east along the centerline of East 3rd Street North to the intersection of East 3rd Street North and Washington Street, being the point of beginning.

## THE OLD TOWN CINEMA REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #7)

(Published in The Wichita Eagle on August 15, 2014) 037002

ORDINANCE NO. 49-791

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE 21ST AND GROVE REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the 21st and Grove Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the 21st and Grove Redevelopment District, the District being created in 1995; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the 21st and Grove Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the City has by ordinance removed property and reduced the District boundaries, the District boundaries being modified in 2002; and,

WHEREAS, the boundaries of the 21st and Grove Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $133,320 of increment funds in ad valorem taxes from the 21st and Grove Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the 21st and Grove Redevelopment District at $133,320 for the year beginning January 1, 2015, and ending December 31, 2015.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2015, and December 31, 2015, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the

Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the 21st and Grove Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of August, 2014.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Brian K. McLeod, Deputy City Attorney

# EXHIBIT "A"

## DESCRIPTION OF THE 21ST AND GROVE REDEVELOPMENT DISTRICT (TIF DISTRICT #5)

Within the City of Wichita, Sedgwick County, Kansas, beginning at the intersection of East 21st Street North and Grove Avenue thence south along the center line of Grove Avenue to the intersection of Grove Avenue and Stadium Avenue, thence west along the center line of Stadium Drive to the intersection of Stadium Drive and Madison Avenue, thence south along the center line of Madison Avenue to the point adjacent to the southeast corner of Lot 6 Block A in the J Walter Ross 2nd Addition on Stadium Drive, thence west to the center line of Piatt Avenue, thence north along the center line of Piatt Avenue to the intersection of Piatt Avenue and 21st Street North, thence east along the center line of 21st Street North to a point adjacent to the southwest corner of Lot 1 in the Logopedics Addition on 21st Street North, thence north to the center line of 25th Street North, thence east along the center line of 25th Street North to the point adjacent to the northeast corner of Reserve "C" in the Logopedics Addition, thence south to the center line of 21st Street North, thence east along the center line of 21st Street North to the point of beginning.

## THE 21ST AND GROVE REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #5)

(Published in The Wichita Eagle on August 15, 2014) 037002

ORDINANCE NO. 49-792

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE NORTHEAST REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Northeast Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Northeast Redevelopment District, the District being created in 1997; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Northeast Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the City has by ordinance removed property and reduced the District boundaries, the District boundaries being modified in 2003; and,

WHEREAS, the boundaries of the Northeast Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $31,600 of increment funds in ad valorem taxes from the Northeast Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Northeast Redevelopment District at $31,600 for the year beginning January 1, 2015, and ending December 31, 2015.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2015, and December 31, 2015, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of

properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the Northeast Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of August, 2015.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Brian K. McLeod, Deputy City Attorney

# EXHIBIT "A"

## DESCRIPTION OF THE NORTHEAST REDEVELOPMENT DISTRICT (TIF DISTRICT #11)

Within the City of Wichita, Sedgwick County, Kansas, beginning at the intersection of E 13th St N and N Grove Avenue, thence north along the center line of N Grove Avenue to the point adjacent to the northwest corner of Lot 11 in Marsh's Replat of Getto's 2nd Addition, thence east to the northwest corner of Lot 12 in March's Replat of Getto's 2nd Addition, thence south to the southwest corner of Lot 12, thence east to the center line of N Poplar Avenue, thence south to the center line of E 13th ST N, thence west to the point of the beginning.

## THE NORTHEAST REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #11)

(Published in The Wichita Eagle on August 15, 2014) 037002

ORDINANCE NO. 49-793

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE KEN MAR REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Ken-Mar Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Ken-Mar Redevelopment District, the District being created in 2008; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Ken-Mar Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the boundaries of the Ken-Mar Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $165,350 of increment funds in ad valorem taxes from the Ken-Mar Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Ken-Mar Redevelopment District at $165,350 for the year beginning January 1, 2015, and ending December 31, 2015.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2015, and December 31, 2015, including principal and interest due on the tax increment financing loan referenced in that certain Amendment to Development Agreement Regarding Revitalization of Ken Mar Shopping Center (Providence Square) dated as of the 4th of October, 2011, which was issued to finance in whole or in part certain acquisition and paving reconstruction expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the Ken-Mar Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of August, 2014.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

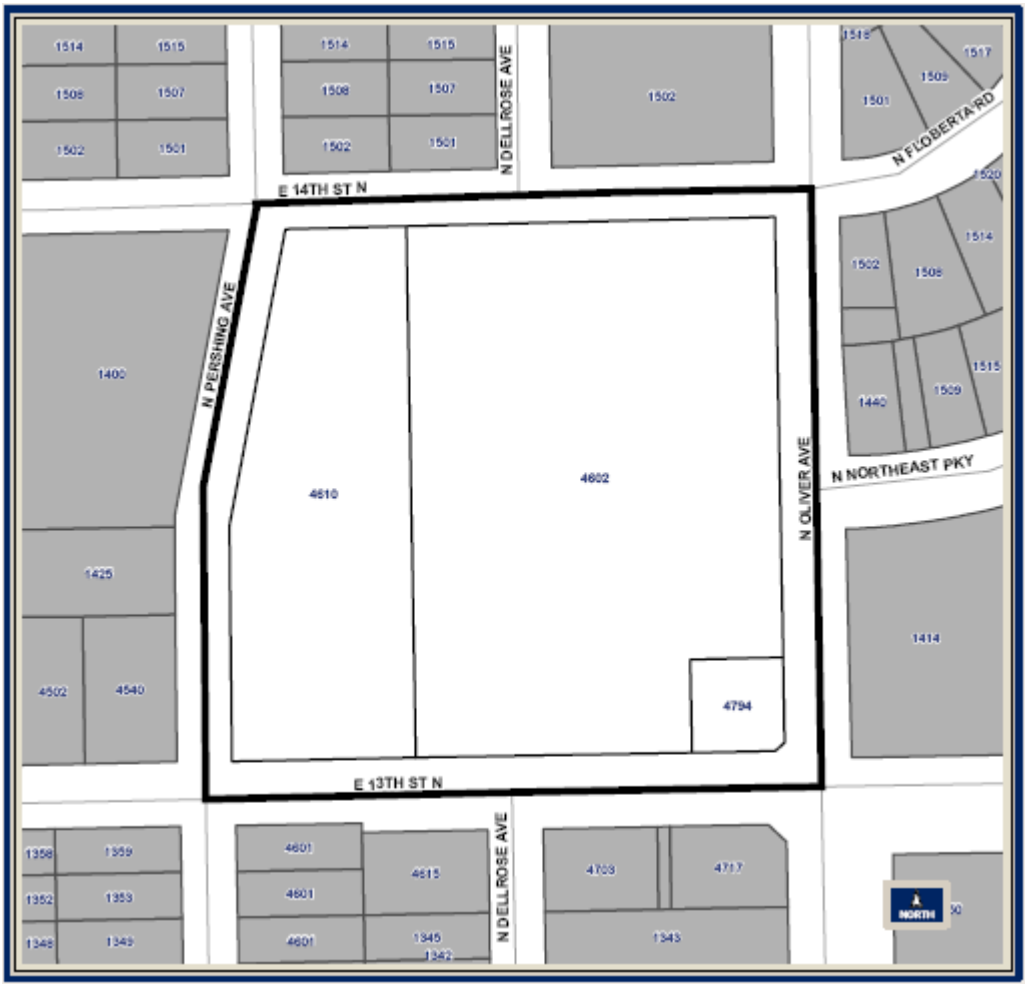
APPROVED AS TO FORM:

_____
Brian K. McLeod, Deputy City Attorney

# EXHIBIT "A"

## DESCRIPTION OF THE KEN-MAR REDEVELOPMENT DISTRICT (TIF DISTRICT 14)

All property parcels located between the center line of 13th Street North on the south, the north right of way line of 14th Street North on the north, the center line of Oliver Avenue on the east and the west right of way line of Pershing Avenue on the west, in Wichita, Sedgwick County, Kansas; and including all street rights of way within such described areas.




**THE KEN-MAR REDEVELOPMENT DISTRICT**
**(TAX INCREMENT FINANCING DISTRICT 14)**

(Published in The Wichita Eagle on August 15, 2014) 037002

ORDINANCE NO. 49-794

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE GILBERT AND MOSLEY SITE REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Gilbert and Mosley Site Redevelopment District under authority of K.S.A. 1990 Supp. 12-1770 *et seq.*, and Chapter 59 of the 1991 Sessions Laws of the State of Kansas; and,

WHEREAS, the City has by ordinance passed upon a 2/3 vote adopted a redevelopment plan for the Gilbert and Mosley Site Redevelopment District, the District being created in 1991; and,

WHEREAS, the City found that the conditions set forth in Section 1(a)(2) of Chapter 59 of the 1991 Session Laws of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Gilbert and Mosley Site Redevelopment District is set on a yearly basis as provided in Section 2(b) of Chapter 59 of the 1991 Session Laws of the State of Kansas; and,

WHEREAS, the boundaries of the Gilbert and Mosley Site Redevelopment District are described in "Exhibit A" attached hereto

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget requiring $2,670,040 of increment funds in ad valorem taxes from the Gilbert and Mosley Site Redevelopment District (the current boundaries of the District are described in "Exhibit A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby sets the increment to be collected from ad valorem taxes produced from property located within the Gilbert and Mosley Site Redevelopment District at $2,670,040 for the year beginning January 1, 2015, and ending December 31, 2015.

SECTION 3. The purpose of setting this increment is to pay the direct costs of investigation and remediation of the contaminated condition that exists in the Gilbert and Mosley Site Redevelopment District that are anticipated to be incurred between January 1, 2015, and December 31, 2015, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to the investigation and remediation of contamination. The increment set herein does not exceed twenty percent (20%) of the amount of taxes that were produced in 1991, which was the year the Gilbert and Mosley Site Redevelopment District was first established.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment to be produced from ad valorem taxes that are to be levied in the Gilbert and Mosley Site Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of August 2014.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Brian K. McLeod, Deputy City Attorney

## BUDGET SUMMARY

The expenditures, revenues and the amount of 2015 tax to be levied (published below) establish the maximum limits of the 2014 budget for the Groundwater Contamination Project of the Gilbert and Mosley Site Redevelopment District.

| **Gilbert and Mosley Site Redevelopment District**<br>**Revenues:** | **2014 Proposed Budget** | **Amount To Be Levied** |
|---|---|---|
| Contributions - potentially responsible parties | 110,000 | |
| Motor Vehicle Tax | 400 | |
| Cost to be funded by a levy from the Gilbert and Mosley Site Redevelopment District* | 2,670,040 | **$ 2,670,040** |
| **Total Revenues** | **$ 2,780,440** | |
| **Expenditures:** | | |
| Personal services | 0 | |
| Contractuals | 1,425,490 | |
| Commodities | 148,124 | |
| Capital outlay | 0 | |
| Debt service / temporary notes | 0 | |
| Reimbursements | 193,568 | |
| Environmental remediation projects | **7**,770,500 | |
| **Total Expenditures** | **$ 9,537,682** | |

* The Gilbert and Mosley Site Redevelopment District was formed under authority of Ordinance No. 41-446 and K.S.A. 12-1770 *et seq*.

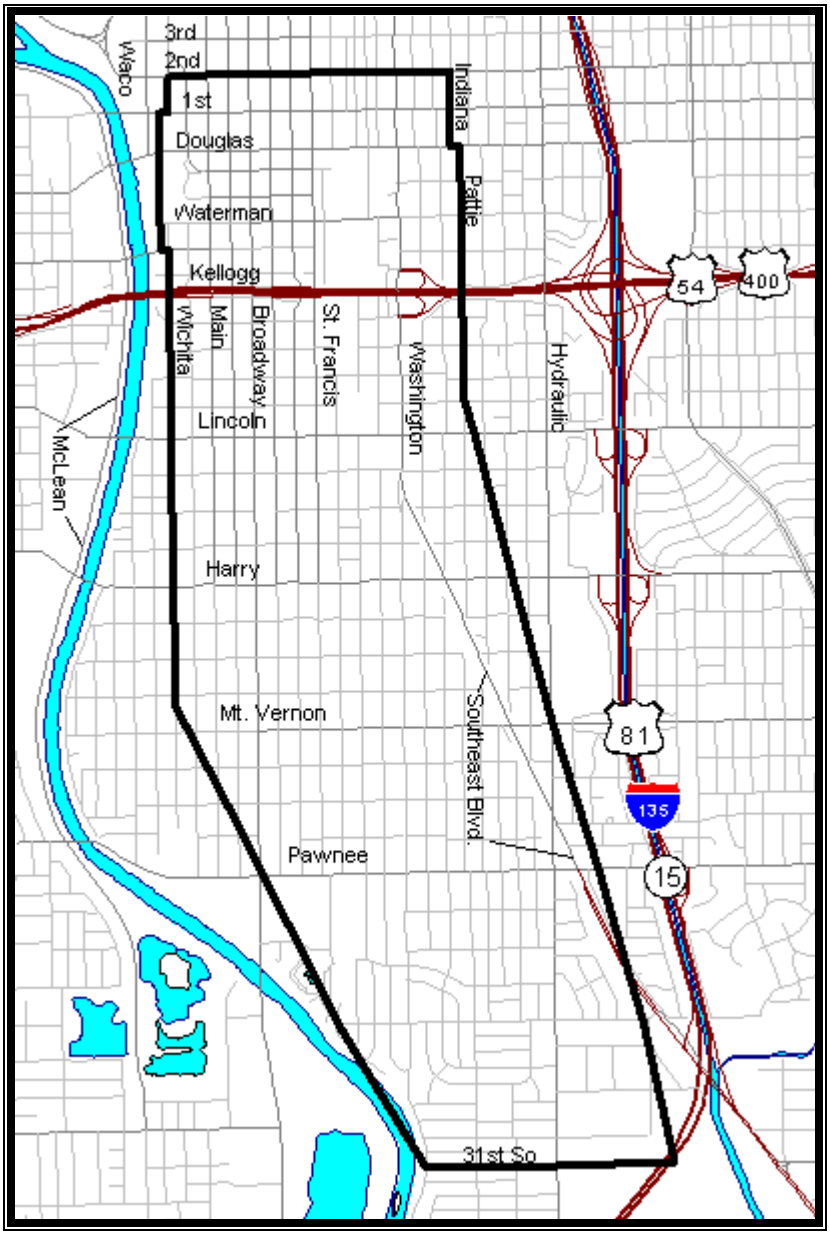
K.S.A. 12-1771a(d) provides that the real property taxes produced by the environmental increment from a redevelopment district shall be allocated and paid by the County Treasurer to the Treasurer of the City and deposited in a special separate fund of the City to pay the direct cost of investigation and remediation of contamination in the redevelopment district. K.S.A. 12-1771a(b) provides that the environmental increment is set on a yearly basis and each year's increment shall be set in an amount sufficient to pay the direct costs of investigation and remediation of the contaminated condition anticipated to be incurred that year. The mill levy rate for property located inside the Redevelopment District does not increase as a result of this levy. Therefore, an estimate of the mill levy rate is not included in this budget summary.

_____

Karen Sublett, City Clerk

## DESCRIPTION OF THE GILBERT AND MOSLEY SITE REDEVELOPMENT DISTRICT (TIF DISTRICT #1)

Within the City of Wichita, Sedgwick County, Kansas, bounded on the north by Second Street; on the west by Wichita Street from Second Street to First Street; thence west on First Street to Civic Center Place; thence south on Civic Center Place and Civic Center Place extended to Lewis and Wichita Street; thence south along Wichita Street to Skinner Street; thence southeast including part of the 1900 block of South Wichita Street, the 2000 block of South Water Street, the 2100 block of South Main Street, the 2200 block of South Market Street, the 2300, 2400 and 2500 blocks of South Santa Fe Street; from Santa Fe Street and Greenway Boulevard to 31st Street South and Washington, 31st Street South being the south boundary; thence along 31st Street South to Interstate Highway I-135; thence northwesterly along the east boundary including the 3000 and 2900 blocks of South Madison, Northern and Wassall Streets, west of Madison, Wassall west of Southeast Boulevard, 1805 Glen Oaks Drive, the 2500 block of South Southeast Drive, the 1900 block of East Pawnee, Blake Street west of Minnesota Street, Stafford Street west of Minneapolis Street, the west side of Minneapolis between Stafford Street and Hodson Street, west of Kansas Street between Hodson Street and Mt. Vernon Street, Linwood Park, west of Hydraulic Avenue from Mt Vernon Street to Funston Street, the 1600 and 1700 blocks of South Greenwood, the 1400 and 1500 blocks of South Ellis, the 1200 and 1300 blocks of South Lulu, thence beginning at the 1000 block of Pattie, north along Pattie to Douglas, thence west along Douglas to Indiana; thence north along Indiana to Second Street being the north boundary.




**THE GILBERT & MOSLEY SITE REDEVELOPMENT DISTRICT**
**(TAX INCREMENT FINANCING DISTRICT #1)**

(Published in The Wichita Eagle on August 15, 2014) 037002

ORDINANCE NO. 49-795

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE NORTH INDUSTRIAL CORRIDOR REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015.

WHEREAS, the City of Wichita, Kansas, has previously, by Ordinance No. 43-009, established a Redevelopment District designated as the North Industrial Corridor Redevelopment District under authority of K.S.A. 12-1770, *et seq*.; and,

WHEREAS, the City has by ordinance passed, upon a 2/3 affirmative vote of the governing body, a redevelopment plan for the North Industrial Corridor Redevelopment District, the District being created in 1996; and,

WHEREAS, the City has previously found that the conditions set forth in K.S.A. 1995 Supp. 12-1771(a)(2) did exist and therefore the increment in ad valorem taxes for the North Industrial Corridor Redevelopment District is set on a yearly basis as provided in K.S.A. 12-1771a(b); and,

WHEREAS, the boundaries of the North Industrial Corridor Redevelopment District are described in "Exhibit A" attached hereto

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget requiring $1,165,300 of increment funds in ad valorem taxes from the North Industrial Corridor Redevelopment District (the boundaries of the District are described in "Exhibit A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby sets the increment to be collected from ad valorem taxes produced from property located within the North Industrial Corridor Redevelopment District at $1,165,300 for the year beginning January 1, 2015, and ending December 31, 2015.

SECTION 3. The purpose of setting this increment is to pay the direct costs of investigation and remediation of the contaminated condition that exists in the North Industrial Corridor Redevelopment District that are anticipated to be incurred between January 1, 2015, and December 31, 2015, including costs of remediation and investigation, and feasibility studies, operation and maintenance expenses and other expenses relating directly to the investigation and remediation of contamination. The increment set herein does not exceed twenty percent (20%) of the amount of taxes that were produced in 1996, which is the year in which the North Industrial Corridor Redevelopment District was first established.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment to be produced from ad valorem taxes that are to be levied in the North Industrial Corridor Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of August 2014.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Brian K. McLeod, Deputy City Attorney

**BUDGET SUMMARY**

The expenditures, revenues and the amount of 2014 tax to be levied (published below) establish the maximum limits of the 2015 budget for the Groundwater Contamination Project of the North Industrial Corridor Redevelopment District.

| **North Industrial Corridor Redevelopment District** | | **Amount To** |
|---|---|---|
| **Revenues:** | **2014 Proposed Budget** | **Be Levied** |
| Motor Vehicle Taxes | 200 | |
| Cost to be funded by a levy from the North Industrial Corridor Redevelopment District* | 1,165,300 | **$ 1,165,300** |
| **Total Revenues** | **$1,165,500** | |
| **Expenditures:** | | |
| Personal services | 0 | |
| Contractuals | 2,158,034 | |
| Commodities | 304,000 | |
| Capital outlay | 0 | |
| Other | 193,568 | |
| Environmental remediation projects | 4,800,000 | |
| **Total Expenditures** | **$7,455,602** | |

* The North Industrial Corridor Redevelopment District was formed under authority of Ordinance No. 43-009 and K.S.A. 12-1770 *et seq*.

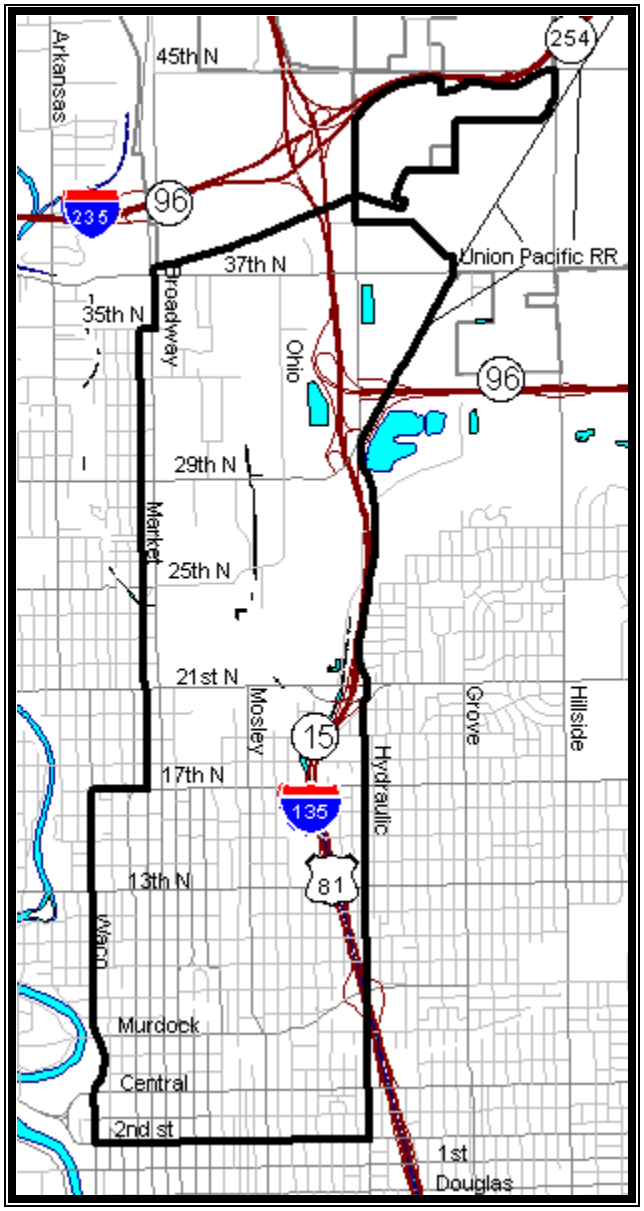
K.S.A. 12-1771a(d) provides that the real property taxes produced by the environmental increment from a redevelopment district shall be allocated and paid by the County Treasurer to the Treasurer of the City and deposited in a special separate fund of the City to pay the direct cost of investigation and remediation of contamination in the redevelopment district. K.S.A. 12-1771a(b) provides that the environmental increment is set on a yearly basis and each year's increment shall be set in an amount sufficient to pay the direct costs of investigation and remediation of the contaminated condition anticipated to be incurred that year. The mill levy rate for property located inside the Redevelopment District does not increase as a result of this levy. Therefore, an estimate of the mill levy rate is not included in this budget summary.

_____

Karen Sublett, City Clerk

## DESCRIPTION OF THE NORTH INDUSTRIAL CORRIDOR REDEVELOPMENT DISTRICT (TIF DISTRICT #2)

Within the City of Wichita, Sedgwick County, Kansas, beginning at the intersection of 37th Street North and Broadway Avenue, thence south along the center line of Broadway Avenue to the intersection of Broadway Avenue and 35th Street North, thence west along the center line of 35th Street North to the intersection of 35th Street North and Market Street, thence south along the center line of Market Street to the intersection of Market Street and 17th Street, thence west along the center line of 17th Street to the intersection of 17th Street and Waco Avenue, thence south along the center line of Waco Avenue to the intersection of Waco Avenue and Second Street, thence east along the center line of Second Street to the intersection of Second Street and Hydraulic Avenue, thence north along the center line of Hydraulic Avenue to the point where the center line of Hydraulic Avenue intersects the east right of way of Interstate Highway I-135, thence generally north along the east right of way of Interstate Highway I-135 to the point where the east right of way of Interstate Highway I-135 intersects the west right of way of the Union Pacific Railroad, thence generally northeast along the west right of way of the Union Pacific Railroad to the center line of 37th Street North, thence generally northwest and southeast along the boundary line of the corporate limits of the City of Wichita as defined by the boundary resolution of December 19, 1995, to the center line of Hydraulic Avenue, thence north along the center line of Hydraulic Avenue to the south right of way of State Highway K-254, thence generally east along the south right of way of State Highway K-254 to the center line of Hillside Avenue, thence generally northeast and southwest along the boundary line of the corporate limits of the City of Wichita to the intersection of 37th Street North and Broadway Avenue, being the point of beginning.




**THE NORTH INDUSTRIAL CORRIDOR REDEVELOPMENT DISTRICT**
**(TAX INCREMENT FINANCING DISTRICT #2)**

(Published in The Wichita Eagle on August 15, 2014) 037002

ORDINANCE NO. 49-798

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE CENTER CITY SOUTH REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Center City South Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Center City South Redevelopment District, the District being created in 2007; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Center City South Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the City has by ordinance added property and increased the District boundaries, the District boundaries being modified in 2008; and,

WHEREAS, the boundaries of the Center City South Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $291,299 of increment funds in ad valorem taxes from the 21st and Grove Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Center City South Redevelopment District at $291,299 for the year beginning January 1, 2015, and ending December 31, 2015.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2015, and December 31, 2015, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and

maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the Center City South Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of August, 2014.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

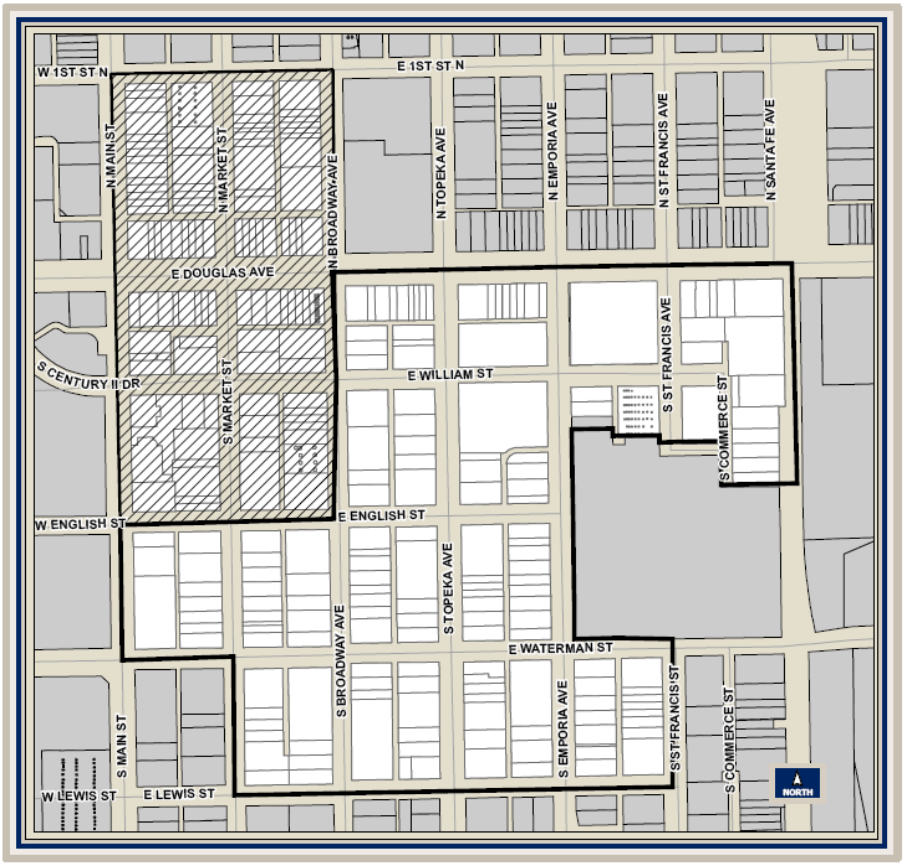
APPROVED AS TO FORM:

_____
Brian K. McLeod, Deputy City Attorney

# EXHIBIT "A"

## DESCRIPTION OF THE CENTER CITY SOUTH REDEVELOPMENT DISTRICT (TIF DISTRICT #12)

All property located in Wichita, Sedgwick County, Kansas within the boundaries beginning at the intersection of the centerline of Main Street and the north right of way line of 1st Street North; thence east to the east right of way line of Broadway Avenue; thence south to the north right of way line of Douglas Avenue; thence east to the east right of way line of Santa Fe Avenue; thence south to the south right of way line of Waterman Street; thence west to the east right of way line of St. Francis Street; thence south to the south right of way line of Lewis Street; thence west to the west right of way line of Market Street; thence north to the south right of way line of Waterman Street; thence west to the centerline of Main Street; thence north to the point of beginning; excluding Lot 1 Block 1 Sedgwick County Arena Addition; and including all street rights of way within such described area.




## THE CENTER CITY SOUTH REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #12)

(Published in The Wichita Eagle on August 15, 2014) 037002

ORDINANCE NO. 49-799

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE DOUGLAS & HILLSIDE REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015.

WHEREAS, the City of Wichita, Kansas, has established a Redevelopment District designated as the Douglas & Hillside Redevelopment District under authority of K.S.A. 12-1770 *et seq.* of the State of Kansas; and,

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Douglas & Hillside Redevelopment District, the District being created in 2006; and,

WHEREAS, the City found that the conditions defined in K.S.A. 12-1770a of the State of Kansas did exist and therefore the increment in ad valorem taxes for the Douglas & Hillside Redevelopment District is collected on a yearly basis as defined in K.S.A. 12-1770a of the State of Kansas; and,

WHEREAS, the boundaries of the Douglas & Hillside Redevelopment District are described in Exhibit "A" attached hereto;

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $57,114 of increment funds in ad valorem taxes from the 21st and Grove Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Douglas & Hillside Redevelopment District at $57,114 for the year beginning January 1, 2015, and ending December 31, 2015.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2015, and December 31, 2015, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

SECTION 4. That the Director of Finance of the City of Wichita, Kansas, is hereby directed to make proper certification of the increment estimated to be produced from ad valorem taxes that are to be levied in the Douglas & Hillside Redevelopment District to the County Clerk of Sedgwick County, Kansas, in conformity with and as provided by law.

SECTION 5. This ordinance shall take effect and be in full force and effect from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 12th day of August, 2014.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

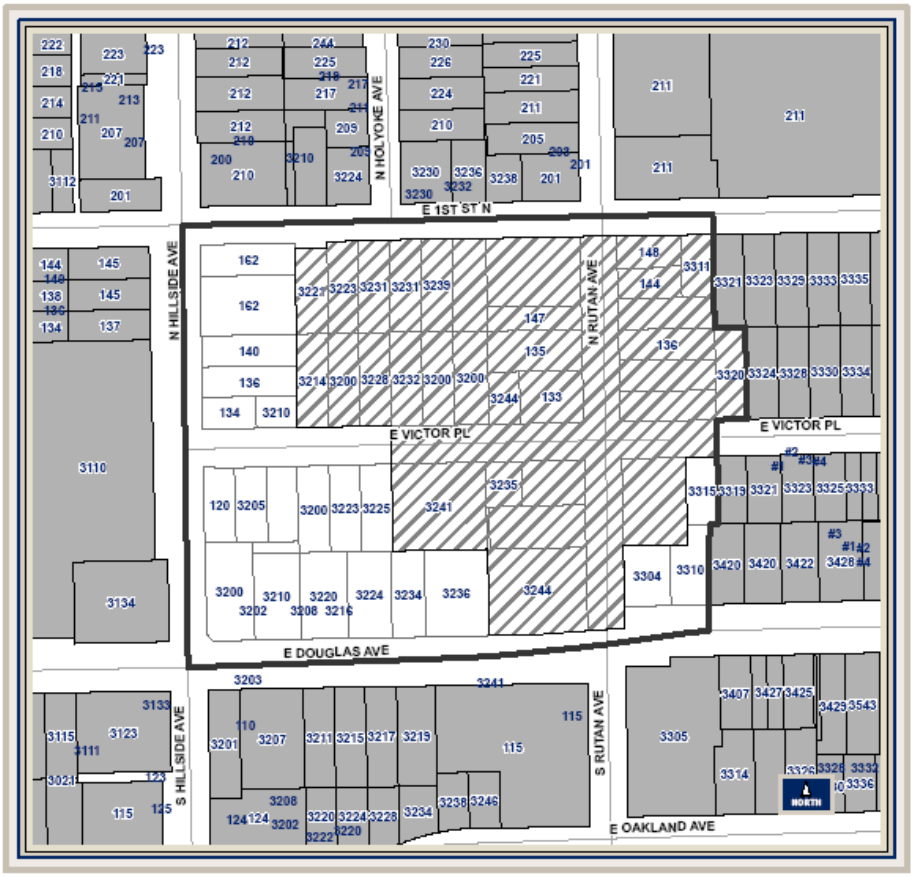
APPROVED AS TO FORM:

_____
Brian K. McLeod, Deputy City Attorney

# EXHIBIT "A"

## DESCRIPTION OF THE DOUGLAS & HILLSIDE REDEVELOPMENT DISTRICT (TIF DISTRICT #15)

All property located in Wichita, Sedgwick County, Kansas, bounded on the south by Douglas Avenue, on the west by Hillside Avenue, on the north by 1st Street North, and includes property adjacent to Rutan Avenue on the east.




## THE DOUGLAS & HILLSIDE REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #15)

## NOTICE OF BUDGET HEARING

The governing body of the City of Wichita, Kansas will meet on the 12th day of August, 2014 at 9:00 A.M., in the City Council Chambers, City Hall, 455 N. Main, Wichita, Kansas for the purpose of hearing objections and answering questions of taxpayers related to the proposed 2015 budget and proposed tax levy, and for considering amendments relating to the 2014 adopted operating budget. Detailed budget information is available at the City of Wichita Department of Finance, 12th Floor, and will be available at this hearing.

## BUDGET SUMMARY

The "Proposed Budget 2015 Expenditures" and the "Amount of 2014 Ad Valorem Tax" establish the maximum limits of the 2015 budget. The "Estimated Tax Rate*" is subject to change depending on final assessed valuation.

| | 2013 | | 2014 | | Proposed Budget 2015 | | |
|---|---|---|---|---|---|---|---|
| Fund | Prior Year Actual Expenditures | Actual Tax Rate* | Current Year Estimate of Expenditure | Actual Tax Rate* | Expenditures | Amount of 2014 Ad Valorem Tax | Est Tax Rate* |
| General Fund | 205,866,360 | 24.443 | 213,360,497 | 24.003 | 230,172,209 | 75,918,454 | 24.009 |
| Debt Service | 77,354,634 | 8.028 | 96,724,373 | 8.506 | 119,430,523 | 26,877,707 | 8.500 |
| **Subtotal tax-supported funds** | **283,220,994** | **32.471** | **310,084,870** | **32.509** | **349,602,732** | **102,796,161** | **32.509** |
| Homelessness Asst | 340,115 | | 382,736 | | 382,736 | | |
| Tourism and Convention | 6,421,109 | | 6,734,480 | | 8,912,269 | | |
| Special Alcohol Programs | 1,954,763 | | 1,964,829 | | 2,214,829 | | |
| Special Parks and Recreation | 1,818,718 | | 1,867,348 | | 1,975,448 | | |
| Landfill | 894,424 | | 1,361,817 | | 4,665,278 | | |
| Landfill Post Closure | 708,760 | | 8,951,050 | | 10,578,676 | | |
| Building & Construction | 5,964,989 | | 6,067,506 | | 6,096,939 | | |
| Economic Development | 3,106,893 | | 4,261,973 | | 3,263,474 | | |
| Sales Tax Construction Pledge | 28,003,853 | | 26,455,232 | | 36,884,290 | | |
| Downtown Parking | 264,641 | | 1,228,910 | | 2,196,768 | | |
| State Office Building | 299,843 | | 641,276 | | 1,243,577 | | |
| TIF Districts** | 3,769,746 | | 10,566,379 | | 21,068,054 | | |
| SSMID** | 584,171 | | 622,810 | | 622,810 | | |
| City/County Operations | 3,337,730 | | 3,690,760 | | 3,738,615 | | |
| Cemeteries | 53,031 | | 85,842 | | 87,732 | | |
| **Subtotal special revenue funds** | **57,522,784** | | **74,882,948** | | **103,931,495** | | |
| Airport Fund** | 19,503,245 | | 21,828,455 | | 28,654,538 | | |
| Golf Fund** | 4,621,617 | | 5,598,596 | | 5,626,049 | | |
| Transit Fund** | 5,521,725 | | 5,613,296 | | 5,696,023 | | |
| Sewer Utility | 45,498,795 | | 54,480,869 | | 54,588,778 | | |
| Water Utility | 59,111,026 | | 74,646,617 | | 82,997,103 | | |
| Stormwater Utility | 9,068,826 | | 10,614,422 | | 16,404,199 | | |
| **Subtotal enterprise funds** | **143,325,236** | | **172,782,255** | | **193,966,689** | | |
| Information Technology | 9,298,276 | | 10,303,404 | | 11,325,183 | | |
| Equipment Motor Pool | 15,027,731 | | 17,028,828 | | 17,190,174 | | |
| Self-Insurance | 42,375,197 | | 52,816,989 | | 56,035,833 | | |
| **Subtotal internal service funds** | **66,701,205** | | **80,149,221** | | **84,551,191** | | |
| **TOTAL OPERATING FUNDS** | **550,770,219** | | **637,899,294** | | **732,052,107** | | |
| Less: Interfund transactions | 112,576,929 | | 133,682,689 | | 142,174,299 | | |
| **NET TOTAL** | **438,193,290** | | **504,216,605** | | **589,877,808** | **102,796,161** | **32.509** |
| Trust Funds | 71,860,131 | | 81,927,683 | | 87,456,239 | | |
| Total Tax Levied | 101,036,040 | | 101,569,480 | | | | |
| Assessed Valuation | 3,111,573,108 | | 3,124,330,492 | | 3,162,083,144 | | |
| | **Outstanding Indebtedness, January 1** | | | | | | |
| | **2012** | | **2013** | | **2014** | | |
| GO Bonds | 525,794,499 | | 558,036,694 | | 480,004,999 | | |
| Revenue Bonds | 508,350,628 | | 447,335,768 | | 413,814,070 | | |
| No-Fund Warrants | 0 | | 0 | | 0 | | |
| Lease Purchase Principal | 0 | | 0 | | 0 | | |
| **Total** | **1,034,145,127** | | **1,005,372,462** | | **893,819,069** | | |

* Tax Rates are expressed in mills.

** These funds are shown for information purposes only and are either certified separately or are not required to be certified.

Clerk

**NOTICE OF BUDGET HEARING**
**AMENDING THE 2014 BUDGET**

The governing body of the ***City of Wichita*** will meet on the 12th day of August, 2014 at 9:00 a.m., in the City Council Room, City Hall, 455 N. Main, Wichita, Kansas for the purpose of hearing objections and answering questions of taxpayers relating to the Proposed 2015 budget, the proposed tax levy, and for considering amendments relating to the 2014 Adopted operating budget.

Detailed budget information is available at the City of Wichita Department of Finance, City Hall, 12th Floor, and will be available at this hearing.

| | **Adopted Budget 2014** | | | **Proposed Amendment 2014 Budget** |
|---|---|---|---|---|
| Fund | Actual Tax Rate | Amount of Ad Valorem Tax | Expenditures | Expenditures |
| Sewer Fund | | | 53,215,910 | 54,480,869 |

Clerk

## NOTICE OF BUDGET HEARING

The governing body of the City of Wichita, Kansas will meet on the 12th day of August, 2014 at 9:00 A.M., in the City Council Chambers, City Hall, 455 N. Main, Wichita, Kansas for the purpose of hearing objections and answering questions of taxpayers related to the proposed 2015 budget for Tax Increment Financing (TIF) Funds and the proposed tax increment. Detailed budget information is available at the City of Wichita Department of Finance, 12th Floor, and will be available at this hearing.

## TAX INCREMENT FINANCING (TIF) DISTRICTS BUDGET SUMMARY

The "Proposed Budget 2015 Expenditures" and the "Amount of 2014 Tax Increment" establish the maximum limits of the 2015 budget.

| | 2013 | 2014 | Proposed Budget 2015 | |
|---|---|---|---|---|
| **Tax Increment Financing Fund** | Prior Year Actual Expenditures | Current Year Estimate of Expenditure | Expenditures | Amount of 2014 Tax Increment* |
| | | | | |
| Gilbert and Mosley | 919,068 | 4,192,895 | 9,537,682 | 2,670,040 |
| North Industrial Corridor | 690,565 | 4,221,884 | 7,455,602 | 1,165,300 |
| | | | | |
| **Total Environmental TIFs** | **1,609,633** | **8,414,779** | **16,993,284** | **3,835,340** |
| | | | | |
| | | | | |
| East Bank | 1,580,000 | 1,580,000 | 2,000,000 | 1,497,048 |
| 21st & Grove | 165,000 | 165,000 | 153,320 | 133,320 |
| Old Town Cinema | 383,513 | 375,000 | 402,111 | 297,894 |
| Northeast Redevelopment | 31,600 | 31,600 | 31,600 | 31,600 |
| Ken Mar TIF | 0 | 0 | 491,930 | 165,350 |
| Center City TIF | 0 | 0 | 652,271 | 291,299 |
| Douglas and Hillside TIF | 0 | 0 | 343,538 | 57,114 |
| | | | | |
| | | | | |
| **Total Economic Development TIFs** | **2,160,113** | **2,151,600** | **4,074,770** | **2,473,625** |
| | | | | |
| | | | | |
| **TOTAL ALL TIFs** | **3,769,746** | **10,566,379** | **21,068,054** | **6,308,965** |
| | | | | |

*NOTE: The amount of the tax increment for the Economic Development TIFs is estimated and is dependent upon the incremental value of improvements since the base year when the TIF was created. The tax increment for Environmental TIFs is established through the budget process.

Clerk

State of Kansas
City/County
2015

## NOTICE OF BUDGET HEARING

The governing body of the City of Wichita, Kansas will meet on the 12th day of August, 2014 at 9:00 A.M., in the City Council Chambers, City Hall, 455 N. Main, Wichita, Kansas for the purpose of hearing objections and answering questions of taxpayers related to the proposed 2015 budget and proposed tax levy, and for considering amendments relating to the 2014 adopted operating budget. Detailed budget information is available at the City of Wichita Department of Finance, 12th Floor, and will be available at this hearing.

## BUDGET SUMMARY

The "Proposed Budget 2015 Expenditures" and the "Amount of 2014 Ad Valorem Tax" establish the maximum limits of the 2015 budget. The "Estimated Tax Rate*" is subject to change depending on final assessed valuation.

| | 2013 | | 2014 | | Proposed Budget 2015 | | |
|---|---|---|---|---|---|---|---|
| Fund | Prior Year Actual Expenditures | Actual Tax Rate* | Current Year Estimate of Expenditure | Actual Tax Rate* | Expenditures | Amount of 2014 Ad Valorem Tax | Est Tax Rate* |
| | | | | | | | |
| SSMID | 584,171 | 6.0420 | 622,810 | 6.040 | 622,810 | 571,705 | 6.040 |
| | | | | | | | |
| | | | | | | | |
| **TOTAL OPERATING FUNDS** | **584,171** | | **622,810** | | **622,810** | | |
| | | | | | | | |
| Less: Interfund transactions | 0 | | 0 | | 0 | | |
| | | | | | | | |
| **NET TOTAL** | **584,171** | | **622,810** | | **622,810** | **571,705** | **6.040** |
| | | | | | | | |
| Expendable Trust Funds | 0 | | 0 | | 0 | | |
| | | | | | | | |
| Total Tax Levied | 538,954 | | 564,989 | | | | |
| Assessed Valuation | 94,064,479 | | 93,535,392 | | 94,653,168 | | |

| | Outstanding Indebtedness, January 1 | | |
|---|---|---|---|
| | 2012 | 2013 | 2014 |
| GO Bonds | 0 | 0 | 0 |
| Revenue Bonds | 0 | 0 | 0 |
| No-Fund Warrants | 0 | 0 | 0 |
| Lease Purchase Principal | 0 | 0 | 0 |
| **Total** | **0** | **0** | **0** |

* Tax Rates are expressed in mills.

Clerk

State of Kansas
City/County
2015

## NOTICE OF BUDGET HEARING

The governing body of the City of Wichita, Kansas will meet on the 12th day of August, 2014 at 9:00 A.M., in the City Council Chambers, City Hall, 455 N. Main, Wichita, Kansas for the purpose of hearing objections and answering questions of taxpayers related to the proposed 2015 budget and proposed tax levy, and for considering amendments relating to the 2014 adopted operating budget. Detailed budget information is available at the City of Wichita Department of Finance, 12th Floor, and will be available at this hearing.

## BUDGET SUMMARY

The "Proposed Budget 2015 Expenditures" and the "Amount of 2014 Ad Valorem Tax" establish the maximum limits of the 2015 budget. The "Estimated Tax Rate*" is subject to change depending on final assessed valuation.

| | 2013 | | 2014 | | Proposed Budget 2015 | | |
|---|---|---|---|---|---|---|---|
| Fund | Prior Year Actual Expenditures | Actual Tax Rate* | Current Year Estimate of Expenditure | Actual Tax Rate* | Expenditures | Amount of 2014 Ad Valorem Tax | Est Tax Rate* |
| | | | | | | | |
| SSMID | 584,171 | 6.0420 | 622,810 | 6.040 | 622,810 | 569,781 | 6.020 |
| | | | | | | | |
| | | | | | | | |
| **TOTAL OPERATING FUNDS** | **584,171** | | **622,810** | | **622,810** | | |
| | | | | | | | |
| Less: Interfund transactions | 0 | | 0 | | 0 | | |
| | | | | | | | |
| **NET TOTAL** | **584,171** | | **622,810** | | **622,810** | **569,781** | **6.020** |
| | | | | | | | |
| Expendable Trust Funds | 0 | | 0 | | 0 | | |
| | | | | | | | |
| Total Tax Levied | 538,954 | | 564,989 | | | | |
| Assessed Valuation | 94,064,479 | | 93,535,392 | | 94,653,168 | | |

| | Outstanding Indebtedness, January 1 | | |
|---|---|---|---|
| | 2012 | 2013 | 2014 |
| GO Bonds | 0 | 0 | 0 |
| Revenue Bonds | 0 | 0 | 0 |
| No-Fund Warrants | 0 | 0 | 0 |
| Lease Purchase Principal | 0 | 0 | 0 |
| **Total** | **0** | **0** | **0** |

* Tax Rates are expressed in mills.

Clerk

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO**: Mayor and City Council

**SUBJECT:** Water and Sewer Utility Refunding Revenue Bond Sale

**INITIATED BY:** Finance Department

**AGENDA:** New Business

---

**Recommendation:** Award the sale of the bonds to the best bidder.

**Background:** The City is offering for sale one series of Water and Sewer Utility Refunding Revenue Bonds (Series 2014A) in the principal amount of not to exceed $43,105,000 to refund previously issued and currently outstanding bonds in order to provide savings on future debt service costs to the City.

**Analysis**: The proceeds of the Series 2014A Bonds will be used for the current and advance refunding of the Water and Sewer Utility Revenue Bonds, Series 2005A and Series 2005C, by providing the necessary funds to pay the principal on the redemption dates.

Bids will be accepted electronically through ***PARITY*** Electronic Bid Submission System on July 15, 2014 until 10:00 a.m. CT in the Finance Conference Room, at which time the bids will be publicly opened. No bids will be accepted after the 10:00 a.m. deadline. The bids will be verified, tabulated and presented to the City Council at its earliest convenience following the tabulation of the bids. By law, the City must award the sale of the bonds and notes to the bidder whose proposed interest rates result in the lowest true interest cost.

The City has established a minimum 3% threshold as an appropriate level of savings in connection with a bond refunding. In the event the actual bids on the refunding bonds do not produce the minimum level of savings, the acceptance of bids on the refunding bonds will not be recommended.

**Financial Considerations**: The Series 2014A Refunding Revenue Bonds will mature from the years 2015 through 2030, with principal maturities structured to produce level savings for the years 2015-2016 (nearly $671,000 per year), with average savings of $255,000 savings in all other years. The Series 2014A Bonds are callable in 2024 at par.

**Legal Considerations:** The authorizing Ordinances and Resolutions have been prepared by Bond Counsel and approved as to form by the Law Department, subject to tabulation and approval of bids and the insertion of final terms and sizing approved by the City Manager, his designee or the Director of Finance.

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

**Attachments:** Request for Declaration of Emergency
Resolution Authorizing Issuance of Bonds
Ordinance Authorizing Issuance of Bonds

Gilmore & Bell, P.C.
06/20/2014

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**ORDINANCE NO. 49-786**

**OF**

**THE CITY OF WICHITA, KANSAS**

**PASSED**

**JULY 15, 2014**

---

**WATER AND SEWER UTILITY REFUNDING REVENUE BONDS**
**SERIES 2014A**

---

JLN\600809.075\BASICDOCS (07-03-14)

**ORDINANCE NO. 49-786**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REFUNDING REVENUE BONDS, SERIES 2014A, OF THE CITY OF WICHITA, KANSAS, FOR THE PURPOSE OF PROVIDING FUNDS TO REFUND A PORTION OF THE CITY'S OUTSTANDING WATER AND SEWER UTILITY SYSTEM REVENUE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

---

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

**WHEREAS**, the City Council (the "Governing Body") of the City has heretofore by Ordinance No. 39-888, adopted May 26, 1987, and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility" (the "Utility"); and

**WHEREAS**, the City is authorized under the provisions of the Act, to issue and sell revenue bonds for the purpose of paying all or part of the cost of the acquisition, construction, reconstruction, alteration, repair, improvement, extension or enlargement of the Utility, provided that the principal of and interest on such revenue bonds shall be payable solely from the Net Revenues derived by the City from the operation of the Utility; and

**WHEREAS**, the City heretofore issued and has Outstanding several series of revenue bonds payable from the net revenues of the Utility and is authorized by K.S.A. 10-116a to issue refunding revenue bonds of the City for the purpose of refunding a portion of said revenue bonds hereinafter described (collectively, the "Refunding Bonds"); and

**WHEREAS**, in order to achieve interest cost savings through early redemption of the Refunded Bonds, to reduce debt service requirements of the City for certain years and to provide an orderly plan of finance for the City, it has become desirable and in the best interest of the City and the Utility to refund the Refunded Bonds; and

**WHEREAS**, the Governing Body hereby finds and determines that each and all of the conditions precedent to the issuance of additional revenue bonds on a parity with and co-equal in priority and lien to the existing revenue bond indebtedness of the Utility have, or can and will be satisfied prior to or upon the issuance of such additional revenue bonds to refund the Refunded Bonds; and

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

**Section 1. Definitions of Words and Terms**. In addition to words and terms defined elsewhere herein, the following words and terms in this Ordinance shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural

and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**"Act"** means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, specifically including K.S.A. 10-116a, and K.S.A. 10-620 *et seq*. and K.S.A. 10-1201 *et seq*., as amended by Charter Ordinance No. 211, all as amended and supplemented from time to time.

**"Additional Bonds"** means any bonds secured by the Revenues hereafter issued pursuant to the Bond Resolution.

**"Additional Indebtedness"** means, collectively, Additional Bonds and Additional Obligations.

**"Additional Obligations"** means any leases or other obligations of the Issuer payable from the Revenues, other than the Bonds.

**"Bond Reserve Account"** means the Water and Sewer Utility Bond Service Reserve Account.

**"Bond Resolution"** means collectively the Outstanding Parity Bond Resolutions, the Series 2014A Bond Resolution and any supplemental resolution authorizing any Additional Indebtedness.

**"Bonds"** means, collectively, Outstanding Parity Bonds, the Series 2014A Bonds and any Additional Bonds.

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

**"Clerk"** means the duly appointed and acting Clerk of the City or, in the Clerk's absence, the duly appointed Deputy, Assistant or Acting Clerk.

**"Current Expenses"** means, as applied to either component of the Utility, the Issuer's reasonable and necessary current expenses of operation, repair and maintenance, and shall include, without limiting the generality of the foregoing, (a) all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, (b) all administrative expenses, (c) any reasonable payments to pension or retirement funds properly chargeable to each component of the Utility, (d) insurance premiums, (e) engineering expenses relating to operation, repair and maintenance, (f) legal expenses, (g) any lawful fiscal agency commissions and expenses in connection with the payment of the principal of and the interest and any redemption premium on Outstanding Bonds, (h) any taxes which may be lawfully imposed on either component of the Utility or the income therefrom and reserves for such taxes, (i) the expenses of collecting rates, fees and charges for the use of and for the services furnished or to be furnished by the Utility, (j) if required by law, the payment of the principal of and the interest on outstanding bonds and other obligations heretofore issued by the Issuer or by improvement districts heretofore annexed by the City to pay the cost of any portion of the Utility to the extent that the special assessments and taxes pledged for the payment of such principal and interest shall be insufficient for such purposes and to the extent that such payment shall not be made from the Improvement Account, and (k) any other expenses required to be paid by the Issuer under the provisions of this Resolution or by law. "Current Expenses" shall ***not*** include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, the Payment to the City, or any deposits or transfers to the credit of the Principal and Interest Account, the Bond Reserve Account, the Depreciation and Replacement Account or the Improvement Account.

**"Depreciation and Replacement Account"** means the Water and Sewer Utility Depreciation and Replacement Account.

**"Fiscal Year** means the twelve month period ending on December 31.

**"Governing Body"** means the duly elected and/or appointed and acting persons comprising the City Council of the Issuer.

**"Gross Revenues"** means all income and revenues derived and collected by the Issuer from the operation of the Utility, including investment and rental income, net proceeds from business interruption insurance and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on Utility Indebtedness, but excluding non-cash contributions capital contributions, any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

**"Improvement Account"** means the Water and Sewer Utility Improvement Account.

**"Issuer"** means the City and any successors or assigns.

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

**"Net Revenues"** means, for the period of determination, the amount of the excess of Gross Revenues deposited to the credit of the Revenue Fund, over the Current Expenses of the respective components of the Utility paid from the Revenue Fund during such period; such amount specifically excluding Debt Service Requirements paid, depreciation, amortization and capital expenditures for improvements to the Utility.

**"Ordinance"** means this Ordinance authorizing the issuance of the Bonds.

**"Outstanding Parity Bonds"** means the Outstanding Series 2000 Bonds, Series 2005B Bonds, Series 2006, Series 2008A Bonds, Series 2009 Bonds, Series 2010 Bonds, Series 2011A Bonds and Series 2012A Bonds.

**"Outstanding Parity Bond Resolution"** means the ordinances and resolutions authorizing the issuance of the Outstanding Parity Bonds.

**"Parity Bonds"** means the Outstanding Parity Bonds, the Series 2014A Bonds, and any Additional Bonds hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Series 2014A Bonds with respect to the Net Revenues.

**"Parity Indebtedness"** means, collectively, the Parity Bonds and Parity Obligations.

**"Parity Obligations"** means any Additional Obligations hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Parity Bonds with respect to the lien on the Net Revenues.

**"Payment to the City"** shall mean the payment to the City's general fund as a payment for operation of the Utility. The amount of the annual Payment to the City shall be governed by the terms of such ordinances of the City which are then in effect with respect to the then outstanding Utility Indebtedness.

**"Refunded Bonds"** means collectively: (a) the Series 2005A Bonds maturing in the years 2014 to 2016, inclusive, in the aggregate principal amount of $14,595,000; and (b) the Series 2005C Bonds maturing in the years 2014 to 2030, inclusive, in the aggregate principal amount of $35,720,000.

**"Series 2000 Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2000, dated June 1, 2000.

**"Series 2005 Bonds"** means, collectively, the Series 2005A Bonds, the Series 2005B Bonds and the Series 2005C Bonds.

**"Series 2005A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2005A, dated May 12, 2005.

**"Series 2005B Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2005B, dated August 17, 2005.

**"Series 2005C Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2005C, dated October 1, 2005.

**"Series 2006 Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2006, dated December 1, 2006.

**"Series 2008A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2008A, dated April 1, 2008.

**"Series 2009 Bonds"** means, collectively, the Series 2009A Bonds and the Series 2009B Bonds.

**"Series 2009A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2009A, dated June 30, 2009.

**"Series 2009B Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), dated June 30, 2009.

**"Series 2010 Bonds"** means, collectively, the Series 2010A Bonds and the Series 2010B Bonds.

**"Series 2010A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2010A, dated October 15, 2010.

**"Series 2010B Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2010B (Taxable Under Federal Law), dated October 15, 2010.

**"Series 2011A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, dated November 17, 2011.

**"Series 2012A Bonds"** mean the Issuer's Water and Sewer Utility Revenue Bonds, Series 2012A, dated May 1, 2012.

**"Series 2014A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, dated August 1, 2014, authorized by this Ordinance.

**"State"** means the State of Kansas.

**"Utility"** shall mean the combined City of Wichita, Kansas Water Utility and Sewer Utility, and any improvements, extensions and enlargements thereto hereafter constructed or acquired.

**"Utility Indebtedness"** means collectively the Bonds and any Additional Obligations which are secured by an interest in, the Gross Revenues.

**Section 2. Authorization of the Series 2014A Bonds**. There shall be issued and hereby are authorized and directed to be issued the Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, of the City in the principal amount of $43,105,000*, for the purpose of providing a portion of the] funds to: (a) refund the Refunded Bonds; and (b) pay costs of issuance of the Series 2014A Bonds.

**Section 3. Security for the Series 2014A Bonds**. The Series 2014A Bonds shall be special obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the City hereby pledges said Net Revenues to the payment of the principal of and interest on the Series 2014A Bonds. The Series 2014A Bonds shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Series 2014A Bonds, either as to principal or interest.

The covenants and agreements of the City contained herein and in the Series 2014A Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2014A Bonds, all of which Series 2014A Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Series 2014A Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Series 2014A Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Net Revenues with any Parity Indebtedness. The Series 2014A Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Parity Indebtedness; and the Parity Indebtedness shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Series 2014A Bonds.

**Section 4. Terms, Details and Conditions of the Series 2014A Bonds**. The Series 2014A Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Bond Resolution hereafter adopted by the governing body of the City.

**Section 5. Rate Covenant**. The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the Utility, including all repairs, alterations, extensions, reconstructions, enlargements or improvements thereto hereafter constructed or acquired by the City, as will produce Gross Revenues sufficient to (a) pay Current Expenses; (b) pay the principal of and interest on the Utility Indebtedness as and when the same become due; and (c) provide reasonable and adequate reserves for the payment of the Parity Bonds and the interest thereon and for the protection and benefit of the Utility as provided in this Ordinance and the Bond Resolution. The Bond Resolution may establish requirements in excess of the requirements set forth herein.

**Section 6. Further Authority**. The Mayor, City Manager, Director of Finance, City Clerk and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of

the Ordinance to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 7. Governing Law**. This Ordinance and the Series 2014A Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 8. Effective Date**. This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

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**PASSED** by the City Council of the City of Wichita, Kansas, on July 15, 2014.

(SEAL)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

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**CERTIFICATE**

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on July 15, 2014; that the record of the final vote on its passage is found on page ____ of journal ____; and that the Ordinance or a summary thereof was published in ***The Wichita Eagle*** on July 18, 2014.

DATED: July 18, 2014.

_____

Karen Sublett, City Clerk

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(PUBLISHED IN ***THE WICHITA EAGLE*** ON JULY 18, 2014)

## SUMMARY OF ORDINANCE NO. 49-[__]

On July 15, 2014, the governing body of the City of Wichita, Kansas passed an ordinance entitled:

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REFUNDING REVENUE BONDS, SERIES 2014A, OF THE CITY OF WICHITA, KANSAS, FOR THE PURPOSE OF PROVIDING FUNDS TO REFUND A PORTION OF THE CITY'S OUTSTANDING WATER AND SEWER UTILITY SYSTEM REVENUE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

The Series 2014A Bonds approved by the Ordinance are being issued in the principal amount of $43,105,000*, to refund previously issued Water and Sewer Utility Revenue Bonds of the City, and constitute special obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues derived by the City from the operation of the Water and Sewer Utility. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, 13th Floor, City Hall, 455 North Main, Wichita, Kansas 67202-1679. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.wichita.gov.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: July 15, 2014.

_____

Gary E. Rebenstorf, Director of Law
and City Attorney

JLN\600809.075\BASICDOCS

Gilmore & Bell, P.C.
06/20/2014

---

**RESOLUTION NO. 14-[___]**

**OF**

**THE CITY OF WICHITA, KANSAS**

**ADOPTED**

**JULY 15, 2014**

**$43,105,000***
**WATER AND SEWER UTILITY REFUNDING REVENUE BONDS**
**SERIES 2014A**

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JLN\600809.075\BASICDOCS (07-03-14)

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**RESOLUTION NO. 14-[___]**

**A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF WATER AND SEWER UTILITY REFUNDING REVENUE BONDS, SERIES 2014A, OF THE CITY OF WICHITA, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 49-[___] OF THE ISSUER; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.**

---

**WHEREAS**, the Issuer has heretofore passed the Ordinance authorizing the issuance of the Series 2014A Bonds; and

**WHEREAS**, the Ordinance authorized the governing body of the Issuer to adopt a resolution prescribing certain details and conditions and to make certain covenants with respect to the issuance of the Series 2014A Bonds; and

**WHEREAS**, in order to provide for the payment of the Refunded Bonds it is desirable to enter into an Escrow Trust Agreement, by and between the Issuer and the Escrow Agent.

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

## ARTICLE I

## DEFINITIONS

**Section 101. Definitions of Words and Terms**. In addition to words and terms defined elsewhere herein and in the Outstanding Parity Bond Resolutions, the following words and terms as used in this Bond Resolution shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**"Act"** means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, specifically including K.S.A. 10-116a, and K.S.A. 10-620 *et seq*. and K.S.A. 10-1201 *et seq*., as amended by Charter Ordinance No. 211, all as amended and supplemented from time to time.

**"Additional Bonds"** means any bonds secured by the Gross Revenues hereafter issued pursuant to the Bond Resolution; provided that any General Obligation Indebtedness shall not constitute Additional Bonds.

**"Additional Obligations"** means any leases or other obligations of the Issuer payable from the Gross Revenues, other than the Bonds.

**"Annual Budget"** means with respect to the Utility, the City's budget of estimated receipts and expenditures on account of all Funds and Accounts created under the provisions of the Bond Resolution, including a budget of Current Expenses, for any Fiscal Year and adopted pursuant to the provisions of ***Section 806*** of the Bond Resolution.

**"Assured Guaranty"** means Assured Guaranty Corp., a Maryland corporation, or any successor thereto.

**"Authorized Denomination"** means $5,000 or any integral multiples thereof.

**"Authorized Investments"** shall mean, as long as the Pre-2008 Bonds are Outstanding, any of the following securities, and to the extent the same are at the time permitted for investment of funds held by the Issuer pursuant to the Bond Resolution:

(a) obligations of any of the following Federal agencies which obligations represent the full faith and credit of the United States of America, including:

- Export - Import Bank
- Farmers Home Administration
- General Services Administration
- U.S. Maritime Administration
- Small Business Administration
- Government National Mortgage Association (GNMA)
- U.S. Department of Housing & Urban Development (PHA's)
- Federal Housing Administration;

(b) bonds, notes or other evidences of indebtedness rated *"AA "* by Standard & Poor's, and *"Aa2"* by Moody's issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;

(c) investments in shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Horne Loan Mortgage Corporation;

(d) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of the State or of any agency, instrumentality or local governmental unit of the State which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (1) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P and Moody's, or any successors thereto; or (2) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (1) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the

maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;

(e) investment agreements with or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or Standard &Poor's

(f) Repurchase agreements secured by direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation; and

(g) Receipts evidencing ownership interests in securities or portions thereof in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation.

***and thereafter*** shall mean the investments hereinafter described, provided, however, no moneys or funds shall be invested in a Derivative:

(a) investments authorized by K.S.A. 12-1675 and amendments thereto;

(b) the municipal investment pool established pursuant to K.S.A. 12-1677a, and amendments thereto;

(c) direct obligations of the United States Government or any agency thereof;

(d) the Issuer's temporary notes issued pursuant to K.S.A. 10-123 and amendments thereto;

(e) interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the Issuer is located which are insured by the Federal Deposit Insurance Corporation or collateralized by securities described in (c);

(f) obligations of the federal national mortgage association, federal home loan banks or the federal home loan mortgage corporation;

(g) repurchase agreements for securities described in (c) or (f);

(h) investment agreements or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or Standard & Poor's;

(i) investments and shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in (c) or (f);

(j) receipts evidencing ownership interests in securities or portions thereof described in (c) or (f);

(k) municipal bonds or other obligations issued by any municipality of the State as defined in K.S.A. 10-1101 which are general obligations of the municipality issuing the same;

(l) bonds of any municipality of the State as defined in K.S.A. 10-1101 which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of securities described in (c) or (f); or

(m) other investment obligations authorized by the laws of the State and approved in writing by the Bond Insurer, all as may be further restricted or modified by amendments to applicable State law.

**"Balloon Indebtedness"** means Long-Term Indebtedness, 25% or more of the original principal amount of which becomes due (either by maturity or mandatory redemption) during any consecutive twelve-month period, if such principal amount becoming due is not required to be amortized below such percentage by mandatory redemption or prepayment prior to such twelve-month period.

**"Beneficial Owner"** of Bonds includes any Owner of Bonds and any other Person who, directly or indirectly has the investment power with respect to any such Bonds.

**"Bond Counsel"** means the firm of Gilmore & Bell, P.C., or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the Issuer.

**"Bond Insurance Policy"** means the municipal bond insurance policy or financial guaranty insurance policy issued by the Bond Insurer concurrently with the delivery of any Utility Indebtedness guaranteeing the scheduled payment when due of the principal of and interest on such Utility Indebtedness.

**"Bond Insurer"** means: (a) FGIC with respect to the Series 2000 Bonds and the Series 2005B14 Bonds; (b) FSA with respect to the Series 2006 Bonds; (c) Assured Guaranty with respect to the Series 2008A Bonds; and (d) with respect to Additional Indebtedness, the entity set forth in the supplemental resolution authorizing the Additional Indebtedness.

**"Bond Payment Date"** means any date on which principal of or interest on any Bond is payable.

**"Bond Register"** means the books for the registration, transfer and exchange of Bonds kept at the office of the Bond Registrar.

**"Bond Registrar"** means: (a) with respect to the Series 2014A Bonds, the State Treasurer, and its successors and assigns; and (b) with respect to Additional Bonds, the entity designated as Bond Registrar in the supplemental resolution authorizing such Additional Bonds.

**"Bond Reserve Account"** means the Water and Sewer Utility Bond Service Reserve Account.

**"Bond Reserve Requirement"** means, collectively, the bond reserve requirement for each series of Outstanding Parity Bonds, the Series 2014A Bond Reserve Requirement and any bond reserve requirement for any subsequent series of Parity Bonds.

**"Bond Resolution"** means collectively the Outstanding Parity Bond Resolutions, the Series 2014A Bond Resolution and any supplemental resolution authorizing any Additional Indebtedness.

**"Bonds"** means, collectively, Outstanding Parity Bonds, the Series 2014A Bonds and any Additional Bonds.

**"Business Day"** means a day other than a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the Legislature of the State and on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its operations.

**"Cede & Co."** means Cede & Co., as nominee of DTC and any successor nominee of DTC.

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

**"City Manager"** means the duly appointed and acting City Manager of the Issuer or, in the Manager's absence, the duly appointed Deputy, Assistant or Acting City Manager of the Issuer.

**"Clerk"** means the duly appointed and/or elected Clerk or, in the Clerk's absence, the duly appointed Deputy Clerk or Acting Clerk of the Issuer.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder by the United States Department of the Treasury.

"**Consultant**" means the Consulting Engineer, the Independent Accountant or an independent consultant qualified and having a favorable reputation for skill and experience in financial affairs selected by the Issuer for the purpose of carrying out the duties imposed on the Consultant by the Bond Resolution.

**"Consulting Engineer"** means an independent engineer or engineering firm or architect or architectural firm, having a favorable reputation for skill and experience in the construction, financing and operation of public utilities, at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Consulting Engineer by the Bond Resolution.

**"Costs of Issuance"** means all costs of issuing any series of Bonds, including all publication, printing, signing and mailing expenses in connection therewith, registration fees, financial advisory fees, all legal fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with compliance with the Code, all expenses incurred in connection with receiving financial ratings on any series of Bonds, and any premiums or expenses incurred in obtaining any credit enhancement.

**"Costs of Issuance Account"** means Costs of Issuance Account for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A.

**"Current Expenses"** means, as applied to either component of the Utility, the Issuer's reasonable and necessary current expenses of operation, repair and maintenance, and shall include, without limiting the generality of the foregoing, (a) all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, (b) all administrative expenses, (c) any reasonable payments to pension or retirement funds properly chargeable to each component of the Utility, (d) insurance premiums, (e) engineering expenses relating to operation, repair and maintenance, (f) legal expenses, (g) any lawful fiscal agency commissions and expenses in connection with the payment of the principal of and the interest and any redemption premium on Outstanding Bonds, (h) any taxes which may be lawfully imposed on either component of the Utility or the income therefrom and reserves for such taxes, (i) the expenses of collecting rates, fees and charges for the use of and for the services furnished or to be furnished by the Utility, (j) if required by law, the payment of the principal of and the interest on outstanding bonds and other obligations heretofore issued by the Issuer or

by improvement districts heretofore annexed by the City to pay the cost of any portion of the Utility to the extent that the special assessments and taxes pledged for the payment of such principal and interest shall be insufficient for such purposes and to the extent that such payment shall not be made from the Improvement Account, and (k) any other expenses required to be paid by the Issuer under the provisions of this Resolution or by law. "Current Expenses" shall ***not*** include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, the Payment to the City, or any deposits or transfers to the credit of the Principal and Interest Account, the Bond Reserve Account, the Depreciation and Replacement Account or the Improvement Account.

**"Dated Date"** means, with respect to the Series 2014A Bonds, August 1, 2014.

**"Debt Service Coverage Ratio"** means, for any Fiscal Year: (a) with respect to the rate covenants, the ratio determined by dividing (i) a numerator equal to the Net Revenues Available for Debt Service for such Fiscal Year by (ii) a denominator equal to the Debt Service Requirements for such Fiscal Year; and (b) with respect to Additional Indebtedness, the ratio determined by dividing (i) a numerator equal to the average Net Revenues Available for Debt Service for the two (2) prior Fiscal Years by (ii) a denominator equal to the Maximum Annual Debt Service; provided that with respect to Additional Indebtedness that are proposed to be Parity Indebtedness, Debt Service Requirements on Subordinate Lien Obligations and General Obligation Indebtedness shall be disregarded.

**"Debt Service Requirements"** means the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on the Bonds for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company located in the State and having full trust powers.

**"Defaulted Interest"** means interest on any Bond which is payable but not paid on any Interest Payment Date.

**"Defeasance Obligations"** means, so long as the Pre-2008 Bonds are Outstanding, any of the following obligations:

(a) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized by with obligations described in the following (b); or

(b) Direct obligations (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America;

***and thereafter*** shall mean:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (i) not subject to redemption prior to maturity or (ii) the trustee for such obligations has been given irrevocable instructions concerning their

calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(3) such cash and the principal of and interest on such United States Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(4) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(5) such cash and United States Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(6) such obligations are rated in a rating category by Moody's or Standard & Poor's that is no lower than the rating category then assigned by that Rating Agency to United States Government Obligations.

**"Depreciation and Replacement Account"** means the Water and Sewer Utility Depreciation and Replacement Account.

**"Depreciation and Replacement Account Requirement"** means an amount equal fifteen percent (15%) of the Operating Revenues of the Utility for the preceding Fiscal Year

**"Derivative"** means any investment instrument whose market price is derived from the fluctuating value of an underlying asset, index, currency, futures contract, including futures, options and collateralized mortgage obligations.

**"Director of Finance"** means the duly appointed and acting Director of Finance of the Issuer or, in the Director's absence, the duly appointed Deputy, Assistant or Acting Director of Finance of the Issuer.

**"Disclosure Undertaking"** means the Issuer's Omnibus Continuing Disclosure Undertaking for Utility Indebtedness relating to certain obligations contained in the SEC Rule.

**"Discount Indebtedness"** means Long-Term Indebtedness that is originally sold at a price (excluding accrued interest, but without deduction of any underwriters' discount) of less than 75% of the maturity amount including the amount of principal and interest to accrete at maturity of such Long-Term Indebtedness.

**"DTC"** means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors and assigns, including any successor securities depository duly appointed.

**"Escrow Agent"** means Security Bank of Kansas City, Wichita, Kansas, and its successors and assigns.

**"Escrow Agreement"** means the Escrow Trust Agreement, dated as of August 1, 2014, between the Issuer and the Escrow Agent.

**"Escrow Fund"** means the Escrow Fund for Refunded Bonds.

**"Escrowed Securities"** means the securities that satisfy the requirement of Defeasance Obligations as set forth in the Refunded Bonds Resolution, as described in the Escrow Agreement.

**"Event of Default"** means each of the following occurrences or events:

(a) Payment of the principal and of the redemption premium, if any, of any of the Utility Indebtedness shall not be made when the same shall become due and payable, either at Stated Maturity or by proceedings for redemption or otherwise; or

(b) Payment of any installment of interest on any Utility Indebtedness shall not be made when the same shall become due; or

(c) The Issuer shall for any reason be rendered incapable of fulfilling its obligations hereunder; or

(d) Any substantial part of the Utility shall be destroyed or damaged to the extent of impairing its efficient operation or adversely affecting its Gross Revenues and the Issuer shall not within a reasonable time commence the repair, replacement or reconstruction thereof and proceed thereafter to complete with reasonable dispatch the repair, replacement or reconstruction thereof; or

(e) Final judgment for the payment of money shall be rendered against the Issuer as a result of the ownership, control or operation of the Utility and any such judgment shall not be discharged within one hundred twenty (120) days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to stay the execution of or levy under such judgment, order, decree or process or the enforcement thereof; or

(f) An order or decree shall be entered, with the consent or acquiescence of the Issuer, appointing a receiver or receivers of the Utility or any part thereof or of the Gross Revenues thereof, or if such order or decree, having been entered without the consent or acquiescence of the Issuer, shall not be vacated or discharged or stayed on appeal within sixty (60) days after the entry thereof; or

(g) Any proceeding shall be instituted, with the consent or acquiescence of the Issuer, for the purpose of effecting a composition between the Issuer and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the Net Revenues Available for Debt Service; or

(h) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in Utility Indebtedness or in the Bond Resolution (other than the covenants relating to continuing disclosure) on the part of the Issuer to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Issuer by the Owner of any of Utility Indebtedness then Outstanding; or

In determining whether an Event of Default shall have occurred with respect to the due and prompt payment of the Debt Service Requirements on any Insured Bonds no effect shall be given to payments made under

any Bond Insurance Policy.

**"Federal Tax Certificate"** means the Issuer's Federal Tax Certificate dated as of the Issue Date, as the same may be amended or supplemented in accordance with the provisions thereof.

**"FGIC"** means Financial Guaranty Insurance Company, or any successor thereto.

**"Fiscal Year"** means the twelve month period ending on December 31.

**"FSA"** means Financial Security Assurance Inc., a New York stock insurance company, or any successor thereto.

**"Funds and Accounts"** means funds and accounts created pursuant to or referred to in the Bond Resolution.

**"General Obligation Indebtedness"** means any of the Issuer's general obligation bonds issued for improvements to the Utility.

**"Governing Body"** means the duly elected and/or appointed and acting persons comprising the City Council of the Issuer.

**"Gross Revenues"** means all income and revenues derived and collected by the Issuer from the operation of the Utility, including investment and rental income, net proceeds from business interruption insurance and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on Utility Indebtedness, but excluding non-cash contributions capital contributions, any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

**"Improvement Account"** means the Water and Sewer Utility Improvement Account.

**"Independent Accountant"** means an independent certified public accountant or firm of independent certified public accountants at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Independent Accountant by the Bond Resolution.

**"Index Rate"** means the rate of interest set forth in *The Bond Buyer* Revenue Bond Index (or, in the event that *The Bond Buyer* does not compile such index or ceases publication, another comparable publication recognized in the municipal bond market) published for the week immediately preceding the date of determination.

**"Insured Bonds"** means any Utility Indebtedness of which the scheduled payment of principal and interest is guaranteed by a Bond Insurance Policy.

**"Interest Payment Date(s)"** means: (a) with respect to the Series 2014A Bonds, the Stated Maturity of an installment of interest on the Series 2014A Bonds which shall be April 1 and October 1 of each year, commencing April 1, 2015; (b) with respect to the Outstanding Parity Bonds, the Stated Maturity of an installment of interest on such Outstanding Parity Bond Resolutions, and (c) with respect to Additional Indebtedness, the Stated Maturity of an installment of interest on such Additional Indebtedness, as set forth in the supplemental resolution authorizing such Additional Indebtedness.

**"Interim Indebtedness"** means Utility Indebtedness having a term not less than one year, and not in excess of five years, incurred or assumed in anticipation of being refinanced or refunded with Long-Term Indebtedness.

**"Issue Date"** means the date when the Issuer delivers any series of Utility Indebtedness to the Purchaser in exchange for the Purchase Price.

**"Issuer"** means the City and any successors or assigns.

**"Long-Term Indebtedness"** means Utility Indebtedness having an original stated maturity or term greater than five years, or renewable or extendible at the option of the debtor for a period greater than one year from the date of original issuance or incurrence thereof.

**"Maturity"** when used with respect to any Utility Indebtedness means the date on which the principal of such Utility Indebtedness becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

**"Mayor"** means the duly elected and acting Mayor, or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the Issuer.

**"Maximum Annual Debt Service"** means the maximum amount of Debt Service Requirements as computed for the then current or any future Fiscal Year; provided that the Debt Service Requirements in the final Stated Maturity of any series of Utility Indebtedness shall be reduced by the value of cash and Permitted Investments on deposit in the Bond Reserve Subaccount for such series, so long as the Bond Reserve Subaccount for such Utility Indebtedness is maintained at the Bond Reserve Requirement.

**"Moody's"** means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

**"Net Proceeds"** shall mean any insurance proceeds or condemnation awards, paid with respect to the Utility, remaining after the payment therefrom of all expenses incurred in the collection thereof.

**"Net Revenues"** means, for the period of determination, the amount of the excess of Gross Revenues deposited to the credit of the Revenue Fund, over the Current Expenses of the respective components of the Utility paid from the Revenue Fund during such period; such amount specifically excluding Debt Service Requirements paid, depreciation, amortization and capital expenditures for improvements to the Utility.

**"Net Revenues Available for Debt Service"** means the Net Revenues.

**"Notice Address"** means with respect to the following entities:

(a) To the Issuer at:

Department of Finance
12th Floor, City Hall
455 North Main
Wichita, Kansas 67202-1679
Fax: (316) 858-7520

(b) To the Paying Agent at:

**Series 2014A Bonds:**

State Treasurer of the State of Kansas
Landon Office Building
900 Southwest Jackson, Suite 201
Topeka, Kansas 66612-1235
Fax: (785) 296-6976

**Additional Bonds:**

The address set forth in the supplemental resolution authorizing such Additional Bonds.

(c) To the Purchaser:

**Series 2014A Bonds:**

[Purchaser Name]
[Purchaser Address]
[City, State]
Fax: [Fax]

**Additional Bonds:**

The address set forth in the supplemental resolution authorizing such Additional Bonds.

(d) To the Rating Agency(ies):

Moody's Municipal Rating Desk
7 World Trade Center
250 Greenwich Street
23rd Floor
New York, New York 10007

Standard & Poor's Ratings Services, a division of
McGraw Hill Financial Inc.
55 Water Street, 38th Floor
New York, New York 10004

(e) To the Escrow Agent at:

Security Bank of Kansas City
Corporate Trust Department
200 W. Douglas, Suite 612
Wichita, Kansas 67202
Fax: (316) [_____]

with a copy to:

Security Bank of Kansas City
Corporate Trust Department
701 Minnesota Avenue
Suite 206, P.O. Box 171297
Kansas City, Kansas 66117
Fax: (913) 279-7960

(f) To the Bond Insurer:

Assured Guaranty Corp.
1325 Avenue of the Americas
New York, New York 10019
Fax: (212) 581-3266

Financial Guaranty Insurance Company
125 Park Avenue
New York, NY 10017
Telephone: 212-312-3000
Fax: [_____]

Financial Security Assurance Inc.
31 West 52nd Street
New York, New York 10019
Telephone: (212) 826-0100; Telecopier (212) 339-3529.

or such other address as is furnished in writing to the other parties referenced herein.

**"Notice Representative"** means:

(a) With respect to the Issuer, the Clerk.

(b) With respect to the Bond Registrar and Paying Agent, the Director of Bond Services.

(c) With respect to any Purchaser, the manager of its Municipal Bond Department.

(d) With respect to any Rating Agency, any Vice President thereof.

(e) With respect to the Escrow Agent, the Manager of the Corporate Trust Department.

(f) With respect to: (1) Assured Guaranty, its General Counsel with a copy to its Risk Management Department-Public Finance Surveillance; (b) FGIC, its General Counsel with a copy to the Surveillance Department; and (c) FSA, its General Counsel with a copy to Managing Director -- Surveillance -- Re: Policy No. [_____].

**"Official Statement"** means Issuer's Official Statement relating to the Series 2014A Bonds.

**"Operating Revenues"** shall mean the Gross Revenues, less investment income and less Current Expenses.

**"Ordinance"** means Ordinance No. 49-[___] of the Issuer authorizing the issuance of the Series 2014A Bonds, as amended from time to time.

**"Outstanding"** means, when used with reference to Bonds, as of a particular date of determination, all Bonds theretofore, authenticated and delivered, except the following Bonds:

**"Outstanding"** means, when used with reference to any Utility Indebtedness, as of a particular date of determination, all Utility Indebtedness theretofore, authenticated and delivered, except the following Utility Indebtedness:

(a) Utility Indebtedness theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to the Bond Resolution;

(b) Utility Indebtedness deemed to be paid in accordance with the provisions of the Bond Resolution;

(c) Utility Indebtedness in exchange for or in lieu of which other Utility Indebtedness has been authenticated and delivered under the Bond Resolution; and

(d) Utility Indebtedness, the principal or interest of which has been paid by the Bond Insurer.

**"Outstanding Parity Bond Resolution"** means the ordinances and resolutions authorizing the issuance of the Outstanding Parity Bonds.

**"Outstanding Parity Bonds"** means the Outstanding Series 2000 Bonds, Series 2005B Bonds, Series 2006, Series 2008A Bonds, Series 2009 Bonds, Series 2010 Bonds, Series 2011A Bonds and Series 2012A Bonds.

**"Owner"** when used with respect to any Utility Indebtedness means the Person in whose name such Utility Indebtedness is registered on the Bond Register. Whenever consent of the Owners is required pursuant to the terms of the Bond Resolution, and the Owner of the Utility Indebtedness, as set forth on the Bond Register, is Cede & Co., the term Owner shall be deemed to be the Beneficial Owner of the Utility Indebtedness.

**"Parity Bonds"** means the Outstanding Parity Bonds, the Series 2014A Bonds, and any Additional Bonds hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Series 2014A Bonds with respect to the Net Revenues.

**"Parity Indebtedness"** means, collectively, the Parity Bonds and Parity Obligations.

**"Parity Obligations"** means any Additional Obligations hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Parity Bonds with respect to the lien on the Net Revenues.

**"Parity Resolution"** means, collectively, the Outstanding Parity Bond Resolution, the Series 2014 Bond Resolution and the ordinances and/or resolutions under which any Additional Bonds which constitute Parity Bonds are hereafter issued.

**"Participants"** means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**"Paying Agent"** means: (a) with respect to the Outstanding Parity Bonds and the Series 2014A Bonds, the State Treasurer, and its successors and assigns; and (b) with respect to Additional Indebtedness, the entity designated as Paying Agent in the supplemental resolution authorizing such Additional Indebtedness.

**"Payment to the City"** shall mean the payment to the City's general fund as a payment for operation of the Utility. The amount of the annual Payment to the City shall be governed by the terms of such ordinances of the City which are then in effect with respect to the then outstanding Utility Indebtedness.

**"Person"** means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

**"Pre-2008 Bonds"** means, collectively, the Series 2000 Bonds, the Series 2005B Bonds and the Series 2006 Bonds.

**"Pre-2009 Bonds"** means, collectively, the Pre-2008 Bonds and the Series 2008A Bonds.

**"Pre-2010 Bonds"** means, collectively, the Pre-2009 Bonds and the Series 2009 Bonds.

**"Pre-2014 Bonds"** means, collectively, the Pre-2009 Bonds, the Series 2009 Bonds, the Series 2010 Bonds, the Series 2011A Bonds and the Series 2012A Bonds.

**"Principal and Interest Account"** shall mean the Water and Sewer Utility Principal and Interest Account.

**"Purchase Price"** means, with respect to the Series 2014A Bonds, 100% of the principal amount of the Series 2014A Bonds plus accrued interest to the date of delivery[, plus a premium of $_____].

**"Purchaser**" means, with respect to the Series 2014A Bonds, [Purchaser Name], [City, State], the original purchaser of the Series 2014A Bonds, and any successor and assigns.

**"Put Indebtedness"** means Long-Term Indebtedness which is (a) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, at the option of the holder thereof, prior to its stated maturity date, or (b) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, other than at the option of the holder, prior to its stated maturity date, other than pursuant to any mandatory sinking fund or other similar fund, or other than by reason of acceleration upon the occurrence of an Event of Default under this Bond Resolution.

**"Rating Agency"** means any company, agency or entity that provides financial ratings for any Utility Indebtedness.

**"Rebate Fund"** means the Rebate Fund for Water and Sewer Refunding Revenue Bonds, Series 2014A.

**"Record Dates"** for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date.

**"Redemption Date"** when used with respect to any Utility Indebtedness to be redeemed means the date fixed for the redemption of such Utility Indebtedness pursuant to the terms of the Bond Resolution.

**"Redemption Price"** when used with respect to any Utility Indebtedness to be redeemed means the price at which such Utility Indebtedness is to be redeemed pursuant to the terms of the Bond Resolution, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

**"Refunded Bonds"** means collectively: (a) the Series 2005A Bonds maturing in the years 2014 to 2016, inclusive, in the aggregate principal amount of $14,595,000; and (b) the Series 2005C Bonds maturing in the years 2014 to 2030, inclusive, in the aggregate principal amount of $35,720,000.

**"Refunded Bonds Paying Agent"** means the respective paying agent for each series of the Refunded Bonds as designated in the respective Refunded Bonds Resolution, and any successor or successors at the time acting as paying agent for any of the Refunded Bonds.

**"Refunded Bonds Redemption Date"** means, collectively: (a) October 1, 2014 for the Series 2005A Bonds; and (b) October 1, 2015 for the Series 2005C Bonds.

**"Refunded Bonds Resolution"** means each ordinance and resolution which authorized the Refunded Bonds.

**"Refunding Indebtedness"** means Utility Indebtedness issued for the purpose of refunding any Outstanding Utility Indebtedness.

**"Replacement Bonds"** means Bonds issued to the Beneficial Owners of the Bonds in accordance with ***Section 212*** hereof.

**"Revenue Fund"** means the Water and Sewer Utility Revenue Fund.

**"SEC Rule"** means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

**"Securities Depository"** means, initially, DTC, and its successors and assigns.

**"Series 2000 Bond Resolution"** means the Issuer's Ordinance No. 44-663, which authorized the Series 2000 Bonds.

**"Series 2000 Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2000, dated June 1, 2000.

**"Series 2005 Bonds"** means, collectively, the Series 2005A Bonds, the Series 2005B Bonds and the Series 2005C Bonds.

**"Series 2005A Bond Reserve Subaccount"** means the Bond Reserve Subaccount for the Series 2005A Bonds.

**"Series 2005A Bond Resolution"** means collectively the Issuer's Ordinance No. 46-581 and Resolution No. 05-228, which authorized the Series 2005A Bonds.

**"Series 2005A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2005A, dated May 12, 2005.

**"Series 2005A Principal and Interest Subaccount"** means the Principal and Interest Subaccount for the Series 2005A Bonds.

**"Series 2005B Bond Resolution"** means collectively the Issuer's Ordinance No. 46-634 and Resolution No. 05-406, which authorized the Series 2005B Bonds.

**"Series 2005B Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2005B, dated August 17, 2005.

**"Series 2005C Bond Reserve Subaccount"** means the Bond Reserve Subaccount for the Series 2005C Bonds.

**"Series 2005C Bond Resolution"** means collectively the Issuer's Ordinance No. 46-670 and Resolution No. 05-502, which authorized the Series 2005C Bonds.

**"Series 2005C Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2005C, dated October 1, 2005.

**"Series 2005C Principal and Interest Subaccount"** means the Principal and Interest Subaccount for the Series 2005C Bonds.

**"Series 2006 Bond Resolution"** means collectively the Issuer's Ordinance No. 47-300 and Resolution No. 06-609, which authorized the Series 2006 Bonds.

**"Series 2006 Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2006, dated December 1, 2006.

**"Series 2008A Bond Resolution"** means collectively the Issuer's Ordinance No. 47-866 and Resolution No. 08-170, which authorized the Series 2008A Bonds.

**"Series 2008A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2008A, dated April 1, 2008.

**"Series 2009 Bonds"** means, collectively, the Series 2009A Bonds and the Series 2009B Bonds.

**"Series 2009 Bond Resolution"** means collectively the Issuer's Ordinance No. 48-351 and Resolution No. 09-174, which authorized the Series 2009 Bonds.

**"Series 2009A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2009A, dated June 30, 2009.

**"Series 2009B Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), dated June 30, 2009.

**"Series 2010 Bond Resolution"** means collectively the Issuer's Ordinance No. 48-834 and Resolution No. 10-257, which authorized the Series 2010 Bonds.

**"Series 2010 Bonds"** means, collectively, the Series 2010A Bonds and the Series 2010B Bonds.

**"Series 2010A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2010A, dated October 15, 2010.

**"Series 2010B Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2010B (Taxable Under Federal Law), dated October 15, 2010.

**"Series 2011A Bond Resolution"** means collectively the Issuer's Ordinance No. 49-148 and Resolution No. 11-260, which authorized the Series 2011A Bonds.

**"Series 2011A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, dated November 17, 2011.

**"Series 2012A Bond Resolution"** means collectively the Issuer's Ordinance No. 49-266 and Resolution No. 12-090 which authorized the Series 2012A Bonds.

**"Series 2012A Bonds"** mean the Issuer's Water and Sewer Utility Revenue Bonds, Series 2012A, dated May 1, 2012.

**"Series 2014A Bond Reserve Requirement"** shall mean a sum equal to greater of the amount of interest which shall become due and payable on the Series 2014A Bonds during the next Fiscal Year (determined in each year) or the maximum amount of interest which shall become due and payable on the Series 2014A Bonds in any subsequent year, except that, in no event shall the amount of the 2014A Bond Reserve Requirement ever exceed the amount which is the lesser of ten percent (10%) of the original principal amount of the Series 2014A Bonds (determined as of the date of issuance of the Series 2014A Bonds), the maximum annual principal and interest requirements on the Series 2014A Bonds (determined as of the date of issuance of the Series 2014A Bonds), or one hundred twenty-five percent (125%) of the average annual debt service on the Series 2014A Bonds (determined as of the date of issuance of the Series 2014A Bonds).

**"Series 2014A Bond Reserve Subaccount"** shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, Bond Reserve Subaccount created within the Bond Reserve Account.

**"Series 2014A Bond Resolution"** means collectively the Issuer's Ordinance and Resolution, which authorized the Series 2014A Bonds.

**"Series 2014A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2014, dated August 1, 2014, authorized and issued by the Issuer pursuant to the Ordinance and the Bond Resolution.

**"Series 2014A Costs of Issuance Account"** shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, Costs of Issuance Account created by this Resolution.

**"2014A Principal and Interest Subaccount"** shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, Principal and Interest Subaccount created by this Resolution within the Principal and Interest Account.

**"Series 2014A Principal and Interest Subaccount"** means the Principal and Interest Subaccount for the Series 2014A Bonds.

[ **"Series 2014[-_____] Term Bonds"** means the Series 2014A Bonds scheduled to mature in the year ____.]

[ **"Series 2014[-2030] Term Bonds"** means the Series 2014A Bonds scheduled to mature in the year 2030.]

**"Sewer Utility"** shall mean and include the sanitary sewer system now owned and operated by the City, and consisting of sewage disposal works, sewers, drains, pumping plants, force mains, service connections, canals, ponds, machinery, equipment and other property appurtenant thereto and any improvements, extensions and enlargements to the Sewer Utility hereafter constructed or acquired.

**"Short-Term Indebtedness"** means Utility Indebtedness having an original maturity less than or equal to one year from the date of original incurrence thereof, and not renewable or extendible at the option of the obligor thereon for a term greater than one year beyond the date of original issuance.

**"Special Record Date"** means the date fixed by the Paying Agent pursuant to ***Section 207*** hereof for the payment of Defaulted Interest.

**"Standard & Poor's"** means Standard & Poor's Ratings Services, a division of McGraw Hill Financial Inc., New York, New York, a corporation organized and existing under the laws of the State of New York, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Standard & Poor's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

**"State"** means the state of Kansas.

**"State Treasurer"** means the duly elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the State.

**"Stated Maturity"** when used with respect to any Utility Indebtedness or any installment of interest thereon means the date specified in such Utility Indebtedness and the Bond Resolution as the fixed date on which the principal of such Utility Indebtedness or such installment of interest is due and payable.

**"Subordinate Indebtedness"** means, collectively the Subordinate Lien Bonds and Subordinate Lien Obligations

**"Subordinate Lien Bonds"** means any Additional Bonds payable from the Revenues, and issued on a subordinate lien basis to any Parity Bonds.

**"Subordinate Lien Obligations"** means any Additional Obligations payable from, and secured by a lien on, the Revenues, which lien is junior to that of any Parity Obligations.

**"Term Bonds"** means any Bonds designated as Term Bonds in this Bond Resolution or in any supplemental resolution authorizing the issuance of Additional Bonds.

**"Treasurer"** means the duly appointed and/or elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the Issuer.

**"United States Government Obligations"** means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and

interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payment on obligations issued by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service and such obligations are held in a custodial account for the benefit of the Issuer.

**"Utility"** shall mean the combined City of Wichita, Kansas Water Utility and Sewer Utility, and any improvements, extensions and enlargements thereto hereafter constructed or acquired.

**"Utility Indebtedness"** means collectively the Bonds and any Additional Obligations which are secured by an interest in, the Gross Revenues.

**"Value"** means, for purposes of the Bond Resolution, the value of the Authorized Investments (which Value shall be determined as of the end of each month), calculated as follows:

(a) as to investments the bid and asked prices of which are published on a regular basis in ***The Wall Street Journal*** (or, if not there, then in *The New York Times)* -- the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(b) as to investments the bid and asked prices of which are not published on a regular basis in ***The Wall Street Journal*** or in ***The New York Times*** - the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Issuer in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; and

(c) as to certificates of deposit and bankers acceptances -- the face amount thereof, plus accrued interest.

Provided, however, that when the Pre-2010 Bonds are no longer Outstanding, "Value" shall be the amortized cost of an obligation or the market cost thereof, whichever is lower. Should the value of the Authorized Investments be required for any other legal purpose, the Value shall be calculated in accordance with the applicable laws and regulations.

**"Variable Rate Indebtedness"** means any Utility Indebtedness which provides for interest to be payable thereon at a rate per annum that may vary from time to time over the term thereof in accordance with procedures provided in the instrument creating such Utility Indebtedness.

**"Verification Report"** means the verification report relating to the sufficiency of money and obligations deposited in the Escrow Fund to be applied in accordance with the Escrow Agreement.

**Water Utility"** shall mean and include the waterworks system now owned and operated by the Issuer and consisting of real estate, water rights, purification and pumping plants, reservoirs, mains, wells, pipelines, meters, hydrants, service connections, machinery, equipment and other property appurtenant thereto, and any improvements, extensions and enlargements to the Water Utility hereafter constructed or acquired.

## ARTICLE II

## AUTHORIZATION AND DETAILS OF THE BONDS

**Section 201. Authorization of the Series 2014A Bonds**. The Series 2014A Bonds have been heretofore authorized and directed to be issued pursuant to the Ordinance in the principal amount of $43,105,000*, for the purpose of providing a portion of the funds to: (a) refund the Refunded Bonds; and (b) pay Costs of Issuance. The Series 2014A Bonds shall be Parity Bonds and shall constitute Long-Term Indebtedness.

**Section 202. Description of the Series 2014A Bonds.** The Series 2014A Bonds shall consist of fully registered bonds in Authorized Denominations, and shall be numbered in such manner as the Bond Registrar shall determine. All of the Series 2014A Bonds shall be dated as of the Dated Date, shall become due in the amounts, on the Stated Maturities, subject to redemption and payment, prior to their Stated Maturities as provided in ***Article III*** hereof and shall bear interest at the rates per annum as follows:

[**SERIAL BONDS**]

| **Stated Maturity October 1** | **Principal Amount** | **Annual Rate of Interest** | **Stated Maturity October 1** | **Principal Amount** | **Annual Rate of Interest** |
|---|---|---|---|---|---|
| 2015 | $6,630,000 | _____% | 2023 | $2,590,000 | _____% |
| 2016 | 7,140,000 | | 2024 | 2,695,000 | |
| 2017 | 2,205,000 | | 2025 | 2,805,000 | |
| 2018 | 2,245,000 | | 2026 | 1,330,000 | |
| 2019 | 2,285,000 | | 2027 | 1,390,000 | |
| 2020 | 2,335,000 | | 2028 | 1,455,000 | |
| 2021 | 2,410,000 | | 2029 | 1,520,000 | |
| 2022 | 2,490,000 | | 2030 | 1,580,000 | |

[TERM BONDS

| **Stated Maturity October 1** | **Principal Amount** | **Annual Rate of Interest** |
|---|---|---|
| 20[__] | $_____ | _____% |
| 2030 | $_____ | _____%] |

The Series 2014A Bonds shall bear interest at the above specified rates (computed on the basis of a 360-day year of twelve 30-day months) from the later of the Dated Date or the most recent Interest Payment Date to which interest has been paid on the Interest Payment Dates in the manner set forth in ***Section 208*** hereof. The Series 2014A Bonds shall be issued as Book-Entry-Only Bonds and administered in accordance with the provisions of ***Section 212*** hereof.

Each of the Series 2014A Bonds, as originally issued or issued upon transfer, exchange or substitution, shall be printed in accordance with the format required by the Attorney General of the State and shall be substantially in the form attached hereto as ***Exhibit A*** or as may be required by the Attorney General pursuant to the Notice of Systems of Registration for Kansas Municipal Bonds, 2 Kan. Reg. 921 (1983), in accordance with the Kansas Bond Registration Law, K.S.A. 10-620 *et seq*.

**Section 203. Designation of Paying Agent and Bond Registrar.** The State Treasurer is hereby designated as the Paying Agent for the payment of principal of and interest on the Series 2014A Bonds and Bond Registrar with respect to the registration, transfer and exchange of the Series 2014A Bonds. The Mayor of the Issuer is hereby authorized and empowered to execute on behalf of the Issuer an agreement with the Bond Registrar and Paying Agent for the Series 2014A Bonds.

The Issuer will at all times maintain a Paying Agent and Bond Registrar meeting the qualifications herein described for the performance of the duties hereunder. The Issuer reserves the right to appoint a successor Paying Agent or Bond Registrar by (a) filing with the Paying Agent or Bond Registrar then performing such function a certified copy of the proceedings giving notice of the termination of such Paying Agent or Bond Registrar and appointing a successor, and (b) causing notice of appointment of the successor Paying Agent and Bond Registrar to be given by first class mail to each Owner. No resignation or removal of the Paying Agent or Bond Registrar shall become effective until a successor has been appointed and has accepted the duties of Paying Agent or Bond Registrar.

Every Paying Agent or Bond Registrar appointed hereunder shall at all times meet the requirements of K.S.A. 10-501 *et seq.* and K.S.A. 10-620 *et seq.*, respectively.

**Section 204. Method and Place of Payment of the Bonds.** The principal of, or Redemption Price, and interest on the Bonds shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The principal or Redemption Price of each Bond shall be paid at Maturity to the Person in whose name such Bond is registered on the Bond Register at the Maturity thereof, upon presentation and surrender of such Bond at the principal office of the Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest (a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Owner or (b) in the case of an interest payment to any Owner of $500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice given to the Bond Registrar by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Owner wishes to have such transfer directed.

Notwithstanding the foregoing provisions of this Section, any Defaulted Interest with respect to any Bond shall cease to be payable to the Owner of such Bond on the relevant Record Date and shall be payable to the Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as hereinafter specified in this paragraph. The Issuer shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, by first class mail, postage prepaid, to each Owner of a Bond entitled to such notice at the address of such Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of payment of principal and Redemption Price of and interest on all Bonds and at least annually shall forward a copy or summary of such records to the Issuer.

**Section 205. Registration, Transfer and Exchange of Bonds.** The Issuer covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the office of the Bond Registrar as herein provided. Each Bond when issued shall be registered in the name of the Owner thereof on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this Section. Upon surrender of any Bond at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange such Bond for a new Bond or Bonds in any Authorized Denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange.

Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Bond Registrar, duly executed by the Owner thereof or by the Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Bond Resolution. The Issuer shall pay the fees and expenses of the Bond Registrar for the registration, transfer and exchange of Bonds provided for by this Bond Resolution and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Bond Registrar, are the responsibility of the Owners of the Bonds. In the event any Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Code § 3406, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Owner hereunder or under the Bonds.

The Issuer and the Bond Registrar shall not be required (a) to register the transfer or exchange of any Bond that has been called for redemption after notice of such redemption has been mailed by the Paying Agent pursuant to ***Section 303*** hereof and during the period of 15 days next preceding the date of mailing of such notice of redemption; or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the Issuer of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to ***Section 208*** hereof.

The Issuer and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute Owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on said Bond and for all other purposes. All payments so made to any such Owner or upon the Owner's order shall be valid and effective to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Paying Agent shall be affected by any notice to the contrary.

At reasonable times and under reasonable regulations established by the Bond Registrar, the Bond Register may be inspected and copied by the Owners (or a designated representative thereof) of 10% or more in principal amount of the Bonds then Outstanding or any designated representative of such Owners whose authority is evidenced to the satisfaction of the Bond Registrar.

**Section 206. Execution, Registration, Authentication and Delivery of Bonds.** Each of the Bonds, including any Bonds issued in exchange or as substitutions for the Bonds initially delivered, shall be executed for and on behalf of the Issuer by the manual or facsimile signature of the Mayor, attested by

the manual or facsimile signature of the Clerk and the seal of the Issuer shall be affixed thereto or imprinted thereon. The Mayor and Clerk are hereby authorized and directed to prepare and execute the Bonds in the manner herein specified, and to cause the Bonds to be registered in the office of the Clerk, which registration shall be evidenced by the manual or facsimile signature of the Clerk with the seal of the Issuer affixed thereto or imprinted thereon. The Bonds shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed thereto or imprinted thereon. In case any officer whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such persons who at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

The Mayor and Clerk are hereby authorized and directed to prepare and execute the Bonds as herein specified, and when duly executed, to deliver the Bonds to the Paying Agent for authentication.

The Series 2014A Bonds shall have endorsed thereon a certificate of authentication substantially in the form attached hereto as ***Exhibit A*** hereof, which shall be manually executed by an authorized officer or employee of the Bond Registrar, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. No Series 2014A Bond shall be entitled to any security or benefit under this Bond Resolution or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Bond Registrar. Such executed certificate of authentication upon any Series 2014A Bond shall be conclusive evidence that such Series 2014A Bond has been duly authenticated and delivered under this Bond Resolution. Upon authentication, the Bond Registrar shall deliver the Series 2014A Bond to the Purchaser upon instructions of the Issuer or its representative.

**Section 207. Mutilated, Lost, Stolen or Destroyed Bonds.** If (a) any mutilated Bond is surrendered to the Bond Registrar or the Bond Registrar receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the Issuer and the Bond Registrar such security or indemnity as may be required by each of them, then, in the absence of notice to the Issuer or the Bond Registrar that such Bond has been acquired by a bona fide purchaser, the Issuer shall execute and, upon the Issuer's request, the Bond Registrar shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Issuer, in its discretion, may pay such Bond instead of issuing a new Bond.

Upon the issuance of any new Bond under this Section, the Issuer and the Paying Agent may require the payment by the Owner of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith.

Every new Bond issued pursuant to this Section shall constitute a replacement of the prior obligation of the Issuer, and shall be entitled to all the benefits of this Bond Resolution equally and ratably with all other Outstanding Bonds.

**Section 208. Cancellation and Destruction of Bonds Upon Payment.** All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before Maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and

surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the Issuer.

**Section 209. Book-Entry Bonds; Securities Depository.** Any series of Bonds may be issued as Book-Entry-Only Bonds. If so, such series of Bonds shall initially be registered to Cede & Co., the nominee for the Securities Depository, and no Beneficial Owner will receive certificates representing their respective interests in the Bonds, except in the event the Bond Registrar issues Replacement Bonds as provided in this Section. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Bonds to the Participants until and unless the Bond Registrar authenticates and delivers Replacement Bonds to the Beneficial Owners as described in the following paragraph.

(a) If the Issuer determines (1) that the Securities Depository is unable to properly discharge its responsibilities, or (2) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (3) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, or (b) if the Bond Registrar receives written notice from Participants having interests in not less than 50% of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, then the Bond Registrar shall notify the Owners of such determination or such notice and of the availability of certificates to owners requesting the same, and the Bond Registrar shall register in the name of and authenticate and deliver Replacement Bonds to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under (a)(1) or (a)(2) of this paragraph, the Issuer, with the consent of the Bond Registrar, may select a successor securities depository in accordance with the following paragraph to effect book-entry transfers. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Bond Registrar, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the Issuer, the Bond Registrar or Owners are unable to locate a qualified successor of the Securities Depository in accordance with the following paragraph, then the Bond Registrar shall authenticate and cause delivery of Replacement Bonds to Owners, as provided herein. The Bond Registrar may rely on information from the Securities Depository and its Participants as to the names of the Beneficial Owners of the Bonds. The cost of printing, registration, authentication, and delivery of Replacement Bonds shall be paid for by the Issuer.

In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the Issuer may appoint a successor Securities Depository provided the Bond Registrar receives written evidence satisfactory to the Bond Registrar with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Bond Registrar upon its

receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

**Section 210. Nonpresentment of Bonds.** If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent all liability of the Issuer to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Bond Resolution or on, or with respect to, said Bond. If any Bond is not presented for payment within four years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay, without liability for interest thereon, to the Issuer the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Issuer, and the Owner thereof shall be entitled to look only to the Issuer for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

**Section 211. Calculation of Debt Service Requirements.**

(a) ***Debt Service Requirements on Balloon, Put, Short-Term and Interim Indebtedness***.

(1) The principal of Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness being treated as Long-Term Indebtedness under ***Section 902*** hereof, or Interim Indebtedness shall be deemed due and payable at its Stated Maturity; provided, however, that at the election of the Issuer for the purpose of any computation of Debt Service Requirements, whether historical or projected, the principal deemed payable on Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness being treated as Long-Term Indebtedness under ***Section 902*** hereof, or Interim Indebtedness, shall be deemed to be payable as set forth below:

(A) If the Issuer has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency) to refinance such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, including without limitation, a letter of credit or a line of credit, the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing arrangement;

(B) If the Issuer has entered into a binding agreement providing for the deposit by the Issuer with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency), in trust (herein called a "Special Redemption Fund") of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, when due from the sums so deposited and investment earnings realized thereon, then the principal amount of the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(C) If the Issuer has entered into arrangements or agreements with respect to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, other than those referred to in subsections (A) and (B) above, which a Consultant in a certificate filed with the Issuer determines, taking into account the interests of the Owners of Utility Indebtedness, provides adequate assurances that the Issuer will be able to meet the Debt Service Requirements due on such Indebtedness, the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may be deemed to be payable in accordance with the terms of such arrangement or agreement; or

(D) Such Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness may be deemed to be Utility Indebtedness which, at the date of its original incurrence, was payable over a term not to exceed twenty (20) years in equal annual installments of principal and interest at the Index Rate.

A Consultant shall deliver to the Issuer a certificate stating that it is reasonable to assume that installment obligations of such term of the Issuer can be incurred and stating the interest rate then applicable to installment obligations of such term of comparable quality. Interim Indebtedness may be deemed to be Indebtedness which, at the date of its original incurrence, would meet the conditions specified in the statement of the Consultant as required in ***Section 902;*** provided that the Consultant shall for each annual period that the Debt Service Requirement is computed, provide a supplemental statement that at such period, the certifications contained in the statement are reasonable.

(2) Interest that is payable prior to the Stated Maturity of any Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness shall be taken into account for such appropriate period in computation of Debt Service Requirements. Interest payable at maturity or early redemption on Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may either be amortized over the anticipated maturity or such longer period as is permitted under ***Section 902*** or ***Section 214(a)(1)(D)*** or may be treated as principal payable on the principal maturity date of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness.

(3) In measuring compliance with the applicable tests hereunder in connection with incurring Put Indebtedness and generally for purposes of determining the Debt Service Requirements relating thereto, Put Indebtedness shall be deemed to mature based upon the actual amortization requirements for the Put Indebtedness, only to the extent that the Issuer has a commitment to refinance such Put Indebtedness.

(b) ***Debt Service Requirements on Discount Indebtedness.*** At the election of the Issuer for the purpose of any computation of Debt Service Requirements, whether historical or projected, the principal and interest deemed payable on Discount Indebtedness shall be deemed to be payable as set forth below:

(1) If the Issuer has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency) to refinance such Discount Indebtedness, or a portion thereof, including without limitation, a letter of credit or a line of credit, the Discount Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing arrangement;

(2) If the Issuer has entered into a binding agreement providing for the deposit with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency), in trust (herein called a "Special Redemption Fund") of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Discount Indebtedness, or a portion thereof, and providing for the payment of such principal amount when due from the sums so deposited, and investment earnings realized thereon, then the Discount Indebtedness, or portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(3) If the Issuer has entered into arrangements or agreements with respect to the principal amount of such Discount Indebtedness, other than those referred to in subsections (1) and (2) above, which a Consultant in a certificate filed with the Issuer determines, taking into account the interests of the holders of Utility Indebtedness, provides adequate assurances that the Issuer will be able to meet the Debt Service Requirements due on such Indebtedness, the Discount Indebtedness may be deemed to be payable in accordance with the terms of such arrangement or agreement; or

(4) As of any time the maturity amount represented by Discount Indebtedness shall be deemed to be the accreted value of such Indebtedness computed on the basis of a constant yield to maturity.

When calculating interest requirements on Variable Rate Indebtedness which bears a variable rate of interest for periods as to which the rate of interest has not been determined, the rate of interest on Outstanding Variable Rate Indebtedness shall be the average annual rate of interest which was payable on such Variable Rate Indebtedness during the twelve (12) months immediately preceding the date as of which the calculation is made; and the rate of interest on Variable Rate Indebtedness to be incurred (or incurred less than twelve (12) months preceding such date) shall be the average annual rate of interest which would have been payable on such Variable Rate Indebtedness had it been outstanding for a period of twelve (12) months immediately preceding the date as of which the calculation is made, as evidenced in a certificate of a Consultant, delivered to the Issuer.

**Section 212. Preliminary and Final Official Statement.** The Preliminary Official Statement dated July [7], 2014, is hereby ratified and approved. The final Official Statement is hereby authorized to be prepared by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The Mayor and Director of Finance are hereby authorized to execute the final Official Statement as so supplemented, amended and completed, and the use and public distribution of the final Official Statement by the Purchaser in connection with the reoffering of the Bonds is hereby authorized. The proper officials of the Issuer are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of the SEC Rule and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 213. Sale of the Series 2014A Bonds.** The sale of the Series 2014A Bonds to the Purchaser is hereby ratified and confirmed. The Mayor and Clerk are hereby authorized to execute the official bid form submitted by the Purchaser. Delivery of the Series 2014A Bonds shall be made to the

Purchaser as soon as practicable after the adoption of this Bond Resolution, upon payment of the Purchase Price.

**Section 214. Authorization of Escrow Agreement.** The Issuer is hereby authorized to enter into the Escrow Agreement, and the Mayor and Clerk are hereby authorized and directed to execute the Escrow Agreement with such changes therein as such officials may deem appropriate, for and on behalf of and as the act and deed of the Issuer. The Escrow Agent is hereby authorized to carry out, on behalf of the Issuer, the duties, terms and provisions of the Escrow Agreement, and the Escrow Agent, the Purchaser and Bond Counsel are authorized to take all necessary actions for the subscription and purchase of the Escrowed Securities described therein, including the subscription for United States Treasury Securities - State and Local Government Series.

## ARTICLE III

## REDEMPTION OF BONDS

**Section 301. Redemption by Issuer.** The Bonds shall be subject to redemption and payment prior to their Stated Maturity, as follows:

(a) ***Optional Redemption***.

(1) *Series 2014A Bonds*. At the option of the Issuer, Series 2014A Bonds maturing on October 1, in the years 2025 and thereafter will be subject to redemption and payment prior to their Stated Maturity on October 1, 2024, and thereafter as a whole or in part (selection of maturities and the amount of Series 2014A Bonds of each maturity to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest thereon to the Redemption Date.

(2) *Additional Bonds*. Additional Bonds are subject to redemption and payment prior to Stated Maturity in accordance with the provisions of the supplemental resolution authorizing the issuance of such Additional Bonds.

(b) ***Mandatory Redemption***.

(1) *General*. The Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the Issuer may: (1) deliver to the Paying Agent for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Paying Agent funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Owner thereof whereupon the Paying Agent shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the Issuer under this Section for any Term Bonds subject to mandatory redemption on said mandatory Redemption Date which, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this subsection) and cancelled by the Paying Agent and not theretofore applied as a credit against any redemption obligation under this subsection. Each

Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the Issuer to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity as designated by the Issuer, and the principal amount of Term Bonds to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the Issuer intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the Issuer will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Paying Agent a written certificate indicating to what extent the provisions of said clauses (1), (2) and (3) are to be complied with, with respect to such mandatory redemption payment.

(2) *The Series 2014A[-_____] Term Bonds*. [There are **no** Series 2014A Term Bonds.] [The Issuer shall from the payments specified in ***Section 602(b)*** hereof which are to be deposited into the Principal and Interest Account redeem on October 1 in each year, the following principal amounts of Series 2014A[-_____] Term Bonds:

| **Principal Amount** | **Year** |
|---|---|
| | * |

*Final Maturity

(3) [The *Series 2014A-[2030] Term Bonds*. The Issuer shall from the payments specified in ***Section 602(b)*** hereof which are to be deposited into the Principal and Interest Account redeem on October 1 in each year, the following principal amounts of Series 2014A[-2030] Term Bonds:

| **Principal Amount** | **Year** |
|---|---|
| | 2030* |

*Final Maturity

(4) *Additional Bonds*. Additional Bonds designated as Term Bonds shall be subject to mandatory redemption in accordance with the provisions of the supplemental resolution authorizing such Additional Bonds.

**Section 302. Selection of Bonds to be Redeemed.**
Bonds shall be redeemed only in an Authorized Denomination. When less than all of the Bonds are to be redeemed and paid prior to their Stated Maturity, such Bonds shall be redeemed in such manner as the Issuer shall determine. Bonds of less than a full Stated Maturity shall be selected by the Bond Registrar in a minimum Authorized Denomination of principal amount in such equitable manner as the Bond Registrar may determine.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than a minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption a minimum Authorized Denomination of face value shall be treated as though it were a

separate Bond of the denomination of a minimum Authorized Denomination. If it is determined that one or more, but not all, of a minimum Authorized Denomination of face value represented by any Bond is selected for redemption, then upon notice of intention to redeem a minimum Authorized Denomination, the Owner or the Owner's duly authorized agent shall forthwith present and surrender such Bond to the Bond Registrar: (1) for payment of the Redemption Price and interest to the Redemption Date of a minimum Authorized Denomination of face value called for redemption, and (2) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond fails to present such Bond to the Paying Agent for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the redemption date to the extent of a minimum Authorized Denomination of face value called for redemption (and to that extent only).

**Section 303. Notice and Effect of Call for Redemption.** In the event the Issuer desires to call the Bonds for redemption prior to maturity, written notice of such intent shall be provided to the Bond Registrar in accordance with K.S.A. 10-129, as amended, not less than 45 days prior to the Redemption Date. The Bond Registrar shall call Bonds for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Bond Registrar at least 45 days prior to the Redemption Date of written instructions of the Issuer specifying the principal amount, Stated Maturities, Redemption Date and Redemption Prices of the Bonds to be called for redemption. The foregoing provisions of this paragraph shall not apply in the case of any mandatory redemption of Term Bonds hereunder, and Term Bonds shall be called by the Paying Agent for redemption pursuant to such mandatory redemption requirements without the necessity of any action by the Issuer and whether or not the Paying Agent holds moneys available and sufficient to effect the required redemption.

Unless waived by any Owner of Bonds to be redeemed, if the Issuer shall call any Bonds for redemption and payment prior to the Stated Maturity thereof, the Issuer shall give written notice of its intention to call and pay said Bonds to the Bond Insurer and the Purchaser. In addition, the Issuer shall cause the Bond Registrar to give written notice of redemption to the Owners of said Bonds. Each of said written notices shall be deposited in the United States first class mail not less than 30 days prior to the Redemption Date.

All official notices of redemption shall be dated and shall contain the following information:

(a) the Redemption Date;

(b) the Redemption Price;

(c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption of any Bonds, the respective principal amounts) of the Bonds to be redeemed;

(d) a statement that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and

(e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the principal office of the Paying Agent.

The failure of any Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the Issuer shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on such Redemption Date.

For so long as the Securities Depository is effecting book-entry transfers of any series of Bonds, the Bond Registrar shall provide the notices specified in this Section to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Bond (having been mailed notice from the Bond Registrar, the Securities Depository, a Participant or otherwise) to notify the Beneficial Owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the Issuer defaults in the payment of the Redemption Price) such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Bonds that have been surrendered for redemption shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

In addition to the foregoing notice, the Issuer shall provide such notices of redemption as are required by the Disclosure Undertaking. Further notice may be given by the Issuer or the Bond Registrar on behalf of the Issuer as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if official notice thereof is given as above prescribed:

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (1) the CUSIP numbers of all Bonds being redeemed; (2) the date of issue of the Bonds as originally issued; (3) the rate of interest borne by each Bond being redeemed; (4) the maturity date of each Bond being redeemed; and (5) any other descriptive information needed to identify accurately the Bonds being redeemed.

(b) Each further notice of redemption shall be sent at least one day before the mailing of notice to Owners by first class, registered or certified mail or overnight delivery, as determined by the Bond Registrar, to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(c) Each check or other transfer of funds issued for the payment of the Redemption Price of Bonds being redeemed shall bear or have enclosed the CUSIP number of the Bonds being redeemed with the proceeds of such check or other transfer.

The Paying Agent is also directed to comply with any mandatory standards then in effect for processing redemptions of municipal securities established by the State or the Securities and Exchange Commission. Failure to comply with such standards shall not affect or invalidate the redemption of any Bond.

## ARTICLE IV

## SECURITY FOR BONDS

**Section 401. Security for the Bonds.** The Series 2014A Bonds shall be special obligations of the Issuer payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the City hereby pledges said Net Revenues to the payment of the principal of and interest on the Series 2014A Bonds. The Series 2014A Bonds shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Series 2014A Bonds, either as to principal or interest.

The covenants and agreements of the City contained herein and in the Series 2014A Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2014A Bonds, all of which Series 2014A Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Series 2014A Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Bond Resolution. The Series 2014A Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Net Revenues with any Parity Indebtedness. The Series 2014A Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Parity Indebtedness; and the Parity Indebtedness shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Series 2014A Bonds.

## ARTICLE V

## ESTABLISHMENT OF FUNDS AND ACCOUNTS
## DEPOSIT AND APPLICATION OF BOND PROCEEDS AND OTHER MONEYS

**Section 501. Creation of Funds and Accounts.** Simultaneously with the issuance of the Series 2014A Bonds, there shall be created within the Treasury of the Issuer the following Funds and Accounts:

(a) Principal and Interest Subaccount for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A;

(b) Bond Reserve Subaccount for Water and Sewer Utility Parity Bonds; and

(c) Rebate Fund for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A.

The Funds and Accounts established herein shall be administered in accordance with the provisions of this Series 2014A Bond Resolution so long as the Series 2014A Bonds are Outstanding.

In addition to the Funds and Accounts described above, the Escrow Agreement establishes the following Funds and Accounts to be held and administered by the Escrow Agent in accordance with the provisions of the Escrow Agreement:

(a) Escrow Fund for Refunded Bonds; and

(b) Costs of Issuance Account for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A.

The following separate Funds and Accounts created and established in the treasury of the Issuer are hereby ratified and confirmed:

(a) Water and Sewer Utility Revenue Fund;

(b) Water and Sewer Utility Bond Reserve Account;

(c) Water and Sewer Utility Depreciation and Replacement Account;

(d) Water and Sewer Utility Improvement Account;

(e) Principal and Interest Subaccounts for Outstanding Parity Bonds; and

(f) Bond Reserve Subaccounts for Outstanding Parity Bonds.

The Funds and Accounts referred to in this paragraph shall be administered in accordance with the provisions of Bond Resolution so long as the Utility Indebtedness is Outstanding.

**Section 502. Deposit of Series 2014A Bond Proceeds and Other Moneys.** The net proceeds received from the sale of the Series 2014A Bonds and certain other moneys shall be deposited simultaneously with the delivery of the Series 2014A Bonds as follows:

(a) Any excess proceeds received from the sale of the Series 2014A Bonds shall be deposited in the Series 2014A Principal and Interest Subaccount.

(b) The sum of $[_____] shall be transferred to the Escrow Agent, deposited in the Series 2014A Costs of Issuance Account and applied in accordance with the Escrow Agreement.

(c) The remaining balance of the proceeds derived from the sale of the Series 2014A Bonds shall be transferred to the Escrow Agent and deposited in the Escrow Fund and applied in accordance with the Escrow Agreement.

(d) Simultaneously with the issuance of the Series 2014A Bonds, the Issuer shall make the following transfers:

(1) From the Series 2005A Principal and Interest Account to the Escrow Agent for deposit into the Escrow Fund all amounts therein.

(2) From the Series 2005C Principal and Interest Account to the Escrow Agent for deposit into the Escrow Fund all amounts therein

(3) From the Series 2005A Bond Reserve Account and the Series 2005C Bond Reserve Account to the Series 2014A Bond Reserve Subaccount and amount necessary to satisfy the Series 2014A Bond Reserve Subaccount Requirement.

(4) From the Series 2005A Bond Reserve Account and the Series 2005C Bond Reserve Account to the Escrow Agent for deposit into the Escrow Fund all amounts remaining

therein after the transfer made to satisfy the Series 2014A Bond Reserve Subaccount Requirement.

**Section 503. Application of Moneys in the Rebate Fund.**

(a) There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Federal Tax Certificate. All money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to satisfy the Rebate Amount (as defined in the Federal Tax Certificate), for payment to the United States of America, and neither the Issuer nor the Owner of any Series 2014A Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and the Federal Tax Certificate.

(b) The Issuer shall periodically determine the rebatable arbitrage, if any, under Code § 148(f) in accordance with the Federal Tax Certificate, and the Issuer shall make payments to the United States of America at the times and in the amounts determined under the Federal Tax Certificate. Any moneys remaining in the Rebate Fund after redemption and payment of all of the Series 2014A Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor, shall be deposited into the Revenue Fund.

(c) Notwithstanding any other provision of this Bond Resolution, including in particular ***Article XI*** hereof, the obligation to pay rebatable arbitrage to the United States of America and to comply with all other requirements of this Section and the Federal Tax Certificate shall survive the defeasance or payment in full of the Series 2014A Bonds.]

**Section 504. Application of Moneys in the Costs of Issuance Account.** Moneys in the Costs of Issuance Account shall be used by the Escrow Agent to pay the Costs of Issuance. Any funds remaining in the Costs of Issuance Account, after payment of all Costs of Issuance, but not later than the later of 30 days prior to the first Stated Maturity of principal or one year after the date of issuance of the Series 2014A Bonds, shall be transferred to the Issuer for deposit into the Series 2014A Principal and Interest Subaccount.

**Section 505. Application of Moneys in the Escrow Fund.** Under the Escrow Agreement, the Escrow Agent will apply moneys in the Escrow Fund to purchase the Escrowed Securities and to establish an initial cash balance in accordance with the Escrow Agreement. The cash and Escrowed Securities held in the Escrow Fund will be applied by the Escrow Agent solely in the manner authorized by the Escrow Agreement. All money deposited with the Escrow Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in the Refunded Bond Resolution(s) and the Escrow Agreement.

**Section 506. Verification of Certified Public Accountant.** Prior to or concurrently with the issuance and delivery of the Series 2014A Bonds and the creation of the Escrow Fund, the Issuer shall obtain a Verification Report from an Independent Accountant that such Independent Accountant has verified the accuracy of the calculations that demonstrate that the money and obligations required to be deposited in the Escrow Fund pursuant to ***Section 502*** of this Bond Resolution and the Escrow Agreement, together with the earnings to accrue thereon, will be sufficient for the timely payment of the principal of, redemption premium, if any, and interest on the Refunded Bonds in accordance with the Escrow Agreement.

## ARTICLE VI

## COLLECTION AND APPLICATION OF REVENUES

**Section 601. Revenue Fund.** The Issuer covenants and agrees that from and after the delivery of the Series 2014A Bonds, and continuing as long as any of the Utility Indebtedness remain Outstanding, all of the Gross Revenues shall as and when received be paid and deposited into the Revenue Fund. Said Revenues shall be segregated and kept separate and apart from all other moneys, revenues, Funds and Accounts of the Issuer and shall not be commingled with any other moneys, revenues, Funds and Accounts of the Issuer. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Bond Resolution, except as may be modified by the provisions of the Outstanding Parity Bond Resolutions.

**Section 602. Application of Moneys in Funds and Accounts.** The Issuer covenants and agrees that from and after the delivery of the Series 2014A Bonds and continuing so long as any of the Bonds shall remain Outstanding, it will administer and allocate all of the moneys then held in the Revenue Fund as follows:

(a) ***Operation and Maintenance***. The cost of Current Expenses shall be paid currently as bills accrue. Such amount as may be necessary in the opinion of the Governing Body to pay the reasonable and proper Current Expenses for the ensuing sixty (60) days may be retained and accumulated in the Revenue Fund before making transfers to other Funds and Accounts.

***Parity Resolutions***. The following transfers shall be made on a parity of lien basis with the transfers and requirements of the Bond Resolution with respect to any Parity Indebtedness, and the term Parity Obligations shall be substituted for Bonds, as appropriate.

(b) ***Principal and Interest Account***. There shall next be paid and credited on the first day of each month to the Principal and Interest Account, for credit to the respective Subaccounts thereof, a proportionate amount necessary to meet on each Bond Payment Date the payment of all interest on and principal of the Parity Bonds. All amounts paid and credited to the various Principal and Interest Subaccounts shall be expended and used by the Issuer for the sole purpose of paying the Debt Service Requirements of respective Parity Bonds as and when the same become due at Maturity and on each Interest Payment Date.

Any amounts deposited in the Principal and Interest Account in accordance with ***Section 502(a)*** hereof shall be credited against the Issuer's payment obligations as set forth in subsection (b)(1) of this Section.

If at any time the moneys in the Revenue Fund are insufficient to make in full the payments and credits at the time required to be made to the Principal and Interest Account and to the subaccounts established to pay the principal of and interest on any Parity Bonds, the available moneys in the Revenue Fund shall be divided among such debt service accounts in proportion to the respective principal amounts of said series of Parity Bonds at the time Outstanding which are payable from the moneys in said Principal and Interest Subaccounts.

(c) ***Bond Reserve Account***. There shall next set aside and credited monthly to the Bond Reserve Account, for the credit of the respective subaccounts thereof as appropriate, the amount, if any, required to restore the Bond Reserve Account to the Bond Reserve Requirement. Except as hereinafter provided, all amounts paid and credited to the Bond Reserve Account shall be expended and used by the Issuer solely to prevent any default in the payment of interest on or principal of the Parity Bonds on any

Maturity date or Interest Payment Date if the moneys in the respective Principal and Interest Subaccounts are insufficient to pay the Debt Service Requirements of said Parity Bonds as they become due. So long as the Bond Reserve Account aggregates the Bond Reserve Requirement, no further payments into said Account shall be required, but if the Issuer is ever required to expend and use a part of the moneys in any subaccount for the purpose herein authorized and such expenditure reduces the amount of such subaccount below the Bond Reserve Requirement for such subaccount, or if the Value of the any such subaccount is below the Bond Reserve Requirement, the Issuer shall make monthly payments into such subaccount so that such subaccount shall again aggregate the Bond Reserve Requirement within twelve (12) months of such deficiency.

(d) ***Debt Service Accounts-Subordinate Lien Indebtedness***. There shall next be paid and credited monthly to the debt service account(s) for any Subordinate Lien Indebtedness, to the extent necessary to meet on each Bond Payment Date an amount equal to the payment of all interest on and principal of any Subordinate Lien Indebtedness. The amounts required to be paid and credited to the debt service account(s) for any Subordinate Lien Indebtedness shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to other debt service accounts established for the payment of the Debt Service Requirements on any Subordinate Lien Indebtedness.

(e) ***Depreciation and Replacement Account***. There shall next be paid and credited monthly to the Depreciation and Replacement Account minimum monthly amounts to the end that the Depreciation and Replacement Account will reach the Depreciation and Replacement Account Requirement within a period of thirty (30) months from the date of the first such transfer. Except as hereinafter provided, moneys in the Depreciation and Replacement Account shall be expended and used by the Issuer for the purpose of: (1) making extraordinary maintenance and repairs to the Utility, (2) making capital improvements in and to the Utility, and (3) keeping the Utility in good repair and working order so that it may continue in effective and efficient operation. If no other funds are available therefor, moneys in the Depreciation and Replacement Account may be used to pay Current Expenses. After the Depreciation and Replacement Account aggregates the Depreciation and Replacement Account Requirement, no further payments into the Depreciation and Replacement Account shall be required, but if the Issuer is ever required to expend a part of the moneys in the Depreciation and Replacement Account for its authorized purposes and such expenditure reduces the amount of the Depreciation and Replacement Account below the Depreciation and Replacement Requirement, then the Issuer shall resume and continue minimum monthly payments into the Depreciation and Replacement Account aggregates the Depreciation and Replacement Requirement within a period of eighteen (18) months of such deficiency.

(f) ***General Obligation Indebtedness*** There shall next be paid and credited monthly to such of the Issuer's funds or accounts determined by the Director of Finance, proportionate monthly amounts equal to the Debt Service Requirements on General Obligation Indebtedness accruing in the next twelve (12) months.

(g) ***Payment to the City***. There shall next be paid and credited monthly to such of the Issuer's funds or accounts determined by the Director of Finance, proportionate monthly amounts equal to the next required Payment to the City.

(h) ***Improvement Account***. All moneys in the Revenue Fund on each January 1 not required for payment of the Current Expenses and all transfers required by subsections (a) to (f) hereof for the next ninety (90) days shall be credited to the Improvement Account. When the Pre-2014 Bonds are no longer Outstanding, transfers from the Revenue Fund to the Improvement Fund may be made on a monthly basis in such amounts as may be determined by the Director of Finance. Moneys in the Improvement Account may be expended and used for the following purposes:

(1) Paying the Current Expenses.

(2) Paying the cost of extending, enlarging or improving the Utility.

(3) Preventing default in, making payments into or increasing the amounts in any of the Funds and Accounts or other payments required by subsections (a) to (g) hereof

(4) Calling, redeeming and paying prior to Stated Maturity, or, at the option of the Issuer, purchasing in the open market at fair market value, any Utility Indebtedness or General Obligation Indebtedness.

(5) Any other lawful purpose in connection with the operation of the Utility and benefiting the Utility.

(6) To make transfers to the Revenue Fund.

(h) ***Deficiency of Payments into Funds and Accounts***. If at any time the Gross Revenues are insufficient to make any payment on the date or dates hereinbefore specified, the Issuer will make good the amount of such deficiency by making additional payments or credits out of the first available Gross Revenues, such payments and credits being made and applied in the order hereinbefore specified in this Section.

(h) ***Deficiency of Payments into Funds and Accounts***. If at any time the Gross Revenues are insufficient to make any payment on the date or dates hereinbefore specified, the Issuer will make good the amount of such deficiency by making additional payments or credits out of the first available Gross Revenues, such payments and credits being made and applied in the order hereinbefore specified in this Section.

**Section 603. Transfer of Funds to Paying Agent.** The Treasurer of the Issuer shall withdraw from the Principal and Interest Account, and, to the extent necessary to prevent a default in the payment of either principal of or interest on the Utility Indebtedness, from the Bond Reserve Account, and the Improvement Account, sums sufficient to pay the principal of and interest on the Utility Indebtedness as and when the same become due on any Bond Payment Date, and to forward such sums to the Paying Agent in a manner which ensures the Paying Agent will have available funds in such amounts on or before the Business Day immediately preceding each Bond Payment Date. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Bond Resolution.

**Section 604. Payments Due on Saturdays, Sundays and Holidays.** In any case where a Bond Payment Date is not a Business Day, then payment of principal, Redemption Price or interest need not be made on such Bond Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Bond Payment Date, and no interest shall accrue for the period after such Bond Payment Date.

## ARTICLE VII

## DEPOSIT AND INVESTMENT OF MONEYS

**Section 701. Deposits and Investment of Moneys.**

(a) Moneys in each of the Funds and Accounts shall be deposited and shall be adequately secured as provided by the laws of the State.

(b) Moneys held in any Fund or Account other than the Escrow Fund may be invested in accordance with the Bond Resolution and the Federal Tax Certificate, in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose for which such Fund or Account was established; and provided, further, that Authorized Investments in the Bond Reserve Account shall have an average aggregate weighted term to maturity not greater than five years. All earnings on any investments held in any Fund or Account shall accrue to and become a part of such Fund or Account, other than earnings required to be deposited into the Rebate Fund pursuant to the Federal Tax Certificate. All earnings on investments held in the Bond Reserve Account shall accrue to and become a part of the Bond Reserve Account until the amount on deposit in the Bond Reserve Account shall aggregate the Bond Reserve Requirement; thereafter, all such earnings shall be credited to the Principal and Interest Account. All earnings on investments held in the Depreciation and Replacement Account shall accrue to and become a part of the Depreciation and Replacement Account until the amount on deposit in the Depreciation and Replacement Account shall aggregate the Depreciation and Replacement Requirement; thereafter, all such earnings shall be credited to the Revenue Fund.

(c) The Value of any Fund or Account shall be determined at the end of each calendar month. Such valuation shall also be made in conjunction with redemption of any Utility Indebtedness.

## ARTICLE VIII

## GENERAL COVENANTS AND PROVISIONS

The Issuer covenants and agrees with each of the Owners of any of the Utility Indebtedness that so long as any of the Utility Indebtedness remain Outstanding and unpaid it will comply with each of the following covenants:

**Section 801. Efficient and Economical Operation.** The Issuer will continuously own and will operate the Utility as a revenue producing facility in an efficient and economical manner and will keep and maintain the same in good repair and working order.

**Section 802. Rate Covenant.** The Issuer, in accordance with and subject to applicable legal requirements, will fix, establish, maintain and collect such rates and charges for the use and services furnished by or through the Utility as will produce Gross Revenues sufficient to: (a) pay the Current Expenses; (b) pay the Debt Service Requirements on the Utility Indebtedness as and when the same become due at the Maturity thereof or on any Interest Payment Date; (c) provide reasonable and adequate reserves for the payment of the Utility Indebtedness and for the protection and benefit of the Utility as provided in the Bond Resolution; and (d) enable the Issuer to have in each Fiscal Year, a Debt Service Coverage Ratio of not less than 1.20 on all Parity Indebtedness at the time Outstanding; 1.00 on all Subordinate Lien Indebtedness at the time Outstanding; 1.00 on all General Obligation Indebtedness at the time Outstanding; and 1.00 with respect to the Payment to the City; provided however, in determining the Net Revenues Available for Debt Service, estimated additional net income to be derived from rate increases in effect and being charged prior to the end of the applicable Fiscal Year, as determined by the Consultant, may be taken into account, and that, without giving effect to any such adjustments from rate increases, the Debt Service Coverage Ratio shall be not less than 1.00 of the current Fiscal Year's Debt Service Requirements for all Utility Indebtedness.

The Issuer will, from time to time as often as necessary, in accordance with and subject to applicable legal requirements, revise the rates and charges aforesaid in such manner as may be necessary or proper so that the Net Revenues Available for Debt Service will be sufficient to cover the obligations under the provisions of the Bond Resolution. If in any Fiscal Year, Net Revenues Available for Debt Service are an amount less than as hereinbefore provided, the Issuer will make adjustments to such rates, fees and charges to bring the Utility into compliance with this covenant. It shall be the policy of the Issuer that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues Available for Debt Service with respect to Utility Indebtedness issued for improvements to each such component of the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

**Section 803. Restrictions on Mortgage or Sale of Utility.** The Issuer will not mortgage, pledge or otherwise encumber the Utility or any part thereof, nor will it sell, lease or otherwise dispose of the Utility or any material part thereof; provided, however, the Issuer may:

(a) sell at fair market value any portion of the Utility which has been replaced by other similar property of at least equal value, or which ceases to be necessary for the efficient operation of the Utility, and in the event of sale, the Issuer will apply the proceeds to either (1) redemption of Outstanding Utility Indebtedness in accordance with the provisions governing repayment of Utility Indebtedness in advance of Stated Maturity, or (2) replacement of the property so disposed of by other property the revenues of which shall be incorporated into the Utility as hereinbefore provided;

(b) cease to operate, abandon or otherwise dispose of any property which has become obsolete, nonproductive or otherwise unusable to the advantage of the Issuer;

(c) grant a security interest in equipment to be purchased with the proceeds of any loan, lease or other obligation undertaken in accordance with ***Article IX*** hereof; or

(d) sell, lease or convey all or substantially all of the Utility to another entity or enter into a management contract with another entity if:

(1) The transferee entity is a political subdivision organized and existing under the laws of the State, or instrumentality thereof, or an organization described in Code § 501(c)(3), and expressly assumes in writing the due and punctual payment of the principal of and premium, if any, and interest on all outstanding Utility Indebtedness according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Bond Resolution;

(2) If there remains unpaid any Utility Indebtedness which bears interest that is not includable in gross income under the Code, the Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, to the effect that under then existing law the consummation of such sale, lease or conveyance, whether or not contemplated on any date of the delivery of such Utility Indebtedness, would not cause the interest payable on such Utility Indebtedness to become includable in gross income under the Code;

(3) The Issuer receives a certificate of the Consultant which demonstrates and certifies that immediately upon such sale or conveyance the transferee entity will not, as a result thereof, be in default in the performance or observance of any covenant or agreement to be performed or observed by it under this Bond Resolution;

(4) Such transferee entity possesses such licenses to operate the Utility as may be required if it is to operate the Utility; and

(5) The Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, as conclusive evidence that any such sale, lease or conveyance, and any such assumption, is permitted by law and complies with the provisions of this Section.

(6) The Issuer receives the written consent of the Bond Insurer.

**Section 804. Insurance.** The Issuer will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Utility as would be carried by a privately owned utility with similar property and performing similar functions, insofar as the properties are of an insurable nature; and in the event of loss or damage, the Issuer will use the Net Proceeds of such insurance to reconstruct or replace the damaged or destroyed property, or if such reconstruction or replacement be unnecessary, then such Net Proceeds shall be used in redeeming or paying off Outstanding Utility Indebtedness, in accordance with their call provisions. The Issuer also will carry general liability insurance in amounts not less than the then maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the State's tort claims act or other similar future law (currently $500,000.00 per occurrence). In lieu of the foregoing, the Issuer may establish a self-insurance program which will provide substantially the same protection for the Owners.

**Section 805. Books, Records and Accounts.** As long as any Utility Indebtedness are Outstanding, the Issuer shall keep proper and separate books of records and accounts in which complete and correct entries shall be made showing the Gross Revenues collected for services by the Utility and all sums expended in the operation thereof and all sums deposited in the Funds and Accounts above mentioned and all disbursements, transfers and transactions relating to the Utility as a whole, and to the several components of the Utility separately. The books and accounts shall be kept in accordance with generally accepted accounting principles.

The Utility shall make comparative quarterly reports to the Office of the City Manager relative to Utility incomes, Utility expenses and net income from operations. If any such quarterly report shall disclose that the Issuer will not have available the necessary funds for carrying out and complying with all of the requirements of this Resolution, then the Issuer shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for the use and services of the Utility which will provide adequate funds to meet such requirements.

**Section 806. Annual Budget.** The Issuer shall prepare an Annual Budget in its customary form estimating anticipated expenditures and income and containing a statement relative to the amounts of insurance being carried and to be carried. As long as the Pre-2009 Bonds are Outstanding, the Annual Budget shall contain normal budgetary items, including:

(a) An estimate of the receipts from the Utility during the next ensuing Fiscal Year.

(b) A statement of the estimated cost of operating the Utility during the next ensuing Fiscal Year.

(c) A statement of any anticipated unusual expenses for the Utility during the next Fiscal Year.

(d) A statement of any necessary replacements to the Utility which may be anticipated during the next Fiscal Year.

(e) A statement of the amount of principal and interest to be paid on Outstanding Utility Indebtedness and any General Obligation Indebtedness to be paid from Gross Revenues of the Utility during the next Fiscal Year.

(f) A statement of the total estimated expenditures to be made from the Gross Revenues of the Utility during the next Fiscal Year.

(g) A statement of the estimated Net Revenues Available for Debt Service during the next Fiscal Year.

As long as the Pre-2009 Bonds are Outstanding, copies of the Annual Budget shall be mailed to the Underwriter and to the Bond Insurer, if any, within thirty (30) days after the same are received by the Issuer.

**Section 807. Annual Audit.** The Issuer shall annually cause an audit to be made by an Independent Accountant of the operation of the Utility, which audit shall be open to public inspection and shall be completed within six (6) months after the completion of the Fiscal Year. If the audit shall disclose that proper provision has not been made for carrying out and complying with all of the requirements of this Resolution, then the Issuer shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for the use of services of the Utility which will provide adequate funds to meet all such requirements.

As long as the Pre-2009 Bonds are Outstanding, the audit shall include the following information:

(a) A classified statement of the Gross Revenues received, the expenditures for operation and maintenance, the expenditures for all other purposes, the net Operating Revenues and the amount of any capital expenditures made from such Operating Revenues during the year.

(b) A complete balance sheet of the Fiscal Year's operations, particularly indicating the amount of moneys set aside for the various Funds and Accounts as herein provided for.

(c) A statement showing all Outstanding Utility Indebtedness which have been called, purchased, matured or paid during the year and a statement of all interest thereon paid during the year.

(d) A statement of the number of customers served by the Utility at the end of the year.

(e) A statement of the gross amount of insurance carried on the Utility's properties, showing the names of the insurers, the expiration dates of the policies and the premiums thereon.

(f) A statement by the auditor of any recommendations suggested as to financial procedures and accounting practices employed by the Issuer.

(g) A statement of the Net Revenues Available for Debt Service of the Utility.

(h) A statement of any amounts to be deposited in the Rebate Account.

As long as the Pre-2009 Bonds are Outstanding, copies of such audit shall be mailed to the Underwriter, to the Bond Insurer, if any, and to the Kansas Bank Commissioner within thirty (30) days after the same are received by the Issuer.

As soon as possible after the completion of the annual audit, the governing body of the Issuer shall review the report of such audit, and if the audit report discloses that proper provision has not been made for all of the requirements of this Bond Resolution and the Act, the Issuer will promptly cure such deficiency and will promptly proceed to modify the rates and charges to be charged for the use and services furnished by the Utility or take such other action as may be necessary to adequately provide for such requirements.

**Section 808. Right of Inspection.** The Owner of any Bond or such Owner's duly authorized attorney, accountant or investment counselor and, the Bond Insurer, if any, shall have the right at all reasonable times during normal business hours to inspect the any records, accounts or data relating thereto in accordance with State law.

**Section 809. Performance of Duties and Covenants.** The Issuer will faithfully and punctually perform all duties, covenants and obligations with respect to the operation of the Utility now or hereafter imposed upon the Issuer by the Constitution and laws of the State and by the provisions of this Bond Resolution.

**Section 810. Report on Utility Condition.** The Issuer shall annually cause a qualified employee of the Issuer to make an examination of and report on the condition and operations of the Utility. Not less than every three (3) years, the Issuer will cause the Consulting Engineers to make an examination and written report on the condition and operation of the Utility, such report to include recommendations as to any changes in such operation deemed desirable. Such report shall also make references to any unusual or extraordinary items of maintenance and repair and any extensions, enlargements or improvements that may be needed in the period prior to the preparation of the next consultant's report required by this Section. A copy of such report will be filed with the Clerk.

## ARTICLE IX

## ADDITIONAL BONDS AND OBLIGATIONS

**Section 901. Prior Lien Bonds.** So long as any of the Parity Bonds remain Outstanding, the Issuer will not issue any Utility Indebtedness payable out of the Gross Revenues which are superior to the Parity Indebtedness with respect to the lien on the Net Revenues.

**Section 902. Parity Indebtedness.** The Issuer will not issue any Utility Indebtedness which stands on a parity or equality of lien against the Net Revenues with the Parity Indebtedness unless the following conditions are met:

(a) The Issuer shall not be in default in the payment of the Debt Service Requirements on any Parity Indebtedness at the time Outstanding or in making any payment at the time required to be made into the respective Funds and Accounts created by and referred to in the Bond Resolution (unless such Utility Indebtedness is being issued to provide funds to cure such default) nor shall any other Event of Default have occurred and be continuing;

(b) The Issuer shall deliver the following:

(1) *Long-Term Indebtedness*. A certificate signed by the Issuer evidencing that the Debt Service Coverage Ratio for the two (2) Fiscal Years immediately preceding the issuance of such Utility Indebtedness, as reflected by information provided by the Independent Accountant, shall be not less than 1.20, including the Utility Indebtedness proposed to be issued. In the event that the Issuer has instituted any increase in rates for the use and services of the Utility and such increase shall not have been in effect during the full two (2) Fiscal Years immediately preceding the issuance of such proposed Utility Indebtedness, the additional Net Revenues Available for Debt Service which would have resulted from the operation of the Utility during said two (2) preceding Fiscal Years had such rate increase been in effect for the entire period may be added to the stated Net Revenues for the calculation of the Debt Service Coverage Ratio, provided that such estimated additional Net Revenues shall be determined by a Consultant.

(2) *Short-Term Indebtedness*. A certificate signed by the Issuer evidencing any ***one*** of the following:

(i) The principal amount of all Outstanding Short-Term Indebtedness does not exceed 15% of the Gross Revenues for the most recently ended Fiscal Year for which financial information is available from the Independent Accountant;

(ii) The Short-Term Indebtedness could be incurred assuming it was Long-Term Indebtedness.

(iii) There is delivered to the Issuer a certificate of a Consultant to the effect that it is such Consultant's opinion that it is reasonable to assume that the Issuer will be able to refinance such Short-Term Indebtedness prior to its Stated Maturity and the conditions are met with respect to such Short-Term Indebtedness when it is assumed that such Short-Term Indebtedness is Long-Term Indebtedness maturing over 20 years (or such shorter period as such Consultant indicates is reasonable to assume in such statement) from the date of issuance of the Short-Term Indebtedness and bears interest on the unpaid principal balance at the Index Rate and is payable on a level annual debt service basis over a 20-year period (or such shorter period as such Consultant indicates is reasonable to assume in such statement).

(3) *Interim Indebtedness*. A certificate signed by the Issuer evidencing any ***either*** of the following:

(i) The Interim Indebtedness could be incurred assuming it was Long-Term Indebtedness.

(ii) There is delivered to the Issuer a certificate of a Consultant to the effect that it is such Consultant's opinion that it is reasonable to assume that the Issuer will be able to refinance such Interim Indebtedness prior to its Stated Maturity and the conditions are met with respect to such Interim Indebtedness when it is assumed that such Interim Indebtedness is Long-Term Indebtedness maturing over 20 years (or such shorter period as such Consultant indicates is reasonable to assume in such statement) from the date of issuance of the Interim Indebtedness and bears interest on the unpaid principal balance at the Index Rate and is payable on a level annual debt service basis over a 20-year period (or such shorter period as such Consultant indicates is reasonable to assume in such statement).

(c) When the issuance of Utility Indebtedness of equal stature and priority is permitted by the laws of the State.

(d) With respect to the issuance of Additional Bonds, an additional deposit to the Bond Reserve Account shall be made to bring the Bond Reserve Account to an amount equal to the Bond Reserve Requirement.

(e) The ordinance and/or resolution authorizing such Utility Indebtedness shall contain or provide for substantially the same terms, conditions, covenants and procedures as established in the Bond Resolution.

Additional Utility Indebtedness issued under the conditions hereinbefore set forth shall stand on a parity with other Parity Indebtedness and shall enjoy complete equality or lien on and claim against the Net Revenues, and the Issuer may make equal provision for paying the Debt Service Requirements on such Utility Indebtedness out of the Revenue Fund and may likewise provide for the creation of reasonable debt service accounts and debt service reserve accounts for the payment of the Debt Service Requirements on such Utility Indebtedness and the interest thereon out of moneys in the Revenue Fund.

**Section 903. Subordinate Lien Indebtedness.** Nothing shall prohibit or restrict the right of the Issuer to issue Subordinate Lien Indebtedness for any lawful purpose in connection with the operation of and benefiting the Utility and to provide that the Debt Service Requirements on such Subordinate Lien Indebtedness shall be payable out of the Net Revenues Available for Debt Service, provided at the time of the issuance of such Subordinate Lien Indebtedness the Issuer is not in default in the performance of any covenant or agreement contained in the Bond Resolution (unless such Utility Indebtedness shall be issued to cure such default and shall be junior and subordinate to the Parity Indebtedness) so that if at any time the Issuer shall be in default in paying either interest on or principal of the Parity Indebtedness, or of the Issuer is in default in payment of Current Expenses, Debt Service Requirements on Parity Indebtedness or transfers required by the Bond Resolution prior to the payment of Debt Service Requirements on Subordinate Lien Indebtedness, the Issuer shall make no payments of Debt Service Requirements on said Subordinate Lien Indebtedness until said default or defaults be cured.

**Section 904. Refunding Indebtedness.** The Issuer shall have the right, without complying with the provisions of ***Section 902*** hereof, to issue Refunding Indebtedness for the purpose of refunding any of the Utility Indebtedness under the provisions of any law then available, and the Refunding Indebtedness so issued shall enjoy complete equality of pledge as did the Utility Indebtedness that was refunded.

## ARTICLE X

## DEFAULT AND REMEDIES

**Section 1001. Remedies.** The Bond Resolution and all of the provisions thereof shall constitute a contract between the Issuer, the Bond Insurer and each of the Owners of Utility Indebtedness, and any such Owner may by suit, action, mandamus, injunction or other proceeding, either at law or in equity, enforce and compel performance of all duties, obligations and conditions determined and required by the Bond Resolution, subject to the limitations of hereinafter set forth; provided however, that no Owner of Subordinate Indebtedness shall have the ability to impair the rights of Owners of Parity Indebtedness. Upon the happening and continuance of any Event of Default, then and in every such case any Owner may proceed, subject to the provisions of the Bond Resolution, to protect and enforce the rights of the Owners by a suit, action or special proceeding in equity, or at law, either for the specific performance of

any covenant or agreement contained therein or in aid or execution of any power therein granted or for the enforcement of any proper legal or equitable remedy as such Owner shall deem most effectual to protect and enforce such rights.

Anything in the Bond Resolution to the contrary notwithstanding, if at any time moneys in the Principal and Interest Account shall not be sufficient to pay the interest on or the principal of the Utility Indebtedness as the same shall become due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Section or otherwise, shall be applied as follows:

(a) If the principal of all the Parity Indebtedness shall not have become due and payable, all such moneys shall be applied:

***first***: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness;

***second***: to the payment to the persons entitled thereto of the unpaid principal of any of the Parity Indebtedness which shall have become due and payable (other than Parity Indebtedness called for redemption for the payment of which moneys are held pursuant to the provisions of the Bond Resolution), in the order of their due dates, with interest on the principal amount of such Parity Indebtedness at the respective rates specified therein from the respective dates upon which such Parity Indebtedness` became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Parity Indebtedness due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

***third***: to the payment of the interest on and the principal of the Parity Indebtedness, to the purchase and retirement of the Parity Indebtedness and to the redemption of the Parity Indebtedness, all in accordance with the provisions of the Bond Resolution.

(b) If the principal of all of the Parity Indebtedness shall have become due and payable, all such moneys shall be applied:

***first***: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness, and then to the payment of any interest due and payable after maturity on the Parity Indebtedness, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the

Parity Indebtedness; and

***second***: to the payment of the principal of the Parity Indebtedness, ratably, to the persons entitled thereto, without preference or priority of any Parity Indebtedness over any other Parity Indebtedness.

(c) If the principal of all the Subordinate Lien Indebtedness shall not have become due and payable, all such moneys shall be applied:

***first***: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Lien Indebtedness;

***second***: to the payment to the persons entitled thereto of the unpaid principal of any of the Subordinate Lien Indebtedness which shall have become due and payable (other than Subordinate Lien Indebtedness called for redemption for the payment of which moneys are held pursuant to the provisions of the Bond Resolution), in the order of their due dates, with interest on the principal amount of such Subordinate Lien Indebtedness at the respective rates specified therein from the respective dates upon which such Subordinate Lien Indebtedness` became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Subordinate Lien Indebtedness due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

***third:*** to the payment of the interest on and the principal of the Subordinate Lien Indebtedness, to the purchase and retirement of the Subordinate Lien Indebtedness and to the redemption of the Subordinate Lien Indebtedness, all in accordance with the provisions of the Bond Resolution.

(d) If the principal of all of the Subordinate Lien Indebtedness shall have become due and payable, all such moneys shall be applied:

***first***: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Lien Indebtedness, and then to the payment of any interest due and payable after maturity on the Subordinate Lien Indebtedness, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Lien Indebtedness; and

***second***: to the payment of the principal of the Subordinate Lien Indebtedness,

ratably, to the persons entitled thereto, without preference or priority of any Subordinate Lien Indebtedness over any other Subordinate Lien Indebtedness.

Whenever moneys are to be applied by the Issuer pursuant to the foregoing provisions, such moneys shall be applied at such times, and from time to time, as the Director of Finance, in his or her sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Paying Agent in trust for the proper purpose shall constitute proper application by the Issuer; and the Issuer shall incur no liability whatsoever to any Owner or to any other person for any delay in applying any such moneys, so long as the Issuer acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Resolution as may be applicable at the time of application by the Director of Finance. Whenever the Director of Finance shall exercise such discretion in applying such moneys, she shall fix the date (which shall be an Interest Payment Date unless she shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Director of Finance shall give such notice as she may deem appropriate of the fixing of any such date, and shall not be required to make payment to the Owner of any unpaid Utility Indebtedness until the same shall be surrendered to the Paying Agent for appropriate endorsement, or for cancellation if fully paid.

In case any proceeding taken by any Owner on account of any default shall have been discontinued or abandoned for any reason, then and in every such case the Issuer and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights and remedies of the Owners shall continue as though no such proceedings had been taken. No Owner of any of any Utility Indebtedness shall have any right in any manner whatever to affect, disturb or prejudice the security of the Bond Resolution or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the same class of Utility Indebtedness. No remedy herein conferred on the Owners is intended to be exclusive of any other remedy or remedies, and each and every remedy conferred shall be cumulative and shall be in addition to every other remedy given hereunder and under the Act or now or hereafter existing at law or in equity or by statute. No delay or omission of any Owner to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given to the Owners may be exercised from time to time and as often as may be deemed expedient.

**Section 1002. Limitation on Rights of Owners.** No Owner of any Utility Indebtedness shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Bond Resolution or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) an Event of Default shall have occurred, (b) the Owners of twenty-five percent (25%) in aggregate principal amount of same class of the Utility Indebtedness then Outstanding shall have made written request to the Issuer, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and (ci) the Issuer shall thereafter fail or refuse to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case, at the option of the Issuer, to be conditions precedent to the execution of the powers and trusts of the Bond Resolution, and to any action or cause of action for the enforcement of the Bond Resolution, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners of the Utility Indebtedness shall have any right in any manner whatsoever to affect, disturb or prejudice the Bond Resolution by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all

proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of the Utility Indebtedness then Outstanding. Nothing in the Bond Resolution contained shall, however, affect or impair the right of any Owner to payment of Debt Service Requirements on any Utility Indebtedness at and after the maturity thereof or the obligation of the Issuer to pay the Debt Service Requirements on each of the Utility Indebtedness issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Utility Indebtedness expressed.

**Section 1003. Remedies Cumulative.** No remedy conferred upon the Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred. No waiver of any default or breach of duty or contract by the Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. If action or proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or shall have been determined adversely to such Owner, then, and in every such case, the Issuer and the Owners shall be restored to their former positions and rights, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

**Section 1004. No Obligation to Levy Taxes.** Nothing contained in this Bond Resolution shall be construed as imposing on the Issuer any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or interest on the Utility Indebtedness.

**Section 1005. Control of Remedies Upon an Event of Default and Event of Insolvency.** Notwithstanding anything herein to the contrary, upon the occurrence and continuance of an Event of Default, the Bond Insurer, provided the Bond Insurance Policy is in full force and effect and the Bond Insurer shall not be in default thereunder, shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owners under this Bond Resolution. Any reorganization or liquidation plan with respect to the Issuer must be acceptable to the Bond Insurer. In the event of any reorganization or liquidation, the Bond Insurer shall have the right to vote on behalf of all Owners who hold the Insured Bonds insured by the Bond Insurer absent a default by the Bond Insurer under the applicable Bond Insurance Policy insuring such Insured Bonds.

## ARTICLE XI

## DEFEASANCE

**Section 1101. Defeasance.** When any or all of the Utility Indebtedness, redemption premium, if any, or scheduled interest payments thereon have been paid and discharged, then the requirements contained in the Bond Resolution and the pledge of the Gross Revenues hereunder and all other rights granted hereby shall terminate with respect to the Bonds or scheduled interest payments thereon so paid and discharged. Utility Indebtedness, redemption premium, if any, or scheduled interest payments thereon shall be deemed to have been paid and discharged within the meaning of the Bond Resolution if there has been deposited with the Paying Agent, or other commercial bank or trust company located in the State and having full trust powers, at or prior to the Stated Maturity or Redemption Date of said Utility Indebtedness or the interest payments thereon, in trust for and irrevocably appropriated thereto, moneys and/or Defeasance Obligations which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of the principal or Redemption Price of said Utility Indebtedness and/or interest accrued to the Stated Maturity or Redemption Date, or if default in such payment has occurred on such date, then to the date of the tender of such payments. If the amount to be

so deposited is based on the Redemption Price of any Bonds, no such satisfaction shall occur until: (a) the Issuer has elected to redeem such Utility Indebtedness, and (b) either notice of such redemption has been given, or the Issuer has given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Bond Registrar to give such notice of redemption in compliance with the Bond Resolution. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the Issuer, for the purpose of paying and discharging any of the Utility Indebtedness, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Owners of the Utility Indebtedness, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Paying Agent or such bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions of the Bond Resolution. The Issuer shall notify the Bond Insurer of any defeasance of any Insured Bonds insured by the Bond Insurer.

Notwithstanding anything in the Bond Resolution to the contrary, in the event that the principal and/or interest due on the Insured Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Insured Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer and the covenants, agreements and other obligations of the Issuer to the Owners shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owners.

## ARTICLE XII

## TAX COVENANTS

**Section 1201. General Covenants.** The Issuer covenants and agrees that it will comply with: (a) all applicable provisions of the Code necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Series 2014A Bonds; and (b) all provisions and requirements of the Federal Tax Certificate. The Mayor and Clerk are hereby authorized and directed to execute the Federal Tax Certificate in a form approved by Bond Counsel, for and on behalf of and as the act and deed of the Issuer. The Issuer will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Series 2014A Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the Issuer.

**Section 1202. Survival of Covenants.** The covenants contained in this Article and in the Federal Tax Certificate shall remain in full force and effect notwithstanding the defeasance of the Series 2014A Bonds pursuant to ***Article XI*** hereof or any other provision of this Bond Resolution until such time as is set forth in the Federal Tax Certificate.

## ARTICLE XIII

## CONTINUING DISCLOSURE REQUIREMENTS

**Section 1301. Disclosure Requirements.** The Issuer hereby covenants with the Purchaser and the Beneficial Owners to provide and disseminate such information as is required by the SEC Rule and as further set forth in the Disclosure Undertaking, which are incorporated herein by reference. Such covenant shall be for the benefit of and enforceable by the Purchaser and the Beneficial Owners.

**Section 1302. Failure to Comply with Continuing Disclosure Requirements.** In the event the Issuer fails to comply in a timely manner with its covenants contained in the preceding section, the Purchaser and/or any Beneficial Owner may make demand for such compliance by written notice to the Issuer. In the event the Issuer does not remedy such noncompliance within 10 days of receipt of such written notice, the Purchaser or any Beneficial Owner may in its discretion, without notice or demand, proceed to enforce compliance by a suit or suits in equity for the specific performance of such covenant or agreement contained in the preceding section or for the enforcement of any other appropriate legal or equitable remedy, as the Purchaser and/or any Beneficial Owner shall deem effectual to protect and enforce any of the duties of the Issuer under such preceding section. The Purchaser or Beneficial Owner shall provide a copy of any such demand or notice to the Bond Insurer.

## ARTICLE XIV

## MISCELLANEOUS PROVISIONS

**Section 1401. Amendments.** The rights and duties of the Issuer and the Owners, and the terms and provisions of the Utility Indebtedness or of this Bond Resolution, may be amended or modified at any time in any respect by resolution of the Issuer with the written consent of the Owners of not less than a majority in principal amount of the Utility Indebtedness then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Clerk, but no such modification or alteration shall:

(a) extend the maturity of any payment of principal or interest due upon any Utility Indebtedness;

(b) effect a reduction in the amount which the Issuer is required to pay as principal of or interest on any Utility Indebtedness;

(c) permit preference or priority of any Utility Indebtedness over any other Utility Indebtedness;

(d) reduce the percentage in principal amount of Utility Indebtedness required for the written consent to any modification or alteration of the provisions of this Bond Resolution; or

(e) permit the creation of a lien on the Revenues prior or equal to the lien of the Parity Indebtedness.

Any provision of the Utility Indebtedness or of this Bond Resolution may, however, be amended or modified by resolution duly adopted by the governing body of the Issuer at any time in any legal respect with the written consent of the Owners of all of the Utility Indebtedness at the time Outstanding.

Without notice to or the consent of any Owners, the Issuer may amend or supplement this Bond Resolution for the purpose of curing any formal defect, omission, inconsistency or ambiguity herein, to grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners, to conform this Bond Resolution to the Code or future applicable federal law concerning tax-exempt obligations, or in connection with any other change therein which is not materially adverse to the interests of the Owners.

Every amendment or modification of the provisions of the Utility Indebtedness or of this Bond Resolution, to which the written consent of the Owners is given, as above provided, shall be expressed in a resolution adopted by the governing body of the Issuer amending or supplementing the provisions of this Bond Resolution and shall be deemed to be a part of this Bond Resolution. A certified copy of every such amendatory or supplemental resolution, if any, and a certified copy of this Bond Resolution shall always be kept on file in the office of the Clerk, and shall be made available for inspection by the Owner of any Utility Indebtedness or a prospective purchaser or owner of any Utility Indebtedness authorized by this Bond Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or of this Bond Resolution will be sent by the Clerk to any such Owner or prospective Owner.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the Clerk a copy of the resolution of the Issuer hereinabove provided for, duly certified, as well as proof of any required consent to such modification by the Bond Insurer and the Owners of the Utility Indebtedness then Outstanding. It shall not be necessary to note on any of the Outstanding Utility Indebtedness any reference to such amendment or modification.

The Issuer shall furnish to the Paying Agent a copy of any amendment to the Utility Indebtedness or this Bond Resolution which affects the duties or obligations of the Paying Agent under this Bond Resolution.

**Section 1402. Notices, Consents and Other Instruments by Owners.** Any notice, consent, request, direction, approval or other instrument to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Utility Indebtedness, if made in the following manner, shall be sufficient for any of the purposes of this Bond Resolution, and shall be conclusive in favor of the Issuer and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Utility Indebtedness, the amount or amounts, numbers and other identification of Utility Indebtedness, and the date of holding the same shall be proved by the Bond Register.

In determining whether the Owners of the requisite principal amount of Utility Indebtedness Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Bond Resolution, Utility Indebtedness owned by the Issuer shall be disregarded and deemed not to be Outstanding under this Bond Resolution, except that, in determining whether the Owners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Utility Indebtedness which the Owners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Utility Indebtedness so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Owners the pledgee's right so to act with respect to such Utility Indebtedness and that the pledgee is not the Issuer.

**Section 1403. Notices.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Bond Resolution shall be in writing, given to the Notice

Representative at the Notice Address and shall be deemed duly given or filed if the same shall be: (a) duly mailed by registered or certified mail, postage prepaid; or (b) communicated via fax, with electronic or telephonic confirmation of receipt. Copies of such notices shall also be given to the Paying Agent and the Bond Insurer. The Issuer, the Paying Agent, the Bond Insurer and the Purchaser may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

All notices given by: (a) certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed; (b) fax as aforesaid shall be deemed duly given as of the date of confirmation of receipt. If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Paying Agent shall constitute a sufficient notice.

**Section 1404. Inconsistent Provisions.** In case any one or more of the provisions of the Series 2014A Bond Resolution or of the Utility Indebtedness issued hereunder shall for any reason be inconsistent with the provisions of the Outstanding Parity Bond Resolutions or the Parity Indebtedness: (a) the provisions of any Outstanding Parity Bond Resolution adopted prior to the Series 2014A Bond Resolution shall prevail with respect to Parity Indebtedness issued prior in time, so long as such Parity Indebtedness is Outstanding; and (b) the provisions of the Series 2014A Bond Resolution shall prevail with respect to any Parity Bond Resolution adopted subsequent to the Series 2014A Bond Resolution, so long as any Parity Indebtedness issued under the Series 2014A Bond Resolution is Outstanding.

**Section 1405. Electronic Transactions.** The issuance of the Series 2014A Bonds and the transactions related thereto and described herein may be conducted and documents may be stored by electronic means.

**Section 1406. Further Authority.** The officers and officials of the Issuer, including the Mayor and Clerk, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Bond Resolution and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 1407. Severability.** If any section or other part of this Bond Resolution, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Bond Resolution.

**Section 1408. Governing Law.** This Bond Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1409. Effective Date.**
This Bond Resolution shall take effect and be in full force from and after its adoption by the governing body of the Issuer.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**ADOPTED** by the City Council of the City of Wichita, Kansas, on July 15, 2014.

(SEAL)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

**CERTIFICATE**

I, the undersigned, hereby certify that the above and foregoing is a true and correct copy of the Resolution No. 14-[___] (the "Bond Resolution") of the City of Wichita, Kansas, adopted by the Governing Body on July 15, 2014, as the same appears of record in my office, and that the Bond Resolution has not been modified, amended or repealed and is in full force and effect as of this date.

DATED: July 15, 2014.

_____
Karen Sublett, City Clerk

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*EXHIBIT A*
**(FORM OF SERIES 2014A BONDS)**

**REGISTERED NUMBER ___** **REGISTERED $_____**

**Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York Corporation ("DTC"), to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.**

**UNITED STATES OF AMERICA**
**STATE OF KANSAS**
**COUNTY OF SEDGWICK**
**CITY OF WICHITA**
**WATER AND SEWER UTILITY REFUNDING REVENUE BOND**
**SERIES 2014A**

| **Interest Rate:** | **Maturity Date:** | **Dated Date: August 1, 2014** | **CUSIP:** |
|---|---|---|---|

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

**KNOW ALL PERSONS BY THESE PRESENTS**: That the City of Wichita, in the County of Sedgwick, State of Kansas (the "Issuer"), for value received, hereby acknowledges itself to be indebted and promises to pay to the Registered Owner shown above, or registered assigns, but solely from the source and in the manner herein specified, the Principal Amount shown above on the Maturity Date shown above, unless called for redemption prior to said Maturity Date, and to pay interest thereon at the Interest Rate per annum shown above (computed on the basis of a 360-day year of twelve 30-day months), from the Dated Date shown above, or from the most recent date to which interest has been paid or duly provided for, payable semiannually on April 1 and October 1 of each year, commencing April 1, 2015 (the "Interest Payment Dates"), until the Principal Amount has been paid.

**Method and Place of Payment**. The principal or redemption price of this Series 2014A Bond shall be paid at maturity or upon earlier redemption to the person in whose name this Series 2014A Bond is registered at the maturity or redemption date thereof, upon presentation and surrender of this Series 2014A Bond at the principal office of the Treasurer of the State of Kansas, Topeka, Kansas (the "Paying Agent" and "Bond Registrar"). The interest payable on this Series 2014A Bond on any Interest Payment Date shall be paid to the person in whose name this Series 2014A Bond is registered on the registration books maintained by the Bond Registrar at the close of business on the Record Date(s) for such interest, which shall be the 15th day (whether or not a business day) of the calendar month next preceding the

Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Registered Owner or, (b) in the case of an interest payment to any Registered Owner of $500,000 or more in aggregate principal amount of Series 2014A Bonds, by electronic transfer to such Registered Owner upon written notice given to the Bond Registrar by such Registered Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Registered Owner wishes to have such transfer directed. The principal or redemption price of and interest on the Series 2014A Bonds shall be payable in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. Interest not punctually paid will be paid in the manner established in the within defined Bond Resolution.

**Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the hereinafter defined Bond Resolution.

**ADDITIONAL PROVISIONS OF THIS SERIES 2014A BOND ARE CONTINUED ON THE REVERSE HEREOF AND SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH AT THIS PLACE.**

**Authentication**. This Series 2014A Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the hereinafter defined Bond Resolution until the Certificate of Authentication and Registration hereon shall have been lawfully executed by the Bond Registrar.

**IT IS HEREBY DECLARED AND CERTIFIED** that all acts, conditions, and things required to be done and to exist precedent to and in the issuance of this Series 2014A Bond have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas, that the total indebtedness of the Issuer, including this series of bonds, does not exceed any constitutional or statutory limitation, and that provision has been duly made for the collection and segregation of the Gross Revenues of the Water and Sewer Utility (the "Utility") and for the application of the same as provided in the hereinafter defined Bond Resolution.

**IN WITNESS WHEREOF**, the Issuer has caused this Series 2014A Bond to be executed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its Clerk, and its seal to be affixed hereto or imprinted hereon.

**CITY OF WICHITA, KANSAS**

(Facsimile Seal) _____(facsimile)_____
Mayor

ATTEST:

By _____(facsimile)_____
Clerk

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Series 2014A Bond is one of a series of Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, of the City of Wichita, Kansas, described in the within-mentioned Bond Resolution.

Registration Date _____

Office of the State Treasurer,
Topeka, Kansas,
as Bond Registrar and Paying Agent

By _____

Registration Number: 0709-087-080114-[___]

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**(FORM OF REVERSE SIDE OF BOND)**

**ADDITIONAL PROVISIONS**

**Authorization of Series 2014A Bonds**. This Series 2014A Bond is one of an authorized series of bonds of the Issuer designated "Water and Sewer Utility Refunding Revenue Bonds, Series 2014A," aggregating the principal amount of $43,105,000* (the "Series 2014A Bonds") issued for the purposes set forth in the Ordinance of the Issuer authorizing the issuance of the Series 2014A Bonds and the Resolution of the Issuer prescribing the form and details of the Series 2014A Bonds (collectively the "Bond Resolution"). The Series 2014A Bonds are issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and laws of the State of Kansas, including K.S.A. 10-116a, K.S.A. 10-620 *et seq*. and K.S.A. 10-1201 *et seq*., as amended by Charter Ordinance No. 211, all as amended, and all other provisions of the laws of the State of Kansas applicable thereto.

**Special Obligations**. The Series 2014A Bonds are special obligations of the Issuer payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the taxing power of the Issuer is not pledged to the payment of the Series 2014A Bonds either as to principal or interest. The Series 2014A Bonds shall not be or constitute a general obligation of the Issuer, nor shall they constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provision, limitation or restriction. The Series 2014A Bonds stand on a parity and are equally and ratably secured with respect to the payment of principal and interest from the Net Revenues and in all other respects with to the Outstanding Parity Bonds of the Issuer and any Parity Indebtedness to be issued. ***Under the conditions set forth in the Bond Resolution, the Issuer has the right to issue additional Utility Indebtedness payable from the same source and secured by the Net Revenues on a parity with said Net Revenues; provided, however, that such additional Utility Indebtedness may be so issued only in accordance with and subject to the covenants, conditions and restrictions relating thereto set forth in the Bond Resolution.***

The Issuer hereby covenants and agrees with the Registered Owner of this Series 2014A Bond that it will keep and perform all covenants and agreements contained in the Bond Resolution, and will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the Utility, as will produce Net Revenues sufficient to pay the costs of operation and maintenance of the Utility, pay the principal of and interest on the Series 2014A Bonds as and when the same become due, and provide reasonable and adequate reserve funds. Reference is made to the Bond Resolution for a description of the covenants and agreements made by the Issuer with respect to the collection, segregation

and application of the Revenues, the nature and extent of the security for the Series 2014A Bonds, the rights, duties and obligations of the Issuer with respect thereto, and the rights of the Registered Owners thereof.

**Redemption Prior to Maturity.** The Series 2014A Bonds are subject to redemption prior to maturity, as follows:

***Optional Redemption***. At the option of the Issuer, the Series 2014A Bonds maturing on October 1, in the years 2025 and thereafter will be subject to redemption and payment prior to maturity on October 1, 2024, or thereafter, as a whole or in part (selection of maturities and the amount of Series 2014A Bonds of each maturity to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the redemption price of 100% (expressed as a percentage of the principal amount), plus accrued interest to the date of redemption.

[***Mandatory Redemption***. Each of the Series 2014A Bonds maturing on October 1, [2030] [in the years [_____] (the "Term Bonds") shall also be subject to mandatory redemption and payment prior to maturity, pursuant to the redemption schedule set forth in the Bond Resolution at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest thereon to the Redemption Date.]

***Redemption Denominations***. Whenever the Bond Registrar is to select Series 2014A Bonds for the purpose of redemption, it shall, in the case of Series 2014A Bonds in denominations greater than a minimum Authorized Denomination, if less than all of the Series 2014A Bonds then Outstanding are to be called for redemption, treat each minimum Authorized Denomination of face value of each such Series 2014A Bond as though it were a separate Series 2014A Bond in the denomination of a minimum Authorized Denomination.

***Notice of Redemption***. Notice of redemption, unless waived, shall be given by the Issuer to the Purchaser of the Series 2014A Bonds and to the Bond Registrar in accordance with the Bond Resolution. The Issuer shall cause the Bond Registrar to notify each Registered Owner at the address maintained on the Bond Register, such notice to be given by mailing an official notice of redemption by first class mail at least 30 days prior to the redemption date. Notice of redemption having been given as aforesaid, the Series 2014A Bonds or portions of Series 2014A Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer defaults in the payment of the redemption price) such Series 2014A Bonds or portions of Series 2014A Bonds shall cease to bear interest.

**Book-Entry System**. The Series 2014A Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Bond Resolution. One certificate with respect to each date on which the Series 2014A Bonds are stated to mature or with respect to each form of Series 2014A Bonds, registered in the nominee name of the Securities Depository, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Series 2014A Bonds by the Securities Depository's participants, beneficial ownership of the Series 2014A Bonds in Authorized Denominations being evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Issuer and the Bond Registrar will recognize the Securities Depository nominee, while the Registered Owner of this Series 2014A Bond, as the owner of this Series 2014A Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on, this Series 2014A Bond, (ii) notices and (iii) voting. Transfer of principal, interest and any redemption premium payments to participants of the Securities

Depository, and transfer of principal, interest and any redemption premium payments to Beneficial Owners of the Series 2014A Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such Beneficial Owners. The Issuer and the Bond Registrar will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the Owner of this Series 2014A Bond, notwithstanding the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on this Series 2014A Bond shall be made in accordance with existing arrangements among the Issuer, the Bond Registrar and the Securities Depository.

**Transfer and Exchange**. **EXCEPT AS OTHERWISE PROVIDED IN THE BOND RESOLUTION, THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.** This Series 2014A Bond may be transferred or exchanged, as provided in the Bond Resolution, only on the Bond Register kept for that purpose at the principal office of the Bond Registrar, upon surrender of this Series 2014A Bond together with a written instrument of transfer or authorization for exchange satisfactory to the Bond Registrar duly executed by the Registered Owner or the Registered Owner's duly authorized agent, and thereupon a new Series 2014A Bond or Series 2014A Bonds in any Authorized Denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Bond Resolution and upon payment of the charges therein prescribed. The Issuer shall pay all costs incurred in connection with the issuance, payment and initial registration of the Series 2014A Bonds and the cost of a reasonable supply of bond blanks. The Issuer and the Paying Agent may deem and treat the person in whose name this Series 2014A Bond is registered on the Bond Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes. The Series 2014A Bonds are issued in fully registered form in Authorized Denominations.

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## LEGAL OPINION

The following is a true and correct copy of the approving legal opinion of Gilmore & Bell, P.C., Bond Counsel, which was dated and issued as of the date of original issuance and delivery of such Series 2014A Bonds:

**GILMORE & BELL, P.C.**
Attorneys at Law
100 N. Main Suite 800
Wichita, Kansas 67202

(PRINTED LEGAL OPINION)

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## BOND ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer to

_____

(Name and Address)

_____
(Social Security or Taxpayer Identification No.)

the Series 2014A Bond to which this assignment is affixed in the outstanding principal amount of $_____, standing in the name of the undersigned on the books of the Bond Registrar. The undersigned do(es) hereby irrevocably constitute and appoint _____ as agent to transfer said Series 2014A Bond on the books of said Bond Registrar with full power of substitution in the premises.

Dated _____

_____
Name

_____
Social Security or
Taxpayer Identification No.

_____
Signature (Sign here exactly as name(s)
appear on the face of Certificate)

Signature guarantee:

By _____

---

**CERTIFICATE OF CLERK**

STATE OF KANSAS )
) SS.
COUNTY OF SEDGWICK )

The undersigned, Clerk of the City of Wichita, Kansas, does hereby certify that the within Series 2014A Bond has been duly registered in my office according to law as of August 1, 2014.

WITNESS my hand and official seal.

(Facsimile Seal) _____(facsimile)_____
Clerk

---

**CERTIFICATE OF STATE TREASURER**

OFFICE OF THE TREASURER, STATE OF KANSAS

RON ESTES, Treasurer of the State of Kansas, does hereby certify that a transcript of the proceedings leading up to the issuance of this Series 2014A Bond has been filed in the office of the State Treasurer, and that this Series 2014A Bond was registered in such office according to law on _____.

WITNESS my hand and official seal.

(Facsimile Seal) By: _____(facsimile)_____
Treasurer of the State of Kansas

Gilmore & Bell, P.C.
06/20/2014

---

**RESOLUTION NO. 14-188**

**OF**

**THE CITY OF WICHITA, KANSAS**

**ADOPTED**

**JULY 15, 2014**

**$43,105,000***
**WATER AND SEWER UTILITY REFUNDING REVENUE BONDS**
**SERIES 2014A**

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*EXHIBIT A* – FORM OF SERIES 2014A BONDS ..... A-1

**RESOLUTION NO. 14-188**

**A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF WATER AND SEWER UTILITY REFUNDING REVENUE BONDS, SERIES 2014A, OF THE CITY OF WICHITA, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 49-[___] OF THE ISSUER; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.**

---

**WHEREAS**, the Issuer has heretofore passed the Ordinance authorizing the issuance of the Series 2014A Bonds; and

**WHEREAS**, the Ordinance authorized the governing body of the Issuer to adopt a resolution prescribing certain details and conditions and to make certain covenants with respect to the issuance of the Series 2014A Bonds; and

**WHEREAS**, in order to provide for the payment of the Refunded Bonds it is desirable to enter into an Escrow Trust Agreement, by and between the Issuer and the Escrow Agent.

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

## ARTICLE I

## DEFINITIONS

**Section 101. Definitions of Words and Terms**. In addition to words and terms defined elsewhere herein and in the Outstanding Parity Bond Resolutions, the following words and terms as used in this Bond Resolution shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**"Act"** means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, specifically including K.S.A. 10-116a, and K.S.A. 10-620 *et seq*. and K.S.A. 10-1201 *et seq*., as amended by Charter Ordinance No. 211, all as amended and supplemented from time to time.

**"Additional Bonds"** means any bonds secured by the Gross Revenues hereafter issued pursuant to the Bond Resolution; provided that any General Obligation Indebtedness shall not constitute Additional Bonds.

**"Additional Obligations"** means any leases or other obligations of the Issuer payable from the Gross Revenues, other than the Bonds.

**"Annual Budget"** means with respect to the Utility, the City's budget of estimated receipts and expenditures on account of all Funds and Accounts created under the provisions of the Bond Resolution, including a budget of Current Expenses, for any Fiscal Year and adopted pursuant to the provisions of ***Section 806*** of the Bond Resolution.

**"Assured Guaranty"** means Assured Guaranty Corp., a Maryland corporation, or any successor thereto.

**"Authorized Denomination"** means $5,000 or any integral multiples thereof.

**"Authorized Investments"** shall mean, as long as the Pre-2008 Bonds are Outstanding, any of the following securities, and to the extent the same are at the time permitted for investment of funds held by the Issuer pursuant to the Bond Resolution:

(a) obligations of any of the following Federal agencies which obligations represent the full faith and credit of the United States of America, including:

- Export - Import Bank
- Farmers Home Administration
- General Services Administration
- U.S. Maritime Administration
- Small Business Administration
- Government National Mortgage Association (GNMA)
- U.S. Department of Housing & Urban Development (PHA's)
- Federal Housing Administration;

(b) bonds, notes or other evidences of indebtedness rated *"AA "* by Standard & Poor's, and *"Aa2"* by Moody's issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;

(c) investments in shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Horne Loan Mortgage Corporation;

(d) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of the State or of any agency, instrumentality or local governmental unit of the State which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (1) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P and Moody's, or any successors thereto; or (2) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (1) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the

maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;

(e) investment agreements with or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or Standard &Poor’s

(f) Repurchase agreements secured by direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation; and

(g) Receipts evidencing ownership interests in securities or portions thereof in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation.

***and thereafter*** shall mean the investments hereinafter described, provided, however, no moneys or funds shall be invested in a Derivative:

(a) investments authorized by K.S.A. 12-1675 and amendments thereto;

(b) the municipal investment pool established pursuant to K.S.A. 12-1677a, and amendments thereto;

(c) direct obligations of the United States Government or any agency thereof;

(d) the Issuer's temporary notes issued pursuant to K.S.A. 10-123 and amendments thereto;

(e) interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the Issuer is located which are insured by the Federal Deposit Insurance Corporation or collateralized by securities described in (c);

(f) obligations of the federal national mortgage association, federal home loan banks or the federal home loan mortgage corporation;

(g) repurchase agreements for securities described in (c) or (f);

(h) investment agreements or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or Standard & Poor's;

(i) investments and shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in (c) or (f);

(j) receipts evidencing ownership interests in securities or portions thereof described in (c) or (f);

(k) municipal bonds or other obligations issued by any municipality of the State as defined in K.S.A. 10-1101 which are general obligations of the municipality issuing the same;

(l) bonds of any municipality of the State as defined in K.S.A. 10-1101 which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of securities described in (c) or (f); or

(m) other investment obligations authorized by the laws of the State and approved in writing by the Bond Insurer, all as may be further restricted or modified by amendments to applicable State law.

**"Balloon Indebtedness"** means Long-Term Indebtedness, 25% or more of the original principal amount of which becomes due (either by maturity or mandatory redemption) during any consecutive twelve-month period, if such principal amount becoming due is not required to be amortized below such percentage by mandatory redemption or prepayment prior to such twelve-month period.

**"Beneficial Owner"** of Bonds includes any Owner of Bonds and any other Person who, directly or indirectly has the investment power with respect to any such Bonds.

**"Bond Counsel"** means the firm of Gilmore & Bell, P.C., or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the Issuer.

**"Bond Insurance Policy"** means the municipal bond insurance policy or financial guaranty insurance policy issued by the Bond Insurer concurrently with the delivery of any Utility Indebtedness guaranteeing the scheduled payment when due of the principal of and interest on such Utility Indebtedness.

**"Bond Insurer"** means: (a) FGIC with respect to the Series 2000 Bonds and the Series 2005B14 Bonds; (b) FSA with respect to the Series 2006 Bonds; (c) Assured Guaranty with respect to the Series 2008A Bonds; and (d) with respect to Additional Indebtedness, the entity set forth in the supplemental resolution authorizing the Additional Indebtedness.

**"Bond Payment Date"** means any date on which principal of or interest on any Bond is payable.

**"Bond Register"** means the books for the registration, transfer and exchange of Bonds kept at the office of the Bond Registrar.

**"Bond Registrar"** means: (a) with respect to the Series 2014A Bonds, the State Treasurer, and its successors and assigns; and (b) with respect to Additional Bonds, the entity designated as Bond Registrar in the supplemental resolution authorizing such Additional Bonds.

**"Bond Reserve Account"** means the Water and Sewer Utility Bond Service Reserve Account.

**"Bond Reserve Requirement"** means, collectively, the bond reserve requirement for each series of Outstanding Parity Bonds, the Series 2014A Bond Reserve Requirement and any bond reserve requirement for any subsequent series of Parity Bonds.

**"Bond Resolution"** means collectively the Outstanding Parity Bond Resolutions, the Series 2014A Bond Resolution and any supplemental resolution authorizing any Additional Indebtedness.

**"Bonds"** means, collectively, Outstanding Parity Bonds, the Series 2014A Bonds and any Additional Bonds.

**"Business Day"** means a day other than a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the Legislature of the State and on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its operations.

**"Cede & Co."** means Cede & Co., as nominee of DTC and any successor nominee of DTC.

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

**"City Manager"** means the duly appointed and acting City Manager of the Issuer or, in the Manager's absence, the duly appointed Deputy, Assistant or Acting City Manager of the Issuer.

**"Clerk"** means the duly appointed and/or elected Clerk or, in the Clerk's absence, the duly appointed Deputy Clerk or Acting Clerk of the Issuer.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder by the United States Department of the Treasury.

"**Consultant**" means the Consulting Engineer, the Independent Accountant or an independent consultant qualified and having a favorable reputation for skill and experience in financial affairs selected by the Issuer for the purpose of carrying out the duties imposed on the Consultant by the Bond Resolution.

**"Consulting Engineer"** means an independent engineer or engineering firm or architect or architectural firm, having a favorable reputation for skill and experience in the construction, financing and operation of public utilities, at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Consulting Engineer by the Bond Resolution.

**"Costs of Issuance"** means all costs of issuing any series of Bonds, including all publication, printing, signing and mailing expenses in connection therewith, registration fees, financial advisory fees, all legal fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with compliance with the Code, all expenses incurred in connection with receiving financial ratings on any series of Bonds, and any premiums or expenses incurred in obtaining any credit enhancement.

**"Costs of Issuance Account"** means Costs of Issuance Account for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A.

**"Current Expenses"** means, as applied to either component of the Utility, the Issuer's reasonable and necessary current expenses of operation, repair and maintenance, and shall include, without limiting the generality of the foregoing, (a) all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, (b) all administrative expenses, (c) any reasonable payments to pension or retirement funds properly chargeable to each component of the Utility, (d) insurance premiums, (e) engineering expenses relating to operation, repair and maintenance, (f) legal expenses, (g) any lawful fiscal agency commissions and expenses in connection with the payment of the principal of and the interest and any redemption premium on Outstanding Bonds, (h) any taxes which may be lawfully imposed on either component of the Utility or the income therefrom and reserves for such taxes, (i) the expenses of collecting rates, fees and charges for the use of and for the services furnished or to be furnished by the Utility, (j) if required by law, the payment of the principal of and the interest on outstanding bonds and other obligations heretofore issued by the Issuer or

by improvement districts heretofore annexed by the City to pay the cost of any portion of the Utility to the extent that the special assessments and taxes pledged for the payment of such principal and interest shall be insufficient for such purposes and to the extent that such payment shall not be made from the Improvement Account, and (k) any other expenses required to be paid by the Issuer under the provisions of this Resolution or by law. "Current Expenses" shall ***not*** include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, the Payment to the City, or any deposits or transfers to the credit of the Principal and Interest Account, the Bond Reserve Account, the Depreciation and Replacement Account or the Improvement Account.

**"Dated Date"** means, with respect to the Series 2014A Bonds, August 1, 2014.

**"Debt Service Coverage Ratio"** means, for any Fiscal Year: (a) with respect to the rate covenants, the ratio determined by dividing (i) a numerator equal to the Net Revenues Available for Debt Service for such Fiscal Year by (ii) a denominator equal to the Debt Service Requirements for such Fiscal Year; and (b) with respect to Additional Indebtedness, the ratio determined by dividing (i) a numerator equal to the average Net Revenues Available for Debt Service for the two (2) prior Fiscal Years by (ii) a denominator equal to the Maximum Annual Debt Service; provided that with respect to Additional Indebtedness that are proposed to be Parity Indebtedness, Debt Service Requirements on Subordinate Lien Obligations and General Obligation Indebtedness shall be disregarded.

**"Debt Service Requirements"** means the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on the Bonds for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company located in the State and having full trust powers.

**"Defaulted Interest"** means interest on any Bond which is payable but not paid on any Interest Payment Date.

**"Defeasance Obligations"** means, so long as the Pre-2008 Bonds are Outstanding, any of the following obligations:

(a) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized by with obligations described in the following (b); or

(b) Direct obligations (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America;

***and thereafter*** shall mean:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (i) not subject to redemption prior to maturity or (ii) the trustee for such obligations has been given irrevocable instructions concerning their

calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(3) such cash and the principal of and interest on such United States Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(4) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(5) such cash and United States Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(6) such obligations are rated in a rating category by Moody's or Standard & Poor's that is no lower than the rating category then assigned by that Rating Agency to United States Government Obligations.

**"Depreciation and Replacement Account"** means the Water and Sewer Utility Depreciation and Replacement Account.

**"Depreciation and Replacement Account Requirement"** means an amount equal fifteen percent (15%) of the Operating Revenues of the Utility for the preceding Fiscal Year

**"Derivative"** means any investment instrument whose market price is derived from the fluctuating value of an underlying asset, index, currency, futures contract, including futures, options and collateralized mortgage obligations.

**"Director of Finance"** means the duly appointed and acting Director of Finance of the Issuer or, in the Director's absence, the duly appointed Deputy, Assistant or Acting Director of Finance of the Issuer.

**"Disclosure Undertaking"** means the Issuer's Omnibus Continuing Disclosure Undertaking for Utility Indebtedness relating to certain obligations contained in the SEC Rule.

**"Discount Indebtedness"** means Long-Term Indebtedness that is originally sold at a price (excluding accrued interest, but without deduction of any underwriters' discount) of less than 75% of the maturity amount including the amount of principal and interest to accrete at maturity of such Long-Term Indebtedness.

**"DTC"** means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors and assigns, including any successor securities depository duly appointed.

**"Escrow Agent"** means Security Bank of Kansas City, Wichita, Kansas, and its successors and assigns.

**"Escrow Agreement"** means the Escrow Trust Agreement, dated as of August 1, 2014, between the Issuer and the Escrow Agent.

**"Escrow Fund"** means the Escrow Fund for Refunded Bonds.

**"Escrowed Securities"** means the securities that satisfy the requirement of Defeasance Obligations as set forth in the Refunded Bonds Resolution, as described in the Escrow Agreement.

**"Event of Default"** means each of the following occurrences or events:

(a) Payment of the principal and of the redemption premium, if any, of any of the Utility Indebtedness shall not be made when the same shall become due and payable, either at Stated Maturity or by proceedings for redemption or otherwise; or

(b) Payment of any installment of interest on any Utility Indebtedness shall not be made when the same shall become due; or

(c) The Issuer shall for any reason be rendered incapable of fulfilling its obligations hereunder; or

(d) Any substantial part of the Utility shall be destroyed or damaged to the extent of impairing its efficient operation or adversely affecting its Gross Revenues and the Issuer shall not within a reasonable time commence the repair, replacement or reconstruction thereof and proceed thereafter to complete with reasonable dispatch the repair, replacement or reconstruction thereof; or

(e) Final judgment for the payment of money shall be rendered against the Issuer as a result of the ownership, control or operation of the Utility and any such judgment shall not be discharged within one hundred twenty (120) days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to stay the execution of or levy under such judgment, order, decree or process or the enforcement thereof; or

(f) An order or decree shall be entered, with the consent or acquiescence of the Issuer, appointing a receiver or receivers of the Utility or any part thereof or of the Gross Revenues thereof, or if such order or decree, having been entered without the consent or acquiescence of the Issuer, shall not be vacated or discharged or stayed on appeal within sixty (60) days after the entry thereof; or

(g) Any proceeding shall be instituted, with the consent or acquiescence of the Issuer, for the purpose of effecting a composition between the Issuer and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the Net Revenues Available for Debt Service; or

(h) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in Utility Indebtedness or in the Bond Resolution (other than the covenants relating to continuing disclosure) on the part of the Issuer to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Issuer by the Owner of any of Utility Indebtedness then Outstanding; or

In determining whether an Event of Default shall have occurred with respect to the due and prompt payment of the Debt Service Requirements on any Insured Bonds no effect shall be given to payments made under

any Bond Insurance Policy.

**"Federal Tax Certificate"** means the Issuer's Federal Tax Certificate dated as of the Issue Date, as the same may be amended or supplemented in accordance with the provisions thereof.

**"FGIC"** means Financial Guaranty Insurance Company, or any successor thereto.

**"Fiscal Year"** means the twelve month period ending on December 31.

**"FSA"** means Financial Security Assurance Inc., a New York stock insurance company, or any successor thereto.

**"Funds and Accounts"** means funds and accounts created pursuant to or referred to in the Bond Resolution.

**"General Obligation Indebtedness"** means any of the Issuer's general obligation bonds issued for improvements to the Utility.

**"Governing Body"** means the duly elected and/or appointed and acting persons comprising the City Council of the Issuer.

**"Gross Revenues"** means all income and revenues derived and collected by the Issuer from the operation of the Utility, including investment and rental income, net proceeds from business interruption insurance and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on Utility Indebtedness, but excluding non-cash contributions capital contributions, any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

**"Improvement Account"** means the Water and Sewer Utility Improvement Account.

**"Independent Accountant"** means an independent certified public accountant or firm of independent certified public accountants at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Independent Accountant by the Bond Resolution.

**"Index Rate"** means the rate of interest set forth in *The Bond Buyer* Revenue Bond Index (or, in the event that *The Bond Buyer* does not compile such index or ceases publication, another comparable publication recognized in the municipal bond market) published for the week immediately preceding the date of determination.

**"Insured Bonds"** means any Utility Indebtedness of which the scheduled payment of principal and interest is guaranteed by a Bond Insurance Policy.

**"Interest Payment Date(s)"** means: (a) with respect to the Series 2014A Bonds, the Stated Maturity of an installment of interest on the Series 2014A Bonds which shall be April 1 and October 1 of each year, commencing April 1, 2015; (b) with respect to the Outstanding Parity Bonds, the Stated Maturity of an installment of interest on such Outstanding Parity Bond Resolutions, and (c) with respect to Additional Indebtedness, the Stated Maturity of an installment of interest on such Additional Indebtedness, as set forth in the supplemental resolution authorizing such Additional Indebtedness.

**"Interim Indebtedness"** means Utility Indebtedness having a term not less than one year, and not in excess of five years, incurred or assumed in anticipation of being refinanced or refunded with Long-Term Indebtedness.

**"Issue Date"** means the date when the Issuer delivers any series of Utility Indebtedness to the Purchaser in exchange for the Purchase Price.

**"Issuer"** means the City and any successors or assigns.

**"Long-Term Indebtedness"** means Utility Indebtedness having an original stated maturity or term greater than five years, or renewable or extendible at the option of the debtor for a period greater than one year from the date of original issuance or incurrence thereof.

**"Maturity"** when used with respect to any Utility Indebtedness means the date on which the principal of such Utility Indebtedness becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

**"Mayor"** means the duly elected and acting Mayor, or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the Issuer.

**"Maximum Annual Debt Service"** means the maximum amount of Debt Service Requirements as computed for the then current or any future Fiscal Year; provided that the Debt Service Requirements in the final Stated Maturity of any series of Utility Indebtedness shall be reduced by the value of cash and Permitted Investments on deposit in the Bond Reserve Subaccount for such series, so long as the Bond Reserve Subaccount for such Utility Indebtedness is maintained at the Bond Reserve Requirement.

**"Moody's"** means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

**"Net Proceeds"** shall mean any insurance proceeds or condemnation awards, paid with respect to the Utility, remaining after the payment therefrom of all expenses incurred in the collection thereof.

**"Net Revenues"** means, for the period of determination, the amount of the excess of Gross Revenues deposited to the credit of the Revenue Fund, over the Current Expenses of the respective components of the Utility paid from the Revenue Fund during such period; such amount specifically excluding Debt Service Requirements paid, depreciation, amortization and capital expenditures for improvements to the Utility.

**"Net Revenues Available for Debt Service"** means the Net Revenues.

**"Notice Address"** means with respect to the following entities:

(a) To the Issuer at:

Department of Finance
12th Floor, City Hall
455 North Main
Wichita, Kansas 67202-1679
Fax: (316) 858-7520

(b) To the Paying Agent at:

**Series 2014A Bonds:**

State Treasurer of the State of Kansas
Landon Office Building
900 Southwest Jackson, Suite 201
Topeka, Kansas 66612-1235
Fax: (785) 296-6976

**Additional Bonds:**

The address set forth in the supplemental resolution authorizing such Additional Bonds.

(c) To the Purchaser:

**Series 2014A Bonds:**

[Purchaser Name]
[Purchaser Address]
[City, State]
Fax: [Fax]

**Additional Bonds:**

The address set forth in the supplemental resolution authorizing such Additional Bonds.

(d) To the Rating Agency(ies):

Moody's Municipal Rating Desk
7 World Trade Center
250 Greenwich Street
23rd Floor
New York, New York 10007

Standard & Poor's Ratings Services, a division of
McGraw Hill Financial Inc.
55 Water Street, 38th Floor
New York, New York 10004

(e) To the Escrow Agent at:

Security Bank of Kansas City
Corporate Trust Department
200 W. Douglas, Suite 612
Wichita, Kansas 67202
Fax: (316) [_____]

with a copy to:

Security Bank of Kansas City
Corporate Trust Department
701 Minnesota Avenue
Suite 206, P.O. Box 171297
Kansas City, Kansas 66117
Fax: (913) 279-7960

(f) To the Bond Insurer:

Assured Guaranty Corp.
1325 Avenue of the Americas
New York, New York 10019
Fax: (212) 581-3266

Financial Guaranty Insurance Company
125 Park Avenue
New York, NY 10017
Telephone: 212-312-3000
Fax: [_____]

Financial Security Assurance Inc.
31 West 52nd Street
New York, New York 10019
Telephone: (212) 826-0100; Telecopier (212) 339-3529.

or such other address as is furnished in writing to the other parties referenced herein.

**"Notice Representative"** means:

(a) With respect to the Issuer, the Clerk.

(b) With respect to the Bond Registrar and Paying Agent, the Director of Bond Services.

(c) With respect to any Purchaser, the manager of its Municipal Bond Department.

(d) With respect to any Rating Agency, any Vice President thereof.

(e) With respect to the Escrow Agent, the Manager of the Corporate Trust Department.

(f) With respect to: (1) Assured Guaranty, its General Counsel with a copy to its Risk Management Department-Public Finance Surveillance; (b) FGIC, its General Counsel with a copy to the Surveillance Department; and (c) FSA, its General Counsel with a copy to Managing Director -- Surveillance -- Re: Policy No. [_____].

**"Official Statement"** means Issuer's Official Statement relating to the Series 2014A Bonds.

**"Operating Revenues"** shall mean the Gross Revenues, less investment income and less Current Expenses.

**"Ordinance"** means Ordinance No. 49-[___] of the Issuer authorizing the issuance of the Series 2014A Bonds, as amended from time to time.

**"Outstanding"** means, when used with reference to Bonds, as of a particular date of determination, all Bonds theretofore, authenticated and delivered, except the following Bonds:

**"Outstanding"** means, when used with reference to any Utility Indebtedness, as of a particular date of determination, all Utility Indebtedness theretofore, authenticated and delivered, except the following Utility Indebtedness:

(a) Utility Indebtedness theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to the Bond Resolution;

(b) Utility Indebtedness deemed to be paid in accordance with the provisions of the Bond Resolution;

(c) Utility Indebtedness in exchange for or in lieu of which other Utility Indebtedness has been authenticated and delivered under the Bond Resolution; and

(d) Utility Indebtedness, the principal or interest of which has been paid by the Bond Insurer.

**"Outstanding Parity Bond Resolution"** means the ordinances and resolutions authorizing the issuance of the Outstanding Parity Bonds.

**"Outstanding Parity Bonds"** means the Outstanding Series 2000 Bonds, Series 2005B Bonds, Series 2006, Series 2008A Bonds, Series 2009 Bonds, Series 2010 Bonds, Series 2011A Bonds and Series 2012A Bonds.

**"Owner"** when used with respect to any Utility Indebtedness means the Person in whose name such Utility Indebtedness is registered on the Bond Register. Whenever consent of the Owners is required pursuant to the terms of the Bond Resolution, and the Owner of the Utility Indebtedness, as set forth on the Bond Register, is Cede & Co., the term Owner shall be deemed to be the Beneficial Owner of the Utility Indebtedness.

**"Parity Bonds"** means the Outstanding Parity Bonds, the Series 2014A Bonds, and any Additional Bonds hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Series 2014A Bonds with respect to the Net Revenues.

**"Parity Indebtedness"** means, collectively, the Parity Bonds and Parity Obligations.

**"Parity Obligations"** means any Additional Obligations hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Parity Bonds with respect to the lien on the Net Revenues.

**"Parity Resolution"** means, collectively, the Outstanding Parity Bond Resolution, the Series 2014 Bond Resolution and the ordinances and/or resolutions under which any Additional Bonds which constitute Parity Bonds are hereafter issued.

**"Participants"** means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**"Paying Agent"** means: (a) with respect to the Outstanding Parity Bonds and the Series 2014A Bonds, the State Treasurer, and its successors and assigns; and (b) with respect to Additional Indebtedness, the entity designated as Paying Agent in the supplemental resolution authorizing such Additional Indebtedness.

**"Payment to the City"** shall mean the payment to the City's general fund as a payment for operation of the Utility. The amount of the annual Payment to the City shall be governed by the terms of such ordinances of the City which are then in effect with respect to the then outstanding Utility Indebtedness.

**"Person"** means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

**"Pre-2008 Bonds"** means, collectively, the Series 2000 Bonds, the Series 2005B Bonds and the Series 2006 Bonds.

**"Pre-2009 Bonds"** means, collectively, the Pre-2008 Bonds and the Series 2008A Bonds.

**"Pre-2010 Bonds"** means, collectively, the Pre-2009 Bonds and the Series 2009 Bonds.

**"Pre-2014 Bonds"** means, collectively, the Pre-2009 Bonds, the Series 2009 Bonds, the Series 2010 Bonds, the Series 2011A Bonds and the Series 2012A Bonds.

**"Principal and Interest Account"** shall mean the Water and Sewer Utility Principal and Interest Account.

**"Purchase Price"** means, with respect to the Series 2014A Bonds, 100% of the principal amount of the Series 2014A Bonds plus accrued interest to the date of delivery[, plus a premium of $_____].

**"Purchaser**" means, with respect to the Series 2014A Bonds, [Purchaser Name], [City, State], the original purchaser of the Series 2014A Bonds, and any successor and assigns.

**"Put Indebtedness"** means Long-Term Indebtedness which is (a) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, at the option of the holder thereof, prior to its stated maturity date, or (b) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, other than at the option of the holder, prior to its stated maturity date, other than pursuant to any mandatory sinking fund or other similar fund, or other than by reason of acceleration upon the occurrence of an Event of Default under this Bond Resolution.

**"Rating Agency"** means any company, agency or entity that provides financial ratings for any Utility Indebtedness.

**"Rebate Fund"** means the Rebate Fund for Water and Sewer Refunding Revenue Bonds, Series 2014A.

**"Record Dates"** for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date.

**"Redemption Date"** when used with respect to any Utility Indebtedness to be redeemed means the date fixed for the redemption of such Utility Indebtedness pursuant to the terms of the Bond Resolution.

**"Redemption Price"** when used with respect to any Utility Indebtedness to be redeemed means the price at which such Utility Indebtedness is to be redeemed pursuant to the terms of the Bond Resolution, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

**"Refunded Bonds"** means collectively: (a) the Series 2005A Bonds maturing in the years 2014 to 2016, inclusive, in the aggregate principal amount of $14,595,000; and (b) the Series 2005C Bonds maturing in the years 2014 to 2030, inclusive, in the aggregate principal amount of $35,720,000.

**"Refunded Bonds Paying Agent"** means the respective paying agent for each series of the Refunded Bonds as designated in the respective Refunded Bonds Resolution, and any successor or successors at the time acting as paying agent for any of the Refunded Bonds.

**"Refunded Bonds Redemption Date"** means, collectively: (a) October 1, 2014 for the Series 2005A Bonds; and (b) October 1, 2015 for the Series 2005C Bonds.

**"Refunded Bonds Resolution"** means each ordinance and resolution which authorized the Refunded Bonds.

**"Refunding Indebtedness"** means Utility Indebtedness issued for the purpose of refunding any Outstanding Utility Indebtedness.

**"Replacement Bonds"** means Bonds issued to the Beneficial Owners of the Bonds in accordance with ***Section 212*** hereof.

**"Revenue Fund"** means the Water and Sewer Utility Revenue Fund.

**"SEC Rule"** means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

**"Securities Depository"** means, initially, DTC, and its successors and assigns.

**"Series 2000 Bond Resolution"** means the Issuer's Ordinance No. 44-663, which authorized the Series 2000 Bonds.

**"Series 2000 Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2000, dated June 1, 2000.

**"Series 2005 Bonds"** means, collectively, the Series 2005A Bonds, the Series 2005B Bonds and the Series 2005C Bonds.

**"Series 2005A Bond Reserve Subaccount"** means the Bond Reserve Subaccount for the Series 2005A Bonds.

**"Series 2005A Bond Resolution"** means collectively the Issuer's Ordinance No. 46-581 and Resolution No. 05-228, which authorized the Series 2005A Bonds.

**"Series 2005A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2005A, dated May 12, 2005.

**"Series 2005A Principal and Interest Subaccount"** means the Principal and Interest Subaccount for the Series 2005A Bonds.

**"Series 2005B Bond Resolution"** means collectively the Issuer's Ordinance No. 46-634 and Resolution No. 05-406, which authorized the Series 2005B Bonds.

**"Series 2005B Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2005B, dated August 17, 2005.

**"Series 2005C Bond Reserve Subaccount"** means the Bond Reserve Subaccount for the Series 2005C Bonds.

**"Series 2005C Bond Resolution"** means collectively the Issuer's Ordinance No. 46-670 and Resolution No. 05-502, which authorized the Series 2005C Bonds.

**"Series 2005C Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2005C, dated October 1, 2005.

**"Series 2005C Principal and Interest Subaccount"** means the Principal and Interest Subaccount for the Series 2005C Bonds.

**"Series 2006 Bond Resolution"** means collectively the Issuer's Ordinance No. 47-300 and Resolution No. 06-609, which authorized the Series 2006 Bonds.

**"Series 2006 Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2006, dated December 1, 2006.

**"Series 2008A Bond Resolution"** means collectively the Issuer's Ordinance No. 47-866 and Resolution No. 08-170, which authorized the Series 2008A Bonds.

**"Series 2008A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2008A, dated April 1, 2008.

**"Series 2009 Bonds"** means, collectively, the Series 2009A Bonds and the Series 2009B Bonds.

**"Series 2009 Bond Resolution"** means collectively the Issuer's Ordinance No. 48-351 and Resolution No. 09-174, which authorized the Series 2009 Bonds.

**"Series 2009A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2009A, dated June 30, 2009.

**"Series 2009B Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), dated June 30, 2009.

**"Series 2010 Bond Resolution"** means collectively the Issuer's Ordinance No. 48-834 and Resolution No. 10-257, which authorized the Series 2010 Bonds.

**"Series 2010 Bonds"** means, collectively, the Series 2010A Bonds and the Series 2010B Bonds.

**"Series 2010A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2010A, dated October 15, 2010.

**"Series 2010B Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2010B (Taxable Under Federal Law), dated October 15, 2010.

**"Series 2011A Bond Resolution"** means collectively the Issuer's Ordinance No. 49-148 and Resolution No. 11-260, which authorized the Series 2011A Bonds.

**"Series 2011A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, dated November 17, 2011.

**"Series 2012A Bond Resolution"** means collectively the Issuer's Ordinance No. 49-266 and Resolution No. 12-090 which authorized the Series 2012A Bonds.

**"Series 2012A Bonds"** mean the Issuer's Water and Sewer Utility Revenue Bonds, Series 2012A, dated May 1, 2012.

**"Series 2014A Bond Reserve Requirement"** shall mean a sum equal to greater of the amount of interest which shall become due and payable on the Series 2014A Bonds during the next Fiscal Year (determined in each year) or the maximum amount of interest which shall become due and payable on the Series 2014A Bonds in any subsequent year, except that, in no event shall the amount of the 2014A Bond Reserve Requirement ever exceed the amount which is the lesser of ten percent (10%) of the original principal amount of the Series 2014A Bonds (determined as of the date of issuance of the Series 2014A Bonds), the maximum annual principal and interest requirements on the Series 2014A Bonds (determined as of the date of issuance of the Series 2014A Bonds), or one hundred twenty-five percent (125%) of the average annual debt service on the Series 2014A Bonds (determined as of the date of issuance of the Series 2014A Bonds).

**"Series 2014A Bond Reserve Subaccount"** shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, Bond Reserve Subaccount created within the Bond Reserve Account.

**"Series 2014A Bond Resolution"** means collectively the Issuer's Ordinance and Resolution, which authorized the Series 2014A Bonds.

**"Series 2014A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2014, dated August 1, 2014, authorized and issued by the Issuer pursuant to the Ordinance and the Bond Resolution.

**"Series 2014A Costs of Issuance Account"** shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, Costs of Issuance Account created by this Resolution.

**"2014A Principal and Interest Subaccount"** shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, Principal and Interest Subaccount created by this Resolution within the Principal and Interest Account.

**"Series 2014A Principal and Interest Subaccount"** means the Principal and Interest Subaccount for the Series 2014A Bonds.

[ **"Series 2014[-_____] Term Bonds"** means the Series 2014A Bonds scheduled to mature in the year ____.]

[ **"Series 2014[-2030] Term Bonds"** means the Series 2014A Bonds scheduled to mature in the year 2030.]

**"Sewer Utility"** shall mean and include the sanitary sewer system now owned and operated by the City, and consisting of sewage disposal works, sewers, drains, pumping plants, force mains, service connections, canals, ponds, machinery, equipment and other property appurtenant thereto and any improvements, extensions and enlargements to the Sewer Utility hereafter constructed or acquired.

**"Short-Term Indebtedness"** means Utility Indebtedness having an original maturity less than or equal to one year from the date of original incurrence thereof, and not renewable or extendible at the option of the obligor thereon for a term greater than one year beyond the date of original issuance.

**"Special Record Date"** means the date fixed by the Paying Agent pursuant to ***Section 207*** hereof for the payment of Defaulted Interest.

**"Standard & Poor's"** means Standard & Poor's Ratings Services, a division of McGraw Hill Financial Inc., New York, New York, a corporation organized and existing under the laws of the State of New York, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Standard & Poor's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

**"State"** means the state of Kansas.

**"State Treasurer"** means the duly elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the State.

**"Stated Maturity"** when used with respect to any Utility Indebtedness or any installment of interest thereon means the date specified in such Utility Indebtedness and the Bond Resolution as the fixed date on which the principal of such Utility Indebtedness or such installment of interest is due and payable.

**"Subordinate Indebtedness"** means, collectively the Subordinate Lien Bonds and Subordinate Lien Obligations

**"Subordinate Lien Bonds"** means any Additional Bonds payable from the Revenues, and issued on a subordinate lien basis to any Parity Bonds.

**"Subordinate Lien Obligations"** means any Additional Obligations payable from, and secured by a lien on, the Revenues, which lien is junior to that of any Parity Obligations.

**"Term Bonds"** means any Bonds designated as Term Bonds in this Bond Resolution or in any supplemental resolution authorizing the issuance of Additional Bonds.

**"Treasurer"** means the duly appointed and/or elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the Issuer.

**"United States Government Obligations"** means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and

interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payment on obligations issued by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service and such obligations are held in a custodial account for the benefit of the Issuer.

**"Utility"** shall mean the combined City of Wichita, Kansas Water Utility and Sewer Utility, and any improvements, extensions and enlargements thereto hereafter constructed or acquired.

**"Utility Indebtedness"** means collectively the Bonds and any Additional Obligations which are secured by an interest in, the Gross Revenues.

**"Value"** means, for purposes of the Bond Resolution, the value of the Authorized Investments (which Value shall be determined as of the end of each month), calculated as follows:

(a) as to investments the bid and asked prices of which are published on a regular basis in ***The Wall Street Journal*** (or, if not there, then in *The New York Times)* -- the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(b) as to investments the bid and asked prices of which are not published on a regular basis in ***The Wall Street Journal*** or in ***The New York Times*** - the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Issuer in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; and

(c) as to certificates of deposit and bankers acceptances -- the face amount thereof, plus accrued interest.

Provided, however, that when the Pre-2010 Bonds are no longer Outstanding, "Value" shall be the amortized cost of an obligation or the market cost thereof, whichever is lower. Should the value of the Authorized Investments be required for any other legal purpose, the Value shall be calculated in accordance with the applicable laws and regulations.

**"Variable Rate Indebtedness"** means any Utility Indebtedness which provides for interest to be payable thereon at a rate per annum that may vary from time to time over the term thereof in accordance with procedures provided in the instrument creating such Utility Indebtedness.

**"Verification Report"** means the verification report relating to the sufficiency of money and obligations deposited in the Escrow Fund to be applied in accordance with the Escrow Agreement.

**Water Utility"** shall mean and include the waterworks system now owned and operated by the Issuer and consisting of real estate, water rights, purification and pumping plants, reservoirs, mains, wells, pipelines, meters, hydrants, service connections, machinery, equipment and other property appurtenant thereto, and any improvements, extensions and enlargements to the Water Utility hereafter constructed or acquired.

## ARTICLE II

## AUTHORIZATION AND DETAILS OF THE BONDS

**Section 201. Authorization of the Series 2014A Bonds**. The Series 2014A Bonds have been heretofore authorized and directed to be issued pursuant to the Ordinance in the principal amount of $43,105,000*, for the purpose of providing a portion of the funds to: (a) refund the Refunded Bonds; and (b) pay Costs of Issuance. The Series 2014A Bonds shall be Parity Bonds and shall constitute Long-Term Indebtedness.

**Section 202. Description of the Series 2014A Bonds.** The Series 2014A Bonds shall consist of fully registered bonds in Authorized Denominations, and shall be numbered in such manner as the Bond Registrar shall determine. All of the Series 2014A Bonds shall be dated as of the Dated Date, shall become due in the amounts, on the Stated Maturities, subject to redemption and payment, prior to their Stated Maturities as provided in ***Article III*** hereof and shall bear interest at the rates per annum as follows:

[**SERIAL BONDS**]

| **Stated Maturity October 1** | **Principal Amount** | **Annual Rate of Interest** | **Stated Maturity October 1** | **Principal Amount** | **Annual Rate of Interest** |
|---|---|---|---|---|---|
| 2015 | $6,630,000 | _____% | 2023 | $2,590,000 | _____% |
| 2016 | 7,140,000 | | 2024 | 2,695,000 | |
| 2017 | 2,205,000 | | 2025 | 2,805,000 | |
| 2018 | 2,245,000 | | 2026 | 1,330,000 | |
| 2019 | 2,285,000 | | 2027 | 1,390,000 | |
| 2020 | 2,335,000 | | 2028 | 1,455,000 | |
| 2021 | 2,410,000 | | 2029 | 1,520,000 | |
| 2022 | 2,490,000 | | 2030 | 1,580,000 | |

[TERM BONDS

| **Stated Maturity October 1** | **Principal Amount** | **Annual Rate of Interest** |
|---|---|---|
| 20[__] | $_____ | _____% |
| 2030 | $_____ | _____%] |

The Series 2014A Bonds shall bear interest at the above specified rates (computed on the basis of a 360-day year of twelve 30-day months) from the later of the Dated Date or the most recent Interest Payment Date to which interest has been paid on the Interest Payment Dates in the manner set forth in ***Section 208*** hereof. The Series 2014A Bonds shall be issued as Book-Entry-Only Bonds and administered in accordance with the provisions of ***Section 212*** hereof.

Each of the Series 2014A Bonds, as originally issued or issued upon transfer, exchange or substitution, shall be printed in accordance with the format required by the Attorney General of the State and shall be substantially in the form attached hereto as ***Exhibit A*** or as may be required by the Attorney General pursuant to the Notice of Systems of Registration for Kansas Municipal Bonds, 2 Kan. Reg. 921 (1983), in accordance with the Kansas Bond Registration Law, K.S.A. 10-620 *et seq*.

**Section 203. Designation of Paying Agent and Bond Registrar.** The State Treasurer is hereby designated as the Paying Agent for the payment of principal of and interest on the Series 2014A Bonds and Bond Registrar with respect to the registration, transfer and exchange of the Series 2014A Bonds. The Mayor of the Issuer is hereby authorized and empowered to execute on behalf of the Issuer an agreement with the Bond Registrar and Paying Agent for the Series 2014A Bonds.

The Issuer will at all times maintain a Paying Agent and Bond Registrar meeting the qualifications herein described for the performance of the duties hereunder. The Issuer reserves the right to appoint a successor Paying Agent or Bond Registrar by (a) filing with the Paying Agent or Bond Registrar then performing such function a certified copy of the proceedings giving notice of the termination of such Paying Agent or Bond Registrar and appointing a successor, and (b) causing notice of appointment of the successor Paying Agent and Bond Registrar to be given by first class mail to each Owner. No resignation or removal of the Paying Agent or Bond Registrar shall become effective until a successor has been appointed and has accepted the duties of Paying Agent or Bond Registrar.

Every Paying Agent or Bond Registrar appointed hereunder shall at all times meet the requirements of K.S.A. 10-501 *et seq.* and K.S.A. 10-620 *et seq.*, respectively.

**Section 204. Method and Place of Payment of the Bonds.** The principal of, or Redemption Price, and interest on the Bonds shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The principal or Redemption Price of each Bond shall be paid at Maturity to the Person in whose name such Bond is registered on the Bond Register at the Maturity thereof, upon presentation and surrender of such Bond at the principal office of the Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest (a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Owner or (b) in the case of an interest payment to any Owner of $500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice given to the Bond Registrar by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Owner wishes to have such transfer directed.

Notwithstanding the foregoing provisions of this Section, any Defaulted Interest with respect to any Bond shall cease to be payable to the Owner of such Bond on the relevant Record Date and shall be payable to the Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as hereinafter specified in this paragraph. The Issuer shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, by first class mail, postage prepaid, to each Owner of a Bond entitled to such notice at the address of such Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of payment of principal and Redemption Price of and interest on all Bonds and at least annually shall forward a copy or summary of such records to the Issuer.

**Section 205. Registration, Transfer and Exchange of Bonds.** The Issuer covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the office of the Bond Registrar as herein provided. Each Bond when issued shall be registered in the name of the Owner thereof on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this Section. Upon surrender of any Bond at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange such Bond for a new Bond or Bonds in any Authorized Denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange.

Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Bond Registrar, duly executed by the Owner thereof or by the Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Bond Resolution. The Issuer shall pay the fees and expenses of the Bond Registrar for the registration, transfer and exchange of Bonds provided for by this Bond Resolution and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Bond Registrar, are the responsibility of the Owners of the Bonds. In the event any Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Code § 3406, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Owner hereunder or under the Bonds.

The Issuer and the Bond Registrar shall not be required (a) to register the transfer or exchange of any Bond that has been called for redemption after notice of such redemption has been mailed by the Paying Agent pursuant to ***Section 303*** hereof and during the period of 15 days next preceding the date of mailing of such notice of redemption; or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the Issuer of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to ***Section 208*** hereof.

The Issuer and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute Owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on said Bond and for all other purposes. All payments so made to any such Owner or upon the Owner's order shall be valid and effective to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Paying Agent shall be affected by any notice to the contrary.

At reasonable times and under reasonable regulations established by the Bond Registrar, the Bond Register may be inspected and copied by the Owners (or a designated representative thereof) of 10% or more in principal amount of the Bonds then Outstanding or any designated representative of such Owners whose authority is evidenced to the satisfaction of the Bond Registrar.

**Section 206. Execution, Registration, Authentication and Delivery of Bonds.** Each of the Bonds, including any Bonds issued in exchange or as substitutions for the Bonds initially delivered, shall be executed for and on behalf of the Issuer by the manual or facsimile signature of the Mayor, attested by

the manual or facsimile signature of the Clerk and the seal of the Issuer shall be affixed thereto or imprinted thereon. The Mayor and Clerk are hereby authorized and directed to prepare and execute the Bonds in the manner herein specified, and to cause the Bonds to be registered in the office of the Clerk, which registration shall be evidenced by the manual or facsimile signature of the Clerk with the seal of the Issuer affixed thereto or imprinted thereon. The Bonds shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed thereto or imprinted thereon. In case any officer whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such persons who at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

The Mayor and Clerk are hereby authorized and directed to prepare and execute the Bonds as herein specified, and when duly executed, to deliver the Bonds to the Paying Agent for authentication.

The Series 2014A Bonds shall have endorsed thereon a certificate of authentication substantially in the form attached hereto as ***Exhibit A*** hereof, which shall be manually executed by an authorized officer or employee of the Bond Registrar, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. No Series 2014A Bond shall be entitled to any security or benefit under this Bond Resolution or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Bond Registrar. Such executed certificate of authentication upon any Series 2014A Bond shall be conclusive evidence that such Series 2014A Bond has been duly authenticated and delivered under this Bond Resolution. Upon authentication, the Bond Registrar shall deliver the Series 2014A Bond to the Purchaser upon instructions of the Issuer or its representative.

**Section 207. Mutilated, Lost, Stolen or Destroyed Bonds.** If (a) any mutilated Bond is surrendered to the Bond Registrar or the Bond Registrar receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the Issuer and the Bond Registrar such security or indemnity as may be required by each of them, then, in the absence of notice to the Issuer or the Bond Registrar that such Bond has been acquired by a bona fide purchaser, the Issuer shall execute and, upon the Issuer's request, the Bond Registrar shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Issuer, in its discretion, may pay such Bond instead of issuing a new Bond.

Upon the issuance of any new Bond under this Section, the Issuer and the Paying Agent may require the payment by the Owner of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith.

Every new Bond issued pursuant to this Section shall constitute a replacement of the prior obligation of the Issuer, and shall be entitled to all the benefits of this Bond Resolution equally and ratably with all other Outstanding Bonds.

**Section 208. Cancellation and Destruction of Bonds Upon Payment.** All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before Maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and

surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the Issuer.

**Section 209. Book-Entry Bonds; Securities Depository.** Any series of Bonds may be issued as Book-Entry-Only Bonds. If so, such series of Bonds shall initially be registered to Cede & Co., the nominee for the Securities Depository, and no Beneficial Owner will receive certificates representing their respective interests in the Bonds, except in the event the Bond Registrar issues Replacement Bonds as provided in this Section. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Bonds to the Participants until and unless the Bond Registrar authenticates and delivers Replacement Bonds to the Beneficial Owners as described in the following paragraph.

(a) If the Issuer determines (1) that the Securities Depository is unable to properly discharge its responsibilities, or (2) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (3) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, or (b) if the Bond Registrar receives written notice from Participants having interests in not less than 50% of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, then the Bond Registrar shall notify the Owners of such determination or such notice and of the availability of certificates to owners requesting the same, and the Bond Registrar shall register in the name of and authenticate and deliver Replacement Bonds to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under (a)(1) or (a)(2) of this paragraph, the Issuer, with the consent of the Bond Registrar, may select a successor securities depository in accordance with the following paragraph to effect book-entry transfers. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Bond Registrar, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the Issuer, the Bond Registrar or Owners are unable to locate a qualified successor of the Securities Depository in accordance with the following paragraph, then the Bond Registrar shall authenticate and cause delivery of Replacement Bonds to Owners, as provided herein. The Bond Registrar may rely on information from the Securities Depository and its Participants as to the names of the Beneficial Owners of the Bonds. The cost of printing, registration, authentication, and delivery of Replacement Bonds shall be paid for by the Issuer.

In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the Issuer may appoint a successor Securities Depository provided the Bond Registrar receives written evidence satisfactory to the Bond Registrar with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Bond Registrar upon its

receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

**Section 210. Nonpresentment of Bonds.** If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent all liability of the Issuer to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Bond Resolution or on, or with respect to, said Bond. If any Bond is not presented for payment within four years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay, without liability for interest thereon, to the Issuer the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Issuer, and the Owner thereof shall be entitled to look only to the Issuer for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

**Section 211. Calculation of Debt Service Requirements.**

(a) ***Debt Service Requirements on Balloon, Put, Short-Term and Interim Indebtedness***.

(1) The principal of Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness being treated as Long-Term Indebtedness under ***Section 902*** hereof, or Interim Indebtedness shall be deemed due and payable at its Stated Maturity; provided, however, that at the election of the Issuer for the purpose of any computation of Debt Service Requirements, whether historical or projected, the principal deemed payable on Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness being treated as Long-Term Indebtedness under ***Section 902*** hereof, or Interim Indebtedness, shall be deemed to be payable as set forth below:

(A) If the Issuer has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency) to refinance such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, including without limitation, a letter of credit or a line of credit, the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing arrangement;

(B) If the Issuer has entered into a binding agreement providing for the deposit by the Issuer with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency), in trust (herein called a "Special Redemption Fund") of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, when due from the sums so deposited and investment earnings realized thereon, then the principal amount of the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(C) If the Issuer has entered into arrangements or agreements with respect to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, other than those referred to in subsections (A) and (B) above, which a Consultant in a certificate filed with the Issuer determines, taking into account the interests of the Owners of Utility Indebtedness, provides adequate assurances that the Issuer will be able to meet the Debt Service Requirements due on such Indebtedness, the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may be deemed to be payable in accordance with the terms of such arrangement or agreement; or

(D) Such Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness may be deemed to be Utility Indebtedness which, at the date of its original incurrence, was payable over a term not to exceed twenty (20) years in equal annual installments of principal and interest at the Index Rate.

A Consultant shall deliver to the Issuer a certificate stating that it is reasonable to assume that installment obligations of such term of the Issuer can be incurred and stating the interest rate then applicable to installment obligations of such term of comparable quality. Interim Indebtedness may be deemed to be Indebtedness which, at the date of its original incurrence, would meet the conditions specified in the statement of the Consultant as required in ***Section 902;*** provided that the Consultant shall for each annual period that the Debt Service Requirement is computed, provide a supplemental statement that at such period, the certifications contained in the statement are reasonable.

(2) Interest that is payable prior to the Stated Maturity of any Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness shall be taken into account for such appropriate period in computation of Debt Service Requirements. Interest payable at maturity or early redemption on Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may either be amortized over the anticipated maturity or such longer period as is permitted under ***Section 902*** or ***Section 214(a)(1)(D)*** or may be treated as principal payable on the principal maturity date of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness.

(3) In measuring compliance with the applicable tests hereunder in connection with incurring Put Indebtedness and generally for purposes of determining the Debt Service Requirements relating thereto, Put Indebtedness shall be deemed to mature based upon the actual amortization requirements for the Put Indebtedness, only to the extent that the Issuer has a commitment to refinance such Put Indebtedness.

(b) ***Debt Service Requirements on Discount Indebtedness.*** At the election of the Issuer for the purpose of any computation of Debt Service Requirements, whether historical or projected, the principal and interest deemed payable on Discount Indebtedness shall be deemed to be payable as set forth below:

(1) If the Issuer has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency) to refinance such Discount Indebtedness, or a portion thereof, including without limitation, a letter of credit or a line of credit, the Discount Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing arrangement;

(2) If the Issuer has entered into a binding agreement providing for the deposit with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency), in trust (herein called a "Special Redemption Fund") of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Discount Indebtedness, or a portion thereof, and providing for the payment of such principal amount when due from the sums so deposited, and investment earnings realized thereon, then the Discount Indebtedness, or portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(3) If the Issuer has entered into arrangements or agreements with respect to the principal amount of such Discount Indebtedness, other than those referred to in subsections (1) and (2) above, which a Consultant in a certificate filed with the Issuer determines, taking into account the interests of the holders of Utility Indebtedness, provides adequate assurances that the Issuer will be able to meet the Debt Service Requirements due on such Indebtedness, the Discount Indebtedness may be deemed to be payable in accordance with the terms of such arrangement or agreement; or

(4) As of any time the maturity amount represented by Discount Indebtedness shall be deemed to be the accreted value of such Indebtedness computed on the basis of a constant yield to maturity.

When calculating interest requirements on Variable Rate Indebtedness which bears a variable rate of interest for periods as to which the rate of interest has not been determined, the rate of interest on Outstanding Variable Rate Indebtedness shall be the average annual rate of interest which was payable on such Variable Rate Indebtedness during the twelve (12) months immediately preceding the date as of which the calculation is made; and the rate of interest on Variable Rate Indebtedness to be incurred (or incurred less than twelve (12) months preceding such date) shall be the average annual rate of interest which would have been payable on such Variable Rate Indebtedness had it been outstanding for a period of twelve (12) months immediately preceding the date as of which the calculation is made, as evidenced in a certificate of a Consultant, delivered to the Issuer.

**Section 212. Preliminary and Final Official Statement.** The Preliminary Official Statement dated July [7], 2014, is hereby ratified and approved. The final Official Statement is hereby authorized to be prepared by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The Mayor and Director of Finance are hereby authorized to execute the final Official Statement as so supplemented, amended and completed, and the use and public distribution of the final Official Statement by the Purchaser in connection with the reoffering of the Bonds is hereby authorized. The proper officials of the Issuer are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of the SEC Rule and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 213. Sale of the Series 2014A Bonds.** The sale of the Series 2014A Bonds to the Purchaser is hereby ratified and confirmed. The Mayor and Clerk are hereby authorized to execute the official bid form submitted by the Purchaser. Delivery of the Series 2014A Bonds shall be made to the

Purchaser as soon as practicable after the adoption of this Bond Resolution, upon payment of the Purchase Price.

**Section 214. Authorization of Escrow Agreement.** The Issuer is hereby authorized to enter into the Escrow Agreement, and the Mayor and Clerk are hereby authorized and directed to execute the Escrow Agreement with such changes therein as such officials may deem appropriate, for and on behalf of and as the act and deed of the Issuer. The Escrow Agent is hereby authorized to carry out, on behalf of the Issuer, the duties, terms and provisions of the Escrow Agreement, and the Escrow Agent, the Purchaser and Bond Counsel are authorized to take all necessary actions for the subscription and purchase of the Escrowed Securities described therein, including the subscription for United States Treasury Securities - State and Local Government Series.

## ARTICLE III

## REDEMPTION OF BONDS

**Section 301. Redemption by Issuer.** The Bonds shall be subject to redemption and payment prior to their Stated Maturity, as follows:

(a) ***Optional Redemption***.

(1) *Series 2014A Bonds*. At the option of the Issuer, Series 2014A Bonds maturing on October 1, in the years 2025 and thereafter will be subject to redemption and payment prior to their Stated Maturity on October 1, 2024, and thereafter as a whole or in part (selection of maturities and the amount of Series 2014A Bonds of each maturity to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest thereon to the Redemption Date.

(2) *Additional Bonds*. Additional Bonds are subject to redemption and payment prior to Stated Maturity in accordance with the provisions of the supplemental resolution authorizing the issuance of such Additional Bonds.

(b) ***Mandatory Redemption***.

(1) *General*. The Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the Issuer may: (1) deliver to the Paying Agent for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Paying Agent funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Owner thereof whereupon the Paying Agent shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the Issuer under this Section for any Term Bonds subject to mandatory redemption on said mandatory Redemption Date which, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this subsection) and cancelled by the Paying Agent and not theretofore applied as a credit against any redemption obligation under this subsection. Each

Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the Issuer to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity as designated by the Issuer, and the principal amount of Term Bonds to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the Issuer intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the Issuer will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Paying Agent a written certificate indicating to what extent the provisions of said clauses (1), (2) and (3) are to be complied with, with respect to such mandatory redemption payment.

(2) *The Series 2014A[-_____] Term Bonds*. [There are **no** Series 2014A Term Bonds.] [The Issuer shall from the payments specified in ***Section 602(b)*** hereof which are to be deposited into the Principal and Interest Account redeem on October 1 in each year, the following principal amounts of Series 2014A[-_____] Term Bonds:

| **Principal Amount** | **Year** |
|---|---|
| | * |

*Final Maturity

(3) [The *Series 2014A-[2030] Term Bonds*. The Issuer shall from the payments specified in ***Section 602(b)*** hereof which are to be deposited into the Principal and Interest Account redeem on October 1 in each year, the following principal amounts of Series 2014A[-2030] Term Bonds:

| **Principal Amount** | **Year** |
|---|---|
| | 2030* |

*Final Maturity

(4) *Additional Bonds*. Additional Bonds designated as Term Bonds shall be subject to mandatory redemption in accordance with the provisions of the supplemental resolution authorizing such Additional Bonds.

**Section 302. Selection of Bonds to be Redeemed.**
Bonds shall be redeemed only in an Authorized Denomination. When less than all of the Bonds are to be redeemed and paid prior to their Stated Maturity, such Bonds shall be redeemed in such manner as the Issuer shall determine. Bonds of less than a full Stated Maturity shall be selected by the Bond Registrar in a minimum Authorized Denomination of principal amount in such equitable manner as the Bond Registrar may determine.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than a minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption a minimum Authorized Denomination of face value shall be treated as though it were a

separate Bond of the denomination of a minimum Authorized Denomination. If it is determined that one or more, but not all, of a minimum Authorized Denomination of face value represented by any Bond is selected for redemption, then upon notice of intention to redeem a minimum Authorized Denomination, the Owner or the Owner's duly authorized agent shall forthwith present and surrender such Bond to the Bond Registrar: (1) for payment of the Redemption Price and interest to the Redemption Date of a minimum Authorized Denomination of face value called for redemption, and (2) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond fails to present such Bond to the Paying Agent for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the redemption date to the extent of a minimum Authorized Denomination of face value called for redemption (and to that extent only).

**Section 303. Notice and Effect of Call for Redemption.** In the event the Issuer desires to call the Bonds for redemption prior to maturity, written notice of such intent shall be provided to the Bond Registrar in accordance with K.S.A. 10-129, as amended, not less than 45 days prior to the Redemption Date. The Bond Registrar shall call Bonds for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Bond Registrar at least 45 days prior to the Redemption Date of written instructions of the Issuer specifying the principal amount, Stated Maturities, Redemption Date and Redemption Prices of the Bonds to be called for redemption. The foregoing provisions of this paragraph shall not apply in the case of any mandatory redemption of Term Bonds hereunder, and Term Bonds shall be called by the Paying Agent for redemption pursuant to such mandatory redemption requirements without the necessity of any action by the Issuer and whether or not the Paying Agent holds moneys available and sufficient to effect the required redemption.

Unless waived by any Owner of Bonds to be redeemed, if the Issuer shall call any Bonds for redemption and payment prior to the Stated Maturity thereof, the Issuer shall give written notice of its intention to call and pay said Bonds to the Bond Insurer and the Purchaser. In addition, the Issuer shall cause the Bond Registrar to give written notice of redemption to the Owners of said Bonds. Each of said written notices shall be deposited in the United States first class mail not less than 30 days prior to the Redemption Date.

All official notices of redemption shall be dated and shall contain the following information:

(a) the Redemption Date;

(b) the Redemption Price;

(c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption of any Bonds, the respective principal amounts) of the Bonds to be redeemed;

(d) a statement that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and

(e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the principal office of the Paying Agent.

The failure of any Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the Issuer shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on such Redemption Date.

For so long as the Securities Depository is effecting book-entry transfers of any series of Bonds, the Bond Registrar shall provide the notices specified in this Section to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Bond (having been mailed notice from the Bond Registrar, the Securities Depository, a Participant or otherwise) to notify the Beneficial Owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the Issuer defaults in the payment of the Redemption Price) such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Bonds that have been surrendered for redemption shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

In addition to the foregoing notice, the Issuer shall provide such notices of redemption as are required by the Disclosure Undertaking. Further notice may be given by the Issuer or the Bond Registrar on behalf of the Issuer as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if official notice thereof is given as above prescribed:

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (1) the CUSIP numbers of all Bonds being redeemed; (2) the date of issue of the Bonds as originally issued; (3) the rate of interest borne by each Bond being redeemed; (4) the maturity date of each Bond being redeemed; and (5) any other descriptive information needed to identify accurately the Bonds being redeemed.

(b) Each further notice of redemption shall be sent at least one day before the mailing of notice to Owners by first class, registered or certified mail or overnight delivery, as determined by the Bond Registrar, to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(c) Each check or other transfer of funds issued for the payment of the Redemption Price of Bonds being redeemed shall bear or have enclosed the CUSIP number of the Bonds being redeemed with the proceeds of such check or other transfer.

The Paying Agent is also directed to comply with any mandatory standards then in effect for processing redemptions of municipal securities established by the State or the Securities and Exchange Commission. Failure to comply with such standards shall not affect or invalidate the redemption of any Bond.

## ARTICLE IV

## SECURITY FOR BONDS

**Section 401. Security for the Bonds.** The Series 2014A Bonds shall be special obligations of the Issuer payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the City hereby pledges said Net Revenues to the payment of the principal of and interest on the Series 2014A Bonds. The Series 2014A Bonds shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Series 2014A Bonds, either as to principal or interest.

The covenants and agreements of the City contained herein and in the Series 2014A Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2014A Bonds, all of which Series 2014A Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Series 2014A Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Bond Resolution. The Series 2014A Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Net Revenues with any Parity Indebtedness. The Series 2014A Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Parity Indebtedness; and the Parity Indebtedness shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Series 2014A Bonds.

## ARTICLE V

## ESTABLISHMENT OF FUNDS AND ACCOUNTS
## DEPOSIT AND APPLICATION OF BOND PROCEEDS AND OTHER MONEYS

**Section 501. Creation of Funds and Accounts.** Simultaneously with the issuance of the Series 2014A Bonds, there shall be created within the Treasury of the Issuer the following Funds and Accounts:

(a) Principal and Interest Subaccount for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A;

(b) Bond Reserve Subaccount for Water and Sewer Utility Parity Bonds; and

(c) Rebate Fund for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A.

The Funds and Accounts established herein shall be administered in accordance with the provisions of this Series 2014A Bond Resolution so long as the Series 2014A Bonds are Outstanding.

In addition to the Funds and Accounts described above, the Escrow Agreement establishes the following Funds and Accounts to be held and administered by the Escrow Agent in accordance with the provisions of the Escrow Agreement:

(a) Escrow Fund for Refunded Bonds; and

(b) Costs of Issuance Account for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A.

The following separate Funds and Accounts created and established in the treasury of the Issuer are hereby ratified and confirmed:

(a) Water and Sewer Utility Revenue Fund;

(b) Water and Sewer Utility Bond Reserve Account;

(c) Water and Sewer Utility Depreciation and Replacement Account;

(d) Water and Sewer Utility Improvement Account;

(e) Principal and Interest Subaccounts for Outstanding Parity Bonds; and

(f) Bond Reserve Subaccounts for Outstanding Parity Bonds.

The Funds and Accounts referred to in this paragraph shall be administered in accordance with the provisions of Bond Resolution so long as the Utility Indebtedness is Outstanding.

**Section 502. Deposit of Series 2014A Bond Proceeds and Other Moneys.** The net proceeds received from the sale of the Series 2014A Bonds and certain other moneys shall be deposited simultaneously with the delivery of the Series 2014A Bonds as follows:

(a) Any excess proceeds received from the sale of the Series 2014A Bonds shall be deposited in the Series 2014A Principal and Interest Subaccount.

(b) The sum of $[_____] shall be transferred to the Escrow Agent, deposited in the Series 2014A Costs of Issuance Account and applied in accordance with the Escrow Agreement.

(c) The remaining balance of the proceeds derived from the sale of the Series 2014A Bonds shall be transferred to the Escrow Agent and deposited in the Escrow Fund and applied in accordance with the Escrow Agreement.

(d) Simultaneously with the issuance of the Series 2014A Bonds, the Issuer shall make the following transfers:

(1) From the Series 2005A Principal and Interest Account to the Escrow Agent for deposit into the Escrow Fund all amounts therein.

(2) From the Series 2005C Principal and Interest Account to the Escrow Agent for deposit into the Escrow Fund all amounts therein

(3) From the Series 2005A Bond Reserve Account and the Series 2005C Bond Reserve Account to the Series 2014A Bond Reserve Subaccount and amount necessary to satisfy the Series 2014A Bond Reserve Subaccount Requirement.

(4) From the Series 2005A Bond Reserve Account and the Series 2005C Bond Reserve Account to the Escrow Agent for deposit into the Escrow Fund all amounts remaining

therein after the transfer made to satisfy the Series 2014A Bond Reserve Subaccount Requirement.

**Section 503. Application of Moneys in the Rebate Fund.**

(a) There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Federal Tax Certificate. All money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to satisfy the Rebate Amount (as defined in the Federal Tax Certificate), for payment to the United States of America, and neither the Issuer nor the Owner of any Series 2014A Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and the Federal Tax Certificate.

(b) The Issuer shall periodically determine the rebatable arbitrage, if any, under Code § 148(f) in accordance with the Federal Tax Certificate, and the Issuer shall make payments to the United States of America at the times and in the amounts determined under the Federal Tax Certificate. Any moneys remaining in the Rebate Fund after redemption and payment of all of the Series 2014A Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor, shall be deposited into the Revenue Fund.

(c) Notwithstanding any other provision of this Bond Resolution, including in particular ***Article XI*** hereof, the obligation to pay rebatable arbitrage to the United States of America and to comply with all other requirements of this Section and the Federal Tax Certificate shall survive the defeasance or payment in full of the Series 2014A Bonds.]

**Section 504. Application of Moneys in the Costs of Issuance Account.** Moneys in the Costs of Issuance Account shall be used by the Escrow Agent to pay the Costs of Issuance. Any funds remaining in the Costs of Issuance Account, after payment of all Costs of Issuance, but not later than the later of 30 days prior to the first Stated Maturity of principal or one year after the date of issuance of the Series 2014A Bonds, shall be transferred to the Issuer for deposit into the Series 2014A Principal and Interest Subaccount.

**Section 505. Application of Moneys in the Escrow Fund.** Under the Escrow Agreement, the Escrow Agent will apply moneys in the Escrow Fund to purchase the Escrowed Securities and to establish an initial cash balance in accordance with the Escrow Agreement. The cash and Escrowed Securities held in the Escrow Fund will be applied by the Escrow Agent solely in the manner authorized by the Escrow Agreement. All money deposited with the Escrow Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in the Refunded Bond Resolution(s) and the Escrow Agreement.

**Section 506. Verification of Certified Public Accountant.** Prior to or concurrently with the issuance and delivery of the Series 2014A Bonds and the creation of the Escrow Fund, the Issuer shall obtain a Verification Report from an Independent Accountant that such Independent Accountant has verified the accuracy of the calculations that demonstrate that the money and obligations required to be deposited in the Escrow Fund pursuant to ***Section 502*** of this Bond Resolution and the Escrow Agreement, together with the earnings to accrue thereon, will be sufficient for the timely payment of the principal of, redemption premium, if any, and interest on the Refunded Bonds in accordance with the Escrow Agreement.

## ARTICLE VI

## COLLECTION AND APPLICATION OF REVENUES

**Section 601. Revenue Fund.** The Issuer covenants and agrees that from and after the delivery of the Series 2014A Bonds, and continuing as long as any of the Utility Indebtedness remain Outstanding, all of the Gross Revenues shall as and when received be paid and deposited into the Revenue Fund. Said Revenues shall be segregated and kept separate and apart from all other moneys, revenues, Funds and Accounts of the Issuer and shall not be commingled with any other moneys, revenues, Funds and Accounts of the Issuer. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Bond Resolution, except as may be modified by the provisions of the Outstanding Parity Bond Resolutions.

**Section 602. Application of Moneys in Funds and Accounts.** The Issuer covenants and agrees that from and after the delivery of the Series 2014A Bonds and continuing so long as any of the Bonds shall remain Outstanding, it will administer and allocate all of the moneys then held in the Revenue Fund as follows:

(a) ***Operation and Maintenance***. The cost of Current Expenses shall be paid currently as bills accrue. Such amount as may be necessary in the opinion of the Governing Body to pay the reasonable and proper Current Expenses for the ensuing sixty (60) days may be retained and accumulated in the Revenue Fund before making transfers to other Funds and Accounts.

***Parity Resolutions***. The following transfers shall be made on a parity of lien basis with the transfers and requirements of the Bond Resolution with respect to any Parity Indebtedness, and the term Parity Obligations shall be substituted for Bonds, as appropriate.

(b) ***Principal and Interest Account***. There shall next be paid and credited on the first day of each month to the Principal and Interest Account, for credit to the respective Subaccounts thereof, a proportionate amount necessary to meet on each Bond Payment Date the payment of all interest on and principal of the Parity Bonds. All amounts paid and credited to the various Principal and Interest Subaccounts shall be expended and used by the Issuer for the sole purpose of paying the Debt Service Requirements of respective Parity Bonds as and when the same become due at Maturity and on each Interest Payment Date.

Any amounts deposited in the Principal and Interest Account in accordance with ***Section 502(a)*** hereof shall be credited against the Issuer's payment obligations as set forth in subsection (b)(1) of this Section.

If at any time the moneys in the Revenue Fund are insufficient to make in full the payments and credits at the time required to be made to the Principal and Interest Account and to the subaccounts established to pay the principal of and interest on any Parity Bonds, the available moneys in the Revenue Fund shall be divided among such debt service accounts in proportion to the respective principal amounts of said series of Parity Bonds at the time Outstanding which are payable from the moneys in said Principal and Interest Subaccounts.

(c) ***Bond Reserve Account***. There shall next set aside and credited monthly to the Bond Reserve Account, for the credit of the respective subaccounts thereof as appropriate, the amount, if any, required to restore the Bond Reserve Account to the Bond Reserve Requirement. Except as hereinafter provided, all amounts paid and credited to the Bond Reserve Account shall be expended and used by the Issuer solely to prevent any default in the payment of interest on or principal of the Parity Bonds on any

Maturity date or Interest Payment Date if the moneys in the respective Principal and Interest Subaccounts are insufficient to pay the Debt Service Requirements of said Parity Bonds as they become due. So long as the Bond Reserve Account aggregates the Bond Reserve Requirement, no further payments into said Account shall be required, but if the Issuer is ever required to expend and use a part of the moneys in any subaccount for the purpose herein authorized and such expenditure reduces the amount of such subaccount below the Bond Reserve Requirement for such subaccount, or if the Value of the any such subaccount is below the Bond Reserve Requirement, the Issuer shall make monthly payments into such subaccount so that such subaccount shall again aggregate the Bond Reserve Requirement within twelve (12) months of such deficiency.

(d) ***Debt Service Accounts-Subordinate Lien Indebtedness***. There shall next be paid and credited monthly to the debt service account(s) for any Subordinate Lien Indebtedness, to the extent necessary to meet on each Bond Payment Date an amount equal to the payment of all interest on and principal of any Subordinate Lien Indebtedness. The amounts required to be paid and credited to the debt service account(s) for any Subordinate Lien Indebtedness shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to other debt service accounts established for the payment of the Debt Service Requirements on any Subordinate Lien Indebtedness.

(e) ***Depreciation and Replacement Account***. There shall next be paid and credited monthly to the Depreciation and Replacement Account minimum monthly amounts to the end that the Depreciation and Replacement Account will reach the Depreciation and Replacement Account Requirement within a period of thirty (30) months from the date of the first such transfer. Except as hereinafter provided, moneys in the Depreciation and Replacement Account shall be expended and used by the Issuer for the purpose of: (1) making extraordinary maintenance and repairs to the Utility, (2) making capital improvements in and to the Utility, and (3) keeping the Utility in good repair and working order so that it may continue in effective and efficient operation. If no other funds are available therefor, moneys in the Depreciation and Replacement Account may be used to pay Current Expenses. After the Depreciation and Replacement Account aggregates the Depreciation and Replacement Account Requirement, no further payments into the Depreciation and Replacement Account shall be required, but if the Issuer is ever required to expend a part of the moneys in the Depreciation and Replacement Account for its authorized purposes and such expenditure reduces the amount of the Depreciation and Replacement Account below the Depreciation and Replacement Requirement, then the Issuer shall resume and continue minimum monthly payments into the Depreciation and Replacement Account aggregates the Depreciation and Replacement Requirement within a period of eighteen (18) months of such deficiency.

(f) ***General Obligation Indebtedness*** There shall next be paid and credited monthly to such of the Issuer's funds or accounts determined by the Director of Finance, proportionate monthly amounts equal to the Debt Service Requirements on General Obligation Indebtedness accruing in the next twelve (12) months.

(g) ***Payment to the City***. There shall next be paid and credited monthly to such of the Issuer's funds or accounts determined by the Director of Finance, proportionate monthly amounts equal to the next required Payment to the City.

(h) ***Improvement Account***. All moneys in the Revenue Fund on each January 1 not required for payment of the Current Expenses and all transfers required by subsections (a) to (f) hereof for the next ninety (90) days shall be credited to the Improvement Account. When the Pre-2014 Bonds are no longer Outstanding, transfers from the Revenue Fund to the Improvement Fund may be made on a monthly basis in such amounts as may be determined by the Director of Finance. Moneys in the Improvement Account may be expended and used for the following purposes:

(1) Paying the Current Expenses.

(2) Paying the cost of extending, enlarging or improving the Utility.

(3) Preventing default in, making payments into or increasing the amounts in any of the Funds and Accounts or other payments required by subsections (a) to (g) hereof

(4) Calling, redeeming and paying prior to Stated Maturity, or, at the option of the Issuer, purchasing in the open market at fair market value, any Utility Indebtedness or General Obligation Indebtedness.

(5) Any other lawful purpose in connection with the operation of the Utility and benefiting the Utility.

(6) To make transfers to the Revenue Fund.

(h) ***Deficiency of Payments into Funds and Accounts***. If at any time the Gross Revenues are insufficient to make any payment on the date or dates hereinbefore specified, the Issuer will make good the amount of such deficiency by making additional payments or credits out of the first available Gross Revenues, such payments and credits being made and applied in the order hereinbefore specified in this Section.

(h) ***Deficiency of Payments into Funds and Accounts***. If at any time the Gross Revenues are insufficient to make any payment on the date or dates hereinbefore specified, the Issuer will make good the amount of such deficiency by making additional payments or credits out of the first available Gross Revenues, such payments and credits being made and applied in the order hereinbefore specified in this Section.

**Section 603. Transfer of Funds to Paying Agent.** The Treasurer of the Issuer shall withdraw from the Principal and Interest Account, and, to the extent necessary to prevent a default in the payment of either principal of or interest on the Utility Indebtedness, from the Bond Reserve Account, and the Improvement Account, sums sufficient to pay the principal of and interest on the Utility Indebtedness as and when the same become due on any Bond Payment Date, and to forward such sums to the Paying Agent in a manner which ensures the Paying Agent will have available funds in such amounts on or before the Business Day immediately preceding each Bond Payment Date. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Bond Resolution.

**Section 604. Payments Due on Saturdays, Sundays and Holidays.** In any case where a Bond Payment Date is not a Business Day, then payment of principal, Redemption Price or interest need not be made on such Bond Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Bond Payment Date, and no interest shall accrue for the period after such Bond Payment Date.

## ARTICLE VII

## DEPOSIT AND INVESTMENT OF MONEYS

**Section 701. Deposits and Investment of Moneys.**

(a) Moneys in each of the Funds and Accounts shall be deposited and shall be adequately secured as provided by the laws of the State.

(b) Moneys held in any Fund or Account other than the Escrow Fund may be invested in accordance with the Bond Resolution and the Federal Tax Certificate, in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose for which such Fund or Account was established; and provided, further, that Authorized Investments in the Bond Reserve Account shall have an average aggregate weighted term to maturity not greater than five years. All earnings on any investments held in any Fund or Account shall accrue to and become a part of such Fund or Account, other than earnings required to be deposited into the Rebate Fund pursuant to the Federal Tax Certificate. All earnings on investments held in the Bond Reserve Account shall accrue to and become a part of the Bond Reserve Account until the amount on deposit in the Bond Reserve Account shall aggregate the Bond Reserve Requirement; thereafter, all such earnings shall be credited to the Principal and Interest Account. All earnings on investments held in the Depreciation and Replacement Account shall accrue to and become a part of the Depreciation and Replacement Account until the amount on deposit in the Depreciation and Replacement Account shall aggregate the Depreciation and Replacement Requirement; thereafter, all such earnings shall be credited to the Revenue Fund.

(c) The Value of any Fund or Account shall be determined at the end of each calendar month. Such valuation shall also be made in conjunction with redemption of any Utility Indebtedness.

## ARTICLE VIII

## GENERAL COVENANTS AND PROVISIONS

The Issuer covenants and agrees with each of the Owners of any of the Utility Indebtedness that so long as any of the Utility Indebtedness remain Outstanding and unpaid it will comply with each of the following covenants:

**Section 801. Efficient and Economical Operation.** The Issuer will continuously own and will operate the Utility as a revenue producing facility in an efficient and economical manner and will keep and maintain the same in good repair and working order.

**Section 802. Rate Covenant.** The Issuer, in accordance with and subject to applicable legal requirements, will fix, establish, maintain and collect such rates and charges for the use and services furnished by or through the Utility as will produce Gross Revenues sufficient to: (a) pay the Current Expenses; (b) pay the Debt Service Requirements on the Utility Indebtedness as and when the same become due at the Maturity thereof or on any Interest Payment Date; (c) provide reasonable and adequate reserves for the payment of the Utility Indebtedness and for the protection and benefit of the Utility as provided in the Bond Resolution; and (d) enable the Issuer to have in each Fiscal Year, a Debt Service Coverage Ratio of not less than 1.20 on all Parity Indebtedness at the time Outstanding; 1.00 on all Subordinate Lien Indebtedness at the time Outstanding; 1.00 on all General Obligation Indebtedness at the time Outstanding; and 1.00 with respect to the Payment to the City; provided however, in determining the Net Revenues Available for Debt Service, estimated additional net income to be derived from rate increases in effect and being charged prior to the end of the applicable Fiscal Year, as determined by the Consultant, may be taken into account, and that, without giving effect to any such adjustments from rate increases, the Debt Service Coverage Ratio shall be not less than 1.00 of the current Fiscal Year's Debt Service Requirements for all Utility Indebtedness.

The Issuer will, from time to time as often as necessary, in accordance with and subject to applicable legal requirements, revise the rates and charges aforesaid in such manner as may be necessary or proper so that the Net Revenues Available for Debt Service will be sufficient to cover the obligations under the provisions of the Bond Resolution. If in any Fiscal Year, Net Revenues Available for Debt Service are an amount less than as hereinbefore provided, the Issuer will make adjustments to such rates, fees and charges to bring the Utility into compliance with this covenant. It shall be the policy of the Issuer that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues Available for Debt Service with respect to Utility Indebtedness issued for improvements to each such component of the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

**Section 803. Restrictions on Mortgage or Sale of Utility.** The Issuer will not mortgage, pledge or otherwise encumber the Utility or any part thereof, nor will it sell, lease or otherwise dispose of the Utility or any material part thereof; provided, however, the Issuer may:

(a) sell at fair market value any portion of the Utility which has been replaced by other similar property of at least equal value, or which ceases to be necessary for the efficient operation of the Utility, and in the event of sale, the Issuer will apply the proceeds to either (1) redemption of Outstanding Utility Indebtedness in accordance with the provisions governing repayment of Utility Indebtedness in advance of Stated Maturity, or (2) replacement of the property so disposed of by other property the revenues of which shall be incorporated into the Utility as hereinbefore provided;

(b) cease to operate, abandon or otherwise dispose of any property which has become obsolete, nonproductive or otherwise unusable to the advantage of the Issuer;

(c) grant a security interest in equipment to be purchased with the proceeds of any loan, lease or other obligation undertaken in accordance with ***Article IX*** hereof; or

(d) sell, lease or convey all or substantially all of the Utility to another entity or enter into a management contract with another entity if:

(1) The transferee entity is a political subdivision organized and existing under the laws of the State, or instrumentality thereof, or an organization described in Code § 501(c)(3), and expressly assumes in writing the due and punctual payment of the principal of and premium, if any, and interest on all outstanding Utility Indebtedness according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Bond Resolution;

(2) If there remains unpaid any Utility Indebtedness which bears interest that is not includable in gross income under the Code, the Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, to the effect that under then existing law the consummation of such sale, lease or conveyance, whether or not contemplated on any date of the delivery of such Utility Indebtedness, would not cause the interest payable on such Utility Indebtedness to become includable in gross income under the Code;

(3) The Issuer receives a certificate of the Consultant which demonstrates and certifies that immediately upon such sale or conveyance the transferee entity will not, as a result thereof, be in default in the performance or observance of any covenant or agreement to be performed or observed by it under this Bond Resolution;

(4) Such transferee entity possesses such licenses to operate the Utility as may be required if it is to operate the Utility; and

(5) The Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, as conclusive evidence that any such sale, lease or conveyance, and any such assumption, is permitted by law and complies with the provisions of this Section.

(6) The Issuer receives the written consent of the Bond Insurer.

**Section 804. Insurance.** The Issuer will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Utility as would be carried by a privately owned utility with similar property and performing similar functions, insofar as the properties are of an insurable nature; and in the event of loss or damage, the Issuer will use the Net Proceeds of such insurance to reconstruct or replace the damaged or destroyed property, or if such reconstruction or replacement be unnecessary, then such Net Proceeds shall be used in redeeming or paying off Outstanding Utility Indebtedness, in accordance with their call provisions. The Issuer also will carry general liability insurance in amounts not less than the then maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the State's tort claims act or other similar future law (currently $500,000.00 per occurrence). In lieu of the foregoing, the Issuer may establish a self-insurance program which will provide substantially the same protection for the Owners.

**Section 805. Books, Records and Accounts.** As long as any Utility Indebtedness are Outstanding, the Issuer shall keep proper and separate books of records and accounts in which complete and correct entries shall be made showing the Gross Revenues collected for services by the Utility and all sums expended in the operation thereof and all sums deposited in the Funds and Accounts above mentioned and all disbursements, transfers and transactions relating to the Utility as a whole, and to the several components of the Utility separately. The books and accounts shall be kept in accordance with generally accepted accounting principles.

The Utility shall make comparative quarterly reports to the Office of the City Manager relative to Utility incomes, Utility expenses and net income from operations. If any such quarterly report shall disclose that the Issuer will not have available the necessary funds for carrying out and complying with all of the requirements of this Resolution, then the Issuer shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for the use and services of the Utility which will provide adequate funds to meet such requirements.

**Section 806. Annual Budget.** The Issuer shall prepare an Annual Budget in its customary form estimating anticipated expenditures and income and containing a statement relative to the amounts of insurance being carried and to be carried. As long as the Pre-2009 Bonds are Outstanding, the Annual Budget shall contain normal budgetary items, including:

(a) An estimate of the receipts from the Utility during the next ensuing Fiscal Year.

(b) A statement of the estimated cost of operating the Utility during the next ensuing Fiscal Year.

(c) A statement of any anticipated unusual expenses for the Utility during the next Fiscal Year.

(d) A statement of any necessary replacements to the Utility which may be anticipated during the next Fiscal Year.

(e) A statement of the amount of principal and interest to be paid on Outstanding Utility Indebtedness and any General Obligation Indebtedness to be paid from Gross Revenues of the Utility during the next Fiscal Year.

(f) A statement of the total estimated expenditures to be made from the Gross Revenues of the Utility during the next Fiscal Year.

(g) A statement of the estimated Net Revenues Available for Debt Service during the next Fiscal Year.

As long as the Pre-2009 Bonds are Outstanding, copies of the Annual Budget shall be mailed to the Underwriter and to the Bond Insurer, if any, within thirty (30) days after the same are received by the Issuer.

**Section 807. Annual Audit.** The Issuer shall annually cause an audit to be made by an Independent Accountant of the operation of the Utility, which audit shall be open to public inspection and shall be completed within six (6) months after the completion of the Fiscal Year. If the audit shall disclose that proper provision has not been made for carrying out and complying with all of the requirements of this Resolution, then the Issuer shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for the use of services of the Utility which will provide adequate funds to meet all such requirements.

As long as the Pre-2009 Bonds are Outstanding, the audit shall include the following information:

(a) A classified statement of the Gross Revenues received, the expenditures for operation and maintenance, the expenditures for all other purposes, the net Operating Revenues and the amount of any capital expenditures made from such Operating Revenues during the year.

(b) A complete balance sheet of the Fiscal Year's operations, particularly indicating the amount of moneys set aside for the various Funds and Accounts as herein provided for.

(c) A statement showing all Outstanding Utility Indebtedness which have been called, purchased, matured or paid during the year and a statement of all interest thereon paid during the year.

(d) A statement of the number of customers served by the Utility at the end of the year.

(e) A statement of the gross amount of insurance carried on the Utility's properties, showing the names of the insurers, the expiration dates of the policies and the premiums thereon.

(f) A statement by the auditor of any recommendations suggested as to financial procedures and accounting practices employed by the Issuer.

(g) A statement of the Net Revenues Available for Debt Service of the Utility.

(h) A statement of any amounts to be deposited in the Rebate Account.

As long as the Pre-2009 Bonds are Outstanding, copies of such audit shall be mailed to the Underwriter, to the Bond Insurer, if any, and to the Kansas Bank Commissioner within thirty (30) days after the same are received by the Issuer.

As soon as possible after the completion of the annual audit, the governing body of the Issuer shall review the report of such audit, and if the audit report discloses that proper provision has not been made for all of the requirements of this Bond Resolution and the Act, the Issuer will promptly cure such deficiency and will promptly proceed to modify the rates and charges to be charged for the use and services furnished by the Utility or take such other action as may be necessary to adequately provide for such requirements.

**Section 808. Right of Inspection.** The Owner of any Bond or such Owner's duly authorized attorney, accountant or investment counselor and, the Bond Insurer, if any, shall have the right at all reasonable times during normal business hours to inspect the any records, accounts or data relating thereto in accordance with State law.

**Section 809. Performance of Duties and Covenants.** The Issuer will faithfully and punctually perform all duties, covenants and obligations with respect to the operation of the Utility now or hereafter imposed upon the Issuer by the Constitution and laws of the State and by the provisions of this Bond Resolution.

**Section 810. Report on Utility Condition.** The Issuer shall annually cause a qualified employee of the Issuer to make an examination of and report on the condition and operations of the Utility. Not less than every three (3) years, the Issuer will cause the Consulting Engineers to make an examination and written report on the condition and operation of the Utility, such report to include recommendations as to any changes in such operation deemed desirable. Such report shall also make references to any unusual or extraordinary items of maintenance and repair and any extensions, enlargements or improvements that may be needed in the period prior to the preparation of the next consultant's report required by this Section. A copy of such report will be filed with the Clerk.

## ARTICLE IX

## ADDITIONAL BONDS AND OBLIGATIONS

**Section 901. Prior Lien Bonds.** So long as any of the Parity Bonds remain Outstanding, the Issuer will not issue any Utility Indebtedness payable out of the Gross Revenues which are superior to the Parity Indebtedness with respect to the lien on the Net Revenues.

**Section 902. Parity Indebtedness.** The Issuer will not issue any Utility Indebtedness which stands on a parity or equality of lien against the Net Revenues with the Parity Indebtedness unless the following conditions are met:

(a) The Issuer shall not be in default in the payment of the Debt Service Requirements on any Parity Indebtedness at the time Outstanding or in making any payment at the time required to be made into the respective Funds and Accounts created by and referred to in the Bond Resolution (unless such Utility Indebtedness is being issued to provide funds to cure such default) nor shall any other Event of Default have occurred and be continuing;

(b) The Issuer shall deliver the following:

(1) *Long-Term Indebtedness*. A certificate signed by the Issuer evidencing that the Debt Service Coverage Ratio for the two (2) Fiscal Years immediately preceding the issuance of such Utility Indebtedness, as reflected by information provided by the Independent Accountant, shall be not less than 1.20, including the Utility Indebtedness proposed to be issued. In the event that the Issuer has instituted any increase in rates for the use and services of the Utility and such increase shall not have been in effect during the full two (2) Fiscal Years immediately preceding the issuance of such proposed Utility Indebtedness, the additional Net Revenues Available for Debt Service which would have resulted from the operation of the Utility during said two (2) preceding Fiscal Years had such rate increase been in effect for the entire period may be added to the stated Net Revenues for the calculation of the Debt Service Coverage Ratio, provided that such estimated additional Net Revenues shall be determined by a Consultant.

(2) *Short-Term Indebtedness*. A certificate signed by the Issuer evidencing any ***one*** of the following:

(i) The principal amount of all Outstanding Short-Term Indebtedness does not exceed 15% of the Gross Revenues for the most recently ended Fiscal Year for which financial information is available from the Independent Accountant;

(ii) The Short-Term Indebtedness could be incurred assuming it was Long-Term Indebtedness.

(iii) There is delivered to the Issuer a certificate of a Consultant to the effect that it is such Consultant's opinion that it is reasonable to assume that the Issuer will be able to refinance such Short-Term Indebtedness prior to its Stated Maturity and the conditions are met with respect to such Short-Term Indebtedness when it is assumed that such Short-Term Indebtedness is Long-Term Indebtedness maturing over 20 years (or such shorter period as such Consultant indicates is reasonable to assume in such statement) from the date of issuance of the Short-Term Indebtedness and bears interest on the unpaid principal balance at the Index Rate and is payable on a level annual debt service basis over a 20-year period (or such shorter period as such Consultant indicates is reasonable to assume in such statement).

(3) *Interim Indebtedness*. A certificate signed by the Issuer evidencing any ***either*** of the following:

(i) The Interim Indebtedness could be incurred assuming it was Long-Term Indebtedness.

(ii) There is delivered to the Issuer a certificate of a Consultant to the effect that it is such Consultant's opinion that it is reasonable to assume that the Issuer will be able to refinance such Interim Indebtedness prior to its Stated Maturity and the conditions are met with respect to such Interim Indebtedness when it is assumed that such Interim Indebtedness is Long-Term Indebtedness maturing over 20 years (or such shorter period as such Consultant indicates is reasonable to assume in such statement) from the date of issuance of the Interim Indebtedness and bears interest on the unpaid principal balance at the Index Rate and is payable on a level annual debt service basis over a 20-year period (or such shorter period as such Consultant indicates is reasonable to assume in such statement).

(c) When the issuance of Utility Indebtedness of equal stature and priority is permitted by the laws of the State.

(d) With respect to the issuance of Additional Bonds, an additional deposit to the Bond Reserve Account shall be made to bring the Bond Reserve Account to an amount equal to the Bond Reserve Requirement.

(e) The ordinance and/or resolution authorizing such Utility Indebtedness shall contain or provide for substantially the same terms, conditions, covenants and procedures as established in the Bond Resolution.

Additional Utility Indebtedness issued under the conditions hereinbefore set forth shall stand on a parity with other Parity Indebtedness and shall enjoy complete equality or lien on and claim against the Net Revenues, and the Issuer may make equal provision for paying the Debt Service Requirements on such Utility Indebtedness out of the Revenue Fund and may likewise provide for the creation of reasonable debt service accounts and debt service reserve accounts for the payment of the Debt Service Requirements on such Utility Indebtedness and the interest thereon out of moneys in the Revenue Fund.

**Section 903. Subordinate Lien Indebtedness.** Nothing shall prohibit or restrict the right of the Issuer to issue Subordinate Lien Indebtedness for any lawful purpose in connection with the operation of and benefiting the Utility and to provide that the Debt Service Requirements on such Subordinate Lien Indebtedness shall be payable out of the Net Revenues Available for Debt Service, provided at the time of the issuance of such Subordinate Lien Indebtedness the Issuer is not in default in the performance of any covenant or agreement contained in the Bond Resolution (unless such Utility Indebtedness shall be issued to cure such default and shall be junior and subordinate to the Parity Indebtedness) so that if at any time the Issuer shall be in default in paying either interest on or principal of the Parity Indebtedness, or of the Issuer is in default in payment of Current Expenses, Debt Service Requirements on Parity Indebtedness or transfers required by the Bond Resolution prior to the payment of Debt Service Requirements on Subordinate Lien Indebtedness, the Issuer shall make no payments of Debt Service Requirements on said Subordinate Lien Indebtedness until said default or defaults be cured.

**Section 904. Refunding Indebtedness.** The Issuer shall have the right, without complying with the provisions of ***Section 902*** hereof, to issue Refunding Indebtedness for the purpose of refunding any of the Utility Indebtedness under the provisions of any law then available, and the Refunding Indebtedness so issued shall enjoy complete equality of pledge as did the Utility Indebtedness that was refunded.

## ARTICLE X

## DEFAULT AND REMEDIES

**Section 1001. Remedies.** The Bond Resolution and all of the provisions thereof shall constitute a contract between the Issuer, the Bond Insurer and each of the Owners of Utility Indebtedness, and any such Owner may by suit, action, mandamus, injunction or other proceeding, either at law or in equity, enforce and compel performance of all duties, obligations and conditions determined and required by the Bond Resolution, subject to the limitations of hereinafter set forth; provided however, that no Owner of Subordinate Indebtedness shall have the ability to impair the rights of Owners of Parity Indebtedness. Upon the happening and continuance of any Event of Default, then and in every such case any Owner may proceed, subject to the provisions of the Bond Resolution, to protect and enforce the rights of the Owners by a suit, action or special proceeding in equity, or at law, either for the specific performance of

any covenant or agreement contained therein or in aid or execution of any power therein granted or for the enforcement of any proper legal or equitable remedy as such Owner shall deem most effectual to protect and enforce such rights.

Anything in the Bond Resolution to the contrary notwithstanding, if at any time moneys in the Principal and Interest Account shall not be sufficient to pay the interest on or the principal of the Utility Indebtedness as the same shall become due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Section or otherwise, shall be applied as follows:

(a) If the principal of all the Parity Indebtedness shall not have become due and payable, all such moneys shall be applied:

***first***: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness;

***second***: to the payment to the persons entitled thereto of the unpaid principal of any of the Parity Indebtedness which shall have become due and payable (other than Parity Indebtedness called for redemption for the payment of which moneys are held pursuant to the provisions of the Bond Resolution), in the order of their due dates, with interest on the principal amount of such Parity Indebtedness at the respective rates specified therein from the respective dates upon which such Parity Indebtedness` became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Parity Indebtedness due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

***third***: to the payment of the interest on and the principal of the Parity Indebtedness, to the purchase and retirement of the Parity Indebtedness and to the redemption of the Parity Indebtedness, all in accordance with the provisions of the Bond Resolution.

(b) If the principal of all of the Parity Indebtedness shall have become due and payable, all such moneys shall be applied:

***first***: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness, and then to the payment of any interest due and payable after maturity on the Parity Indebtedness, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the

Parity Indebtedness; and

***second***: to the payment of the principal of the Parity Indebtedness, ratably, to the persons entitled thereto, without preference or priority of any Parity Indebtedness over any other Parity Indebtedness.

(c) If the principal of all the Subordinate Lien Indebtedness shall not have become due and payable, all such moneys shall be applied:

***first***: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Lien Indebtedness;

***second***: to the payment to the persons entitled thereto of the unpaid principal of any of the Subordinate Lien Indebtedness which shall have become due and payable (other than Subordinate Lien Indebtedness called for redemption for the payment of which moneys are held pursuant to the provisions of the Bond Resolution), in the order of their due dates, with interest on the principal amount of such Subordinate Lien Indebtedness at the respective rates specified therein from the respective dates upon which such Subordinate Lien Indebtedness` became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Subordinate Lien Indebtedness due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

***third:*** to the payment of the interest on and the principal of the Subordinate Lien Indebtedness, to the purchase and retirement of the Subordinate Lien Indebtedness and to the redemption of the Subordinate Lien Indebtedness, all in accordance with the provisions of the Bond Resolution.

(d) If the principal of all of the Subordinate Lien Indebtedness shall have become due and payable, all such moneys shall be applied:

***first***: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Lien Indebtedness, and then to the payment of any interest due and payable after maturity on the Subordinate Lien Indebtedness, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Lien Indebtedness; and

***second***: to the payment of the principal of the Subordinate Lien Indebtedness,

ratably, to the persons entitled thereto, without preference or priority of any Subordinate Lien Indebtedness over any other Subordinate Lien Indebtedness.

Whenever moneys are to be applied by the Issuer pursuant to the foregoing provisions, such moneys shall be applied at such times, and from time to time, as the Director of Finance, in his or her sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Paying Agent in trust for the proper purpose shall constitute proper application by the Issuer; and the Issuer shall incur no liability whatsoever to any Owner or to any other person for any delay in applying any such moneys, so long as the Issuer acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Resolution as may be applicable at the time of application by the Director of Finance. Whenever the Director of Finance shall exercise such discretion in applying such moneys, she shall fix the date (which shall be an Interest Payment Date unless she shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Director of Finance shall give such notice as she may deem appropriate of the fixing of any such date, and shall not be required to make payment to the Owner of any unpaid Utility Indebtedness until the same shall be surrendered to the Paying Agent for appropriate endorsement, or for cancellation if fully paid.

In case any proceeding taken by any Owner on account of any default shall have been discontinued or abandoned for any reason, then and in every such case the Issuer and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights and remedies of the Owners shall continue as though no such proceedings had been taken. No Owner of any of any Utility Indebtedness shall have any right in any manner whatever to affect, disturb or prejudice the security of the Bond Resolution or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the same class of Utility Indebtedness. No remedy herein conferred on the Owners is intended to be exclusive of any other remedy or remedies, and each and every remedy conferred shall be cumulative and shall be in addition to every other remedy given hereunder and under the Act or now or hereafter existing at law or in equity or by statute. No delay or omission of any Owner to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given to the Owners may be exercised from time to time and as often as may be deemed expedient.

**Section 1002. Limitation on Rights of Owners.** No Owner of any Utility Indebtedness shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Bond Resolution or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) an Event of Default shall have occurred, (b) the Owners of twenty-five percent (25%) in aggregate principal amount of same class of the Utility Indebtedness then Outstanding shall have made written request to the Issuer, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and (ci) the Issuer shall thereafter fail or refuse to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case, at the option of the Issuer, to be conditions precedent to the execution of the powers and trusts of the Bond Resolution, and to any action or cause of action for the enforcement of the Bond Resolution, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners of the Utility Indebtedness shall have any right in any manner whatsoever to affect, disturb or prejudice the Bond Resolution by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all

proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of the Utility Indebtedness then Outstanding. Nothing in the Bond Resolution contained shall, however, affect or impair the right of any Owner to payment of Debt Service Requirements on any Utility Indebtedness at and after the maturity thereof or the obligation of the Issuer to pay the Debt Service Requirements on each of the Utility Indebtedness issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Utility Indebtedness expressed.

**Section 1003. Remedies Cumulative.** No remedy conferred upon the Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred. No waiver of any default or breach of duty or contract by the Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. If action or proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or shall have been determined adversely to such Owner, then, and in every such case, the Issuer and the Owners shall be restored to their former positions and rights, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

**Section 1004. No Obligation to Levy Taxes.** Nothing contained in this Bond Resolution shall be construed as imposing on the Issuer any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or interest on the Utility Indebtedness.

**Section 1005. Control of Remedies Upon an Event of Default and Event of Insolvency.** Notwithstanding anything herein to the contrary, upon the occurrence and continuance of an Event of Default, the Bond Insurer, provided the Bond Insurance Policy is in full force and effect and the Bond Insurer shall not be in default thereunder, shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owners under this Bond Resolution. Any reorganization or liquidation plan with respect to the Issuer must be acceptable to the Bond Insurer. In the event of any reorganization or liquidation, the Bond Insurer shall have the right to vote on behalf of all Owners who hold the Insured Bonds insured by the Bond Insurer absent a default by the Bond Insurer under the applicable Bond Insurance Policy insuring such Insured Bonds.

## ARTICLE XI

## DEFEASANCE

**Section 1101. Defeasance.** When any or all of the Utility Indebtedness, redemption premium, if any, or scheduled interest payments thereon have been paid and discharged, then the requirements contained in the Bond Resolution and the pledge of the Gross Revenues hereunder and all other rights granted hereby shall terminate with respect to the Bonds or scheduled interest payments thereon so paid and discharged. Utility Indebtedness, redemption premium, if any, or scheduled interest payments thereon shall be deemed to have been paid and discharged within the meaning of the Bond Resolution if there has been deposited with the Paying Agent, or other commercial bank or trust company located in the State and having full trust powers, at or prior to the Stated Maturity or Redemption Date of said Utility Indebtedness or the interest payments thereon, in trust for and irrevocably appropriated thereto, moneys and/or Defeasance Obligations which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of the principal or Redemption Price of said Utility Indebtedness and/or interest accrued to the Stated Maturity or Redemption Date, or if default in such payment has occurred on such date, then to the date of the tender of such payments. If the amount to be

so deposited is based on the Redemption Price of any Bonds, no such satisfaction shall occur until: (a) the Issuer has elected to redeem such Utility Indebtedness, and (b) either notice of such redemption has been given, or the Issuer has given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Bond Registrar to give such notice of redemption in compliance with the Bond Resolution. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the Issuer, for the purpose of paying and discharging any of the Utility Indebtedness, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Owners of the Utility Indebtedness, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Paying Agent or such bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions of the Bond Resolution. The Issuer shall notify the Bond Insurer of any defeasance of any Insured Bonds insured by the Bond Insurer.

Notwithstanding anything in the Bond Resolution to the contrary, in the event that the principal and/or interest due on the Insured Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Insured Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer and the covenants, agreements and other obligations of the Issuer to the Owners shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owners.

## ARTICLE XII

## TAX COVENANTS

**Section 1201. General Covenants.** The Issuer covenants and agrees that it will comply with: (a) all applicable provisions of the Code necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Series 2014A Bonds; and (b) all provisions and requirements of the Federal Tax Certificate. The Mayor and Clerk are hereby authorized and directed to execute the Federal Tax Certificate in a form approved by Bond Counsel, for and on behalf of and as the act and deed of the Issuer. The Issuer will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Series 2014A Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the Issuer.

**Section 1202. Survival of Covenants.** The covenants contained in this Article and in the Federal Tax Certificate shall remain in full force and effect notwithstanding the defeasance of the Series 2014A Bonds pursuant to ***Article XI*** hereof or any other provision of this Bond Resolution until such time as is set forth in the Federal Tax Certificate.

## ARTICLE XIII

## CONTINUING DISCLOSURE REQUIREMENTS

**Section 1301. Disclosure Requirements.** The Issuer hereby covenants with the Purchaser and the Beneficial Owners to provide and disseminate such information as is required by the SEC Rule and as further set forth in the Disclosure Undertaking, which are incorporated herein by reference. Such covenant shall be for the benefit of and enforceable by the Purchaser and the Beneficial Owners.

**Section 1302. Failure to Comply with Continuing Disclosure Requirements.** In the event the Issuer fails to comply in a timely manner with its covenants contained in the preceding section, the Purchaser and/or any Beneficial Owner may make demand for such compliance by written notice to the Issuer. In the event the Issuer does not remedy such noncompliance within 10 days of receipt of such written notice, the Purchaser or any Beneficial Owner may in its discretion, without notice or demand, proceed to enforce compliance by a suit or suits in equity for the specific performance of such covenant or agreement contained in the preceding section or for the enforcement of any other appropriate legal or equitable remedy, as the Purchaser and/or any Beneficial Owner shall deem effectual to protect and enforce any of the duties of the Issuer under such preceding section. The Purchaser or Beneficial Owner shall provide a copy of any such demand or notice to the Bond Insurer.

## ARTICLE XIV

## MISCELLANEOUS PROVISIONS

**Section 1401. Amendments.** The rights and duties of the Issuer and the Owners, and the terms and provisions of the Utility Indebtedness or of this Bond Resolution, may be amended or modified at any time in any respect by resolution of the Issuer with the written consent of the Owners of not less than a majority in principal amount of the Utility Indebtedness then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Clerk, but no such modification or alteration shall:

(a) extend the maturity of any payment of principal or interest due upon any Utility Indebtedness;

(b) effect a reduction in the amount which the Issuer is required to pay as principal of or interest on any Utility Indebtedness;

(c) permit preference or priority of any Utility Indebtedness over any other Utility Indebtedness;

(d) reduce the percentage in principal amount of Utility Indebtedness required for the written consent to any modification or alteration of the provisions of this Bond Resolution; or

(e) permit the creation of a lien on the Revenues prior or equal to the lien of the Parity Indebtedness.

Any provision of the Utility Indebtedness or of this Bond Resolution may, however, be amended or modified by resolution duly adopted by the governing body of the Issuer at any time in any legal respect with the written consent of the Owners of all of the Utility Indebtedness at the time Outstanding.

Without notice to or the consent of any Owners, the Issuer may amend or supplement this Bond Resolution for the purpose of curing any formal defect, omission, inconsistency or ambiguity herein, to grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners, to conform this Bond Resolution to the Code or future applicable federal law concerning tax-exempt obligations, or in connection with any other change therein which is not materially adverse to the interests of the Owners.

Every amendment or modification of the provisions of the Utility Indebtedness or of this Bond Resolution, to which the written consent of the Owners is given, as above provided, shall be expressed in a resolution adopted by the governing body of the Issuer amending or supplementing the provisions of this Bond Resolution and shall be deemed to be a part of this Bond Resolution. A certified copy of every such amendatory or supplemental resolution, if any, and a certified copy of this Bond Resolution shall always be kept on file in the office of the Clerk, and shall be made available for inspection by the Owner of any Utility Indebtedness or a prospective purchaser or owner of any Utility Indebtedness authorized by this Bond Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or of this Bond Resolution will be sent by the Clerk to any such Owner or prospective Owner.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the Clerk a copy of the resolution of the Issuer hereinabove provided for, duly certified, as well as proof of any required consent to such modification by the Bond Insurer and the Owners of the Utility Indebtedness then Outstanding. It shall not be necessary to note on any of the Outstanding Utility Indebtedness any reference to such amendment or modification.

The Issuer shall furnish to the Paying Agent a copy of any amendment to the Utility Indebtedness or this Bond Resolution which affects the duties or obligations of the Paying Agent under this Bond Resolution.

**Section 1402. Notices, Consents and Other Instruments by Owners.** Any notice, consent, request, direction, approval or other instrument to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Utility Indebtedness, if made in the following manner, shall be sufficient for any of the purposes of this Bond Resolution, and shall be conclusive in favor of the Issuer and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Utility Indebtedness, the amount or amounts, numbers and other identification of Utility Indebtedness, and the date of holding the same shall be proved by the Bond Register.

In determining whether the Owners of the requisite principal amount of Utility Indebtedness Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Bond Resolution, Utility Indebtedness owned by the Issuer shall be disregarded and deemed not to be Outstanding under this Bond Resolution, except that, in determining whether the Owners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Utility Indebtedness which the Owners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Utility Indebtedness so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Owners the pledgee's right so to act with respect to such Utility Indebtedness and that the pledgee is not the Issuer.

**Section 1403. Notices.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Bond Resolution shall be in writing, given to the Notice

Representative at the Notice Address and shall be deemed duly given or filed if the same shall be: (a) duly mailed by registered or certified mail, postage prepaid; or (b) communicated via fax, with electronic or telephonic confirmation of receipt. Copies of such notices shall also be given to the Paying Agent and the Bond Insurer. The Issuer, the Paying Agent, the Bond Insurer and the Purchaser may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

All notices given by: (a) certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed; (b) fax as aforesaid shall be deemed duly given as of the date of confirmation of receipt. If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Paying Agent shall constitute a sufficient notice.

**Section 1404. Inconsistent Provisions.** In case any one or more of the provisions of the Series 2014A Bond Resolution or of the Utility Indebtedness issued hereunder shall for any reason be inconsistent with the provisions of the Outstanding Parity Bond Resolutions or the Parity Indebtedness: (a) the provisions of any Outstanding Parity Bond Resolution adopted prior to the Series 2014A Bond Resolution shall prevail with respect to Parity Indebtedness issued prior in time, so long as such Parity Indebtedness is Outstanding; and (b) the provisions of the Series 2014A Bond Resolution shall prevail with respect to any Parity Bond Resolution adopted subsequent to the Series 2014A Bond Resolution, so long as any Parity Indebtedness issued under the Series 2014A Bond Resolution is Outstanding.

**Section 1405. Electronic Transactions.** The issuance of the Series 2014A Bonds and the transactions related thereto and described herein may be conducted and documents may be stored by electronic means.

**Section 1406. Further Authority.** The officers and officials of the Issuer, including the Mayor and Clerk, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Bond Resolution and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 1407. Severability.** If any section or other part of this Bond Resolution, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Bond Resolution.

**Section 1408. Governing Law.** This Bond Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1409. Effective Date.**
This Bond Resolution shall take effect and be in full force from and after its adoption by the governing body of the Issuer.

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**ADOPTED** by the City Council of the City of Wichita, Kansas, on July 15, 2014.

(SEAL)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

**CERTIFICATE**

I, the undersigned, hereby certify that the above and foregoing is a true and correct copy of the Resolution No. 14-[___] (the "Bond Resolution") of the City of Wichita, Kansas, adopted by the Governing Body on July 15, 2014, as the same appears of record in my office, and that the Bond Resolution has not been modified, amended or repealed and is in full force and effect as of this date.

DATED: July 15, 2014.

_____
Karen Sublett, City Clerk

JLN\600809.075\BASICDOCS

*EXHIBIT A*
**(FORM OF SERIES 2014A BONDS)**

**REGISTERED NUMBER ___** **REGISTERED $_____**

**Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York Corporation ("DTC"), to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.**

**UNITED STATES OF AMERICA**
**STATE OF KANSAS**
**COUNTY OF SEDGWICK**
**CITY OF WICHITA**
**WATER AND SEWER UTILITY REFUNDING REVENUE BOND**
**SERIES 2014A**

| **Interest Rate:** | **Maturity Date:** | **Dated Date: August 1, 2014** | **CUSIP:** |
|---|---|---|---|

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

**KNOW ALL PERSONS BY THESE PRESENTS**: That the City of Wichita, in the County of Sedgwick, State of Kansas (the "Issuer"), for value received, hereby acknowledges itself to be indebted and promises to pay to the Registered Owner shown above, or registered assigns, but solely from the source and in the manner herein specified, the Principal Amount shown above on the Maturity Date shown above, unless called for redemption prior to said Maturity Date, and to pay interest thereon at the Interest Rate per annum shown above (computed on the basis of a 360-day year of twelve 30-day months), from the Dated Date shown above, or from the most recent date to which interest has been paid or duly provided for, payable semiannually on April 1 and October 1 of each year, commencing April 1, 2015 (the "Interest Payment Dates"), until the Principal Amount has been paid.

**Method and Place of Payment**. The principal or redemption price of this Series 2014A Bond shall be paid at maturity or upon earlier redemption to the person in whose name this Series 2014A Bond is registered at the maturity or redemption date thereof, upon presentation and surrender of this Series 2014A Bond at the principal office of the Treasurer of the State of Kansas, Topeka, Kansas (the "Paying Agent" and "Bond Registrar"). The interest payable on this Series 2014A Bond on any Interest Payment Date shall be paid to the person in whose name this Series 2014A Bond is registered on the registration books maintained by the Bond Registrar at the close of business on the Record Date(s) for such interest, which shall be the 15th day (whether or not a business day) of the calendar month next preceding the

Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Registered Owner or, (b) in the case of an interest payment to any Registered Owner of $500,000 or more in aggregate principal amount of Series 2014A Bonds, by electronic transfer to such Registered Owner upon written notice given to the Bond Registrar by such Registered Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Registered Owner wishes to have such transfer directed. The principal or redemption price of and interest on the Series 2014A Bonds shall be payable in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. Interest not punctually paid will be paid in the manner established in the within defined Bond Resolution.

**Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the hereinafter defined Bond Resolution.

**ADDITIONAL PROVISIONS OF THIS SERIES 2014A BOND ARE CONTINUED ON THE REVERSE HEREOF AND SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH AT THIS PLACE.**

**Authentication**. This Series 2014A Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the hereinafter defined Bond Resolution until the Certificate of Authentication and Registration hereon shall have been lawfully executed by the Bond Registrar.

**IT IS HEREBY DECLARED AND CERTIFIED** that all acts, conditions, and things required to be done and to exist precedent to and in the issuance of this Series 2014A Bond have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas, that the total indebtedness of the Issuer, including this series of bonds, does not exceed any constitutional or statutory limitation, and that provision has been duly made for the collection and segregation of the Gross Revenues of the Water and Sewer Utility (the "Utility") and for the application of the same as provided in the hereinafter defined Bond Resolution.

**IN WITNESS WHEREOF**, the Issuer has caused this Series 2014A Bond to be executed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its Clerk, and its seal to be affixed hereto or imprinted hereon.

**CITY OF WICHITA, KANSAS**

(Facsimile Seal) _____(facsimile)_____
Mayor

ATTEST:

By _____(facsimile)_____
Clerk

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Series 2014A Bond is one of a series of Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, of the City of Wichita, Kansas, described in the within-mentioned Bond Resolution.

Registration Date _____

Office of the State Treasurer,
Topeka, Kansas,
as Bond Registrar and Paying Agent

By _____

Registration Number: 0709-087-080114-[___]

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**(FORM OF REVERSE SIDE OF BOND)**

**ADDITIONAL PROVISIONS**

**Authorization of Series 2014A Bonds**. This Series 2014A Bond is one of an authorized series of bonds of the Issuer designated "Water and Sewer Utility Refunding Revenue Bonds, Series 2014A," aggregating the principal amount of $43,105,000* (the "Series 2014A Bonds") issued for the purposes set forth in the Ordinance of the Issuer authorizing the issuance of the Series 2014A Bonds and the Resolution of the Issuer prescribing the form and details of the Series 2014A Bonds (collectively the "Bond Resolution"). The Series 2014A Bonds are issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and laws of the State of Kansas, including K.S.A. 10-116a, K.S.A. 10-620 *et seq*. and K.S.A. 10-1201 *et seq*., as amended by Charter Ordinance No. 211, all as amended, and all other provisions of the laws of the State of Kansas applicable thereto.

**Special Obligations**. The Series 2014A Bonds are special obligations of the Issuer payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the taxing power of the Issuer is not pledged to the payment of the Series 2014A Bonds either as to principal or interest. The Series 2014A Bonds shall not be or constitute a general obligation of the Issuer, nor shall they constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provision, limitation or restriction. The Series 2014A Bonds stand on a parity and are equally and ratably secured with respect to the payment of principal and interest from the Net Revenues and in all other respects with to the Outstanding Parity Bonds of the Issuer and any Parity Indebtedness to be issued. ***Under the conditions set forth in the Bond Resolution, the Issuer has the right to issue additional Utility Indebtedness payable from the same source and secured by the Net Revenues on a parity with said Net Revenues; provided, however, that such additional Utility Indebtedness may be so issued only in accordance with and subject to the covenants, conditions and restrictions relating thereto set forth in the Bond Resolution.***

The Issuer hereby covenants and agrees with the Registered Owner of this Series 2014A Bond that it will keep and perform all covenants and agreements contained in the Bond Resolution, and will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the Utility, as will produce Net Revenues sufficient to pay the costs of operation and maintenance of the Utility, pay the principal of and interest on the Series 2014A Bonds as and when the same become due, and provide reasonable and adequate reserve funds. Reference is made to the Bond Resolution for a description of the covenants and agreements made by the Issuer with respect to the collection, segregation

and application of the Revenues, the nature and extent of the security for the Series 2014A Bonds, the rights, duties and obligations of the Issuer with respect thereto, and the rights of the Registered Owners thereof.

**Redemption Prior to Maturity.** The Series 2014A Bonds are subject to redemption prior to maturity, as follows:

***Optional Redemption***. At the option of the Issuer, the Series 2014A Bonds maturing on October 1, in the years 2025 and thereafter will be subject to redemption and payment prior to maturity on October 1, 2024, or thereafter, as a whole or in part (selection of maturities and the amount of Series 2014A Bonds of each maturity to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the redemption price of 100% (expressed as a percentage of the principal amount), plus accrued interest to the date of redemption.

[***Mandatory Redemption***. Each of the Series 2014A Bonds maturing on October 1, [2030] [in the years [_____] (the "Term Bonds") shall also be subject to mandatory redemption and payment prior to maturity, pursuant to the redemption schedule set forth in the Bond Resolution at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest thereon to the Redemption Date.]

***Redemption Denominations***. Whenever the Bond Registrar is to select Series 2014A Bonds for the purpose of redemption, it shall, in the case of Series 2014A Bonds in denominations greater than a minimum Authorized Denomination, if less than all of the Series 2014A Bonds then Outstanding are to be called for redemption, treat each minimum Authorized Denomination of face value of each such Series 2014A Bond as though it were a separate Series 2014A Bond in the denomination of a minimum Authorized Denomination.

***Notice of Redemption***. Notice of redemption, unless waived, shall be given by the Issuer to the Purchaser of the Series 2014A Bonds and to the Bond Registrar in accordance with the Bond Resolution. The Issuer shall cause the Bond Registrar to notify each Registered Owner at the address maintained on the Bond Register, such notice to be given by mailing an official notice of redemption by first class mail at least 30 days prior to the redemption date. Notice of redemption having been given as aforesaid, the Series 2014A Bonds or portions of Series 2014A Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer defaults in the payment of the redemption price) such Series 2014A Bonds or portions of Series 2014A Bonds shall cease to bear interest.

**Book-Entry System**. The Series 2014A Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Bond Resolution. One certificate with respect to each date on which the Series 2014A Bonds are stated to mature or with respect to each form of Series 2014A Bonds, registered in the nominee name of the Securities Depository, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Series 2014A Bonds by the Securities Depository's participants, beneficial ownership of the Series 2014A Bonds in Authorized Denominations being evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Issuer and the Bond Registrar will recognize the Securities Depository nominee, while the Registered Owner of this Series 2014A Bond, as the owner of this Series 2014A Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on, this Series 2014A Bond, (ii) notices and (iii) voting. Transfer of principal, interest and any redemption premium payments to participants of the Securities

Depository, and transfer of principal, interest and any redemption premium payments to Beneficial Owners of the Series 2014A Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such Beneficial Owners. The Issuer and the Bond Registrar will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the Owner of this Series 2014A Bond, notwithstanding the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on this Series 2014A Bond shall be made in accordance with existing arrangements among the Issuer, the Bond Registrar and the Securities Depository.

**Transfer and Exchange**. **EXCEPT AS OTHERWISE PROVIDED IN THE BOND RESOLUTION, THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.** This Series 2014A Bond may be transferred or exchanged, as provided in the Bond Resolution, only on the Bond Register kept for that purpose at the principal office of the Bond Registrar, upon surrender of this Series 2014A Bond together with a written instrument of transfer or authorization for exchange satisfactory to the Bond Registrar duly executed by the Registered Owner or the Registered Owner's duly authorized agent, and thereupon a new Series 2014A Bond or Series 2014A Bonds in any Authorized Denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Bond Resolution and upon payment of the charges therein prescribed. The Issuer shall pay all costs incurred in connection with the issuance, payment and initial registration of the Series 2014A Bonds and the cost of a reasonable supply of bond blanks. The Issuer and the Paying Agent may deem and treat the person in whose name this Series 2014A Bond is registered on the Bond Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes. The Series 2014A Bonds are issued in fully registered form in Authorized Denominations.

---

## LEGAL OPINION

The following is a true and correct copy of the approving legal opinion of Gilmore & Bell, P.C., Bond Counsel, which was dated and issued as of the date of original issuance and delivery of such Series 2014A Bonds:

**GILMORE & BELL, P.C.**
Attorneys at Law
100 N. Main Suite 800
Wichita, Kansas 67202

(PRINTED LEGAL OPINION)

---

## BOND ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer to

_____

(Name and Address)

_____
(Social Security or Taxpayer Identification No.)

the Series 2014A Bond to which this assignment is affixed in the outstanding principal amount of $_____, standing in the name of the undersigned on the books of the Bond Registrar. The undersigned do(es) hereby irrevocably constitute and appoint _____ as agent to transfer said Series 2014A Bond on the books of said Bond Registrar with full power of substitution in the premises.

Dated _____

_____
Name

_____
Social Security or
Taxpayer Identification No.

_____
Signature (Sign here exactly as name(s)
appear on the face of Certificate)

Signature guarantee:

By _____

---

**CERTIFICATE OF CLERK**

STATE OF KANSAS )
) SS.
COUNTY OF SEDGWICK )

The undersigned, Clerk of the City of Wichita, Kansas, does hereby certify that the within Series 2014A Bond has been duly registered in my office according to law as of August 1, 2014.

WITNESS my hand and official seal.

(Facsimile Seal) _____(facsimile)_____
Clerk

---

**CERTIFICATE OF STATE TREASURER**

OFFICE OF THE TREASURER, STATE OF KANSAS

RON ESTES, Treasurer of the State of Kansas, does hereby certify that a transcript of the proceedings leading up to the issuance of this Series 2014A Bond has been filed in the office of the State Treasurer, and that this Series 2014A Bond was registered in such office according to law on _____.

WITNESS my hand and official seal.

(Facsimile Seal) By: _____(facsimile)_____
Treasurer of the State of Kansas

Gilmore & Bell, P.C.
06/20/2014

**REQUEST FOR DECLARATION OF EMERGENCY**

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final passage on the date of its introduction, to wit, July 15, 2014, of an ordinance entitled:

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REFUNDING REVENUE BONDS, SERIES 2014A, OF THE CITY OF WICHITA, KANSAS, FOR THE PURPOSE OF PROVIDING FUNDS TO REFUND A PORTION OF THE CITY'S OUTSTANDING WATER AND SEWER UTILITY SYSTEM REVENUE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

The general nature of such public emergency is due to bond market expectations that the authorization of the issuance of the Series 2014A Bonds occur on the same date bids are received and to enable the City to deliver the Series 2014A Bonds authorized by said Ordinance on August 1, 2014.

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

**EXECUTED** at Wichita, Kansas on July 15, 2014.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM**:

_____
Gary Rebenstorf, City Attorney

JLN\600809.075\BASICDOCS (07-03-14)

Gilmore & Bell, P.C.
06/20/2014

---

**ORDINANCE NO. 49-[___]**

**OF**

**THE CITY OF WICHITA, KANSAS**

**PASSED**

**JULY 15, 2014**

---

**WATER AND SEWER UTILITY REFUNDING REVENUE BONDS**
**SERIES 2014A**

---

JLN\600809.075\BASICDOCS (07-03-14)

**ORDINANCE NO. 49-[___]**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REFUNDING REVENUE BONDS, SERIES 2014A, OF THE CITY OF WICHITA, KANSAS, FOR THE PURPOSE OF PROVIDING FUNDS TO REFUND A PORTION OF THE CITY'S OUTSTANDING WATER AND SEWER UTILITY SYSTEM REVENUE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

---

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

**WHEREAS**, the City Council (the "Governing Body") of the City has heretofore by Ordinance No. 39-888, adopted May 26, 1987, and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility" (the "Utility"); and

**WHEREAS**, the City is authorized under the provisions of the Act, to issue and sell revenue bonds for the purpose of paying all or part of the cost of the acquisition, construction, reconstruction, alteration, repair, improvement, extension or enlargement of the Utility, provided that the principal of and interest on such revenue bonds shall be payable solely from the Net Revenues derived by the City from the operation of the Utility; and

**WHEREAS**, the City heretofore issued and has Outstanding several series of revenue bonds payable from the net revenues of the Utility and is authorized by K.S.A. 10-116a to issue refunding revenue bonds of the City for the purpose of refunding a portion of said revenue bonds hereinafter described (collectively, the "Refunding Bonds"); and

**WHEREAS**, in order to achieve interest cost savings through early redemption of the Refunded Bonds, to reduce debt service requirements of the City for certain years and to provide an orderly plan of finance for the City, it has become desirable and in the best interest of the City and the Utility to refund the Refunded Bonds; and

**WHEREAS**, the Governing Body hereby finds and determines that each and all of the conditions precedent to the issuance of additional revenue bonds on a parity with and co-equal in priority and lien to the existing revenue bond indebtedness of the Utility have, or can and will be satisfied prior to or upon the issuance of such additional revenue bonds to refund the Refunded Bonds; and

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

**Section 1. Definitions of Words and Terms**. In addition to words and terms defined elsewhere herein, the following words and terms in this Ordinance shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural

and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**"Act"** means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, specifically including K.S.A. 10-116a, and K.S.A. 10-620 *et seq*. and K.S.A. 10-1201 *et seq*., as amended by Charter Ordinance No. 211, all as amended and supplemented from time to time.

**"Additional Bonds"** means any bonds secured by the Revenues hereafter issued pursuant to the Bond Resolution.

**"Additional Indebtedness"** means, collectively, Additional Bonds and Additional Obligations.

**"Additional Obligations"** means any leases or other obligations of the Issuer payable from the Revenues, other than the Bonds.

**"Bond Reserve Account"** means the Water and Sewer Utility Bond Service Reserve Account.

**"Bond Resolution"** means collectively the Outstanding Parity Bond Resolutions, the Series 2014A Bond Resolution and any supplemental resolution authorizing any Additional Indebtedness.

**"Bonds"** means, collectively, Outstanding Parity Bonds, the Series 2014A Bonds and any Additional Bonds.

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

**"Clerk"** means the duly appointed and acting Clerk of the City or, in the Clerk's absence, the duly appointed Deputy, Assistant or Acting Clerk.

**"Current Expenses"** means, as applied to either component of the Utility, the Issuer's reasonable and necessary current expenses of operation, repair and maintenance, and shall include, without limiting the generality of the foregoing, (a) all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, (b) all administrative expenses, (c) any reasonable payments to pension or retirement funds properly chargeable to each component of the Utility, (d) insurance premiums, (e) engineering expenses relating to operation, repair and maintenance, (f) legal expenses, (g) any lawful fiscal agency commissions and expenses in connection with the payment of the principal of and the interest and any redemption premium on Outstanding Bonds, (h) any taxes which may be lawfully imposed on either component of the Utility or the income therefrom and reserves for such taxes, (i) the expenses of collecting rates, fees and charges for the use of and for the services furnished or to be furnished by the Utility, (j) if required by law, the payment of the principal of and the interest on outstanding bonds and other obligations heretofore issued by the Issuer or by improvement districts heretofore annexed by the City to pay the cost of any portion of the Utility to the extent that the special assessments and taxes pledged for the payment of such principal and interest shall be insufficient for such purposes and to the extent that such payment shall not be made from the Improvement Account, and (k) any other expenses required to be paid by the Issuer under the provisions of this Resolution or by law. "Current Expenses" shall ***not*** include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, the Payment to the City, or any deposits or transfers to the credit of the Principal and Interest Account, the Bond Reserve Account, the Depreciation and Replacement Account or the Improvement Account.

**"Depreciation and Replacement Account"** means the Water and Sewer Utility Depreciation and Replacement Account.

**"Fiscal Year** means the twelve month period ending on December 31.

**"Governing Body"** means the duly elected and/or appointed and acting persons comprising the City Council of the Issuer.

**"Gross Revenues"** means all income and revenues derived and collected by the Issuer from the operation of the Utility, including investment and rental income, net proceeds from business interruption insurance and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on Utility Indebtedness, but excluding non-cash contributions capital contributions, any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

**"Improvement Account"** means the Water and Sewer Utility Improvement Account.

**"Issuer"** means the City and any successors or assigns.

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

**"Net Revenues"** means, for the period of determination, the amount of the excess of Gross Revenues deposited to the credit of the Revenue Fund, over the Current Expenses of the respective components of the Utility paid from the Revenue Fund during such period; such amount specifically excluding Debt Service Requirements paid, depreciation, amortization and capital expenditures for improvements to the Utility.

**"Ordinance"** means this Ordinance authorizing the issuance of the Bonds.

**"Outstanding Parity Bonds"** means the Outstanding Series 2000 Bonds, Series 2005B Bonds, Series 2006, Series 2008A Bonds, Series 2009 Bonds, Series 2010 Bonds, Series 2011A Bonds and Series 2012A Bonds.

**"Outstanding Parity Bond Resolution"** means the ordinances and resolutions authorizing the issuance of the Outstanding Parity Bonds.

**"Parity Bonds"** means the Outstanding Parity Bonds, the Series 2014A Bonds, and any Additional Bonds hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Series 2014A Bonds with respect to the Net Revenues.

**"Parity Indebtedness"** means, collectively, the Parity Bonds and Parity Obligations.

**"Parity Obligations"** means any Additional Obligations hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Parity Bonds with respect to the lien on the Net Revenues.

**"Payment to the City"** shall mean the payment to the City's general fund as a payment for operation of the Utility. The amount of the annual Payment to the City shall be governed by the terms of such ordinances of the City which are then in effect with respect to the then outstanding Utility Indebtedness.

**"Refunded Bonds"** means collectively: (a) the Series 2005A Bonds maturing in the years 2014 to 2016, inclusive, in the aggregate principal amount of $14,595,000; and (b) the Series 2005C Bonds maturing in the years 2014 to 2030, inclusive, in the aggregate principal amount of $35,720,000.

**"Series 2000 Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2000, dated June 1, 2000.

**"Series 2005 Bonds"** means, collectively, the Series 2005A Bonds, the Series 2005B Bonds and the Series 2005C Bonds.

**"Series 2005A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2005A, dated May 12, 2005.

**"Series 2005B Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2005B, dated August 17, 2005.

**"Series 2005C Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2005C, dated October 1, 2005.

**"Series 2006 Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2006, dated December 1, 2006.

**"Series 2008A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2008A, dated April 1, 2008.

**"Series 2009 Bonds"** means, collectively, the Series 2009A Bonds and the Series 2009B Bonds.

**"Series 2009A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2009A, dated June 30, 2009.

**"Series 2009B Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), dated June 30, 2009.

**"Series 2010 Bonds"** means, collectively, the Series 2010A Bonds and the Series 2010B Bonds.

**"Series 2010A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2010A, dated October 15, 2010.

**"Series 2010B Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2010B (Taxable Under Federal Law), dated October 15, 2010.

**"Series 2011A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, dated November 17, 2011.

**"Series 2012A Bonds"** mean the Issuer's Water and Sewer Utility Revenue Bonds, Series 2012A, dated May 1, 2012.

**"Series 2014A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, dated August 1, 2014, authorized by this Ordinance.

**"State"** means the State of Kansas.

**"Utility"** shall mean the combined City of Wichita, Kansas Water Utility and Sewer Utility, and any improvements, extensions and enlargements thereto hereafter constructed or acquired.

**"Utility Indebtedness"** means collectively the Bonds and any Additional Obligations which are secured by an interest in, the Gross Revenues.

**Section 2. Authorization of the Series 2014A Bonds**. There shall be issued and hereby are authorized and directed to be issued the Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, of the City in the principal amount of $43,105,000*, for the purpose of providing a portion of the] funds to: (a) refund the Refunded Bonds; and (b) pay costs of issuance of the Series 2014A Bonds.

**Section 3. Security for the Series 2014A Bonds**. The Series 2014A Bonds shall be special obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the City hereby pledges said Net Revenues to the payment of the principal of and interest on the Series 2014A Bonds. The Series 2014A Bonds shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Series 2014A Bonds, either as to principal or interest.

The covenants and agreements of the City contained herein and in the Series 2014A Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2014A Bonds, all of which Series 2014A Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Series 2014A Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Ordinance. The Series 2014A Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Net Revenues with any Parity Indebtedness. The Series 2014A Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Parity Indebtedness; and the Parity Indebtedness shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Series 2014A Bonds.

**Section 4. Terms, Details and Conditions of the Series 2014A Bonds**. The Series 2014A Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Bond Resolution hereafter adopted by the governing body of the City.

**Section 5. Rate Covenant**. The City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the Utility, including all repairs, alterations, extensions, reconstructions, enlargements or improvements thereto hereafter constructed or acquired by the City, as will produce Gross Revenues sufficient to (a) pay Current Expenses; (b) pay the principal of and interest on the Utility Indebtedness as and when the same become due; and (c) provide reasonable and adequate reserves for the payment of the Parity Bonds and the interest thereon and for the protection and benefit of the Utility as provided in this Ordinance and the Bond Resolution. The Bond Resolution may establish requirements in excess of the requirements set forth herein.

**Section 6. Further Authority**. The Mayor, City Manager, Director of Finance, City Clerk and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of

the Ordinance to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 7. Governing Law**. This Ordinance and the Series 2014A Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 8. Effective Date**. This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

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**PASSED** by the City Council of the City of Wichita, Kansas, on July 15, 2014.

(SEAL)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

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**CERTIFICATE**

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on July 15, 2014; that the record of the final vote on its passage is found on page ____ of journal ____; and that the Ordinance or a summary thereof was published in ***The Wichita Eagle*** on July 18, 2014.

DATED: July 18, 2014.

_____

Karen Sublett, City Clerk

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(PUBLISHED IN ***THE WICHITA EAGLE*** ON JULY 18, 2014)

## SUMMARY OF ORDINANCE NO. 49-[__]

On July 15, 2014, the governing body of the City of Wichita, Kansas passed an ordinance entitled:

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REFUNDING REVENUE BONDS, SERIES 2014A, OF THE CITY OF WICHITA, KANSAS, FOR THE PURPOSE OF PROVIDING FUNDS TO REFUND A PORTION OF THE CITY'S OUTSTANDING WATER AND SEWER UTILITY SYSTEM REVENUE BONDS; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

The Series 2014A Bonds approved by the Ordinance are being issued in the principal amount of $43,105,000*, to refund previously issued Water and Sewer Utility Revenue Bonds of the City, and constitute special obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues derived by the City from the operation of the Water and Sewer Utility. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, 13th Floor, City Hall, 455 North Main, Wichita, Kansas 67202-1679. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.wichita.gov.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: July 15, 2014.

_____

Gary E. Rebenstorf, Director of Law
and City Attorney

JLN\600809.075\BASICDOCS

Gilmore & Bell, P.C.
06/20/2014

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**RESOLUTION NO. 14-[___]**

**OF**

**THE CITY OF WICHITA, KANSAS**

**ADOPTED**

**JULY 15, 2014**

**$43,105,000***
**WATER AND SEWER UTILITY REFUNDING REVENUE BONDS**
**SERIES 2014A**

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JLN\600809.075\BASICDOCS (07-03-14)

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**RESOLUTION NO. 14-[___]**

**A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF WATER AND SEWER UTILITY REFUNDING REVENUE BONDS, SERIES 2014A, OF THE CITY OF WICHITA, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 49-[___] OF THE ISSUER; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.**

---

**WHEREAS**, the Issuer has heretofore passed the Ordinance authorizing the issuance of the Series 2014A Bonds; and

**WHEREAS**, the Ordinance authorized the governing body of the Issuer to adopt a resolution prescribing certain details and conditions and to make certain covenants with respect to the issuance of the Series 2014A Bonds; and

**WHEREAS**, in order to provide for the payment of the Refunded Bonds it is desirable to enter into an Escrow Trust Agreement, by and between the Issuer and the Escrow Agent.

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

## ARTICLE I

## DEFINITIONS

**Section 101. Definitions of Words and Terms**. In addition to words and terms defined elsewhere herein and in the Outstanding Parity Bond Resolutions, the following words and terms as used in this Bond Resolution shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**"Act"** means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, specifically including K.S.A. 10-116a, and K.S.A. 10-620 *et seq*. and K.S.A. 10-1201 *et seq*., as amended by Charter Ordinance No. 211, all as amended and supplemented from time to time.

**"Additional Bonds"** means any bonds secured by the Gross Revenues hereafter issued pursuant to the Bond Resolution; provided that any General Obligation Indebtedness shall not constitute Additional Bonds.

**"Additional Obligations"** means any leases or other obligations of the Issuer payable from the Gross Revenues, other than the Bonds.

**"Annual Budget"** means with respect to the Utility, the City's budget of estimated receipts and expenditures on account of all Funds and Accounts created under the provisions of the Bond Resolution, including a budget of Current Expenses, for any Fiscal Year and adopted pursuant to the provisions of ***Section 806*** of the Bond Resolution.

**"Assured Guaranty"** means Assured Guaranty Corp., a Maryland corporation, or any successor thereto.

**"Authorized Denomination"** means $5,000 or any integral multiples thereof.

**"Authorized Investments"** shall mean, as long as the Pre-2008 Bonds are Outstanding, any of the following securities, and to the extent the same are at the time permitted for investment of funds held by the Issuer pursuant to the Bond Resolution:

(a) obligations of any of the following Federal agencies which obligations represent the full faith and credit of the United States of America, including:

- Export - Import Bank
- Farmers Home Administration
- General Services Administration
- U.S. Maritime Administration
- Small Business Administration
- Government National Mortgage Association (GNMA)
- U.S. Department of Housing & Urban Development (PHA's)
- Federal Housing Administration;

(b) bonds, notes or other evidences of indebtedness rated *"AA "* by Standard & Poor's, and *"Aa2"* by Moody's issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;

(c) investments in shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Horne Loan Mortgage Corporation;

(d) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of the State or of any agency, instrumentality or local governmental unit of the State which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (1) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P and Moody's, or any successors thereto; or (2) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (1) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the

maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;

(e) investment agreements with or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or Standard &Poor's

(f) Repurchase agreements secured by direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation; and

(g) Receipts evidencing ownership interests in securities or portions thereof in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation.

***and thereafter*** shall mean the investments hereinafter described, provided, however, no moneys or funds shall be invested in a Derivative:

(a) investments authorized by K.S.A. 12-1675 and amendments thereto;

(b) the municipal investment pool established pursuant to K.S.A. 12-1677a, and amendments thereto;

(c) direct obligations of the United States Government or any agency thereof;

(d) the Issuer's temporary notes issued pursuant to K.S.A. 10-123 and amendments thereto;

(e) interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the Issuer is located which are insured by the Federal Deposit Insurance Corporation or collateralized by securities described in (c);

(f) obligations of the federal national mortgage association, federal home loan banks or the federal home loan mortgage corporation;

(g) repurchase agreements for securities described in (c) or (f);

(h) investment agreements or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or Standard & Poor's;

(i) investments and shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in (c) or (f);

(j) receipts evidencing ownership interests in securities or portions thereof described in (c) or (f);

(k) municipal bonds or other obligations issued by any municipality of the State as defined in K.S.A. 10-1101 which are general obligations of the municipality issuing the same;

(l) bonds of any municipality of the State as defined in K.S.A. 10-1101 which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of securities described in (c) or (f); or

(m) other investment obligations authorized by the laws of the State and approved in writing by the Bond Insurer, all as may be further restricted or modified by amendments to applicable State law.

**"Balloon Indebtedness"** means Long-Term Indebtedness, 25% or more of the original principal amount of which becomes due (either by maturity or mandatory redemption) during any consecutive twelve-month period, if such principal amount becoming due is not required to be amortized below such percentage by mandatory redemption or prepayment prior to such twelve-month period.

**"Beneficial Owner"** of Bonds includes any Owner of Bonds and any other Person who, directly or indirectly has the investment power with respect to any such Bonds.

**"Bond Counsel"** means the firm of Gilmore & Bell, P.C., or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the Issuer.

**"Bond Insurance Policy"** means the municipal bond insurance policy or financial guaranty insurance policy issued by the Bond Insurer concurrently with the delivery of any Utility Indebtedness guaranteeing the scheduled payment when due of the principal of and interest on such Utility Indebtedness.

**"Bond Insurer"** means: (a) FGIC with respect to the Series 2000 Bonds and the Series 2005B14 Bonds; (b) FSA with respect to the Series 2006 Bonds; (c) Assured Guaranty with respect to the Series 2008A Bonds; and (d) with respect to Additional Indebtedness, the entity set forth in the supplemental resolution authorizing the Additional Indebtedness.

**"Bond Payment Date"** means any date on which principal of or interest on any Bond is payable.

**"Bond Register"** means the books for the registration, transfer and exchange of Bonds kept at the office of the Bond Registrar.

**"Bond Registrar"** means: (a) with respect to the Series 2014A Bonds, the State Treasurer, and its successors and assigns; and (b) with respect to Additional Bonds, the entity designated as Bond Registrar in the supplemental resolution authorizing such Additional Bonds.

**"Bond Reserve Account"** means the Water and Sewer Utility Bond Service Reserve Account.

**"Bond Reserve Requirement"** means, collectively, the bond reserve requirement for each series of Outstanding Parity Bonds, the Series 2014A Bond Reserve Requirement and any bond reserve requirement for any subsequent series of Parity Bonds.

**"Bond Resolution"** means collectively the Outstanding Parity Bond Resolutions, the Series 2014A Bond Resolution and any supplemental resolution authorizing any Additional Indebtedness.

**"Bonds"** means, collectively, Outstanding Parity Bonds, the Series 2014A Bonds and any Additional Bonds.

**"Business Day"** means a day other than a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the Legislature of the State and on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its operations.

**"Cede & Co."** means Cede & Co., as nominee of DTC and any successor nominee of DTC.

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

**"City Manager"** means the duly appointed and acting City Manager of the Issuer or, in the Manager's absence, the duly appointed Deputy, Assistant or Acting City Manager of the Issuer.

**"Clerk"** means the duly appointed and/or elected Clerk or, in the Clerk's absence, the duly appointed Deputy Clerk or Acting Clerk of the Issuer.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder by the United States Department of the Treasury.

"**Consultant**" means the Consulting Engineer, the Independent Accountant or an independent consultant qualified and having a favorable reputation for skill and experience in financial affairs selected by the Issuer for the purpose of carrying out the duties imposed on the Consultant by the Bond Resolution.

**"Consulting Engineer"** means an independent engineer or engineering firm or architect or architectural firm, having a favorable reputation for skill and experience in the construction, financing and operation of public utilities, at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Consulting Engineer by the Bond Resolution.

**"Costs of Issuance"** means all costs of issuing any series of Bonds, including all publication, printing, signing and mailing expenses in connection therewith, registration fees, financial advisory fees, all legal fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with compliance with the Code, all expenses incurred in connection with receiving financial ratings on any series of Bonds, and any premiums or expenses incurred in obtaining any credit enhancement.

**"Costs of Issuance Account"** means Costs of Issuance Account for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A.

**"Current Expenses"** means, as applied to either component of the Utility, the Issuer's reasonable and necessary current expenses of operation, repair and maintenance, and shall include, without limiting the generality of the foregoing, (a) all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, (b) all administrative expenses, (c) any reasonable payments to pension or retirement funds properly chargeable to each component of the Utility, (d) insurance premiums, (e) engineering expenses relating to operation, repair and maintenance, (f) legal expenses, (g) any lawful fiscal agency commissions and expenses in connection with the payment of the principal of and the interest and any redemption premium on Outstanding Bonds, (h) any taxes which may be lawfully imposed on either component of the Utility or the income therefrom and reserves for such taxes, (i) the expenses of collecting rates, fees and charges for the use of and for the services furnished or to be furnished by the Utility, (j) if required by law, the payment of the principal of and the interest on outstanding bonds and other obligations heretofore issued by the Issuer or

by improvement districts heretofore annexed by the City to pay the cost of any portion of the Utility to the extent that the special assessments and taxes pledged for the payment of such principal and interest shall be insufficient for such purposes and to the extent that such payment shall not be made from the Improvement Account, and (k) any other expenses required to be paid by the Issuer under the provisions of this Resolution or by law. "Current Expenses" shall ***not*** include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, the Payment to the City, or any deposits or transfers to the credit of the Principal and Interest Account, the Bond Reserve Account, the Depreciation and Replacement Account or the Improvement Account.

**"Dated Date"** means, with respect to the Series 2014A Bonds, August 1, 2014.

**"Debt Service Coverage Ratio"** means, for any Fiscal Year: (a) with respect to the rate covenants, the ratio determined by dividing (i) a numerator equal to the Net Revenues Available for Debt Service for such Fiscal Year by (ii) a denominator equal to the Debt Service Requirements for such Fiscal Year; and (b) with respect to Additional Indebtedness, the ratio determined by dividing (i) a numerator equal to the average Net Revenues Available for Debt Service for the two (2) prior Fiscal Years by (ii) a denominator equal to the Maximum Annual Debt Service; provided that with respect to Additional Indebtedness that are proposed to be Parity Indebtedness, Debt Service Requirements on Subordinate Lien Obligations and General Obligation Indebtedness shall be disregarded.

**"Debt Service Requirements"** means the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on the Bonds for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company located in the State and having full trust powers.

**"Defaulted Interest"** means interest on any Bond which is payable but not paid on any Interest Payment Date.

**"Defeasance Obligations"** means, so long as the Pre-2008 Bonds are Outstanding, any of the following obligations:

(a) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized by with obligations described in the following (b); or

(b) Direct obligations (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America;

***and thereafter*** shall mean:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (i) not subject to redemption prior to maturity or (ii) the trustee for such obligations has been given irrevocable instructions concerning their

calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(3) such cash and the principal of and interest on such United States Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(4) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(5) such cash and United States Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(6) such obligations are rated in a rating category by Moody's or Standard & Poor's that is no lower than the rating category then assigned by that Rating Agency to United States Government Obligations.

**"Depreciation and Replacement Account"** means the Water and Sewer Utility Depreciation and Replacement Account.

**"Depreciation and Replacement Account Requirement"** means an amount equal fifteen percent (15%) of the Operating Revenues of the Utility for the preceding Fiscal Year

**"Derivative"** means any investment instrument whose market price is derived from the fluctuating value of an underlying asset, index, currency, futures contract, including futures, options and collateralized mortgage obligations.

**"Director of Finance"** means the duly appointed and acting Director of Finance of the Issuer or, in the Director's absence, the duly appointed Deputy, Assistant or Acting Director of Finance of the Issuer.

**"Disclosure Undertaking"** means the Issuer's Omnibus Continuing Disclosure Undertaking for Utility Indebtedness relating to certain obligations contained in the SEC Rule.

**"Discount Indebtedness"** means Long-Term Indebtedness that is originally sold at a price (excluding accrued interest, but without deduction of any underwriters' discount) of less than 75% of the maturity amount including the amount of principal and interest to accrete at maturity of such Long-Term Indebtedness.

**"DTC"** means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors and assigns, including any successor securities depository duly appointed.

**"Escrow Agent"** means Security Bank of Kansas City, Wichita, Kansas, and its successors and assigns.

**"Escrow Agreement"** means the Escrow Trust Agreement, dated as of August 1, 2014, between the Issuer and the Escrow Agent.

**"Escrow Fund"** means the Escrow Fund for Refunded Bonds.

**"Escrowed Securities"** means the securities that satisfy the requirement of Defeasance Obligations as set forth in the Refunded Bonds Resolution, as described in the Escrow Agreement.

**"Event of Default"** means each of the following occurrences or events:

(a) Payment of the principal and of the redemption premium, if any, of any of the Utility Indebtedness shall not be made when the same shall become due and payable, either at Stated Maturity or by proceedings for redemption or otherwise; or

(b) Payment of any installment of interest on any Utility Indebtedness shall not be made when the same shall become due; or

(c) The Issuer shall for any reason be rendered incapable of fulfilling its obligations hereunder; or

(d) Any substantial part of the Utility shall be destroyed or damaged to the extent of impairing its efficient operation or adversely affecting its Gross Revenues and the Issuer shall not within a reasonable time commence the repair, replacement or reconstruction thereof and proceed thereafter to complete with reasonable dispatch the repair, replacement or reconstruction thereof; or

(e) Final judgment for the payment of money shall be rendered against the Issuer as a result of the ownership, control or operation of the Utility and any such judgment shall not be discharged within one hundred twenty (120) days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to stay the execution of or levy under such judgment, order, decree or process or the enforcement thereof; or

(f) An order or decree shall be entered, with the consent or acquiescence of the Issuer, appointing a receiver or receivers of the Utility or any part thereof or of the Gross Revenues thereof, or if such order or decree, having been entered without the consent or acquiescence of the Issuer, shall not be vacated or discharged or stayed on appeal within sixty (60) days after the entry thereof; or

(g) Any proceeding shall be instituted, with the consent or acquiescence of the Issuer, for the purpose of effecting a composition between the Issuer and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the Net Revenues Available for Debt Service; or

(h) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in Utility Indebtedness or in the Bond Resolution (other than the covenants relating to continuing disclosure) on the part of the Issuer to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Issuer by the Owner of any of Utility Indebtedness then Outstanding; or

In determining whether an Event of Default shall have occurred with respect to the due and prompt payment of the Debt Service Requirements on any Insured Bonds no effect shall be given to payments made under

any Bond Insurance Policy.

**"Federal Tax Certificate"** means the Issuer's Federal Tax Certificate dated as of the Issue Date, as the same may be amended or supplemented in accordance with the provisions thereof.

**"FGIC"** means Financial Guaranty Insurance Company, or any successor thereto.

**"Fiscal Year"** means the twelve month period ending on December 31.

**"FSA"** means Financial Security Assurance Inc., a New York stock insurance company, or any successor thereto.

**"Funds and Accounts"** means funds and accounts created pursuant to or referred to in the Bond Resolution.

**"General Obligation Indebtedness"** means any of the Issuer's general obligation bonds issued for improvements to the Utility.

**"Governing Body"** means the duly elected and/or appointed and acting persons comprising the City Council of the Issuer.

**"Gross Revenues"** means all income and revenues derived and collected by the Issuer from the operation of the Utility, including investment and rental income, net proceeds from business interruption insurance and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on Utility Indebtedness, but excluding non-cash contributions capital contributions, any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

**"Improvement Account"** means the Water and Sewer Utility Improvement Account.

**"Independent Accountant"** means an independent certified public accountant or firm of independent certified public accountants at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Independent Accountant by the Bond Resolution.

**"Index Rate"** means the rate of interest set forth in *The Bond Buyer* Revenue Bond Index (or, in the event that *The Bond Buyer* does not compile such index or ceases publication, another comparable publication recognized in the municipal bond market) published for the week immediately preceding the date of determination.

**"Insured Bonds"** means any Utility Indebtedness of which the scheduled payment of principal and interest is guaranteed by a Bond Insurance Policy.

**"Interest Payment Date(s)"** means: (a) with respect to the Series 2014A Bonds, the Stated Maturity of an installment of interest on the Series 2014A Bonds which shall be April 1 and October 1 of each year, commencing April 1, 2015; (b) with respect to the Outstanding Parity Bonds, the Stated Maturity of an installment of interest on such Outstanding Parity Bond Resolutions, and (c) with respect to Additional Indebtedness, the Stated Maturity of an installment of interest on such Additional Indebtedness, as set forth in the supplemental resolution authorizing such Additional Indebtedness.

**"Interim Indebtedness"** means Utility Indebtedness having a term not less than one year, and not in excess of five years, incurred or assumed in anticipation of being refinanced or refunded with Long-Term Indebtedness.

**"Issue Date"** means the date when the Issuer delivers any series of Utility Indebtedness to the Purchaser in exchange for the Purchase Price.

**"Issuer"** means the City and any successors or assigns.

**"Long-Term Indebtedness"** means Utility Indebtedness having an original stated maturity or term greater than five years, or renewable or extendible at the option of the debtor for a period greater than one year from the date of original issuance or incurrence thereof.

**"Maturity"** when used with respect to any Utility Indebtedness means the date on which the principal of such Utility Indebtedness becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

**"Mayor"** means the duly elected and acting Mayor, or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the Issuer.

**"Maximum Annual Debt Service"** means the maximum amount of Debt Service Requirements as computed for the then current or any future Fiscal Year; provided that the Debt Service Requirements in the final Stated Maturity of any series of Utility Indebtedness shall be reduced by the value of cash and Permitted Investments on deposit in the Bond Reserve Subaccount for such series, so long as the Bond Reserve Subaccount for such Utility Indebtedness is maintained at the Bond Reserve Requirement.

**"Moody's"** means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

**"Net Proceeds"** shall mean any insurance proceeds or condemnation awards, paid with respect to the Utility, remaining after the payment therefrom of all expenses incurred in the collection thereof.

**"Net Revenues"** means, for the period of determination, the amount of the excess of Gross Revenues deposited to the credit of the Revenue Fund, over the Current Expenses of the respective components of the Utility paid from the Revenue Fund during such period; such amount specifically excluding Debt Service Requirements paid, depreciation, amortization and capital expenditures for improvements to the Utility.

**"Net Revenues Available for Debt Service"** means the Net Revenues.

**"Notice Address"** means with respect to the following entities:

(a) To the Issuer at:

Department of Finance
12th Floor, City Hall
455 North Main
Wichita, Kansas 67202-1679
Fax: (316) 858-7520

(b) To the Paying Agent at:

**Series 2014A Bonds:**

State Treasurer of the State of Kansas
Landon Office Building
900 Southwest Jackson, Suite 201
Topeka, Kansas 66612-1235
Fax: (785) 296-6976

**Additional Bonds:**

The address set forth in the supplemental resolution authorizing such Additional Bonds.

(c) To the Purchaser:

**Series 2014A Bonds:**

[Purchaser Name]
[Purchaser Address]
[City, State]
Fax: [Fax]

**Additional Bonds:**

The address set forth in the supplemental resolution authorizing such Additional Bonds.

(d) To the Rating Agency(ies):

Moody's Municipal Rating Desk
7 World Trade Center
250 Greenwich Street
23rd Floor
New York, New York 10007

Standard & Poor's Ratings Services, a division of
McGraw Hill Financial Inc.
55 Water Street, 38th Floor
New York, New York 10004

(e) To the Escrow Agent at:

Security Bank of Kansas City
Corporate Trust Department
200 W. Douglas, Suite 612
Wichita, Kansas 67202
Fax: (316) [_____]

with a copy to:

Security Bank of Kansas City
Corporate Trust Department
701 Minnesota Avenue
Suite 206, P.O. Box 171297
Kansas City, Kansas 66117
Fax: (913) 279-7960

(f) To the Bond Insurer:

Assured Guaranty Corp.
1325 Avenue of the Americas
New York, New York 10019
Fax: (212) 581-3266

Financial Guaranty Insurance Company
125 Park Avenue
New York, NY 10017
Telephone: 212-312-3000
Fax: [_____]

Financial Security Assurance Inc.
31 West 52nd Street
New York, New York 10019
Telephone: (212) 826-0100; Telecopier (212) 339-3529.

or such other address as is furnished in writing to the other parties referenced herein.

**"Notice Representative"** means:

(a) With respect to the Issuer, the Clerk.

(b) With respect to the Bond Registrar and Paying Agent, the Director of Bond Services.

(c) With respect to any Purchaser, the manager of its Municipal Bond Department.

(d) With respect to any Rating Agency, any Vice President thereof.

(e) With respect to the Escrow Agent, the Manager of the Corporate Trust Department.

(f) With respect to: (1) Assured Guaranty, its General Counsel with a copy to its Risk Management Department-Public Finance Surveillance; (b) FGIC, its General Counsel with a copy to the Surveillance Department; and (c) FSA, its General Counsel with a copy to Managing Director -- Surveillance -- Re: Policy No. [_____].

**"Official Statement"** means Issuer's Official Statement relating to the Series 2014A Bonds.

**"Operating Revenues"** shall mean the Gross Revenues, less investment income and less Current Expenses.

**"Ordinance"** means Ordinance No. 49-[___] of the Issuer authorizing the issuance of the Series 2014A Bonds, as amended from time to time.

**"Outstanding"** means, when used with reference to Bonds, as of a particular date of determination, all Bonds theretofore, authenticated and delivered, except the following Bonds:

**"Outstanding"** means, when used with reference to any Utility Indebtedness, as of a particular date of determination, all Utility Indebtedness theretofore, authenticated and delivered, except the following Utility Indebtedness:

(a) Utility Indebtedness theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to the Bond Resolution;

(b) Utility Indebtedness deemed to be paid in accordance with the provisions of the Bond Resolution;

(c) Utility Indebtedness in exchange for or in lieu of which other Utility Indebtedness has been authenticated and delivered under the Bond Resolution; and

(d) Utility Indebtedness, the principal or interest of which has been paid by the Bond Insurer.

**"Outstanding Parity Bond Resolution"** means the ordinances and resolutions authorizing the issuance of the Outstanding Parity Bonds.

**"Outstanding Parity Bonds"** means the Outstanding Series 2000 Bonds, Series 2005B Bonds, Series 2006, Series 2008A Bonds, Series 2009 Bonds, Series 2010 Bonds, Series 2011A Bonds and Series 2012A Bonds.

**"Owner"** when used with respect to any Utility Indebtedness means the Person in whose name such Utility Indebtedness is registered on the Bond Register. Whenever consent of the Owners is required pursuant to the terms of the Bond Resolution, and the Owner of the Utility Indebtedness, as set forth on the Bond Register, is Cede & Co., the term Owner shall be deemed to be the Beneficial Owner of the Utility Indebtedness.

**"Parity Bonds"** means the Outstanding Parity Bonds, the Series 2014A Bonds, and any Additional Bonds hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Series 2014A Bonds with respect to the Net Revenues.

**"Parity Indebtedness"** means, collectively, the Parity Bonds and Parity Obligations.

**"Parity Obligations"** means any Additional Obligations hereafter issued or incurred pursuant to the Bond Resolution and standing on a parity and equality with the Parity Bonds with respect to the lien on the Net Revenues.

**"Parity Resolution"** means, collectively, the Outstanding Parity Bond Resolution, the Series 2014 Bond Resolution and the ordinances and/or resolutions under which any Additional Bonds which constitute Parity Bonds are hereafter issued.

**"Participants"** means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**"Paying Agent"** means: (a) with respect to the Outstanding Parity Bonds and the Series 2014A Bonds, the State Treasurer, and its successors and assigns; and (b) with respect to Additional Indebtedness, the entity designated as Paying Agent in the supplemental resolution authorizing such Additional Indebtedness.

**"Payment to the City"** shall mean the payment to the City's general fund as a payment for operation of the Utility. The amount of the annual Payment to the City shall be governed by the terms of such ordinances of the City which are then in effect with respect to the then outstanding Utility Indebtedness.

**"Person"** means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

**"Pre-2008 Bonds"** means, collectively, the Series 2000 Bonds, the Series 2005B Bonds and the Series 2006 Bonds.

**"Pre-2009 Bonds"** means, collectively, the Pre-2008 Bonds and the Series 2008A Bonds.

**"Pre-2010 Bonds"** means, collectively, the Pre-2009 Bonds and the Series 2009 Bonds.

**"Pre-2014 Bonds"** means, collectively, the Pre-2009 Bonds, the Series 2009 Bonds, the Series 2010 Bonds, the Series 2011A Bonds and the Series 2012A Bonds.

**"Principal and Interest Account"** shall mean the Water and Sewer Utility Principal and Interest Account.

**"Purchase Price"** means, with respect to the Series 2014A Bonds, 100% of the principal amount of the Series 2014A Bonds plus accrued interest to the date of delivery[, plus a premium of $_____].

**"Purchaser**" means, with respect to the Series 2014A Bonds, [Purchaser Name], [City, State], the original purchaser of the Series 2014A Bonds, and any successor and assigns.

**"Put Indebtedness"** means Long-Term Indebtedness which is (a) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, at the option of the holder thereof, prior to its stated maturity date, or (b) payable or required to be purchased or redeemed from the holder by or on behalf of the underlying obligor, other than at the option of the holder, prior to its stated maturity date, other than pursuant to any mandatory sinking fund or other similar fund, or other than by reason of acceleration upon the occurrence of an Event of Default under this Bond Resolution.

**"Rating Agency"** means any company, agency or entity that provides financial ratings for any Utility Indebtedness.

**"Rebate Fund"** means the Rebate Fund for Water and Sewer Refunding Revenue Bonds, Series 2014A.

**"Record Dates"** for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date.

**"Redemption Date"** when used with respect to any Utility Indebtedness to be redeemed means the date fixed for the redemption of such Utility Indebtedness pursuant to the terms of the Bond Resolution.

**"Redemption Price"** when used with respect to any Utility Indebtedness to be redeemed means the price at which such Utility Indebtedness is to be redeemed pursuant to the terms of the Bond Resolution, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

**"Refunded Bonds"** means collectively: (a) the Series 2005A Bonds maturing in the years 2014 to 2016, inclusive, in the aggregate principal amount of $14,595,000; and (b) the Series 2005C Bonds maturing in the years 2014 to 2030, inclusive, in the aggregate principal amount of $35,720,000.

**"Refunded Bonds Paying Agent"** means the respective paying agent for each series of the Refunded Bonds as designated in the respective Refunded Bonds Resolution, and any successor or successors at the time acting as paying agent for any of the Refunded Bonds.

**"Refunded Bonds Redemption Date"** means, collectively: (a) October 1, 2014 for the Series 2005A Bonds; and (b) October 1, 2015 for the Series 2005C Bonds.

**"Refunded Bonds Resolution"** means each ordinance and resolution which authorized the Refunded Bonds.

**"Refunding Indebtedness"** means Utility Indebtedness issued for the purpose of refunding any Outstanding Utility Indebtedness.

**"Replacement Bonds"** means Bonds issued to the Beneficial Owners of the Bonds in accordance with ***Section 212*** hereof.

**"Revenue Fund"** means the Water and Sewer Utility Revenue Fund.

**"SEC Rule"** means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

**"Securities Depository"** means, initially, DTC, and its successors and assigns.

**"Series 2000 Bond Resolution"** means the Issuer's Ordinance No. 44-663, which authorized the Series 2000 Bonds.

**"Series 2000 Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2000, dated June 1, 2000.

**"Series 2005 Bonds"** means, collectively, the Series 2005A Bonds, the Series 2005B Bonds and the Series 2005C Bonds.

**"Series 2005A Bond Reserve Subaccount"** means the Bond Reserve Subaccount for the Series 2005A Bonds.

**"Series 2005A Bond Resolution"** means collectively the Issuer's Ordinance No. 46-581 and Resolution No. 05-228, which authorized the Series 2005A Bonds.

**"Series 2005A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2005A, dated May 12, 2005.

**"Series 2005A Principal and Interest Subaccount"** means the Principal and Interest Subaccount for the Series 2005A Bonds.

**"Series 2005B Bond Resolution"** means collectively the Issuer's Ordinance No. 46-634 and Resolution No. 05-406, which authorized the Series 2005B Bonds.

**"Series 2005B Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2005B, dated August 17, 2005.

**"Series 2005C Bond Reserve Subaccount"** means the Bond Reserve Subaccount for the Series 2005C Bonds.

**"Series 2005C Bond Resolution"** means collectively the Issuer's Ordinance No. 46-670 and Resolution No. 05-502, which authorized the Series 2005C Bonds.

**"Series 2005C Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2005C, dated October 1, 2005.

**"Series 2005C Principal and Interest Subaccount"** means the Principal and Interest Subaccount for the Series 2005C Bonds.

**"Series 2006 Bond Resolution"** means collectively the Issuer's Ordinance No. 47-300 and Resolution No. 06-609, which authorized the Series 2006 Bonds.

**"Series 2006 Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2006, dated December 1, 2006.

**"Series 2008A Bond Resolution"** means collectively the Issuer's Ordinance No. 47-866 and Resolution No. 08-170, which authorized the Series 2008A Bonds.

**"Series 2008A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2008A, dated April 1, 2008.

**"Series 2009 Bonds"** means, collectively, the Series 2009A Bonds and the Series 2009B Bonds.

**"Series 2009 Bond Resolution"** means collectively the Issuer's Ordinance No. 48-351 and Resolution No. 09-174, which authorized the Series 2009 Bonds.

**"Series 2009A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2009A, dated June 30, 2009.

**"Series 2009B Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), dated June 30, 2009.

**"Series 2010 Bond Resolution"** means collectively the Issuer's Ordinance No. 48-834 and Resolution No. 10-257, which authorized the Series 2010 Bonds.

**"Series 2010 Bonds"** means, collectively, the Series 2010A Bonds and the Series 2010B Bonds.

**"Series 2010A Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2010A, dated October 15, 2010.

**"Series 2010B Bonds"** means the Issuer's Water and Sewer Utility Revenue Bonds, Series 2010B (Taxable Under Federal Law), dated October 15, 2010.

**"Series 2011A Bond Resolution"** means collectively the Issuer's Ordinance No. 49-148 and Resolution No. 11-260, which authorized the Series 2011A Bonds.

**"Series 2011A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2011A, dated November 17, 2011.

**"Series 2012A Bond Resolution"** means collectively the Issuer's Ordinance No. 49-266 and Resolution No. 12-090 which authorized the Series 2012A Bonds.

**"Series 2012A Bonds"** mean the Issuer's Water and Sewer Utility Revenue Bonds, Series 2012A, dated May 1, 2012.

**"Series 2014A Bond Reserve Requirement"** shall mean a sum equal to greater of the amount of interest which shall become due and payable on the Series 2014A Bonds during the next Fiscal Year (determined in each year) or the maximum amount of interest which shall become due and payable on the Series 2014A Bonds in any subsequent year, except that, in no event shall the amount of the 2014A Bond Reserve Requirement ever exceed the amount which is the lesser of ten percent (10%) of the original principal amount of the Series 2014A Bonds (determined as of the date of issuance of the Series 2014A Bonds), the maximum annual principal and interest requirements on the Series 2014A Bonds (determined as of the date of issuance of the Series 2014A Bonds), or one hundred twenty-five percent (125%) of the average annual debt service on the Series 2014A Bonds (determined as of the date of issuance of the Series 2014A Bonds).

**"Series 2014A Bond Reserve Subaccount"** shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, Bond Reserve Subaccount created within the Bond Reserve Account.

**"Series 2014A Bond Resolution"** means collectively the Issuer's Ordinance and Resolution, which authorized the Series 2014A Bonds.

**"Series 2014A Bonds"** means the Issuer's Water and Sewer Utility Refunding Revenue Bonds, Series 2014, dated August 1, 2014, authorized and issued by the Issuer pursuant to the Ordinance and the Bond Resolution.

**"Series 2014A Costs of Issuance Account"** shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, Costs of Issuance Account created by this Resolution.

**"2014A Principal and Interest Subaccount"** shall mean the Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, Principal and Interest Subaccount created by this Resolution within the Principal and Interest Account.

**"Series 2014A Principal and Interest Subaccount"** means the Principal and Interest Subaccount for the Series 2014A Bonds.

[ **"Series 2014[-_____] Term Bonds"** means the Series 2014A Bonds scheduled to mature in the year ____.]

[ **"Series 2014[-2030] Term Bonds"** means the Series 2014A Bonds scheduled to mature in the year 2030.]

**"Sewer Utility"** shall mean and include the sanitary sewer system now owned and operated by the City, and consisting of sewage disposal works, sewers, drains, pumping plants, force mains, service connections, canals, ponds, machinery, equipment and other property appurtenant thereto and any improvements, extensions and enlargements to the Sewer Utility hereafter constructed or acquired.

**"Short-Term Indebtedness"** means Utility Indebtedness having an original maturity less than or equal to one year from the date of original incurrence thereof, and not renewable or extendible at the option of the obligor thereon for a term greater than one year beyond the date of original issuance.

**"Special Record Date"** means the date fixed by the Paying Agent pursuant to ***Section 207*** hereof for the payment of Defaulted Interest.

**"Standard & Poor's"** means Standard & Poor's Ratings Services, a division of McGraw Hill Financial Inc., New York, New York, a corporation organized and existing under the laws of the State of New York, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Standard & Poor's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

**"State"** means the state of Kansas.

**"State Treasurer"** means the duly elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the State.

**"Stated Maturity"** when used with respect to any Utility Indebtedness or any installment of interest thereon means the date specified in such Utility Indebtedness and the Bond Resolution as the fixed date on which the principal of such Utility Indebtedness or such installment of interest is due and payable.

**"Subordinate Indebtedness"** means, collectively the Subordinate Lien Bonds and Subordinate Lien Obligations

**"Subordinate Lien Bonds"** means any Additional Bonds payable from the Revenues, and issued on a subordinate lien basis to any Parity Bonds.

**"Subordinate Lien Obligations"** means any Additional Obligations payable from, and secured by a lien on, the Revenues, which lien is junior to that of any Parity Obligations.

**"Term Bonds"** means any Bonds designated as Term Bonds in this Bond Resolution or in any supplemental resolution authorizing the issuance of Additional Bonds.

**"Treasurer"** means the duly appointed and/or elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the Issuer.

**"United States Government Obligations"** means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and

interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payment on obligations issued by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service and such obligations are held in a custodial account for the benefit of the Issuer.

**"Utility"** shall mean the combined City of Wichita, Kansas Water Utility and Sewer Utility, and any improvements, extensions and enlargements thereto hereafter constructed or acquired.

**"Utility Indebtedness"** means collectively the Bonds and any Additional Obligations which are secured by an interest in, the Gross Revenues.

**"Value"** means, for purposes of the Bond Resolution, the value of the Authorized Investments (which Value shall be determined as of the end of each month), calculated as follows:

(a) as to investments the bid and asked prices of which are published on a regular basis in ***The Wall Street Journal*** (or, if not there, then in *The New York Times)* -- the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(b) as to investments the bid and asked prices of which are not published on a regular basis in ***The Wall Street Journal*** or in ***The New York Times*** - the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Issuer in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; and

(c) as to certificates of deposit and bankers acceptances -- the face amount thereof, plus accrued interest.

Provided, however, that when the Pre-2010 Bonds are no longer Outstanding, "Value" shall be the amortized cost of an obligation or the market cost thereof, whichever is lower. Should the value of the Authorized Investments be required for any other legal purpose, the Value shall be calculated in accordance with the applicable laws and regulations.

**"Variable Rate Indebtedness"** means any Utility Indebtedness which provides for interest to be payable thereon at a rate per annum that may vary from time to time over the term thereof in accordance with procedures provided in the instrument creating such Utility Indebtedness.

**"Verification Report"** means the verification report relating to the sufficiency of money and obligations deposited in the Escrow Fund to be applied in accordance with the Escrow Agreement.

**Water Utility"** shall mean and include the waterworks system now owned and operated by the Issuer and consisting of real estate, water rights, purification and pumping plants, reservoirs, mains, wells, pipelines, meters, hydrants, service connections, machinery, equipment and other property appurtenant thereto, and any improvements, extensions and enlargements to the Water Utility hereafter constructed or acquired.

## ARTICLE II

## AUTHORIZATION AND DETAILS OF THE BONDS

**Section 201. Authorization of the Series 2014A Bonds**. The Series 2014A Bonds have been heretofore authorized and directed to be issued pursuant to the Ordinance in the principal amount of $43,105,000*, for the purpose of providing a portion of the funds to: (a) refund the Refunded Bonds; and (b) pay Costs of Issuance. The Series 2014A Bonds shall be Parity Bonds and shall constitute Long-Term Indebtedness.

**Section 202. Description of the Series 2014A Bonds.** The Series 2014A Bonds shall consist of fully registered bonds in Authorized Denominations, and shall be numbered in such manner as the Bond Registrar shall determine. All of the Series 2014A Bonds shall be dated as of the Dated Date, shall become due in the amounts, on the Stated Maturities, subject to redemption and payment, prior to their Stated Maturities as provided in ***Article III*** hereof and shall bear interest at the rates per annum as follows:

[**SERIAL BONDS**]

| **Stated Maturity October 1** | **Principal Amount** | **Annual Rate of Interest** | **Stated Maturity October 1** | **Principal Amount** | **Annual Rate of Interest** |
|---|---|---|---|---|---|
| 2015 | $6,630,000 | _____% | 2023 | $2,590,000 | _____% |
| 2016 | 7,140,000 | | 2024 | 2,695,000 | |
| 2017 | 2,205,000 | | 2025 | 2,805,000 | |
| 2018 | 2,245,000 | | 2026 | 1,330,000 | |
| 2019 | 2,285,000 | | 2027 | 1,390,000 | |
| 2020 | 2,335,000 | | 2028 | 1,455,000 | |
| 2021 | 2,410,000 | | 2029 | 1,520,000 | |
| 2022 | 2,490,000 | | 2030 | 1,580,000 | |

[TERM BONDS

| **Stated Maturity October 1** | **Principal Amount** | **Annual Rate of Interest** |
|---|---|---|
| 20[__] | $_____ | _____% |
| 2030 | $_____ | _____%] |

The Series 2014A Bonds shall bear interest at the above specified rates (computed on the basis of a 360-day year of twelve 30-day months) from the later of the Dated Date or the most recent Interest Payment Date to which interest has been paid on the Interest Payment Dates in the manner set forth in ***Section 208*** hereof. The Series 2014A Bonds shall be issued as Book-Entry-Only Bonds and administered in accordance with the provisions of ***Section 212*** hereof.

Each of the Series 2014A Bonds, as originally issued or issued upon transfer, exchange or substitution, shall be printed in accordance with the format required by the Attorney General of the State and shall be substantially in the form attached hereto as ***Exhibit A*** or as may be required by the Attorney General pursuant to the Notice of Systems of Registration for Kansas Municipal Bonds, 2 Kan. Reg. 921 (1983), in accordance with the Kansas Bond Registration Law, K.S.A. 10-620 *et seq*.

**Section 203. Designation of Paying Agent and Bond Registrar.** The State Treasurer is hereby designated as the Paying Agent for the payment of principal of and interest on the Series 2014A Bonds and Bond Registrar with respect to the registration, transfer and exchange of the Series 2014A Bonds. The Mayor of the Issuer is hereby authorized and empowered to execute on behalf of the Issuer an agreement with the Bond Registrar and Paying Agent for the Series 2014A Bonds.

The Issuer will at all times maintain a Paying Agent and Bond Registrar meeting the qualifications herein described for the performance of the duties hereunder. The Issuer reserves the right to appoint a successor Paying Agent or Bond Registrar by (a) filing with the Paying Agent or Bond Registrar then performing such function a certified copy of the proceedings giving notice of the termination of such Paying Agent or Bond Registrar and appointing a successor, and (b) causing notice of appointment of the successor Paying Agent and Bond Registrar to be given by first class mail to each Owner. No resignation or removal of the Paying Agent or Bond Registrar shall become effective until a successor has been appointed and has accepted the duties of Paying Agent or Bond Registrar.

Every Paying Agent or Bond Registrar appointed hereunder shall at all times meet the requirements of K.S.A. 10-501 *et seq.* and K.S.A. 10-620 *et seq.*, respectively.

**Section 204. Method and Place of Payment of the Bonds.** The principal of, or Redemption Price, and interest on the Bonds shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The principal or Redemption Price of each Bond shall be paid at Maturity to the Person in whose name such Bond is registered on the Bond Register at the Maturity thereof, upon presentation and surrender of such Bond at the principal office of the Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest (a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Owner or (b) in the case of an interest payment to any Owner of $500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice given to the Bond Registrar by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Owner wishes to have such transfer directed.

Notwithstanding the foregoing provisions of this Section, any Defaulted Interest with respect to any Bond shall cease to be payable to the Owner of such Bond on the relevant Record Date and shall be payable to the Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as hereinafter specified in this paragraph. The Issuer shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, by first class mail, postage prepaid, to each Owner of a Bond entitled to such notice at the address of such Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of payment of principal and Redemption Price of and interest on all Bonds and at least annually shall forward a copy or summary of such records to the Issuer.

**Section 205. Registration, Transfer and Exchange of Bonds.** The Issuer covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the office of the Bond Registrar as herein provided. Each Bond when issued shall be registered in the name of the Owner thereof on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this Section. Upon surrender of any Bond at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange such Bond for a new Bond or Bonds in any Authorized Denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange.

Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Bond Registrar, duly executed by the Owner thereof or by the Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Bond Resolution. The Issuer shall pay the fees and expenses of the Bond Registrar for the registration, transfer and exchange of Bonds provided for by this Bond Resolution and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Bond Registrar, are the responsibility of the Owners of the Bonds. In the event any Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Code § 3406, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Owner hereunder or under the Bonds.

The Issuer and the Bond Registrar shall not be required (a) to register the transfer or exchange of any Bond that has been called for redemption after notice of such redemption has been mailed by the Paying Agent pursuant to ***Section 303*** hereof and during the period of 15 days next preceding the date of mailing of such notice of redemption; or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the Issuer of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to ***Section 208*** hereof.

The Issuer and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute Owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on said Bond and for all other purposes. All payments so made to any such Owner or upon the Owner's order shall be valid and effective to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Paying Agent shall be affected by any notice to the contrary.

At reasonable times and under reasonable regulations established by the Bond Registrar, the Bond Register may be inspected and copied by the Owners (or a designated representative thereof) of 10% or more in principal amount of the Bonds then Outstanding or any designated representative of such Owners whose authority is evidenced to the satisfaction of the Bond Registrar.

**Section 206. Execution, Registration, Authentication and Delivery of Bonds.** Each of the Bonds, including any Bonds issued in exchange or as substitutions for the Bonds initially delivered, shall be executed for and on behalf of the Issuer by the manual or facsimile signature of the Mayor, attested by

the manual or facsimile signature of the Clerk and the seal of the Issuer shall be affixed thereto or imprinted thereon. The Mayor and Clerk are hereby authorized and directed to prepare and execute the Bonds in the manner herein specified, and to cause the Bonds to be registered in the office of the Clerk, which registration shall be evidenced by the manual or facsimile signature of the Clerk with the seal of the Issuer affixed thereto or imprinted thereon. The Bonds shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed thereto or imprinted thereon. In case any officer whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such persons who at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

The Mayor and Clerk are hereby authorized and directed to prepare and execute the Bonds as herein specified, and when duly executed, to deliver the Bonds to the Paying Agent for authentication.

The Series 2014A Bonds shall have endorsed thereon a certificate of authentication substantially in the form attached hereto as ***Exhibit A*** hereof, which shall be manually executed by an authorized officer or employee of the Bond Registrar, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. No Series 2014A Bond shall be entitled to any security or benefit under this Bond Resolution or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Bond Registrar. Such executed certificate of authentication upon any Series 2014A Bond shall be conclusive evidence that such Series 2014A Bond has been duly authenticated and delivered under this Bond Resolution. Upon authentication, the Bond Registrar shall deliver the Series 2014A Bond to the Purchaser upon instructions of the Issuer or its representative.

**Section 207. Mutilated, Lost, Stolen or Destroyed Bonds.** If (a) any mutilated Bond is surrendered to the Bond Registrar or the Bond Registrar receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the Issuer and the Bond Registrar such security or indemnity as may be required by each of them, then, in the absence of notice to the Issuer or the Bond Registrar that such Bond has been acquired by a bona fide purchaser, the Issuer shall execute and, upon the Issuer's request, the Bond Registrar shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Issuer, in its discretion, may pay such Bond instead of issuing a new Bond.

Upon the issuance of any new Bond under this Section, the Issuer and the Paying Agent may require the payment by the Owner of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith.

Every new Bond issued pursuant to this Section shall constitute a replacement of the prior obligation of the Issuer, and shall be entitled to all the benefits of this Bond Resolution equally and ratably with all other Outstanding Bonds.

**Section 208. Cancellation and Destruction of Bonds Upon Payment.** All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before Maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and

surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the Issuer.

**Section 209. Book-Entry Bonds; Securities Depository.** Any series of Bonds may be issued as Book-Entry-Only Bonds. If so, such series of Bonds shall initially be registered to Cede & Co., the nominee for the Securities Depository, and no Beneficial Owner will receive certificates representing their respective interests in the Bonds, except in the event the Bond Registrar issues Replacement Bonds as provided in this Section. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Bonds to the Participants until and unless the Bond Registrar authenticates and delivers Replacement Bonds to the Beneficial Owners as described in the following paragraph.

(a) If the Issuer determines (1) that the Securities Depository is unable to properly discharge its responsibilities, or (2) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (3) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, or (b) if the Bond Registrar receives written notice from Participants having interests in not less than 50% of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, then the Bond Registrar shall notify the Owners of such determination or such notice and of the availability of certificates to owners requesting the same, and the Bond Registrar shall register in the name of and authenticate and deliver Replacement Bonds to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under (a)(1) or (a)(2) of this paragraph, the Issuer, with the consent of the Bond Registrar, may select a successor securities depository in accordance with the following paragraph to effect book-entry transfers. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Bond Registrar, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the Issuer, the Bond Registrar or Owners are unable to locate a qualified successor of the Securities Depository in accordance with the following paragraph, then the Bond Registrar shall authenticate and cause delivery of Replacement Bonds to Owners, as provided herein. The Bond Registrar may rely on information from the Securities Depository and its Participants as to the names of the Beneficial Owners of the Bonds. The cost of printing, registration, authentication, and delivery of Replacement Bonds shall be paid for by the Issuer.

In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the Issuer may appoint a successor Securities Depository provided the Bond Registrar receives written evidence satisfactory to the Bond Registrar with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Bond Registrar upon its

receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

**Section 210. Nonpresentment of Bonds.** If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent all liability of the Issuer to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Bond Resolution or on, or with respect to, said Bond. If any Bond is not presented for payment within four years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay, without liability for interest thereon, to the Issuer the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Issuer, and the Owner thereof shall be entitled to look only to the Issuer for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

**Section 211. Calculation of Debt Service Requirements.**

(a) ***Debt Service Requirements on Balloon, Put, Short-Term and Interim Indebtedness***.

(1) The principal of Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness being treated as Long-Term Indebtedness under ***Section 902*** hereof, or Interim Indebtedness shall be deemed due and payable at its Stated Maturity; provided, however, that at the election of the Issuer for the purpose of any computation of Debt Service Requirements, whether historical or projected, the principal deemed payable on Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness being treated as Long-Term Indebtedness under ***Section 902*** hereof, or Interim Indebtedness, shall be deemed to be payable as set forth below:

(A) If the Issuer has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency) to refinance such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, including without limitation, a letter of credit or a line of credit, the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing arrangement;

(B) If the Issuer has entered into a binding agreement providing for the deposit by the Issuer with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency), in trust (herein called a "Special Redemption Fund") of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or a portion thereof, when due from the sums so deposited and investment earnings realized thereon, then the principal amount of the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, or portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(C) If the Issuer has entered into arrangements or agreements with respect to the principal amount of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness, other than those referred to in subsections (A) and (B) above, which a Consultant in a certificate filed with the Issuer determines, taking into account the interests of the Owners of Utility Indebtedness, provides adequate assurances that the Issuer will be able to meet the Debt Service Requirements due on such Indebtedness, the Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may be deemed to be payable in accordance with the terms of such arrangement or agreement; or

(D) Such Balloon Indebtedness, Put Indebtedness or Short-Term Indebtedness may be deemed to be Utility Indebtedness which, at the date of its original incurrence, was payable over a term not to exceed twenty (20) years in equal annual installments of principal and interest at the Index Rate.

A Consultant shall deliver to the Issuer a certificate stating that it is reasonable to assume that installment obligations of such term of the Issuer can be incurred and stating the interest rate then applicable to installment obligations of such term of comparable quality. Interim Indebtedness may be deemed to be Indebtedness which, at the date of its original incurrence, would meet the conditions specified in the statement of the Consultant as required in ***Section 902;*** provided that the Consultant shall for each annual period that the Debt Service Requirement is computed, provide a supplemental statement that at such period, the certifications contained in the statement are reasonable.

(2) Interest that is payable prior to the Stated Maturity of any Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness shall be taken into account for such appropriate period in computation of Debt Service Requirements. Interest payable at maturity or early redemption on Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness may either be amortized over the anticipated maturity or such longer period as is permitted under ***Section 902*** or ***Section 214(a)(1)(D)*** or may be treated as principal payable on the principal maturity date of such Balloon Indebtedness, Put Indebtedness, Short-Term Indebtedness or Interim Indebtedness.

(3) In measuring compliance with the applicable tests hereunder in connection with incurring Put Indebtedness and generally for purposes of determining the Debt Service Requirements relating thereto, Put Indebtedness shall be deemed to mature based upon the actual amortization requirements for the Put Indebtedness, only to the extent that the Issuer has a commitment to refinance such Put Indebtedness.

(b) ***Debt Service Requirements on Discount Indebtedness.*** At the election of the Issuer for the purpose of any computation of Debt Service Requirements, whether historical or projected, the principal and interest deemed payable on Discount Indebtedness shall be deemed to be payable as set forth below:

(1) If the Issuer has obtained a binding commitment of a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency) to refinance such Discount Indebtedness, or a portion thereof, including without limitation, a letter of credit or a line of credit, the Discount Indebtedness, or portion thereof to be refinanced, may be deemed to be payable in accordance with the terms of the refinancing arrangement;

(2) If the Issuer has entered into a binding agreement providing for the deposit with a bank or other financial institution (whose senior debt obligations, or the senior debt obligations of the holding company of which such bank or financial institution is the principal subsidiary, are then rated "A" or better by any Rating Agency), in trust (herein called a "Special Redemption Fund") of amounts, less investment earnings realized and retained in the Special Redemption Fund, equal in aggregate to the principal amount of such Discount Indebtedness, or a portion thereof, and providing for the payment of such principal amount when due from the sums so deposited, and investment earnings realized thereon, then the Discount Indebtedness, or portion thereof, may be deemed to be payable in accordance with the terms of such agreement;

(3) If the Issuer has entered into arrangements or agreements with respect to the principal amount of such Discount Indebtedness, other than those referred to in subsections (1) and (2) above, which a Consultant in a certificate filed with the Issuer determines, taking into account the interests of the holders of Utility Indebtedness, provides adequate assurances that the Issuer will be able to meet the Debt Service Requirements due on such Indebtedness, the Discount Indebtedness may be deemed to be payable in accordance with the terms of such arrangement or agreement; or

(4) As of any time the maturity amount represented by Discount Indebtedness shall be deemed to be the accreted value of such Indebtedness computed on the basis of a constant yield to maturity.

When calculating interest requirements on Variable Rate Indebtedness which bears a variable rate of interest for periods as to which the rate of interest has not been determined, the rate of interest on Outstanding Variable Rate Indebtedness shall be the average annual rate of interest which was payable on such Variable Rate Indebtedness during the twelve (12) months immediately preceding the date as of which the calculation is made; and the rate of interest on Variable Rate Indebtedness to be incurred (or incurred less than twelve (12) months preceding such date) shall be the average annual rate of interest which would have been payable on such Variable Rate Indebtedness had it been outstanding for a period of twelve (12) months immediately preceding the date as of which the calculation is made, as evidenced in a certificate of a Consultant, delivered to the Issuer.

**Section 212. Preliminary and Final Official Statement.** The Preliminary Official Statement dated July [7], 2014, is hereby ratified and approved. The final Official Statement is hereby authorized to be prepared by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The Mayor and Director of Finance are hereby authorized to execute the final Official Statement as so supplemented, amended and completed, and the use and public distribution of the final Official Statement by the Purchaser in connection with the reoffering of the Bonds is hereby authorized. The proper officials of the Issuer are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of the SEC Rule and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 213. Sale of the Series 2014A Bonds.** The sale of the Series 2014A Bonds to the Purchaser is hereby ratified and confirmed. The Mayor and Clerk are hereby authorized to execute the official bid form submitted by the Purchaser. Delivery of the Series 2014A Bonds shall be made to the

Purchaser as soon as practicable after the adoption of this Bond Resolution, upon payment of the Purchase Price.

**Section 214. Authorization of Escrow Agreement.** The Issuer is hereby authorized to enter into the Escrow Agreement, and the Mayor and Clerk are hereby authorized and directed to execute the Escrow Agreement with such changes therein as such officials may deem appropriate, for and on behalf of and as the act and deed of the Issuer. The Escrow Agent is hereby authorized to carry out, on behalf of the Issuer, the duties, terms and provisions of the Escrow Agreement, and the Escrow Agent, the Purchaser and Bond Counsel are authorized to take all necessary actions for the subscription and purchase of the Escrowed Securities described therein, including the subscription for United States Treasury Securities - State and Local Government Series.

## ARTICLE III

## REDEMPTION OF BONDS

**Section 301. Redemption by Issuer.** The Bonds shall be subject to redemption and payment prior to their Stated Maturity, as follows:

(a) ***Optional Redemption***.

(1) *Series 2014A Bonds*. At the option of the Issuer, Series 2014A Bonds maturing on October 1, in the years 2025 and thereafter will be subject to redemption and payment prior to their Stated Maturity on October 1, 2024, and thereafter as a whole or in part (selection of maturities and the amount of Series 2014A Bonds of each maturity to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest thereon to the Redemption Date.

(2) *Additional Bonds*. Additional Bonds are subject to redemption and payment prior to Stated Maturity in accordance with the provisions of the supplemental resolution authorizing the issuance of such Additional Bonds.

(b) ***Mandatory Redemption***.

(1) *General*. The Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the Issuer may: (1) deliver to the Paying Agent for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Paying Agent funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Owner thereof whereupon the Paying Agent shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the Issuer under this Section for any Term Bonds subject to mandatory redemption on said mandatory Redemption Date which, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this subsection) and cancelled by the Paying Agent and not theretofore applied as a credit against any redemption obligation under this subsection. Each

Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the Issuer to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity as designated by the Issuer, and the principal amount of Term Bonds to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the Issuer intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the Issuer will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Paying Agent a written certificate indicating to what extent the provisions of said clauses (1), (2) and (3) are to be complied with, with respect to such mandatory redemption payment.

(2) *The Series 2014A[-_____] Term Bonds*. [There are **no** Series 2014A Term Bonds.] [The Issuer shall from the payments specified in ***Section 602(b)*** hereof which are to be deposited into the Principal and Interest Account redeem on October 1 in each year, the following principal amounts of Series 2014A[-_____] Term Bonds:

| **Principal Amount** | **Year** |
|---|---|
| | * |

*Final Maturity

(3) [The *Series 2014A-[2030] Term Bonds*. The Issuer shall from the payments specified in ***Section 602(b)*** hereof which are to be deposited into the Principal and Interest Account redeem on October 1 in each year, the following principal amounts of Series 2014A[-2030] Term Bonds:

| **Principal Amount** | **Year** |
|---|---|
| | 2030* |

*Final Maturity

(4) *Additional Bonds*. Additional Bonds designated as Term Bonds shall be subject to mandatory redemption in accordance with the provisions of the supplemental resolution authorizing such Additional Bonds.

**Section 302. Selection of Bonds to be Redeemed.**
Bonds shall be redeemed only in an Authorized Denomination. When less than all of the Bonds are to be redeemed and paid prior to their Stated Maturity, such Bonds shall be redeemed in such manner as the Issuer shall determine. Bonds of less than a full Stated Maturity shall be selected by the Bond Registrar in a minimum Authorized Denomination of principal amount in such equitable manner as the Bond Registrar may determine.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than a minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption a minimum Authorized Denomination of face value shall be treated as though it were a

separate Bond of the denomination of a minimum Authorized Denomination. If it is determined that one or more, but not all, of a minimum Authorized Denomination of face value represented by any Bond is selected for redemption, then upon notice of intention to redeem a minimum Authorized Denomination, the Owner or the Owner's duly authorized agent shall forthwith present and surrender such Bond to the Bond Registrar: (1) for payment of the Redemption Price and interest to the Redemption Date of a minimum Authorized Denomination of face value called for redemption, and (2) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond fails to present such Bond to the Paying Agent for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the redemption date to the extent of a minimum Authorized Denomination of face value called for redemption (and to that extent only).

**Section 303. Notice and Effect of Call for Redemption.** In the event the Issuer desires to call the Bonds for redemption prior to maturity, written notice of such intent shall be provided to the Bond Registrar in accordance with K.S.A. 10-129, as amended, not less than 45 days prior to the Redemption Date. The Bond Registrar shall call Bonds for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Bond Registrar at least 45 days prior to the Redemption Date of written instructions of the Issuer specifying the principal amount, Stated Maturities, Redemption Date and Redemption Prices of the Bonds to be called for redemption. The foregoing provisions of this paragraph shall not apply in the case of any mandatory redemption of Term Bonds hereunder, and Term Bonds shall be called by the Paying Agent for redemption pursuant to such mandatory redemption requirements without the necessity of any action by the Issuer and whether or not the Paying Agent holds moneys available and sufficient to effect the required redemption.

Unless waived by any Owner of Bonds to be redeemed, if the Issuer shall call any Bonds for redemption and payment prior to the Stated Maturity thereof, the Issuer shall give written notice of its intention to call and pay said Bonds to the Bond Insurer and the Purchaser. In addition, the Issuer shall cause the Bond Registrar to give written notice of redemption to the Owners of said Bonds. Each of said written notices shall be deposited in the United States first class mail not less than 30 days prior to the Redemption Date.

All official notices of redemption shall be dated and shall contain the following information:

(a) the Redemption Date;

(b) the Redemption Price;

(c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption of any Bonds, the respective principal amounts) of the Bonds to be redeemed;

(d) a statement that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and

(e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the principal office of the Paying Agent.

The failure of any Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the Issuer shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on such Redemption Date.

For so long as the Securities Depository is effecting book-entry transfers of any series of Bonds, the Bond Registrar shall provide the notices specified in this Section to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Bond (having been mailed notice from the Bond Registrar, the Securities Depository, a Participant or otherwise) to notify the Beneficial Owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the Issuer defaults in the payment of the Redemption Price) such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Bonds that have been surrendered for redemption shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

In addition to the foregoing notice, the Issuer shall provide such notices of redemption as are required by the Disclosure Undertaking. Further notice may be given by the Issuer or the Bond Registrar on behalf of the Issuer as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if official notice thereof is given as above prescribed:

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (1) the CUSIP numbers of all Bonds being redeemed; (2) the date of issue of the Bonds as originally issued; (3) the rate of interest borne by each Bond being redeemed; (4) the maturity date of each Bond being redeemed; and (5) any other descriptive information needed to identify accurately the Bonds being redeemed.

(b) Each further notice of redemption shall be sent at least one day before the mailing of notice to Owners by first class, registered or certified mail or overnight delivery, as determined by the Bond Registrar, to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(c) Each check or other transfer of funds issued for the payment of the Redemption Price of Bonds being redeemed shall bear or have enclosed the CUSIP number of the Bonds being redeemed with the proceeds of such check or other transfer.

The Paying Agent is also directed to comply with any mandatory standards then in effect for processing redemptions of municipal securities established by the State or the Securities and Exchange Commission. Failure to comply with such standards shall not affect or invalidate the redemption of any Bond.

## ARTICLE IV

## SECURITY FOR BONDS

**Section 401. Security for the Bonds.** The Series 2014A Bonds shall be special obligations of the Issuer payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the City hereby pledges said Net Revenues to the payment of the principal of and interest on the Series 2014A Bonds. The Series 2014A Bonds shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Series 2014A Bonds, either as to principal or interest.

The covenants and agreements of the City contained herein and in the Series 2014A Bonds shall be for the equal benefit, protection and security of the legal owners of any or all of the Series 2014A Bonds, all of which Series 2014A Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Series 2014A Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Bond Resolution. The Series 2014A Bonds shall stand on a parity and be equally and ratably secured with respect to the payment of principal and interest from the Net Revenues with any Parity Indebtedness. The Series 2014A Bonds shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Parity Indebtedness; and the Parity Indebtedness shall not have any priority with respect to the payment of principal or interest from said Net Revenues or otherwise over the Series 2014A Bonds.

## ARTICLE V

## ESTABLISHMENT OF FUNDS AND ACCOUNTS
## DEPOSIT AND APPLICATION OF BOND PROCEEDS AND OTHER MONEYS

**Section 501. Creation of Funds and Accounts.** Simultaneously with the issuance of the Series 2014A Bonds, there shall be created within the Treasury of the Issuer the following Funds and Accounts:

(a) Principal and Interest Subaccount for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A;

(b) Bond Reserve Subaccount for Water and Sewer Utility Parity Bonds; and

(c) Rebate Fund for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A.

The Funds and Accounts established herein shall be administered in accordance with the provisions of this Series 2014A Bond Resolution so long as the Series 2014A Bonds are Outstanding.

In addition to the Funds and Accounts described above, the Escrow Agreement establishes the following Funds and Accounts to be held and administered by the Escrow Agent in accordance with the provisions of the Escrow Agreement:

(a) Escrow Fund for Refunded Bonds; and

(b) Costs of Issuance Account for Water and Sewer Utility Refunding Revenue Bonds, Series 2014A.

The following separate Funds and Accounts created and established in the treasury of the Issuer are hereby ratified and confirmed:

(a) Water and Sewer Utility Revenue Fund;

(b) Water and Sewer Utility Bond Reserve Account;

(c) Water and Sewer Utility Depreciation and Replacement Account;

(d) Water and Sewer Utility Improvement Account;

(e) Principal and Interest Subaccounts for Outstanding Parity Bonds; and

(f) Bond Reserve Subaccounts for Outstanding Parity Bonds.

The Funds and Accounts referred to in this paragraph shall be administered in accordance with the provisions of Bond Resolution so long as the Utility Indebtedness is Outstanding.

**Section 502. Deposit of Series 2014A Bond Proceeds and Other Moneys.** The net proceeds received from the sale of the Series 2014A Bonds and certain other moneys shall be deposited simultaneously with the delivery of the Series 2014A Bonds as follows:

(a) Any excess proceeds received from the sale of the Series 2014A Bonds shall be deposited in the Series 2014A Principal and Interest Subaccount.

(b) The sum of $[_____] shall be transferred to the Escrow Agent, deposited in the Series 2014A Costs of Issuance Account and applied in accordance with the Escrow Agreement.

(c) The remaining balance of the proceeds derived from the sale of the Series 2014A Bonds shall be transferred to the Escrow Agent and deposited in the Escrow Fund and applied in accordance with the Escrow Agreement.

(d) Simultaneously with the issuance of the Series 2014A Bonds, the Issuer shall make the following transfers:

(1) From the Series 2005A Principal and Interest Account to the Escrow Agent for deposit into the Escrow Fund all amounts therein.

(2) From the Series 2005C Principal and Interest Account to the Escrow Agent for deposit into the Escrow Fund all amounts therein

(3) From the Series 2005A Bond Reserve Account and the Series 2005C Bond Reserve Account to the Series 2014A Bond Reserve Subaccount and amount necessary to satisfy the Series 2014A Bond Reserve Subaccount Requirement.

(4) From the Series 2005A Bond Reserve Account and the Series 2005C Bond Reserve Account to the Escrow Agent for deposit into the Escrow Fund all amounts remaining

therein after the transfer made to satisfy the Series 2014A Bond Reserve Subaccount Requirement.

**Section 503. Application of Moneys in the Rebate Fund.**

(a) There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Federal Tax Certificate. All money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to satisfy the Rebate Amount (as defined in the Federal Tax Certificate), for payment to the United States of America, and neither the Issuer nor the Owner of any Series 2014A Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and the Federal Tax Certificate.

(b) The Issuer shall periodically determine the rebatable arbitrage, if any, under Code § 148(f) in accordance with the Federal Tax Certificate, and the Issuer shall make payments to the United States of America at the times and in the amounts determined under the Federal Tax Certificate. Any moneys remaining in the Rebate Fund after redemption and payment of all of the Series 2014A Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor, shall be deposited into the Revenue Fund.

(c) Notwithstanding any other provision of this Bond Resolution, including in particular ***Article XI*** hereof, the obligation to pay rebatable arbitrage to the United States of America and to comply with all other requirements of this Section and the Federal Tax Certificate shall survive the defeasance or payment in full of the Series 2014A Bonds.]

**Section 504. Application of Moneys in the Costs of Issuance Account.** Moneys in the Costs of Issuance Account shall be used by the Escrow Agent to pay the Costs of Issuance. Any funds remaining in the Costs of Issuance Account, after payment of all Costs of Issuance, but not later than the later of 30 days prior to the first Stated Maturity of principal or one year after the date of issuance of the Series 2014A Bonds, shall be transferred to the Issuer for deposit into the Series 2014A Principal and Interest Subaccount.

**Section 505. Application of Moneys in the Escrow Fund.** Under the Escrow Agreement, the Escrow Agent will apply moneys in the Escrow Fund to purchase the Escrowed Securities and to establish an initial cash balance in accordance with the Escrow Agreement. The cash and Escrowed Securities held in the Escrow Fund will be applied by the Escrow Agent solely in the manner authorized by the Escrow Agreement. All money deposited with the Escrow Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in the Refunded Bond Resolution(s) and the Escrow Agreement.

**Section 506. Verification of Certified Public Accountant.** Prior to or concurrently with the issuance and delivery of the Series 2014A Bonds and the creation of the Escrow Fund, the Issuer shall obtain a Verification Report from an Independent Accountant that such Independent Accountant has verified the accuracy of the calculations that demonstrate that the money and obligations required to be deposited in the Escrow Fund pursuant to ***Section 502*** of this Bond Resolution and the Escrow Agreement, together with the earnings to accrue thereon, will be sufficient for the timely payment of the principal of, redemption premium, if any, and interest on the Refunded Bonds in accordance with the Escrow Agreement.

## ARTICLE VI

## COLLECTION AND APPLICATION OF REVENUES

**Section 601. Revenue Fund.** The Issuer covenants and agrees that from and after the delivery of the Series 2014A Bonds, and continuing as long as any of the Utility Indebtedness remain Outstanding, all of the Gross Revenues shall as and when received be paid and deposited into the Revenue Fund. Said Revenues shall be segregated and kept separate and apart from all other moneys, revenues, Funds and Accounts of the Issuer and shall not be commingled with any other moneys, revenues, Funds and Accounts of the Issuer. The Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Bond Resolution, except as may be modified by the provisions of the Outstanding Parity Bond Resolutions.

**Section 602. Application of Moneys in Funds and Accounts.** The Issuer covenants and agrees that from and after the delivery of the Series 2014A Bonds and continuing so long as any of the Bonds shall remain Outstanding, it will administer and allocate all of the moneys then held in the Revenue Fund as follows:

(a) ***Operation and Maintenance***. The cost of Current Expenses shall be paid currently as bills accrue. Such amount as may be necessary in the opinion of the Governing Body to pay the reasonable and proper Current Expenses for the ensuing sixty (60) days may be retained and accumulated in the Revenue Fund before making transfers to other Funds and Accounts.

***Parity Resolutions***. The following transfers shall be made on a parity of lien basis with the transfers and requirements of the Bond Resolution with respect to any Parity Indebtedness, and the term Parity Obligations shall be substituted for Bonds, as appropriate.

(b) ***Principal and Interest Account***. There shall next be paid and credited on the first day of each month to the Principal and Interest Account, for credit to the respective Subaccounts thereof, a proportionate amount necessary to meet on each Bond Payment Date the payment of all interest on and principal of the Parity Bonds. All amounts paid and credited to the various Principal and Interest Subaccounts shall be expended and used by the Issuer for the sole purpose of paying the Debt Service Requirements of respective Parity Bonds as and when the same become due at Maturity and on each Interest Payment Date.

Any amounts deposited in the Principal and Interest Account in accordance with ***Section 502(a)*** hereof shall be credited against the Issuer's payment obligations as set forth in subsection (b)(1) of this Section.

If at any time the moneys in the Revenue Fund are insufficient to make in full the payments and credits at the time required to be made to the Principal and Interest Account and to the subaccounts established to pay the principal of and interest on any Parity Bonds, the available moneys in the Revenue Fund shall be divided among such debt service accounts in proportion to the respective principal amounts of said series of Parity Bonds at the time Outstanding which are payable from the moneys in said Principal and Interest Subaccounts.

(c) ***Bond Reserve Account***. There shall next set aside and credited monthly to the Bond Reserve Account, for the credit of the respective subaccounts thereof as appropriate, the amount, if any, required to restore the Bond Reserve Account to the Bond Reserve Requirement. Except as hereinafter provided, all amounts paid and credited to the Bond Reserve Account shall be expended and used by the Issuer solely to prevent any default in the payment of interest on or principal of the Parity Bonds on any

Maturity date or Interest Payment Date if the moneys in the respective Principal and Interest Subaccounts are insufficient to pay the Debt Service Requirements of said Parity Bonds as they become due. So long as the Bond Reserve Account aggregates the Bond Reserve Requirement, no further payments into said Account shall be required, but if the Issuer is ever required to expend and use a part of the moneys in any subaccount for the purpose herein authorized and such expenditure reduces the amount of such subaccount below the Bond Reserve Requirement for such subaccount, or if the Value of the any such subaccount is below the Bond Reserve Requirement, the Issuer shall make monthly payments into such subaccount so that such subaccount shall again aggregate the Bond Reserve Requirement within twelve (12) months of such deficiency.

(d) ***Debt Service Accounts-Subordinate Lien Indebtedness***. There shall next be paid and credited monthly to the debt service account(s) for any Subordinate Lien Indebtedness, to the extent necessary to meet on each Bond Payment Date an amount equal to the payment of all interest on and principal of any Subordinate Lien Indebtedness. The amounts required to be paid and credited to the debt service account(s) for any Subordinate Lien Indebtedness shall be made at the same time and on a parity with the amounts at the time required to be paid and credited to other debt service accounts established for the payment of the Debt Service Requirements on any Subordinate Lien Indebtedness.

(e) ***Depreciation and Replacement Account***. There shall next be paid and credited monthly to the Depreciation and Replacement Account minimum monthly amounts to the end that the Depreciation and Replacement Account will reach the Depreciation and Replacement Account Requirement within a period of thirty (30) months from the date of the first such transfer. Except as hereinafter provided, moneys in the Depreciation and Replacement Account shall be expended and used by the Issuer for the purpose of: (1) making extraordinary maintenance and repairs to the Utility, (2) making capital improvements in and to the Utility, and (3) keeping the Utility in good repair and working order so that it may continue in effective and efficient operation. If no other funds are available therefor, moneys in the Depreciation and Replacement Account may be used to pay Current Expenses. After the Depreciation and Replacement Account aggregates the Depreciation and Replacement Account Requirement, no further payments into the Depreciation and Replacement Account shall be required, but if the Issuer is ever required to expend a part of the moneys in the Depreciation and Replacement Account for its authorized purposes and such expenditure reduces the amount of the Depreciation and Replacement Account below the Depreciation and Replacement Requirement, then the Issuer shall resume and continue minimum monthly payments into the Depreciation and Replacement Account aggregates the Depreciation and Replacement Requirement within a period of eighteen (18) months of such deficiency.

(f) ***General Obligation Indebtedness*** There shall next be paid and credited monthly to such of the Issuer's funds or accounts determined by the Director of Finance, proportionate monthly amounts equal to the Debt Service Requirements on General Obligation Indebtedness accruing in the next twelve (12) months.

(g) ***Payment to the City***. There shall next be paid and credited monthly to such of the Issuer's funds or accounts determined by the Director of Finance, proportionate monthly amounts equal to the next required Payment to the City.

(h) ***Improvement Account***. All moneys in the Revenue Fund on each January 1 not required for payment of the Current Expenses and all transfers required by subsections (a) to (f) hereof for the next ninety (90) days shall be credited to the Improvement Account. When the Pre-2014 Bonds are no longer Outstanding, transfers from the Revenue Fund to the Improvement Fund may be made on a monthly basis in such amounts as may be determined by the Director of Finance. Moneys in the Improvement Account may be expended and used for the following purposes:

(1) Paying the Current Expenses.

(2) Paying the cost of extending, enlarging or improving the Utility.

(3) Preventing default in, making payments into or increasing the amounts in any of the Funds and Accounts or other payments required by subsections (a) to (g) hereof

(4) Calling, redeeming and paying prior to Stated Maturity, or, at the option of the Issuer, purchasing in the open market at fair market value, any Utility Indebtedness or General Obligation Indebtedness.

(5) Any other lawful purpose in connection with the operation of the Utility and benefiting the Utility.

(6) To make transfers to the Revenue Fund.

(h) ***Deficiency of Payments into Funds and Accounts***. If at any time the Gross Revenues are insufficient to make any payment on the date or dates hereinbefore specified, the Issuer will make good the amount of such deficiency by making additional payments or credits out of the first available Gross Revenues, such payments and credits being made and applied in the order hereinbefore specified in this Section.

(h) ***Deficiency of Payments into Funds and Accounts***. If at any time the Gross Revenues are insufficient to make any payment on the date or dates hereinbefore specified, the Issuer will make good the amount of such deficiency by making additional payments or credits out of the first available Gross Revenues, such payments and credits being made and applied in the order hereinbefore specified in this Section.

**Section 603. Transfer of Funds to Paying Agent.** The Treasurer of the Issuer shall withdraw from the Principal and Interest Account, and, to the extent necessary to prevent a default in the payment of either principal of or interest on the Utility Indebtedness, from the Bond Reserve Account, and the Improvement Account, sums sufficient to pay the principal of and interest on the Utility Indebtedness as and when the same become due on any Bond Payment Date, and to forward such sums to the Paying Agent in a manner which ensures the Paying Agent will have available funds in such amounts on or before the Business Day immediately preceding each Bond Payment Date. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Bond Resolution.

**Section 604. Payments Due on Saturdays, Sundays and Holidays.** In any case where a Bond Payment Date is not a Business Day, then payment of principal, Redemption Price or interest need not be made on such Bond Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Bond Payment Date, and no interest shall accrue for the period after such Bond Payment Date.

## ARTICLE VII

## DEPOSIT AND INVESTMENT OF MONEYS

**Section 701. Deposits and Investment of Moneys.**

(a) Moneys in each of the Funds and Accounts shall be deposited and shall be adequately secured as provided by the laws of the State.

(b) Moneys held in any Fund or Account other than the Escrow Fund may be invested in accordance with the Bond Resolution and the Federal Tax Certificate, in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose for which such Fund or Account was established; and provided, further, that Authorized Investments in the Bond Reserve Account shall have an average aggregate weighted term to maturity not greater than five years. All earnings on any investments held in any Fund or Account shall accrue to and become a part of such Fund or Account, other than earnings required to be deposited into the Rebate Fund pursuant to the Federal Tax Certificate. All earnings on investments held in the Bond Reserve Account shall accrue to and become a part of the Bond Reserve Account until the amount on deposit in the Bond Reserve Account shall aggregate the Bond Reserve Requirement; thereafter, all such earnings shall be credited to the Principal and Interest Account. All earnings on investments held in the Depreciation and Replacement Account shall accrue to and become a part of the Depreciation and Replacement Account until the amount on deposit in the Depreciation and Replacement Account shall aggregate the Depreciation and Replacement Requirement; thereafter, all such earnings shall be credited to the Revenue Fund.

(c) The Value of any Fund or Account shall be determined at the end of each calendar month. Such valuation shall also be made in conjunction with redemption of any Utility Indebtedness.

## ARTICLE VIII

## GENERAL COVENANTS AND PROVISIONS

The Issuer covenants and agrees with each of the Owners of any of the Utility Indebtedness that so long as any of the Utility Indebtedness remain Outstanding and unpaid it will comply with each of the following covenants:

**Section 801. Efficient and Economical Operation.** The Issuer will continuously own and will operate the Utility as a revenue producing facility in an efficient and economical manner and will keep and maintain the same in good repair and working order.

**Section 802. Rate Covenant.** The Issuer, in accordance with and subject to applicable legal requirements, will fix, establish, maintain and collect such rates and charges for the use and services furnished by or through the Utility as will produce Gross Revenues sufficient to: (a) pay the Current Expenses; (b) pay the Debt Service Requirements on the Utility Indebtedness as and when the same become due at the Maturity thereof or on any Interest Payment Date; (c) provide reasonable and adequate reserves for the payment of the Utility Indebtedness and for the protection and benefit of the Utility as provided in the Bond Resolution; and (d) enable the Issuer to have in each Fiscal Year, a Debt Service Coverage Ratio of not less than 1.20 on all Parity Indebtedness at the time Outstanding; 1.00 on all Subordinate Lien Indebtedness at the time Outstanding; 1.00 on all General Obligation Indebtedness at the time Outstanding; and 1.00 with respect to the Payment to the City; provided however, in determining the Net Revenues Available for Debt Service, estimated additional net income to be derived from rate increases in effect and being charged prior to the end of the applicable Fiscal Year, as determined by the Consultant, may be taken into account, and that, without giving effect to any such adjustments from rate increases, the Debt Service Coverage Ratio shall be not less than 1.00 of the current Fiscal Year's Debt Service Requirements for all Utility Indebtedness.

The Issuer will, from time to time as often as necessary, in accordance with and subject to applicable legal requirements, revise the rates and charges aforesaid in such manner as may be necessary or proper so that the Net Revenues Available for Debt Service will be sufficient to cover the obligations under the provisions of the Bond Resolution. If in any Fiscal Year, Net Revenues Available for Debt Service are an amount less than as hereinbefore provided, the Issuer will make adjustments to such rates, fees and charges to bring the Utility into compliance with this covenant. It shall be the policy of the Issuer that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues Available for Debt Service with respect to Utility Indebtedness issued for improvements to each such component of the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

**Section 803. Restrictions on Mortgage or Sale of Utility.** The Issuer will not mortgage, pledge or otherwise encumber the Utility or any part thereof, nor will it sell, lease or otherwise dispose of the Utility or any material part thereof; provided, however, the Issuer may:

(a) sell at fair market value any portion of the Utility which has been replaced by other similar property of at least equal value, or which ceases to be necessary for the efficient operation of the Utility, and in the event of sale, the Issuer will apply the proceeds to either (1) redemption of Outstanding Utility Indebtedness in accordance with the provisions governing repayment of Utility Indebtedness in advance of Stated Maturity, or (2) replacement of the property so disposed of by other property the revenues of which shall be incorporated into the Utility as hereinbefore provided;

(b) cease to operate, abandon or otherwise dispose of any property which has become obsolete, nonproductive or otherwise unusable to the advantage of the Issuer;

(c) grant a security interest in equipment to be purchased with the proceeds of any loan, lease or other obligation undertaken in accordance with ***Article IX*** hereof; or

(d) sell, lease or convey all or substantially all of the Utility to another entity or enter into a management contract with another entity if:

(1) The transferee entity is a political subdivision organized and existing under the laws of the State, or instrumentality thereof, or an organization described in Code § 501(c)(3), and expressly assumes in writing the due and punctual payment of the principal of and premium, if any, and interest on all outstanding Utility Indebtedness according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Bond Resolution;

(2) If there remains unpaid any Utility Indebtedness which bears interest that is not includable in gross income under the Code, the Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, to the effect that under then existing law the consummation of such sale, lease or conveyance, whether or not contemplated on any date of the delivery of such Utility Indebtedness, would not cause the interest payable on such Utility Indebtedness to become includable in gross income under the Code;

(3) The Issuer receives a certificate of the Consultant which demonstrates and certifies that immediately upon such sale or conveyance the transferee entity will not, as a result thereof, be in default in the performance or observance of any covenant or agreement to be performed or observed by it under this Bond Resolution;

(4) Such transferee entity possesses such licenses to operate the Utility as may be required if it is to operate the Utility; and

(5) The Issuer receives an opinion of Bond Counsel, in form and substance satisfactory to the Issuer, as conclusive evidence that any such sale, lease or conveyance, and any such assumption, is permitted by law and complies with the provisions of this Section.

(6) The Issuer receives the written consent of the Bond Insurer.

**Section 804. Insurance.** The Issuer will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Utility as would be carried by a privately owned utility with similar property and performing similar functions, insofar as the properties are of an insurable nature; and in the event of loss or damage, the Issuer will use the Net Proceeds of such insurance to reconstruct or replace the damaged or destroyed property, or if such reconstruction or replacement be unnecessary, then such Net Proceeds shall be used in redeeming or paying off Outstanding Utility Indebtedness, in accordance with their call provisions. The Issuer also will carry general liability insurance in amounts not less than the then maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the State's tort claims act or other similar future law (currently $500,000.00 per occurrence). In lieu of the foregoing, the Issuer may establish a self-insurance program which will provide substantially the same protection for the Owners.

**Section 805. Books, Records and Accounts.** As long as any Utility Indebtedness are Outstanding, the Issuer shall keep proper and separate books of records and accounts in which complete and correct entries shall be made showing the Gross Revenues collected for services by the Utility and all sums expended in the operation thereof and all sums deposited in the Funds and Accounts above mentioned and all disbursements, transfers and transactions relating to the Utility as a whole, and to the several components of the Utility separately. The books and accounts shall be kept in accordance with generally accepted accounting principles.

The Utility shall make comparative quarterly reports to the Office of the City Manager relative to Utility incomes, Utility expenses and net income from operations. If any such quarterly report shall disclose that the Issuer will not have available the necessary funds for carrying out and complying with all of the requirements of this Resolution, then the Issuer shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for the use and services of the Utility which will provide adequate funds to meet such requirements.

**Section 806. Annual Budget.** The Issuer shall prepare an Annual Budget in its customary form estimating anticipated expenditures and income and containing a statement relative to the amounts of insurance being carried and to be carried. As long as the Pre-2009 Bonds are Outstanding, the Annual Budget shall contain normal budgetary items, including:

(a) An estimate of the receipts from the Utility during the next ensuing Fiscal Year.

(b) A statement of the estimated cost of operating the Utility during the next ensuing Fiscal Year.

(c) A statement of any anticipated unusual expenses for the Utility during the next Fiscal Year.

(d) A statement of any necessary replacements to the Utility which may be anticipated during the next Fiscal Year.

(e) A statement of the amount of principal and interest to be paid on Outstanding Utility Indebtedness and any General Obligation Indebtedness to be paid from Gross Revenues of the Utility during the next Fiscal Year.

(f) A statement of the total estimated expenditures to be made from the Gross Revenues of the Utility during the next Fiscal Year.

(g) A statement of the estimated Net Revenues Available for Debt Service during the next Fiscal Year.

As long as the Pre-2009 Bonds are Outstanding, copies of the Annual Budget shall be mailed to the Underwriter and to the Bond Insurer, if any, within thirty (30) days after the same are received by the Issuer.

**Section 807. Annual Audit.** The Issuer shall annually cause an audit to be made by an Independent Accountant of the operation of the Utility, which audit shall be open to public inspection and shall be completed within six (6) months after the completion of the Fiscal Year. If the audit shall disclose that proper provision has not been made for carrying out and complying with all of the requirements of this Resolution, then the Issuer shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for the use of services of the Utility which will provide adequate funds to meet all such requirements.

As long as the Pre-2009 Bonds are Outstanding, the audit shall include the following information:

(a) A classified statement of the Gross Revenues received, the expenditures for operation and maintenance, the expenditures for all other purposes, the net Operating Revenues and the amount of any capital expenditures made from such Operating Revenues during the year.

(b) A complete balance sheet of the Fiscal Year's operations, particularly indicating the amount of moneys set aside for the various Funds and Accounts as herein provided for.

(c) A statement showing all Outstanding Utility Indebtedness which have been called, purchased, matured or paid during the year and a statement of all interest thereon paid during the year.

(d) A statement of the number of customers served by the Utility at the end of the year.

(e) A statement of the gross amount of insurance carried on the Utility's properties, showing the names of the insurers, the expiration dates of the policies and the premiums thereon.

(f) A statement by the auditor of any recommendations suggested as to financial procedures and accounting practices employed by the Issuer.

(g) A statement of the Net Revenues Available for Debt Service of the Utility.

(h) A statement of any amounts to be deposited in the Rebate Account.

As long as the Pre-2009 Bonds are Outstanding, copies of such audit shall be mailed to the Underwriter, to the Bond Insurer, if any, and to the Kansas Bank Commissioner within thirty (30) days after the same are received by the Issuer.

As soon as possible after the completion of the annual audit, the governing body of the Issuer shall review the report of such audit, and if the audit report discloses that proper provision has not been made for all of the requirements of this Bond Resolution and the Act, the Issuer will promptly cure such deficiency and will promptly proceed to modify the rates and charges to be charged for the use and services furnished by the Utility or take such other action as may be necessary to adequately provide for such requirements.

**Section 808. Right of Inspection.** The Owner of any Bond or such Owner's duly authorized attorney, accountant or investment counselor and, the Bond Insurer, if any, shall have the right at all reasonable times during normal business hours to inspect the any records, accounts or data relating thereto in accordance with State law.

**Section 809. Performance of Duties and Covenants.** The Issuer will faithfully and punctually perform all duties, covenants and obligations with respect to the operation of the Utility now or hereafter imposed upon the Issuer by the Constitution and laws of the State and by the provisions of this Bond Resolution.

**Section 810. Report on Utility Condition.** The Issuer shall annually cause a qualified employee of the Issuer to make an examination of and report on the condition and operations of the Utility. Not less than every three (3) years, the Issuer will cause the Consulting Engineers to make an examination and written report on the condition and operation of the Utility, such report to include recommendations as to any changes in such operation deemed desirable. Such report shall also make references to any unusual or extraordinary items of maintenance and repair and any extensions, enlargements or improvements that may be needed in the period prior to the preparation of the next consultant's report required by this Section. A copy of such report will be filed with the Clerk.

## ARTICLE IX

## ADDITIONAL BONDS AND OBLIGATIONS

**Section 901. Prior Lien Bonds.** So long as any of the Parity Bonds remain Outstanding, the Issuer will not issue any Utility Indebtedness payable out of the Gross Revenues which are superior to the Parity Indebtedness with respect to the lien on the Net Revenues.

**Section 902. Parity Indebtedness.** The Issuer will not issue any Utility Indebtedness which stands on a parity or equality of lien against the Net Revenues with the Parity Indebtedness unless the following conditions are met:

(a) The Issuer shall not be in default in the payment of the Debt Service Requirements on any Parity Indebtedness at the time Outstanding or in making any payment at the time required to be made into the respective Funds and Accounts created by and referred to in the Bond Resolution (unless such Utility Indebtedness is being issued to provide funds to cure such default) nor shall any other Event of Default have occurred and be continuing;

(b) The Issuer shall deliver the following:

(1) *Long-Term Indebtedness*. A certificate signed by the Issuer evidencing that the Debt Service Coverage Ratio for the two (2) Fiscal Years immediately preceding the issuance of such Utility Indebtedness, as reflected by information provided by the Independent Accountant, shall be not less than 1.20, including the Utility Indebtedness proposed to be issued. In the event that the Issuer has instituted any increase in rates for the use and services of the Utility and such increase shall not have been in effect during the full two (2) Fiscal Years immediately preceding the issuance of such proposed Utility Indebtedness, the additional Net Revenues Available for Debt Service which would have resulted from the operation of the Utility during said two (2) preceding Fiscal Years had such rate increase been in effect for the entire period may be added to the stated Net Revenues for the calculation of the Debt Service Coverage Ratio, provided that such estimated additional Net Revenues shall be determined by a Consultant.

(2) *Short-Term Indebtedness*. A certificate signed by the Issuer evidencing any ***one*** of the following:

(i) The principal amount of all Outstanding Short-Term Indebtedness does not exceed 15% of the Gross Revenues for the most recently ended Fiscal Year for which financial information is available from the Independent Accountant;

(ii) The Short-Term Indebtedness could be incurred assuming it was Long-Term Indebtedness.

(iii) There is delivered to the Issuer a certificate of a Consultant to the effect that it is such Consultant's opinion that it is reasonable to assume that the Issuer will be able to refinance such Short-Term Indebtedness prior to its Stated Maturity and the conditions are met with respect to such Short-Term Indebtedness when it is assumed that such Short-Term Indebtedness is Long-Term Indebtedness maturing over 20 years (or such shorter period as such Consultant indicates is reasonable to assume in such statement) from the date of issuance of the Short-Term Indebtedness and bears interest on the unpaid principal balance at the Index Rate and is payable on a level annual debt service basis over a 20-year period (or such shorter period as such Consultant indicates is reasonable to assume in such statement).

(3) *Interim Indebtedness*. A certificate signed by the Issuer evidencing any ***either*** of the following:

(i) The Interim Indebtedness could be incurred assuming it was Long-Term Indebtedness.

(ii) There is delivered to the Issuer a certificate of a Consultant to the effect that it is such Consultant's opinion that it is reasonable to assume that the Issuer will be able to refinance such Interim Indebtedness prior to its Stated Maturity and the conditions are met with respect to such Interim Indebtedness when it is assumed that such Interim Indebtedness is Long-Term Indebtedness maturing over 20 years (or such shorter period as such Consultant indicates is reasonable to assume in such statement) from the date of issuance of the Interim Indebtedness and bears interest on the unpaid principal balance at the Index Rate and is payable on a level annual debt service basis over a 20-year period (or such shorter period as such Consultant indicates is reasonable to assume in such statement).

(c) When the issuance of Utility Indebtedness of equal stature and priority is permitted by the laws of the State.

(d) With respect to the issuance of Additional Bonds, an additional deposit to the Bond Reserve Account shall be made to bring the Bond Reserve Account to an amount equal to the Bond Reserve Requirement.

(e) The ordinance and/or resolution authorizing such Utility Indebtedness shall contain or provide for substantially the same terms, conditions, covenants and procedures as established in the Bond Resolution.

Additional Utility Indebtedness issued under the conditions hereinbefore set forth shall stand on a parity with other Parity Indebtedness and shall enjoy complete equality or lien on and claim against the Net Revenues, and the Issuer may make equal provision for paying the Debt Service Requirements on such Utility Indebtedness out of the Revenue Fund and may likewise provide for the creation of reasonable debt service accounts and debt service reserve accounts for the payment of the Debt Service Requirements on such Utility Indebtedness and the interest thereon out of moneys in the Revenue Fund.

**Section 903. Subordinate Lien Indebtedness.** Nothing shall prohibit or restrict the right of the Issuer to issue Subordinate Lien Indebtedness for any lawful purpose in connection with the operation of and benefiting the Utility and to provide that the Debt Service Requirements on such Subordinate Lien Indebtedness shall be payable out of the Net Revenues Available for Debt Service, provided at the time of the issuance of such Subordinate Lien Indebtedness the Issuer is not in default in the performance of any covenant or agreement contained in the Bond Resolution (unless such Utility Indebtedness shall be issued to cure such default and shall be junior and subordinate to the Parity Indebtedness) so that if at any time the Issuer shall be in default in paying either interest on or principal of the Parity Indebtedness, or of the Issuer is in default in payment of Current Expenses, Debt Service Requirements on Parity Indebtedness or transfers required by the Bond Resolution prior to the payment of Debt Service Requirements on Subordinate Lien Indebtedness, the Issuer shall make no payments of Debt Service Requirements on said Subordinate Lien Indebtedness until said default or defaults be cured.

**Section 904. Refunding Indebtedness.** The Issuer shall have the right, without complying with the provisions of ***Section 902*** hereof, to issue Refunding Indebtedness for the purpose of refunding any of the Utility Indebtedness under the provisions of any law then available, and the Refunding Indebtedness so issued shall enjoy complete equality of pledge as did the Utility Indebtedness that was refunded.

## ARTICLE X

## DEFAULT AND REMEDIES

**Section 1001. Remedies.** The Bond Resolution and all of the provisions thereof shall constitute a contract between the Issuer, the Bond Insurer and each of the Owners of Utility Indebtedness, and any such Owner may by suit, action, mandamus, injunction or other proceeding, either at law or in equity, enforce and compel performance of all duties, obligations and conditions determined and required by the Bond Resolution, subject to the limitations of hereinafter set forth; provided however, that no Owner of Subordinate Indebtedness shall have the ability to impair the rights of Owners of Parity Indebtedness. Upon the happening and continuance of any Event of Default, then and in every such case any Owner may proceed, subject to the provisions of the Bond Resolution, to protect and enforce the rights of the Owners by a suit, action or special proceeding in equity, or at law, either for the specific performance of

any covenant or agreement contained therein or in aid or execution of any power therein granted or for the enforcement of any proper legal or equitable remedy as such Owner shall deem most effectual to protect and enforce such rights.

Anything in the Bond Resolution to the contrary notwithstanding, if at any time moneys in the Principal and Interest Account shall not be sufficient to pay the interest on or the principal of the Utility Indebtedness as the same shall become due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Section or otherwise, shall be applied as follows:

(a) If the principal of all the Parity Indebtedness shall not have become due and payable, all such moneys shall be applied:

***first***: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness;

***second***: to the payment to the persons entitled thereto of the unpaid principal of any of the Parity Indebtedness which shall have become due and payable (other than Parity Indebtedness called for redemption for the payment of which moneys are held pursuant to the provisions of the Bond Resolution), in the order of their due dates, with interest on the principal amount of such Parity Indebtedness at the respective rates specified therein from the respective dates upon which such Parity Indebtedness` became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Parity Indebtedness due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

***third***: to the payment of the interest on and the principal of the Parity Indebtedness, to the purchase and retirement of the Parity Indebtedness and to the redemption of the Parity Indebtedness, all in accordance with the provisions of the Bond Resolution.

(b) If the principal of all of the Parity Indebtedness shall have become due and payable, all such moneys shall be applied:

***first***: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Indebtedness, and then to the payment of any interest due and payable after maturity on the Parity Indebtedness, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the

Parity Indebtedness; and

***second***: to the payment of the principal of the Parity Indebtedness, ratably, to the persons entitled thereto, without preference or priority of any Parity Indebtedness over any other Parity Indebtedness.

(c) If the principal of all the Subordinate Lien Indebtedness shall not have become due and payable, all such moneys shall be applied:

***first***: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Lien Indebtedness;

***second***: to the payment to the persons entitled thereto of the unpaid principal of any of the Subordinate Lien Indebtedness which shall have become due and payable (other than Subordinate Lien Indebtedness called for redemption for the payment of which moneys are held pursuant to the provisions of the Bond Resolution), in the order of their due dates, with interest on the principal amount of such Subordinate Lien Indebtedness at the respective rates specified therein from the respective dates upon which such Subordinate Lien Indebtedness` became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Subordinate Lien Indebtedness due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

***third:*** to the payment of the interest on and the principal of the Subordinate Lien Indebtedness, to the purchase and retirement of the Subordinate Lien Indebtedness and to the redemption of the Subordinate Lien Indebtedness, all in accordance with the provisions of the Bond Resolution.

(d) If the principal of all of the Subordinate Lien Indebtedness shall have become due and payable, all such moneys shall be applied:

***first***: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Lien Indebtedness, and then to the payment of any interest due and payable after maturity on the Subordinate Lien Indebtedness, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Subordinate Lien Indebtedness; and

***second***: to the payment of the principal of the Subordinate Lien Indebtedness,

ratably, to the persons entitled thereto, without preference or priority of any Subordinate Lien Indebtedness over any other Subordinate Lien Indebtedness.

Whenever moneys are to be applied by the Issuer pursuant to the foregoing provisions, such moneys shall be applied at such times, and from time to time, as the Director of Finance, in his or her sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Paying Agent in trust for the proper purpose shall constitute proper application by the Issuer; and the Issuer shall incur no liability whatsoever to any Owner or to any other person for any delay in applying any such moneys, so long as the Issuer acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Resolution as may be applicable at the time of application by the Director of Finance. Whenever the Director of Finance shall exercise such discretion in applying such moneys, she shall fix the date (which shall be an Interest Payment Date unless she shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Director of Finance shall give such notice as she may deem appropriate of the fixing of any such date, and shall not be required to make payment to the Owner of any unpaid Utility Indebtedness until the same shall be surrendered to the Paying Agent for appropriate endorsement, or for cancellation if fully paid.

In case any proceeding taken by any Owner on account of any default shall have been discontinued or abandoned for any reason, then and in every such case the Issuer and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights and remedies of the Owners shall continue as though no such proceedings had been taken. No Owner of any of any Utility Indebtedness shall have any right in any manner whatever to affect, disturb or prejudice the security of the Bond Resolution or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the same class of Utility Indebtedness. No remedy herein conferred on the Owners is intended to be exclusive of any other remedy or remedies, and each and every remedy conferred shall be cumulative and shall be in addition to every other remedy given hereunder and under the Act or now or hereafter existing at law or in equity or by statute. No delay or omission of any Owner to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given to the Owners may be exercised from time to time and as often as may be deemed expedient.

**Section 1002. Limitation on Rights of Owners.** No Owner of any Utility Indebtedness shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Bond Resolution or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) an Event of Default shall have occurred, (b) the Owners of twenty-five percent (25%) in aggregate principal amount of same class of the Utility Indebtedness then Outstanding shall have made written request to the Issuer, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and (ci) the Issuer shall thereafter fail or refuse to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case, at the option of the Issuer, to be conditions precedent to the execution of the powers and trusts of the Bond Resolution, and to any action or cause of action for the enforcement of the Bond Resolution, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners of the Utility Indebtedness shall have any right in any manner whatsoever to affect, disturb or prejudice the Bond Resolution by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all

proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of the Utility Indebtedness then Outstanding. Nothing in the Bond Resolution contained shall, however, affect or impair the right of any Owner to payment of Debt Service Requirements on any Utility Indebtedness at and after the maturity thereof or the obligation of the Issuer to pay the Debt Service Requirements on each of the Utility Indebtedness issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Utility Indebtedness expressed.

**Section 1003. Remedies Cumulative.** No remedy conferred upon the Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred. No waiver of any default or breach of duty or contract by the Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. If action or proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or shall have been determined adversely to such Owner, then, and in every such case, the Issuer and the Owners shall be restored to their former positions and rights, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

**Section 1004. No Obligation to Levy Taxes.** Nothing contained in this Bond Resolution shall be construed as imposing on the Issuer any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or interest on the Utility Indebtedness.

**Section 1005. Control of Remedies Upon an Event of Default and Event of Insolvency.** Notwithstanding anything herein to the contrary, upon the occurrence and continuance of an Event of Default, the Bond Insurer, provided the Bond Insurance Policy is in full force and effect and the Bond Insurer shall not be in default thereunder, shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owners under this Bond Resolution. Any reorganization or liquidation plan with respect to the Issuer must be acceptable to the Bond Insurer. In the event of any reorganization or liquidation, the Bond Insurer shall have the right to vote on behalf of all Owners who hold the Insured Bonds insured by the Bond Insurer absent a default by the Bond Insurer under the applicable Bond Insurance Policy insuring such Insured Bonds.

## ARTICLE XI

## DEFEASANCE

**Section 1101. Defeasance.** When any or all of the Utility Indebtedness, redemption premium, if any, or scheduled interest payments thereon have been paid and discharged, then the requirements contained in the Bond Resolution and the pledge of the Gross Revenues hereunder and all other rights granted hereby shall terminate with respect to the Bonds or scheduled interest payments thereon so paid and discharged. Utility Indebtedness, redemption premium, if any, or scheduled interest payments thereon shall be deemed to have been paid and discharged within the meaning of the Bond Resolution if there has been deposited with the Paying Agent, or other commercial bank or trust company located in the State and having full trust powers, at or prior to the Stated Maturity or Redemption Date of said Utility Indebtedness or the interest payments thereon, in trust for and irrevocably appropriated thereto, moneys and/or Defeasance Obligations which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of the principal or Redemption Price of said Utility Indebtedness and/or interest accrued to the Stated Maturity or Redemption Date, or if default in such payment has occurred on such date, then to the date of the tender of such payments. If the amount to be

so deposited is based on the Redemption Price of any Bonds, no such satisfaction shall occur until: (a) the Issuer has elected to redeem such Utility Indebtedness, and (b) either notice of such redemption has been given, or the Issuer has given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Bond Registrar to give such notice of redemption in compliance with the Bond Resolution. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the Issuer, for the purpose of paying and discharging any of the Utility Indebtedness, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Owners of the Utility Indebtedness, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Paying Agent or such bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions of the Bond Resolution. The Issuer shall notify the Bond Insurer of any defeasance of any Insured Bonds insured by the Bond Insurer.

Notwithstanding anything in the Bond Resolution to the contrary, in the event that the principal and/or interest due on the Insured Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Insured Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer and the covenants, agreements and other obligations of the Issuer to the Owners shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owners.

## ARTICLE XII

## TAX COVENANTS

**Section 1201. General Covenants.** The Issuer covenants and agrees that it will comply with: (a) all applicable provisions of the Code necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Series 2014A Bonds; and (b) all provisions and requirements of the Federal Tax Certificate. The Mayor and Clerk are hereby authorized and directed to execute the Federal Tax Certificate in a form approved by Bond Counsel, for and on behalf of and as the act and deed of the Issuer. The Issuer will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Series 2014A Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the Issuer.

**Section 1202. Survival of Covenants.** The covenants contained in this Article and in the Federal Tax Certificate shall remain in full force and effect notwithstanding the defeasance of the Series 2014A Bonds pursuant to ***Article XI*** hereof or any other provision of this Bond Resolution until such time as is set forth in the Federal Tax Certificate.

## ARTICLE XIII

## CONTINUING DISCLOSURE REQUIREMENTS

**Section 1301. Disclosure Requirements.** The Issuer hereby covenants with the Purchaser and the Beneficial Owners to provide and disseminate such information as is required by the SEC Rule and as further set forth in the Disclosure Undertaking, which are incorporated herein by reference. Such covenant shall be for the benefit of and enforceable by the Purchaser and the Beneficial Owners.

**Section 1302. Failure to Comply with Continuing Disclosure Requirements.** In the event the Issuer fails to comply in a timely manner with its covenants contained in the preceding section, the Purchaser and/or any Beneficial Owner may make demand for such compliance by written notice to the Issuer. In the event the Issuer does not remedy such noncompliance within 10 days of receipt of such written notice, the Purchaser or any Beneficial Owner may in its discretion, without notice or demand, proceed to enforce compliance by a suit or suits in equity for the specific performance of such covenant or agreement contained in the preceding section or for the enforcement of any other appropriate legal or equitable remedy, as the Purchaser and/or any Beneficial Owner shall deem effectual to protect and enforce any of the duties of the Issuer under such preceding section. The Purchaser or Beneficial Owner shall provide a copy of any such demand or notice to the Bond Insurer.

## ARTICLE XIV

## MISCELLANEOUS PROVISIONS

**Section 1401. Amendments.** The rights and duties of the Issuer and the Owners, and the terms and provisions of the Utility Indebtedness or of this Bond Resolution, may be amended or modified at any time in any respect by resolution of the Issuer with the written consent of the Owners of not less than a majority in principal amount of the Utility Indebtedness then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Clerk, but no such modification or alteration shall:

(a) extend the maturity of any payment of principal or interest due upon any Utility Indebtedness;

(b) effect a reduction in the amount which the Issuer is required to pay as principal of or interest on any Utility Indebtedness;

(c) permit preference or priority of any Utility Indebtedness over any other Utility Indebtedness;

(d) reduce the percentage in principal amount of Utility Indebtedness required for the written consent to any modification or alteration of the provisions of this Bond Resolution; or

(e) permit the creation of a lien on the Revenues prior or equal to the lien of the Parity Indebtedness.

Any provision of the Utility Indebtedness or of this Bond Resolution may, however, be amended or modified by resolution duly adopted by the governing body of the Issuer at any time in any legal respect with the written consent of the Owners of all of the Utility Indebtedness at the time Outstanding.

Without notice to or the consent of any Owners, the Issuer may amend or supplement this Bond Resolution for the purpose of curing any formal defect, omission, inconsistency or ambiguity herein, to grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners, to conform this Bond Resolution to the Code or future applicable federal law concerning tax-exempt obligations, or in connection with any other change therein which is not materially adverse to the interests of the Owners.

Every amendment or modification of the provisions of the Utility Indebtedness or of this Bond Resolution, to which the written consent of the Owners is given, as above provided, shall be expressed in a resolution adopted by the governing body of the Issuer amending or supplementing the provisions of this Bond Resolution and shall be deemed to be a part of this Bond Resolution. A certified copy of every such amendatory or supplemental resolution, if any, and a certified copy of this Bond Resolution shall always be kept on file in the office of the Clerk, and shall be made available for inspection by the Owner of any Utility Indebtedness or a prospective purchaser or owner of any Utility Indebtedness authorized by this Bond Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or of this Bond Resolution will be sent by the Clerk to any such Owner or prospective Owner.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the Clerk a copy of the resolution of the Issuer hereinabove provided for, duly certified, as well as proof of any required consent to such modification by the Bond Insurer and the Owners of the Utility Indebtedness then Outstanding. It shall not be necessary to note on any of the Outstanding Utility Indebtedness any reference to such amendment or modification.

The Issuer shall furnish to the Paying Agent a copy of any amendment to the Utility Indebtedness or this Bond Resolution which affects the duties or obligations of the Paying Agent under this Bond Resolution.

**Section 1402. Notices, Consents and Other Instruments by Owners.** Any notice, consent, request, direction, approval or other instrument to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Utility Indebtedness, if made in the following manner, shall be sufficient for any of the purposes of this Bond Resolution, and shall be conclusive in favor of the Issuer and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Utility Indebtedness, the amount or amounts, numbers and other identification of Utility Indebtedness, and the date of holding the same shall be proved by the Bond Register.

In determining whether the Owners of the requisite principal amount of Utility Indebtedness Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Bond Resolution, Utility Indebtedness owned by the Issuer shall be disregarded and deemed not to be Outstanding under this Bond Resolution, except that, in determining whether the Owners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Utility Indebtedness which the Owners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Utility Indebtedness so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Owners the pledgee's right so to act with respect to such Utility Indebtedness and that the pledgee is not the Issuer.

**Section 1403. Notices.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Bond Resolution shall be in writing, given to the Notice

Representative at the Notice Address and shall be deemed duly given or filed if the same shall be: (a) duly mailed by registered or certified mail, postage prepaid; or (b) communicated via fax, with electronic or telephonic confirmation of receipt. Copies of such notices shall also be given to the Paying Agent and the Bond Insurer. The Issuer, the Paying Agent, the Bond Insurer and the Purchaser may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

All notices given by: (a) certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed; (b) fax as aforesaid shall be deemed duly given as of the date of confirmation of receipt. If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Paying Agent shall constitute a sufficient notice.

**Section 1404. Inconsistent Provisions.** In case any one or more of the provisions of the Series 2014A Bond Resolution or of the Utility Indebtedness issued hereunder shall for any reason be inconsistent with the provisions of the Outstanding Parity Bond Resolutions or the Parity Indebtedness: (a) the provisions of any Outstanding Parity Bond Resolution adopted prior to the Series 2014A Bond Resolution shall prevail with respect to Parity Indebtedness issued prior in time, so long as such Parity Indebtedness is Outstanding; and (b) the provisions of the Series 2014A Bond Resolution shall prevail with respect to any Parity Bond Resolution adopted subsequent to the Series 2014A Bond Resolution, so long as any Parity Indebtedness issued under the Series 2014A Bond Resolution is Outstanding.

**Section 1405. Electronic Transactions.** The issuance of the Series 2014A Bonds and the transactions related thereto and described herein may be conducted and documents may be stored by electronic means.

**Section 1406. Further Authority.** The officers and officials of the Issuer, including the Mayor and Clerk, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Bond Resolution and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

**Section 1407. Severability.** If any section or other part of this Bond Resolution, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Bond Resolution.

**Section 1408. Governing Law.** This Bond Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1409. Effective Date.**
This Bond Resolution shall take effect and be in full force from and after its adoption by the governing body of the Issuer.

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**ADOPTED** by the City Council of the City of Wichita, Kansas, on July 15, 2014.

(SEAL)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

**CERTIFICATE**

I, the undersigned, hereby certify that the above and foregoing is a true and correct copy of the Resolution No. 14-[___] (the "Bond Resolution") of the City of Wichita, Kansas, adopted by the Governing Body on July 15, 2014, as the same appears of record in my office, and that the Bond Resolution has not been modified, amended or repealed and is in full force and effect as of this date.

DATED: July 15, 2014.

_____
Karen Sublett, City Clerk

JLN\600809.075\BASICDOCS

*EXHIBIT A*
**(FORM OF SERIES 2014A BONDS)**

**REGISTERED NUMBER ___** **REGISTERED $_____**

**Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York Corporation ("DTC"), to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.**

**UNITED STATES OF AMERICA**
**STATE OF KANSAS**
**COUNTY OF SEDGWICK**
**CITY OF WICHITA**
**WATER AND SEWER UTILITY REFUNDING REVENUE BOND**
**SERIES 2014A**

| **Interest Rate:** | **Maturity Date:** | **Dated Date: August 1, 2014** | **CUSIP:** |
|---|---|---|---|

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

**KNOW ALL PERSONS BY THESE PRESENTS**: That the City of Wichita, in the County of Sedgwick, State of Kansas (the "Issuer"), for value received, hereby acknowledges itself to be indebted and promises to pay to the Registered Owner shown above, or registered assigns, but solely from the source and in the manner herein specified, the Principal Amount shown above on the Maturity Date shown above, unless called for redemption prior to said Maturity Date, and to pay interest thereon at the Interest Rate per annum shown above (computed on the basis of a 360-day year of twelve 30-day months), from the Dated Date shown above, or from the most recent date to which interest has been paid or duly provided for, payable semiannually on April 1 and October 1 of each year, commencing April 1, 2015 (the "Interest Payment Dates"), until the Principal Amount has been paid.

**Method and Place of Payment**. The principal or redemption price of this Series 2014A Bond shall be paid at maturity or upon earlier redemption to the person in whose name this Series 2014A Bond is registered at the maturity or redemption date thereof, upon presentation and surrender of this Series 2014A Bond at the principal office of the Treasurer of the State of Kansas, Topeka, Kansas (the "Paying Agent" and "Bond Registrar"). The interest payable on this Series 2014A Bond on any Interest Payment Date shall be paid to the person in whose name this Series 2014A Bond is registered on the registration books maintained by the Bond Registrar at the close of business on the Record Date(s) for such interest, which shall be the 15th day (whether or not a business day) of the calendar month next preceding the

Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Registered Owner or, (b) in the case of an interest payment to any Registered Owner of $500,000 or more in aggregate principal amount of Series 2014A Bonds, by electronic transfer to such Registered Owner upon written notice given to the Bond Registrar by such Registered Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Registered Owner wishes to have such transfer directed. The principal or redemption price of and interest on the Series 2014A Bonds shall be payable in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. Interest not punctually paid will be paid in the manner established in the within defined Bond Resolution.

**Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the hereinafter defined Bond Resolution.

**ADDITIONAL PROVISIONS OF THIS SERIES 2014A BOND ARE CONTINUED ON THE REVERSE HEREOF AND SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS THOUGH FULLY SET FORTH AT THIS PLACE.**

**Authentication**. This Series 2014A Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the hereinafter defined Bond Resolution until the Certificate of Authentication and Registration hereon shall have been lawfully executed by the Bond Registrar.

**IT IS HEREBY DECLARED AND CERTIFIED** that all acts, conditions, and things required to be done and to exist precedent to and in the issuance of this Series 2014A Bond have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas, that the total indebtedness of the Issuer, including this series of bonds, does not exceed any constitutional or statutory limitation, and that provision has been duly made for the collection and segregation of the Gross Revenues of the Water and Sewer Utility (the "Utility") and for the application of the same as provided in the hereinafter defined Bond Resolution.

**IN WITNESS WHEREOF**, the Issuer has caused this Series 2014A Bond to be executed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its Clerk, and its seal to be affixed hereto or imprinted hereon.

**CITY OF WICHITA, KANSAS**

(Facsimile Seal) _____(facsimile)_____
Mayor

ATTEST:

By _____(facsimile)_____
Clerk

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Series 2014A Bond is one of a series of Water and Sewer Utility Refunding Revenue Bonds, Series 2014A, of the City of Wichita, Kansas, described in the within-mentioned Bond Resolution.

Registration Date _____

Office of the State Treasurer,
Topeka, Kansas,
as Bond Registrar and Paying Agent

By _____

Registration Number: 0709-087-080114-[___]

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**(FORM OF REVERSE SIDE OF BOND)**

**ADDITIONAL PROVISIONS**

**Authorization of Series 2014A Bonds**. This Series 2014A Bond is one of an authorized series of bonds of the Issuer designated "Water and Sewer Utility Refunding Revenue Bonds, Series 2014A," aggregating the principal amount of $43,105,000* (the "Series 2014A Bonds") issued for the purposes set forth in the Ordinance of the Issuer authorizing the issuance of the Series 2014A Bonds and the Resolution of the Issuer prescribing the form and details of the Series 2014A Bonds (collectively the "Bond Resolution"). The Series 2014A Bonds are issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and laws of the State of Kansas, including K.S.A. 10-116a, K.S.A. 10-620 *et seq*. and K.S.A. 10-1201 *et seq*., as amended by Charter Ordinance No. 211, all as amended, and all other provisions of the laws of the State of Kansas applicable thereto.

**Special Obligations**. The Series 2014A Bonds are special obligations of the Issuer payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues, and the taxing power of the Issuer is not pledged to the payment of the Series 2014A Bonds either as to principal or interest. The Series 2014A Bonds shall not be or constitute a general obligation of the Issuer, nor shall they constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provision, limitation or restriction. The Series 2014A Bonds stand on a parity and are equally and ratably secured with respect to the payment of principal and interest from the Net Revenues and in all other respects with to the Outstanding Parity Bonds of the Issuer and any Parity Indebtedness to be issued. ***Under the conditions set forth in the Bond Resolution, the Issuer has the right to issue additional Utility Indebtedness payable from the same source and secured by the Net Revenues on a parity with said Net Revenues; provided, however, that such additional Utility Indebtedness may be so issued only in accordance with and subject to the covenants, conditions and restrictions relating thereto set forth in the Bond Resolution.***

The Issuer hereby covenants and agrees with the Registered Owner of this Series 2014A Bond that it will keep and perform all covenants and agreements contained in the Bond Resolution, and will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the Utility, as will produce Net Revenues sufficient to pay the costs of operation and maintenance of the Utility, pay the principal of and interest on the Series 2014A Bonds as and when the same become due, and provide reasonable and adequate reserve funds. Reference is made to the Bond Resolution for a description of the covenants and agreements made by the Issuer with respect to the collection, segregation

and application of the Revenues, the nature and extent of the security for the Series 2014A Bonds, the rights, duties and obligations of the Issuer with respect thereto, and the rights of the Registered Owners thereof.

**Redemption Prior to Maturity.** The Series 2014A Bonds are subject to redemption prior to maturity, as follows:

***Optional Redemption***. At the option of the Issuer, the Series 2014A Bonds maturing on October 1, in the years 2025 and thereafter will be subject to redemption and payment prior to maturity on October 1, 2024, or thereafter, as a whole or in part (selection of maturities and the amount of Series 2014A Bonds of each maturity to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the redemption price of 100% (expressed as a percentage of the principal amount), plus accrued interest to the date of redemption.

[***Mandatory Redemption***. Each of the Series 2014A Bonds maturing on October 1, [2030] [in the years [_____] (the "Term Bonds") shall also be subject to mandatory redemption and payment prior to maturity, pursuant to the redemption schedule set forth in the Bond Resolution at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest thereon to the Redemption Date.]

***Redemption Denominations***. Whenever the Bond Registrar is to select Series 2014A Bonds for the purpose of redemption, it shall, in the case of Series 2014A Bonds in denominations greater than a minimum Authorized Denomination, if less than all of the Series 2014A Bonds then Outstanding are to be called for redemption, treat each minimum Authorized Denomination of face value of each such Series 2014A Bond as though it were a separate Series 2014A Bond in the denomination of a minimum Authorized Denomination.

***Notice of Redemption***. Notice of redemption, unless waived, shall be given by the Issuer to the Purchaser of the Series 2014A Bonds and to the Bond Registrar in accordance with the Bond Resolution. The Issuer shall cause the Bond Registrar to notify each Registered Owner at the address maintained on the Bond Register, such notice to be given by mailing an official notice of redemption by first class mail at least 30 days prior to the redemption date. Notice of redemption having been given as aforesaid, the Series 2014A Bonds or portions of Series 2014A Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the Issuer defaults in the payment of the redemption price) such Series 2014A Bonds or portions of Series 2014A Bonds shall cease to bear interest.

**Book-Entry System**. The Series 2014A Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Bond Resolution. One certificate with respect to each date on which the Series 2014A Bonds are stated to mature or with respect to each form of Series 2014A Bonds, registered in the nominee name of the Securities Depository, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Series 2014A Bonds by the Securities Depository's participants, beneficial ownership of the Series 2014A Bonds in Authorized Denominations being evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Issuer and the Bond Registrar will recognize the Securities Depository nominee, while the Registered Owner of this Series 2014A Bond, as the owner of this Series 2014A Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on, this Series 2014A Bond, (ii) notices and (iii) voting. Transfer of principal, interest and any redemption premium payments to participants of the Securities

Depository, and transfer of principal, interest and any redemption premium payments to Beneficial Owners of the Series 2014A Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such Beneficial Owners. The Issuer and the Bond Registrar will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the Owner of this Series 2014A Bond, notwithstanding the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on this Series 2014A Bond shall be made in accordance with existing arrangements among the Issuer, the Bond Registrar and the Securities Depository.

**Transfer and Exchange**. **EXCEPT AS OTHERWISE PROVIDED IN THE BOND RESOLUTION, THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.** This Series 2014A Bond may be transferred or exchanged, as provided in the Bond Resolution, only on the Bond Register kept for that purpose at the principal office of the Bond Registrar, upon surrender of this Series 2014A Bond together with a written instrument of transfer or authorization for exchange satisfactory to the Bond Registrar duly executed by the Registered Owner or the Registered Owner's duly authorized agent, and thereupon a new Series 2014A Bond or Series 2014A Bonds in any Authorized Denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Bond Resolution and upon payment of the charges therein prescribed. The Issuer shall pay all costs incurred in connection with the issuance, payment and initial registration of the Series 2014A Bonds and the cost of a reasonable supply of bond blanks. The Issuer and the Paying Agent may deem and treat the person in whose name this Series 2014A Bond is registered on the Bond Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes. The Series 2014A Bonds are issued in fully registered form in Authorized Denominations.

---

## LEGAL OPINION

The following is a true and correct copy of the approving legal opinion of Gilmore & Bell, P.C., Bond Counsel, which was dated and issued as of the date of original issuance and delivery of such Series 2014A Bonds:

**GILMORE & BELL, P.C.**
Attorneys at Law
100 N. Main Suite 800
Wichita, Kansas 67202

(PRINTED LEGAL OPINION)

---

## BOND ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer to

_____

(Name and Address)

_____
(Social Security or Taxpayer Identification No.)

the Series 2014A Bond to which this assignment is affixed in the outstanding principal amount of $_____, standing in the name of the undersigned on the books of the Bond Registrar. The undersigned do(es) hereby irrevocably constitute and appoint _____ as agent to transfer said Series 2014A Bond on the books of said Bond Registrar with full power of substitution in the premises.

Dated _____

_____
Name

_____
Social Security or
Taxpayer Identification No.

_____
Signature (Sign here exactly as name(s)
appear on the face of Certificate)

Signature guarantee:

By _____

---

**CERTIFICATE OF CLERK**

STATE OF KANSAS )
) SS.
COUNTY OF SEDGWICK )

The undersigned, Clerk of the City of Wichita, Kansas, does hereby certify that the within Series 2014A Bond has been duly registered in my office according to law as of August 1, 2014.

WITNESS my hand and official seal.

(Facsimile Seal) _____(facsimile)_____
Clerk

---

**CERTIFICATE OF STATE TREASURER**

OFFICE OF THE TREASURER, STATE OF KANSAS

RON ESTES, Treasurer of the State of Kansas, does hereby certify that a transcript of the proceedings leading up to the issuance of this Series 2014A Bond has been filed in the office of the State Treasurer, and that this Series 2014A Bond was registered in such office according to law on _____.

WITNESS my hand and official seal.

(Facsimile Seal) By: _____(facsimile)_____
Treasurer of the State of Kansas

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Wichita Airport Authority

**SUBJECT:** Wichita Airport Hotel, LLC, d/b/a Hampton Inn
Use and Lease Agreement
Wichita Mid-Continent Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Non-Consent)

---

**Recommendation:** Approve the agreement.

**Background:** In October 2012, the Airport staff received an unsolicited request from a developer, Wichita Airport Hotel, LLC (WAH), to construct a limited-service hotel on Airport property on Harry Street across from Honeywell. The lease agreement between the Wichita Airport Authority (WAA) and the operators of the DoubleTree by Hilton Wichita Airport (DoubleTree) contains a one-year Right of First Refusal (ROFR) provision. Staff notified DoubleTree of the request, which DoubleTree acknowledged. DoubleTree failed to exercise the ROFR. Therefore, as permitted by DoubleTree's lease, staff continued negotiations with the other party.

Negotiations with WAH resulted in modification of some of the business terms. This triggered a second 30-day ROFR opportunity for DoubleTree, due to the provisions in its current lease agreement. DoubleTree notified the Airport that it intended to exercise its right to build a hotel in order to prevent the original requesting party from doing so. However, DoubleTree did not match the business terms offered by WAH as required by the ROFR, and instead, offered to negotiate an alternate lease with the Airport. Instead of negotiating a lease, DoubleTree requested that the Airport allow it to negotiate a future development agreement.

During this same time period, the Hilton Corporation denied DoubleTree's application for a Hampton Inn franchise. The Hilton company awarded this franchise license to WAH. Based upon these circumstances, at its meeting on June 2, 2014, the Wichita Airport Advisory Board voted unanimously to recommend that the WAA enter into a lease agreement with WAH. DoubleTree was notified of the Airport Advisory Board's recommendation on June 12, 2014.

**Analysis:** The development group requesting a lease agreement has formed a Kansas corporation, to own and operate a Hampton Inn hotel on the Airport. Some of the principal partners of WAH have constructed, and now own and operate several new hotel properties in the region, including a Holiday Inn Express in Maize, a Fairfield Inn and a Holiday Inn in Hutchinson, and a Staybridge Suites in the Kansas City area. Some of the investors also will be the owners and the operator of the new Marriott Spring Hill Suites currently under construction near the entrance to the Airport on Kellogg.

This new Hampton Inn will replace the current franchise located on Kellogg at West Street since that facility's license with the Hilton Corporation expires in January of 2017. Hilton has approved the new franchise with WAH because of its requirement that properties be refreshed and updated periodically in order to maintain the hotel flag.

Upon execution of the lease, WAH will provide a $2 million good faith security deposit in escrow with the Airport to ensure timely construction of the hotel. Upon completion of the roof construction, the deposit will be available to WAH for additional construction costs. WAH will invest a minimum of $12 million of private funds to build and equip the property, which will be owned by the WAA in accordance with existing policy. During the life of the lease, WAH is required to make periodic capital improvements and re-investment obligations in order to maintain its Hampton Inn franchise agreement with Hilton.

The hotel is planned for opening on or about February 1, 2016.

**Financial Considerations:** The lease agreement will have a base term of 30 years, with two, ten-year options. The leasehold will contain no less than 100,000 square feet of Airport land. Beginning on January 1, 2015, the initial land rent will start out at the published rate of $0.4118 per square foot per year for the first 3.5 years. Thereafter, WAH will pay a commission fee of 1% of gross revenues until year 28. For the remainder of the term and option periods, the commission fee will escalate in regular steps, up to 5.5%. In no event shall any annual payment to the Airport be less than $41,180.

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

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the agreement and authorize the necessary signatures.

**Attachments:** Use and Lease Agreement.

# USE AND LEASE AGREEMENT

**By and Between**

**WICHITA AIRPORT AUTHORITY**

**and**

**WICHITA AIRPORT HOTEL L.L.C.**

**for**

## LIMITED-SERVICE HOTEL PROPERTY AND SERVICES

## AT WICHITA MID-CONTINENT AIRPORT

## WICHITA, KANSAS

THIS AGREEMENT, made and entered into this 15th day of July 2014, by and between The Wichita Airport Authority, hereafter referred to as "LESSOR," and Wichita Airport Hotel, L.L.C., Federal Tax Identification #47-1205914, hereinafter referred to as "LESSEE,"

W I T N E S S E T H:

WHEREAS, LESSOR is a governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, LESSOR owns, operates, regulates, administers, and maintains the campus of Wichita Mid-Continent Airport; and

WHEREAS, the LESSOR desires to lease to LESSEE certain premises, including land and facilities, both improved and unimproved, defined below on the Wichita Mid-Continent Airport Property under the terms and conditions set forth below in this Concession and Lease Agreement for the purpose of operating a limited-services hotel and related services as described herein on the Premises; and

WHEREAS, LESSEE is a private business entity authorized to operate in the state of Kansas that desires to lease from the LESSOR certain premises, including land, facilities and facilities that LESSEE will construct on the Wichita Mid-Continent Airport Property under the terms and conditions set forth below in this Concession and Lease Agreement for the purpose of operating a Limited-Services Hotel and related services; and

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby covenant and agree as follows:

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## 1. DEFINITIONS

The terms and phrases defined in this Section for all purposes of this Concession and Lease Agreement shall have the following meanings:

**Agreement** shall mean this Concession and Lease Agreement which creates rights and obligations of the parties to such Agreement.

**Airport** shall mean the Mid-Continent Airport under the ownership, control and jurisdiction of the Wichita Airport Authority.

**Airport Property** shall mean any property, facilities, and improvements owned, leased and/or under the control of the LESSOR and roads and streets contained thereon.

**Certificate of Occupancy** shall mean the certificate issued by the Metropolitan Area Building and Construction Department (MABCD) required as a prerequisite for the legal public occupancy and use of facilities as defined by City/County Code.

**Commencement Date** shall mean the date specified in Section 3 of this Agreement as the beginning date of the Initial Term and any subsequent Option Terms.

**Commercial Business or Commercial Activity** shall mean:

(a) exchanging, trading, buying, hiring, providing or selling of commodities, goods, services or property of any kind on Airport Property;
(b) engaging in any conduct on Airport Property for revenue-producing purposes, whether or not currency, monetary exchange or other forms of monetary instruments or credits ultimately are exchanged, obtained, or transferred on Airport Property; or
(c) offering or exchanging of any service on Airport Property as a part of, or as a condition to, other revenue-producing activities or services on or off Airport Property; or
(d) acting for the purpose of securing revenue, earnings, income, and/or compensation (including exchange for service), and/or profit, whether or not such objectives are accomplished.

**Concession Fee** shall mean a monetary amount charged by LESSOR as compensation for an act, service or privilege provided by LESSOR as described in Section 4 of this Agreement.

**Contract Year** shall mean the twelve (12) month period of time which shall start on the Commencement Date of the Initial Term of this Agreement. Subsequent Contract Years shall continue thereafter for continuous twelve (12) month periods throughout the Initial Term and Option Terms, if exercised, durations as described in Section 3 of this Agreement. The first day of the Initial Term, as defined in Section 3 of this Agreement, shall mark the Commencement Date the first day of the first Contract Year.

**Director** shall mean the Director of Airports, who is the person designated by the LESSOR to exercise functions with respect to the rights and obligations of the LESSOR under this Agreement, and shall include any person expressly delegated by the Director of Airports to exercise functions with respect to the rights and obligations of the Director of Airports under this Agreement.

**Hazardous Materials** shall mean any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as Hazardous Material(s) (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law.

**Improvements** shall mean any new construction, or addition, alteration or betterment, to real estate or any existing improvements on any part thereof including structures, paved surfaces and other ancillary and supporting improvements.

**Limited-Service Hotel** shall mean a lodging/hospitality product with little to no ancillary spaces or service offerings such as conference rooms, convention facilities, restaurant, bar/lounge facilities as are typically customary with a full-service hotel.

**Opening Day** shall mean the date on which the Limited-Service Hotel opens for commercial business to the general public.

**Premises** shall mean the facilities leased under this Agreement, and designated by Exhibit A of this Agreement, which may be amended by consent of the parties from time to time.

**Project** shall mean construction and operation on the Premises of a high quality, nationally recognized brand hotel with a minimum of 100,000 guest rooms, parking lot, ancillary roadways and accesses, requiring a minimum of $12,000,000 of initial private capital investment.

**Rules, Regulations and Codes** shall mean those codes established and set forth under Chapter 9.35 AIRPORTS, of the Code of City Ordinances of the City of Wichita; and shall also mean those Airport Standard Operating Procedures establishing certain policies and procedures on Airport Property.

**Tax** shall mean and includes any assessment, imposition, or levy imposed by any governmental body pursuant to its taxing power.

**Term** shall mean the express time period during which LESSEE has rights and obligations to the Premises as established under Section 2 of this Agreement.

## 2. PREMISES

LESSOR agrees to let to LESSEE, and LESSEE does hereby rent from LESSOR certain real property located at Harry and Ridge, consisting of a minimum of 100,000 sq. ft. of land, ("Premises"), as set forth and shown on the attached Exhibit "A". The Premises shall include the land and any Improvements, located and constructed on the land.

The taking of possession of the Premises by LESSEE shall constitute acknowledgement that the Premises are in good and tenantable condition, and LESSEE agrees to accept Premises in its presently existing condition, "as is," "where is," and that LESSOR shall not be obligated to make any improvements or modifications to the Premises.

## 3. TERM

**Initial Term of Agreement.**
The Term ("Initial Term") of this Agreement shall commence on **July 1, 2014** ("Commencement Date"), and shall continue for a period of thirty (30) years, with the Initial Term expiring on **June 30, 2044**, unless otherwise terminated under provisions agreed to herein.

**Option Term of Agreement**
Agreement may be renewed for one or two (2), consecutive, ten (10) year periods ("Option Terms"), provided LESSEE is not in default hereunder at the time notice requesting exercising an Option Term is given. If LESSEE wishes to exercise the first Option Term, written notice shall be submitted to LESSOR no less than ninety (90) calendar days prior to the expiration of the Initial Term. The second Option Term is available only after successful completion of the

first Option Term. If LESSEE is in default of any obligation under this Agreement beyond the time periods expressly allowed in this Section then any notice attempting to exercise an Option Term shall be void.

The Option Terms, if exercised by LESSEE as expressed under the conditions of this Agreement, shall be:

**First Option Term:** **July 1, 2044**, and expire on **June 30, 2054**
**Second Option Term:** **July 1, 2054**, and expire on **June 30, 2064**

This Agreement is contingent upon the Right of First Refusal granted to Wichita Airport Hotel Associates, L.P. in the Lease of June 5, 2007. Should that third party exercises the right to develop a limited service hotel on the Airport campus under that Right of First Refusal provision, LESSEE shall be relieved of its obligations in this Agreement.

## 4. RENTALS and CONCESSION FEES

**Land Rental**

Upon the Commencement Date of this Agreement, LESSEE shall pay to LESSOR land rental for the Premises described in Section 2. The land rent shall be calculated as follows:

| INITIAL TERM<br>100,000 Sq. Ft. or more, as agreed | | | | | |
|---|---|---|---|---|---|
| Effective Dates | | | Rate Per Sq. Ft. | Annual | Monthly |
| 7/1/2014 | - | 12/31/2014 | 0 | 0 | 0 |
| 01/01/2015 | - | 06/30/2018 | .4118 | $41,180 | $3,431.67 |

Land rent terminates after June 30, 2018, Contract Year 4, to be replaced by payment of the Concession Fee or MAG.

**Concession Fee**

The LESSEE shall pay to LESSOR an annual Concession Fee in twelve (12) monthly installments determined as follows:

| | |
|---|---|
| **Initial Term** | |
| Contract Years 1 – 4 | No Concession Fee Due |
| Contract Years 5 - 27 | 1% of total Gross Revenues |
| Contract Years 28 – 30 | 3.5% of total Gross Revenues |
| **First Option Term** | |
| Contract Years 31 – 35 | 3.5% of total Gross Revenues |
| Contract Years 36 – 40 | 4.5% of total Gross Revenues |
| **Second Option Term** | |
| Contract Years 41 – 50 | 5.5% of total Gross Revenues |

The LESSEE shall pay to the LESSOR under the schedule described in this Section, a Concession fee the greater of either LESSEE's scheduled percentage of total annual gross revenues, or a minimum annual guarantee (MAG). The MAG for Contract Year 5 shall be a fixed value calculated from the square footage leased, to be not less than $41,180. For all subsequent Contract Years thereafter the MAG shall be an amount equal to eighty-five percent (85%) of the aggregate Concession Fee paid by LESSEE during the immediate preceding Contract Year; however, in no event shall the MAG for the next succeeding Contract Year be less than the MAG for the previous Contract Year.

Tables – Summary of Concession Fee Schedule

| CONCESSION FEE SCHEDULE | | | | | |
|---|---|---|---|---|---|
| Initial Term Effective Dates | | | Fee % | | Minimum Annual Guarantee |
| 07/01/2014 | - | 06/30/2018 | 0 | | No Concession Fee or MAG Due |
| 07/01/2018 | - | 06/30/2019 | 1% | OR | Calculated from square footage agreed, with a minimum of $41,180 |
| 07/01/2019 | - | 06/30/2041 | 1% | OR | Amount equal to eighty-five percent (85%) of concession fee from the immediate preceding Contract Year, but not less than MAG for the previous Contract Year. |
| 07/01/2041 | - | 06/30/2044 | 3.5% | | |

| CONCESSION FEE SCHEDULE | | | | | |
|---|---|---|---|---|---|
| First Option Term Effective Dates | | | Fee % | | Minimum Annual Guarantee |
| 07/01/2044 | - | 06/30/2049 | 3.5% | OR | Amount equal to eighty-five percent (85%) of concession fee from the immediate preceding Contract Year, but not less than MAG for the previous Contract Year. |
| 07/01/2049 | - | 06/30/2054 | 4.5% | | |

| CONCESSION FEE SCHEDULE | | | | | |
|---|---|---|---|---|---|
| Second Option Term Effective Dates | | | Fee % | | Minimum Annual Guarantee |
| 07/01/2054 | - | 06/30/2064 | 5.5% | OR | Amount equal to eighty-five percent (85%) of concession fee from the immediate preceding Contract Year, but not less than MAG for the previous Contract Year. |

The applicable Concession Fee shall be due and payable by LESSEE to LESSOR on the fifteenth ($15^{th}$) day of each and every month following the month of activity and shall be delinquent if not received by LESSOR on or before the last day of the month following the month of activity. If the total paid Concession Fee increments for the Contract Year are more than the greater of the total percentage of Gross Revenues or the MAG for the Contract Year in its entirety, the LESSOR will credit such excess to amounts due from LESSEE during the following period until such excess is completely applied against such amounts.

## 5. DEFINITION OF GROSS REVENUES

Gross Revenues shall mean, for all purposes in this Agreement, all monies paid to LESSEE or considerations of determinable value received from customers and clients by LESSEE, and any affiliate or subsidiary companies, concessionaires, licensees, permitees or sub-lessees conducting any business from or upon the Premises, after discounts and coupons deducted at the time of sale, for:

(a) Lodging;
(b) Sales of all food and beverages, including catering;
(c) Any and all additional sales or services not expressly excluded in this Section.

Only the following shall be **excluded** from the term "Gross Revenues":

(a) Packaged food and beverage products dispensed from vending machines;
(b) Credits or refunds made to customers;
(c) Insurance proceeds received by LESSEE in settlement of claims for loss or damage to the Premises or personal property;
(d) Sales taxes or other taxes of a similar or equivalent nature paid to or collected by LESSEE on behalf of any taxing governmental agency.

## 6. GOOD FAITH SECURITY DEPOSIT AND LIQUIDATED DAMAGES FOR NON-COMPLETION

At the time of signing this Agreement by LESSEE, LESSEE agrees to deposit two million U.S. dollars ($2,000,000), or in the alternative, marketable securities meeting the approval of LESSOR in its unfettered discretion in such greater amount as is acceptable to LESSOR as a good faith escrow to secure construction of the Project. This deposit shall be accessible for payment of construction expenses by LESSOR only if and when the roof is completed on the Project provided the roof is completed on or before January 2, 2016. This escrow shall be established in an account mutually selected by the parties, and any release shall require mutual assent.

LESSOR and LESSEE recognize that time is of the essence of this Agreement and that LESSOR will suffer financial loss, and opportunity loss, potentially over the intended thirty (30) years or more life of this Agreement if the Project is not completed within the time specified in this Agreement, plus any extensions which may be allowed. The parties also recognize the delays,

expense and difficulties involved in proving in a legal preceding the actual loss suffered by LESSOR if the Project is not completed on time. Accordingly, instead of requiring such proof, and as an inducement to LESSOR to enter into this Agreement, the parties agree that as liquidated damages for delay beyond the established completion date (but not as a penalty), LESSEE shall pay LESSOR the sum of Two Thousand dollars ($2,000.00) for each day that expires after the Project completion date.

## 7. PAYMENT

LESSEE shall make all payments to the Wichita Airport Authority, and in a form acceptable to LESSOR. ACH direct deposit is preferred. Bank account and routing information is available upon request. Payments made by check shall be delivered or mailed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

or such other address as designated in writing.

In the event LESSOR fails to make payment within ten (10) calendar days of the dates due as set forth in this Agreement, then LESSOR may and shall have the right to charge LESSEE a monthly service charge of twelve percent (12%) annual percentage rate on an annual basis for any such overdue amount, plus reasonable attorneys' and administrative fees and third party collection agency fees incurred by LESSOR in attempting to collect payment.

## 8. GROSS REVENUE REPORTS

LESSEE shall submit monthly to LESSOR a "Gross Revenue Report" showing, with respect to the prior month, a summary of daily business transactions, together with an accounting of all fees charged to customers. Such report shall be in form and substance satisfactory to the Director.

LESSEE's Gross Revenue Report for the previous month shall be due and submitted to the LESSOR on or before the fifteenth ($15^{th}$) day of the month. The parties acknowledge that the LESSOR incurs additional administrative effort if LESSEE's Gross Revenue Reports are not complete and received by the due date of each report. To compensate the LESSOR for this administrative effort, LESSEE agrees to pay the LESSOR fifty dollars ($50) for each monthly

report which is not complete, accurate, and received by its due date. This amount shall be considered additional compensation and shall become due and payable to, and received by LESSOR on or before the last day of the month in which this additional compensation is incurred.

## 9. BOOKS AND RECORDS

LESSEE covenants and agrees that for the purposes of ascertaining the amount payable as Concession Fee, it shall keep proper books, records, and accounts in accordance with generally accepted accounting principles which shall show all sales made and services performed of any nature whatsoever, for cash, credit, or any other consideration which shall accurately reflect Gross Revenues. LESSEE agrees to operate its business so that for each sale, service or transaction whatsoever that a duplicate sales slip, or any acceptable form of documentation, is issued and prepared so that LESSOR can verify upon LESSEE's accounting and internal control processes for accurately reporting Gross Revenues.

Upon request of the LESSOR, LESSEE shall furnish LESSOR within ten (10) calendar days, accurate and exact copies of all sales and excise tax reports made to the Kansas Department of Revenue.

## 10. AUDIT

LESSEE shall employ the services of an independent Certified Public Accountant who shall furnish a written annual reconciliation of Gross Receipts subject to the terms and conditions of this Agreement to the LESSOR annually within thirty (30) days following the end of each twelve (12) month period, in a form acceptable to the LESSOR.

LESSEE agrees to give LESSOR or LESSOR's designated examiner access during reasonable hours for inspection of LESSEE's books and records with seven (7) calendar days advance written notice. The LESSOR shall have the right to inspect all of the records and books of account of LESSEE. The subject of the audit shall include Gross Revenues, and the LESSEE, upon request, shall make all such information available for such inspection. Such books, ledgers, accounts and records shall be available for inspection by LESSOR upon request of three (3) years from the date of such activity. If LESSEE fails to produce all of the requested books or records in Wichita, Kansas, LESSEE shall pay a $50 penalty per day for each day in excess of the tenth ($10^{th}$) day up until the books and records are produced. This amount shall be considered additional compensation and shall become due and payable to, and received by

LESSOR on or before the last day of the month in which this additional compensation is incurred.

If, as a result of such inspection, it is established that LESSEE has understated Gross Revenues or business transacted for any Contract Year by three percent (3%) or more (after deductions and exclusions provided for herein), the LESSEE shall promptly pay to LESSOR the full cost of such inspection in addition to any additional Concession Fee owed but not theretofore paid, with any applicable interest thereon at the rate of one and one-half percent (1 1/2%) per month from the end of the month in which the discrepancy(ies) occurred. If as a result of such inspection it is established that LESSEE has overstated Gross Revenues, any overpayment of Concession Fee therefore made by LESSEE shall be credited against MAG or Concession Fee next becoming due hereunder unless the term has expired and in which case LESSEE will then be issued a refund.

Any financial or other information released to the LESSOR that is considered by a LESSEE to be proprietary is still subject to release as a component of an open records request, subject to review by the City Attorney. Any financial or other information deemed to be proprietary by the LESSEE should be clearly marked as "confidential" or "proprietary" on each page on which the information appears. LESSEE should not expect the LESSOR to seek confidentiality protection for any claimed privileged or proprietary information just because the material is marked "confidential" or "proprietary."

## 11. LESSEE'S RIGHTS AND PRIVILEGES

LESSEE shall have the following rights and privileges on the Premises and on the Airport:

(a) The right and privilege to use the Premises for the conduct of its Commercial Business as a Limited-Service Hotel concession under a premium, high quality and nationally recognized hotel brand.

(b) The rights to install, operate, repair, and store upon the Premises all personal property and fixtures necessary for the conduct of LESSEE's lawful business.

(c) The right of ingress and egress to and from the Premises, which rights shall extend to LESSEE's invitees, contractors, subcontractors, agents, representatives and employees; subject, however, to all reasonable security regulations;

(d) The right in common with others authorized to do so, to use the common areas of the Airport, consisting of but not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting beacons, and navigational aids;

(e) All other rights and privileges expressly granted to LESSEE under the terms and conditions of this Agreement.

## 12. LESSOR'S RIGHT AND PRIVILEGES

LESSOR expressly reserves from the Premises:

(a) Mineral Rights. All gas, oil and mineral rights in and under the soil;

(b) Water Rights. All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises;

(c) Airspace. A public right of flight through the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of LESSOR or any Tenant shall result from the exercise of this right.

(d) Navigational Aids. The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids;

(e) Entry and Inspection of Premises. The right of LESSOR, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:

i. With twenty four (24) hours advance notice, to inspect at reasonable intervals during regular business hours (*or any time without prior notice in case of emergency or lawful investigation*) to determine whether LESSEE has complied, and is complying with the terms and conditions of this Agreement;

ii. Without notice, to inspect Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations and airport standard operating procedures; and

iii. Within thirty (30) calendar days advance notice (*or any time without prior notice in case of emergency or critical system repairs*) to construct new facilities, or to perform maintenance, repair, or replacement relating to the LESSOR's support of the Premises or any facility thereon, as may be required and necessary, but LESSOR shall not be obligated to exercise this option.

(f) Radio/Wireless Communication Systems. The right to approve or withhold approval of any use of fixed RF Systems for the transmission of radio frequency signals in/on the Premises;

(g) General Provisions. The right to exercise any and all rights set out in Section 44, General Provisions.

Provided that exercise by LESSOR of any such reserved rights shall be without expense to the LESSEE and shall not unreasonably or materially interfere with LESSEE's use of the Premises and shall not delay LESSEE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

## 13. USE OF PREMISES

**(a) Permitted Uses of Premises**

The purpose of this Agreement is to grant to LESSEE the right and privilege of the use and occupancy of the Premises on Airport Property for its construction and operation of a Limited-Service Hotel concession under a premium, high quality and nationally recognized hotel brand, and supporting not less than one hundred (100) guest rooms, parking lot, ancillary and supporting roadways, accesses, and other supporting facilities as may be necessary or required in support thereof.

The LESSEE agrees to continuously maintain, preserve and uphold the premium, high quality and nationally recognized hotel brand throughout the Initial and Option Terms of this Agreement in full compliance with the franchise license agreement in effect on Opening Day. Future substitution of the brand in effect on Opening Day may be approved in writing only at the sole discretion of the LESSOR, and such approval shall not be unreasonably withheld by the LESSOR so long as the brand substituted remains that of a premium, high quality and nationally recognized hotel brand and all terms and

conditions of this Agreement shall apply equally and in full force and effect to any future substituted brand(s).

The privileges granted herein are not exclusive, and the LESSOR shall have the right to enter into contractual arrangements with other hotel operators on Airport Property.

LESSEE shall have the right of ingress and egress on Airport Property consistent with Standard Operating Procedures, in common with others, for the benefit of its employees, customers, contractors, subcontractors, agents and representatives, and other invitees to be exercised in a reasonable manner. This right of ingress and egress is granted for activities incidental or related to LESSEE'S approved activities, and for no other purposes except as may be approved in writing by LESSOR. LESSEE shall not interfere with the rights, privileges and access of other tenants, tenant employees, patrons and invitees on the Airport. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute, the Premises shall be used and occupied for aviation purposes or purposes incidental or related thereto in support of a hotel property and services related thereto.

LESSEE recognizes that other tenants now and hereafter may occupy other portions of Airport Property, and that such other tenants shall have the right to use public roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not under an Exclusive Use lease; and LESSEE shall conduct its operations in such a manner as to not impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests at the Airport.

LESSEE recognizes that this right of quiet enjoyment and unimpeded access extends to all tenants equally. No tenant shall have has the right to overhang or otherwise invade by vegetation, equipment, improvements, any part of an aircraft, or other means or any other contrivances the leasehold premises of any other tenant or the vertical areas thereabove commencing at the property lease line and all areas therein. This prohibition applies to both, permanent or transitory invasions. The sole exception to this provision shall be for the navigational easement, described in the Airspace and Easement for Flight provisions of Section 44 General Provisions, granted to airborne aircraft.

LESSOR reserves the right to grant and/or permit other parties the right to use any portion of Airport Property, except those Premises leased to LESSEE, on an Exclusive Use basis for any permitted purpose and upon any fair and non-discriminatory terms

established by the LESSOR.

LESSEE, its affiliated entities, subsidiaries, partners, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided by a separate written approval, or amendment to this Agreement, and subject to approval by LESSOR.

**(b) <u>Prohibited Uses of Premises</u>**

As consideration for this right and privilege, LESSEE agrees to reasonably use and is hereby obligated to maintain and operate upon said Premises in accordance with the terms and conditions set forth herein. The Premises shall not be used for any other Commercial Business or Commercial Activity not specifically authorized in this Agreement, or as may be approved in writing by the LESSOR. Without limiting this general restriction, the following activities, operations, services and concessions shall be specifically prohibited on or from the Premises or any other location on Airport Property:

- **i.** Automobile rental business or franchise;
- **ii.** Automobile sales;
- **iii.** Commercial "paid" parking or valet parking services;
- **iv.** Vehicle, equipment or other personal property storage;
- **v.** Sale, trade or bartering of fuel or lubricant products;
- **vi.** Any automobile servicing, including but not limited to fueling, fluid servicing, interior or exterior washing or cleaning;
- **vii.** Revenue-producing communication systems or systems not directly applicable to LESSEE's operations on the Premises;
- **viii.** Commercial advertising (other than on Premises, and then only to the extent it is directly promoting LESSEE'S own hotel related services);
- **ix.** No banners shall be displayed or installed by LESSEE on Airport Property;
- **x.** LESSEE shall not permit or allow its customers or employees to utilize the Premises or for any other purpose other than those specifically granted by LESSOR pursuant to this Agreement; and
- **xi.** Any activity considered by LESSOR to not be aviation purposes or purposes incidental or related thereto in support of a hotel property and services related thereto.

## 14. LESSEE'S STANDARDS OF PERFORMANCE

In the operation of the business to be conducted under this Agreement, LESSEE agrees to comply with the following conditions and requirements:

**(a)** LESSEE shall provide the customary facilities and services of a high quality, Limited Service Hotel under a premium, nationally recognized hotel brand, and supporting not less than one hundred (100) guest rooms, parking lot and ancillary and supporting roadways, accesses, and other supporting facilities as may be necessary or required in support thereof twenty-four (24) hours per day, seven (7) days per week.

**(b)** LESSEE shall furnish well-trained personnel, including qualified, competent, and experienced supervisory personnel, and other support staff necessary to operate its hotel concession. LESSEE shall select and appoint a full-time manager and supervisors necessary to fulfill the requirements of the operation of a hotel concession.

**(c)** LESSEE's supervisors shall be qualified and experienced supervisors. Each shall be capable of acting as the manager during the full time manager's absence. Supervisors shall be trained by the manager and LESSEE so that each shall become proficient in handling all the duties of the manager. Supervisors shall be scheduled so that the manager or a supervisor is on duty at all times during business hours.

**(d)** LESSEE agrees to inform and instruct its employees with regard to operational procedures contained in this Agreement in order to ensure propriety and courteous conduct while on duty and to take positive and immediate action to correct the conduct of its employees upon notification by the Director or his representative of a breach of this Agreement in this regard.

**(e)** LESSEE agrees to maintain standards of quality of service and products consistent with a high quality, premium Limited Service Hotel brand name, and in accordance and compliance with the terms and conditions of any franchise license agreement which may be in effect now or in the future.

**(f)** LESSEE shall ensure polite and inoffensive conduct and demeanor on the part of its representatives, agents, servants, and employees.

**(g)** LESSEE shall furnish good, prompt, courteous and efficient service to meet reasonable demands or requests for such services.

**(h)** LESSEE's Premises shall be clean in appearance and maintained so as to present a professional and well-kept image at all times.

**(i)** LESSEE shall not distribute, or allow to be distributed, advertising or promotional materials, flyers or leaflets at or upon Airport Property except from the lobby area of the hotel, and only subject to the provisions of this Agreement;

**(j)** LESSEE shall not allow its agents, servants or employees so engaged to conduct business in a loud, noisy, boisterous, derogatory, discriminatory, offensive, objectionable manner, or to drive in either a reckless or an unlawful fashion, or to solicit business on Airport Property except through the LESSOR's advertising concessionaire. Upon notification by the Director to LESSEE that any person employed by LESSEE is, in the Director's opinion, disorderly or otherwise unsatisfactory, such person shall be promptly removed from the Airport.

**(k)** LESSEE shall operate its business upon the Premises so that a duplicate sales slip, guest registration, or detailed sales transaction shall be issued with each sale or transaction. Such duplicate detailed sales transactions shall be considered a part of LESSEE's books and records of accounts and shall be retained pursuant to Section 10 of this Agreement.

**(l)** LESSEE shall not misrepresent to the public its prices or the terms and provisions of its services or those of its competitors. LESSEE shall comply with all applicable rules and regulations of all governmental agencies having jurisdiction over LESSEE's activities. LESSEE shall fully inform each Airport Customer, prior to the execution of such Airport Customer's agreement for room charges, of all rates and fees applicable to such Airport Customer's rental. LESSEE (including its employees, agents and representatives) shall not refer to any rents, fees or charges required to be paid hereunder as an Airport tax or customer tax. Said rents, fees and charges shall only be referred to or characterized by the terminology as used in this Agreement or as approved in advance in writing by the Director. LESSEE shall, upon receipt of written notice, immediately cease any business practices which LESSOR determines to be deceptive.

LESSEE shall furnish any and all services to the public on a fair, reasonable and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service; provided, however, that LESSEE, except to the extent it may be otherwise prohibited in this Agreement, shall be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers, if any.

## 15. NON-EXCLUSIVE USE OF CERTAIN FACILITIES

LESSOR grants the LESSEE, in common with other users, the non-exclusive use of the Airport and appurtenances, together with all facilities, improvements and services which are now, or may hereafter be provided at, or in connection with the Airport. This use is limited to the purposes for which such facilities were designed and constructed, and for no other purposes, and is available only from time to time and on a non-exclusive use basis, according to the discretionary operational decisions of LESSOR. These facilities include, but are not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations which are not exclusively leased areas of the LESSEE or of any other tenant on the Airport.

## 16. DESIGN AND CONSTRUCTION

LESSEE agrees to construct a structure or structures supporting not less than one hundred (100) guest rooms, parking lot and ancillary and supporting roadways, accesses and other necessary Improvements on the Premises shown on Exhibit "A" at Harry and Ridge Road. LESSEE warrants that the Improvements, when completed, will be necessary or useful by LESSEE for activities allowed under this Agreement and meet the design, furnishing, and documenting standards set by it's high quality, premium franchisor. LESSEE agrees to proceed diligently to complete the Improvements.

In addition to the requirements of Section 6, Good Faith Security Deposit, it shall be treated as an event of default under this Agreement if construction of the new facilities and Improvements ("Construction Start Date") have not commenced upon or prior to the one (1) year anniversary of the Commencement Date of this Agreement. Such failure to commence construction shall be treated as an event of default under Section 32, Termination by Lessor.

It shall be treated as an event of default under this Agreement if a Certificate of Occupancy is not issued by the Metropolitan Area Building and Construction Department (MABCD) for the Improvements, structures and facilities on the Premises upon or prior to twenty-four (24) calendar months of the Commencement Date of this Agreement. As it applies to execution of these provisions, the LESSOR may extend such time periods in writing only at the sole discretion of the Director of Airport and only for demonstrated good cause beyond the reasonable control of the LESSEE.

If the Agreement is terminated due to failure to commence or complete the construction as set

forth in this Section, LESSEE shall, at LESSOR'S election at LESSEE's sole expense, be required to restore the Premises to a like and comparable condition as existed at the commencement date of this Agreement. This restoration shall be completed within a time period of ninety (90) calendar days from expiration of LESSEE'S opportunity to cure as set out in Section 32, Termination by Lessor. At the end of the ninety (90) day period described above, LESSEE shall vacate the Premises, and LESSOR shall be entitled to complete the restoration work at LESSEE'S expense, plus an additional twenty percent (20%) administrative fee to be paid by LESSEE directly to LESSOR. The parties recognize that the Premises are unique property of substantial value, and stipulate that injunctive relief is appropriate to enforce the provisions of this Section. Irrespective of the performance under this Section, LESSEE shall be obligated for all rental payments under this Agreement until the Premises are both vacated and restored.

LESSEE shall design and construct facilities and improvements on the Premises subject to the LESSOR'S express approval of LESSEE'S proposed plans and specifications. Such construction shall adhere to the terms of this Agreement and any other applicable regulations, codes and requirements set out by LESSOR or any governmental agency or unit. Plans and specification review submittals shall follow accepted practice for such deliverables, and the LESSOR shall provide comments, as applicable, on each submittal. Upon the LESSOR's reasonable request, the LESSEE shall provide additional or supplemental submittals, as may be reasonably required, to fully understand the proposed improvements. No above-ground wires or other above-ground utilities shall be installed on the Premises.

The LESSEE shall provide data to the LESSOR sufficient and acceptable for the LESSOR to submit Form FAA 7460-1 NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION for proposed structures on the Premises. The LESSEE is responsible to comply with FAR Part 77 and City of Wichita Code which shall be satisfied by receiving from the FAA a formal DETERMINATION OF NO HAZARD TO AIR NAVIGATION demonstrating no adverse impact, no safety hazards, and no risk to air navigation approaches. The LESSEE shall be responsible to design and construct and/or modify the design of proposed structures to meet these requirements.

LESSEE shall provide a storm water management plan as part of the preliminary plan review process. Storm water management facilities shall be designed and maintained in accordance with guidelines established by the City of Wichita, the Wichita Airport Authority, and all federal agencies. No construction, development or subsequent activities shall be allowed to cause adverse drainage issues such as erosion, blocking the flow of water, etc. Upon LESSOR'S approval of all plans and specifications and upon approval and issuance of required building permits by the City of Wichita Office, the LESSEE and LESSEE's employees, contractors,

subcontractors, suppliers, agents, and/or representatives shall have the right to enter upon the Premises and commence construction. Stormwater best management practices (BMPs) shall be installed and maintained as required by LESSOR, and other federal, state, and local agencies having regulatory jurisdictional authority.

LESSEE agrees: (1) construction shall be administered and observed on-site by construction and/or design professionals and Job Site Requirement document to ensure compliance with the approved plans and specifications; (2) proposed construction modifications, amendments or changes to the LESSOR approved plans and specifications shall be submitted to LESSOR for prior approval; (3) to install a temporary security and/or construction barricade fence as directed by the LESSOR at LESSEE's expense (4) to repair or replace, at LESSEE's expense and to LESSOR's satisfaction, property damaged in the construction of the facilities and improvements by LESSEE, its contractors, agents or employees; and (5) to provide LESSOR, within thirty (30) days following occupancy of the facilities, a complete reproducible set of as-built record drawings, along with a certification of Project costs for all permanent improvements. Upon completion of the facility, LESSEE shall furnish a letter to LESSOR warranting that: (1) the improvements have been completed in accordance with the approved plans and specifications; (2) the improvements have been completed in a good and skilled manner; (3) no liens have been filed, nor is there any basis for the filing of such liens with respect to the improvements; and (4) all improvements constituting a part of the Project are located or installed upon the Premises. Inaccurate or false certifications under this Section shall be a breach of this Agreement which the parties agree may only be remedied by specific performance whenever discovered. LESSEE's obligation to cure deficiencies in the improvements to the Premises by performance in a good and skilled manner shall survive this Agreement.

Plan approval described in this Section shall not be deemed approval as required for the Zoning Code, Building Code, or any other approval required by the City of Wichita. LESSEE shall indemnify and hold the LESSOR harmless for any liability for regulatory or governmental approvals or the failure to obtain the same. LESSEE shall be responsible for obtaining all permits and approvals required for the construction, maintenance, operation and use of all facilities on the Premises. LESSEE shall use reasonable efforts to coordinate the construction of the improvements with time schedules established by the LESSOR, should other construction be occurring at the Airport which may be impacted by this Project.

## 17. CONSTRUCTION COSTS

LESSEE agrees to invest a minimum initial capital investment of twelve million dollars ($12,000,000) in new facilities and Improvements in the Project. LESSEE further agrees to make additional and on-going upgrade capital investments in facilities and Improvements as may be required by the franchise license agreement to maintain the franchise license with a premium, high quality and nationally recognized hotel brand.

LESSEE agrees to pay all costs incurred in connection with the construction of the new structures, facilities and improvements, and future additions, improvements and alterations, unless otherwise expressly agreed to in writing by the LESSEE and LESSOR. LESSEE agrees to make direct payment to all materials, product and service providers for all such costs as they are incurred. LESSEE shall have no right, authority, or power to bind LESSOR or any interest of LESSOR in the Premises, for the payment of any claim for labor or material or for any charge or expense incurred in the erection, construction, operation, or maintenance of said improvements and Premises.

Before beginning construction, LESSEE shall, by agreement with its contractor or otherwise, provide performance, labor and material payment bonds and statutory bonds with respect to all improvements to be constructed on the Premises in the full amount for the Project contract. The general contractor under any such contract shall be the principal and a surety company or companies qualified to do business in Kansas shall serve as surety. Such performance, labor and material payment bonds shall name the Wichita Airport Authority and the City of Wichita, Kansas as the obligees. Satisfaction of this requirement shall not be the basis for an extension of the Section 16, Design and Construction, construction period.

For any construction on the Premises, LESSEE shall purchase and maintain a builder's risk insurance policy, or require its prime contractor to carry such policies, in a sum equal to the full Project replacement value as set forth in Section 29, Liability Insurance. Builder's Risk coverages shall be in effect from the date of or prior to the Construction Start Date and continue in force until all financial interest ceases. LESSEE shall also purchase and maintain any other insurance policies described in Job Site Requirements document relating to construction of the Premises. All other coverages shall remain in force as described in the Job Site Requirement document. The Wichita Airport Authority and the City of Wichita shall be named as additional insured on such policies, and all policies shall be written by insurers subject to LESSOR's reasonable approval.

## 18. ALTERATIONS AND IMPROVEMENTS

Once the initial improvements are completed, LESSEE may, with prior written approval of LESSOR, and by lease amendment, if appropriate, add to, improve, or alter the Premises subject to all conditions set forth herein. Any such addition or alteration shall be subject to the same design, construction and use requirements established for initial construction as set forth in Section 16, Design and Construction. Any such addition or alteration must be designed and constructed in a manner that will not weaken or impair the structural strength or reduce the value or functionality of the Premises or existing improvements thereon. It shall be the responsibility of LESSEE to file all necessary alteration and construction forms with the Director of Airports, as the LESSOR's representative, for submission to the Federal Aviation Administration for approval.

## 19. UTILITIES

**(a) <u>Facilities Installation and Upgrades</u>**

The LESSEE shall have the right to access utility services; including gas, water, sewer, trash collection, and electricity, which shall be made available or allowed to be made available to the Premises by the LESSOR. The LESSEE shall be responsible for upgrading, modifying, or extending any existing utilities at or upon the Premises, beyond that provided by the LESSOR if any are provided by LESSOR, to the condition and capacity as may be required by the LESSEE. Any additional utility upgrade, modification or extension shall be at the LESSEE's sole expense, and must be approved in advance by the LESSOR.

**(b) <u>Utility Service</u>**

Payments for utility service used by LESSEE shall be made directly to the utility supplier or service provider. For utility service supplied by the LESSOR, then LESSEE shall pay those costs to LESSOR within thirty (30) days after receipt of LESSOR's invoice. LESSOR agrees that any such utility costs, surcharges and administrative fees invoiced to LESSEE shall be based upon the uniform rates charged by the LESSOR to other airport users.

## 20. NON-INTERFERENCE WITH AIRPORT OPERATIONS

LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities, nor shall LESSEE use or permit the Premises to be used in any manner which might interfere with the landing and take-off of aircraft from the Airport or otherwise constitute a hazard to the general public, or to LESSOR's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.

LESSEE covenants and agrees that it shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect, infringe upon, block or interrupt the operations and business activity of other airport tenant leaseholds.

## 21. COOPERATION WITH AIRPORT DEVELOPMENT

LESSEE understands and agrees that LESSOR may pursue Airport development, improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. LESSEE agrees to work cooperatively and in good faith with the LESSOR and other tenants and contractors in development, improvement and maintenance activities to minimize any disruptions. If requested by the LESSOR, LESSEE shall cooperate with and assist the LESSOR to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, improvement, and maintenance activities. LESSOR may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress are reasonably equivalent to current access available to LESSEE. LESSOR may temporarily close paved surfaces or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Provided that exercise by LESSOR of any such Airport development, improvement, or maintenance shall be without expense to the LESSEE and shall not unreasonably or materially interfere with LESSEE's use of the Premises, and shall not delay LESSEE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

## 22. SURRENDER OF POSSESSION AND RESTORATION

LESSEE shall yield and deliver to LESSOR possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with LESSEE's obligations in this Agreement, except for reasonable wear and tear, or fire or other casualty for which full insurance compensation has been paid as agreed. LESSEE shall, at its expense, deliver the Premises in good order and condition, including:

(a) cleaning and removal from the Premises all waste and refuse;
(b) removal from the Premises all Personal Property;
(c) removing by legal means all materials or other substances classified as hazardous;
(d) leaving in operating condition all bulbs and ballasts; and
(e) replacing all broken glass.

## 23. REMOVAL AND DEMOLITION

LESSEE shall not remove or demolish, in whole or in part, any improvements upon the Premises without the prior written consent of the LESSOR, which may, at its discretion, condition such consent upon the obligation of LESSEE replacing the same by a reasonable improvement specified in such consent. LESSEE shall obtain written consent before commencing demolition and restoration as described under Section 16, Design and Construction. Failure to obtain this consent shall entitle the Authority to such compensation as is necessary to restore the affected improvements.

## 24. DAMAGE OR DESTRUCTION

In the event that facilities or improvements on the Premises are damaged or destroyed in whole or in part by fire, lightning or any other peril or other casualty during the term of this Agreement, this Agreement shall remain in full force and effect and LESSEE shall proceed with due diligence to repair, restore, rebuild or replace said damaged or destroyed property or parts thereof to as good a condition as all affected properties were in immediately prior to such damage or destruction, subject to such alterations as LESSEE may elect to make and are permitted in this Agreement. All proceeds from the insurance policies related to such damage or destruction shall be applied to cover the cost of such repairs or restoration.

In the event the improvements are damaged or destroyed in whole or in part by fire, lightning or any other peril or casualty not resulting in whole or in part from the actions of the LESSEE during the term of this Agreement, and such damage, destruction or loss exceeds fifty five percent (55%) of the value of the property as it existed prior to the casualty loss, LESSEE shall have the election, indicated by written notice given to LESSOR within 180 calendar days after the occurrence of such event, not to repair, restore, rebuild or replace the improvements. Upon such election by LESSEE, this Agreement shall be terminated effective as of the date such notice is given by LESSEE, and neither party shall have any further rights or obligations pursuant to this Agreement other than LESSEE'S obligation to satisfy damages arising from any negligent or intentional action of itself, its employees, agents or invitees to the extent not covered by insurance proceeds. All of the insurance proceeds shall be paid to LESSEE and LESSOR in pro-rata distributions as their interests may appear based upon the fair market value of each party's interest at the time the proceeds are received. Where allowed by the insurance policy, insurance proceeds shall first be applied to removal of damaged improvements from the Premises before such distribution.

## 25. PERSONAL PROPERTY

Any personal property of LESSEE or others placed in or upon the Premises shall be at the sole risk of the LESSEE, and LESSOR shall not be responsible or liable for any loss, damage and replacement thereto, unless caused by LESSOR, its officers, agents, or employees, and the LESSEE waives all rights of subrogation against recovery from the LESSOR for such loss or damage.

The parties agrees that all personal property owned and placed upon or within the Premises by the LESSEE shall be removed by the LESSEE in accordance with the terms of this Agreement at the termination or expiration of this Agreement subject to any valid lien which LESSOR may have on that property for unpaid rents, expenses or fees; provided the LESSEE shall not then be in default in performance of the covenants hereof. The removal of any such property, as aforesaid, shall be effected and all damage caused to said Premises by such removal shall be repaired by LESSEE within thirty (30) days after the termination or expiration of the Agreement. Should the LESSEE fail to remove said personal property within the prescribed thirty (30) day period, title to all such property shall vest in the LESSOR which may retain such property for its own use. In the alternative, the LESSOR may cause the removal and destruction or disposition of all or any portion of such property at the sole risk and expense of the LESSEE.

## 26. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES

All Improvements, structures, fixtures, facilities, or future structures, fixtures, facilities and Improvements constructed by and permanently affixed to the Premises shall be, and shall remain, exclusively with LESSOR. The term "fixtures", whenever used in this Agreement, shall be construed to include all structures and fixed systems and equipment erected or installed upon the Premises, shelves, cabinets, counters, all fencing, grading, landscaping and pavement, all underground wires, cables, pipes, conduits, tanks, drains and drainages; and all other property of every kind and nature which is permanently affixed to the Premises.

LESSOR shall, without cost to LESSOR, furnish and install all non-attached furniture, movable partitions, decorations, accessories, equipment, and tools on the Premises necessary to conduct its business, which shall retain its status as personal property of the LESSEE even though temporarily affixed or fastened to the Premises.

## 27. TAXES

LESSEE agrees to pay all present and future taxes or, in lieu of taxes, special assessments now or hereafter levied or assessed:

(a) upon taxable property owned or possessed by LESSEE and situated on the Premises; and
(b) upon LESSEE's interest in or use of the Premises. LESSEE shall defend, indemnify and save the Wichita Airport Authority and the City of Wichita, Kansas harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.

LESSEE shall promptly pay all taxes, excises, franchise or license fees and permit fees of whatever nature applicable to its operation of Premises. LESSEE may elect, however, at its own cost and expense, to contest any such tax, excise, levy, or assessment. LESSEE shall keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. LESSEE represents and warrants to LESSOR that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate LESSEE's operation in accordance with the terms of this Agreement, and LESSEE covenants to keep all such licenses, franchises, permits, operating certificates and other agreements in full force and effect during the Term of this Agreement.

LESSEE shall pay all lawful taxes and assessments which, during the Term hereof, may become a lien upon or which may be levied by the State, County, City or any other tax levying body,

upon the Premises or upon any taxable interest of LESSEE acquired in this Agreement, or any taxable possessory right which LESSEE may have in or to the Premises, including any improvements or facilities located on the Premises. LESSEE shall also pay all lawful taxes and assessments on taxable property, real or personal, owned by the LESSEE in and about said Premises. Nothing in this Section shall prevent LESSEE from contesting the legality, validity or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled so to do.

## 28. LIENS

LESSEE shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises or any improvements thereon. Should any lien be placed on the Premises or any improvements thereon, LESSEE shall cause to be removed any and all liens of any nature. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation performed by or on behalf of LESSEE or any of its contractors or subcontractors upon LESSEE's Premises or arising out of or because of the performance of any work or labor to it at said Premises or the furnishing of any materials to it for use at said Premises. Should any such lien be made or filed, LESSEE shall bond against or discharge the same within thirty (30) calendar days after actual notice of the same from any source, whether from LESSOR or otherwise, and provide written proof of discharge or bonding to LESSOR within that time. LESSEE acknowledges that its interest in the Premises is a leasehold, and that notwithstanding its construction of improvements on the Premises, such improvements accrue to the LESSOR and that it has no equity interest in the Premises which can support a mortgage lien. LESSEE shall not mortgage or pledge as collateral its leasehold interest herein without the prior written consent of the LESSOR.

LESSOR may consent, upon LESSEE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of LESSOR's activities on the Premises, which assignment is intended to be a present transfer to such lender of all of LESSEE's rights to collect and receive rents and charges from approved users, operators, sub-concessionaires and permitees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the LESSOR as required under Section 36, Assignment. Upon LESSEE's written consent, LESSOR agrees to give Lender(s) notice of any default or termination of the Agreement, and allow Lender(s) the same opportunity as the LESSEE under the Agreement to correct any condition or cure any default. Nothing in this Section is intended to relieve the LESSEE of its obligations under this Agreement.

## 29. INDEMNITY, INSURANCE AND SUBROGATION

**(a) Indemnity**

LESSEE hereby agrees to release, to defend, to indemnify and to save harmless the Wichita Airport Authority and the City of Wichita, Kansas, and their officers, agents and employees, (i) from and against any and all loss of or damage to property, or injuries to or death of any person or persons, as well as (ii) from and against any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind or nature whatsoever (including, without limiting the generality of the foregoing, Workers Compensation and any assessments resulting from civil penalties or regulatory), of or by anyone whomever in matters resulting from or arising out of, or alleged to have resulted from or to have arisen out of, directly or indirectly, LESSEE's operations or activities under or in connection with this Agreement, or LESSEE's use and occupancy of any portion of the Airport, and including, without limiting the generality of the foregoing, acts and omissions of LESSEE's officers, employees, representatives, suppliers, customers, contractors or agents. Provided, however, LESSEE shall not be liable for any loss occasioned by the sole negligence or misconduct of the Wichita Airport Authority, The City of Wichita, Kansas or their officers, agents, and employees. LESSOR covenants to give LESSEE prompt notice of any claims. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

In the event, however, the certificate of insurance provided by LESSEE is void of any mention of coverage for its obligations to indemnify, LESSEE irrefutably covenants and agrees that LESSEE has the maximum allowed insurance for its obligations to indemnify and LESSOR may rely on said covenant. The coverage for indemnification given by LESSEE under this Agreement shall not in any way limit LESSEE's indemnification obligations hereunder. The minimum insurance requirements set forth above shall not be deemed to limit the obligations of LESSEE hereunder.

Should LESSEE, its employees, subcontractors, suppliers, agents, customers, and/or representatives cause any violations of federal, state or local law, regulation or ordinance, and should LESSOR be cited for a fine or penalty for such violation, LESSEE agrees to reimburse LESSOR for any monetary fine or penalty which may be imposed on LESSOR. However, nothing herein shall prevent the LESSEE from contesting the legality, validity or application of such fine or penalty to the full extent LESSEE may lawfully be entitled, nor require LESSOR to pursue such a contest on LESSEE's behalf.

**(b) Liability Insurance**

LESSEE shall procure, maintain and carry, at its sole cost, in accordance with and/or until completion of this Agreement all insurance, as required per the amounts as set forth below. Insurance shall be furnished by a company licensed to do business in Kansas.

Insurance certificates shall be issued on a standard ACORD form or such other documentation as may be acceptable to LESSOR in its discretion and include the NAIC number of the insuring company. Each insurance company's rating, as shown in the latest Best's Key Rating Guide, shall be no less than A-VII, unless otherwise approved by the LESSOR, or from a Workers' Compensation pool approved by the State of Kansas. Insurance certificates must be received and approved by the LESSOR prior to occupancy. LESSOR retains the right to require changes in the character, coverages and amounts of coverage commensurate with changes in the LESSEE's use of the Premises.

The failure of LESSOR to reject the LESSEE's proffered insurance shall not be deemed to constitute an acceptance by the LESSOR of deficient insurance coverage. If the LESSEE fails to procure or maintain any of the specified coverages the LESSOR has the right, but not the obligation, to secure the coverage and charge the cost to the LESSEE along with a 20% administrative fee.

The LESSEE shall be responsible for determining the types and limits of insurance coverage required by any approved sub-concessionaire. At a minimum, such sub-concessionaire shall carry Workers' Compensation, general liability (minimum of $1,000,000 per occurrence) and automobile liability (minimum of $500,000 combined single limit). LESSEE shall require in any approved sublease that the Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds on the sub-concessionaire's general liability policy.

The requirements, procurement and carrying of the required insurance shall not limit any of the LESSEE's obligations or liability under this Agreement or as a matter of law.

Where "minimum limits" of insurance are specified in this Section, such minimum insurance limits are required and considered by LESSOR to be the lowest insured amounts acceptable under this Agreement. The LESSEE is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at the LESSEE's determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and

higher limits are necessary and appropriate.

**(c) Insurance shall include the following terms, conditions and minimum limits:**

**i. WORKERS' COMPENSATION**

LESSEE shall maintain Workers' Compensation insurance to cover the statutory requirements of the Workers' Compensation laws of the State of Kansas for its operations on the Premises, and when applicable, to Federal Laws and Voluntary Compensation and Employer's Liability (including occupational disease) coverage.

**ii. AUTOMOBILE LIABILITY**

LESSEE shall maintain automobile insurance, which shall include all owned, non-owned and hired automobiles used on the Premises, and shall have minimum bodily injury and property damage limits as outlined herein. As an alternative, the LESSEE may provide proof of licensure as a self-insured entity approved by the State of Kansas.

| | |
|---|---|
| Combined Single Limit | $500,000 Each Accident |

**iii. COMMERCIAL LIABILITY**

LESSEE shall maintain Commercial General Liability Insurance on an occurrence form. Minimum limits, as outlined herein, shall be:

| | |
|---|---|
| Annual Aggregate | $2,000,000 |
| Each Occurrence | $1,000,000 |

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds. The policy shall also provide coverage for LESSEE's contractual obligations created in this Agreement.

iv. **UMBRELLA/EXCESS LIABILITY COVERAGE**

The LESSEE shall provide minimum Umbrella/Excess liability limits (excess of all coverages other than Workers' Compensation) of:

| | |
|---|---|
| Each Occurrence Limit | $5,000,000 |
| Annual Aggregate Limit | $10,000,000 |

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds covered under this umbrella/excess liability coverage.

**(d) All Risk Property Insurance**

LESSEE, at its expense, throughout the term of this Agreement, shall cause any structures, facilities, improvements and fixtures on the Premises to be insured against loss or damage by fire or other casualty equal to the full replacement value thereof and by an all risk coverage policy furnished by a company licensed to do business in Kansas. Such policy shall not exclude, or in the alternative, shall carry full coverage endorsements for damage from tornado, hail, flood, and sewer backup, and shall furnish LESSOR a certificate evidencing such insurance. The proceeds of any payments made under such insurance policy or policies shall be used to rehabilitate or reconstruct the insured facilities, subject to the provisions governing damage or destruction found at Section 24, Damage and Destruction. LESSEE agrees, prior to the commencement of the Agreement, to provide LESSOR with copies of all policies or certificates evidencing that such insurance are in full force and effect, and stating the terms thereof. This Agreement shall not commence until policies of insurance satisfactory to LESSOR are supplied by LESSEE. LESSEE shall provide LESSOR updated certificates of insurance the earlier of annually, or upon renewal, which certificate shall demonstrate the coverage required in this Section for the ensuing 12 month period. Failure to maintain satisfactory insurance policies in force shall constitute grounds for termination of this Agreement.

LESSEE agrees that in the event of future changes in the law or upon notice by the LESSOR, the minimum levels of insurance required by this Section may be increased within the bounds of commercial reasonableness.

LESSEE shall be solely responsible for obtaining insurance policies that provide coverage for losses of LESSEE-owned property. LESSOR shall not be required to provide such insurance

coverage or be responsible for payment of LESSEE's cost for such insurance.

**(e) Subrogation of Insurance**

LESSOR hereby waives any and all rights of recovery against LESSEE for or arising out of damage or destruction of the building, or the demised Premises, or any other property of LESSOR, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of LESSEE, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver without diminution of LESSOR coverage.

LESSEE hereby waives any and all rights of recovery against LESSOR for or arising out of damage to or destruction of any property of LESSEE from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of LESSOR, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

**(f) Loss of Personal Property**

Any personal property of LESSEE or others placed in or upon the Premises shall be at the sole risk of the LESSEE, and LESSOR shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the LESSEE waives all rights of subrogation against recovery from the LESSOR for such loss or damage unless such loss or damage is the proven to be the result of the LESSOR's negligence.

## 30. ENVIRONMENTAL COVENANTS

The LESSEE hereby covenants that it shall not cause or permit any Hazardous Material(s) to be placed, held, located, or disposed of, on, under or at any portion of Airport Property except the Premises leased, and then only in the ordinary course of business and in compliance with all applicable laws.

In furtherance and not in limitation of any indemnity elsewhere provided in this Agreement to the LESSOR, the LESSEE hereby agrees to indemnify and hold harmless the Wichita Airport Authority and the City of Wichita from and against any and all losses, liabilities, including strict

liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Wichita Airport Authority or the City of Wichita by any person or entity for or arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises or Airport Property to which LESSEE has access during any Term of this Agreement of any Hazardous Material or other substance regulated by any applicable statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning, any Hazardous Material(s) (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws), if such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by the LESSEE, or persons within the control of the LESSEE, its officers, employees, agents, contractors, invitees and/or licensees, or if such Hazardous Material or other substance was owned by the LESSEE, or located on the Premises or Airport Property to which LESSEE has access (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release). LESSEE shall not be liable for Hazardous Material or other substances located on the Premises due to migration or movement onto the Premises of presently existing substances from presently identified sources.

If, during the Term of this Agreement, the LESSEE receives any notice of (i) the happening of any event involving the use (other than in the ordinary course of business and in compliance with all applicable laws), spill, release, leak, seepage, discharge or cleanup of any Hazardous Material or other substance on the Premises or Airport Property to which LESSEE has access or in connection with the LESSEE's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the LESSEE from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE"), the LESSEE shall immediately notify the LESSOR in writing and provide LESSOR copy of said notice.

The LESSOR shall have the right, but not the obligation, and without limitation of the LESSOR's other rights under this Agreement, to enter the Premises or to take such other actions as deemed necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any Hazardous Material or other substance or environmental complaint following receipt of any notice from any person, including, without limitation, the EPA or KDHE, asserting the existence of any Hazardous Material or other substance or an environmental complaint pertaining to the Premises or any part thereof which, if true, could

result in an order, suit or other action against the LESSEE and/or which, in the reasonable judgment of the LESSOR, could jeopardize its interests under this Agreement. If such conditions are caused by circumstances within the control of the LESSEE or if such circumstances result from a Hazardous Material or other substance owned by the LESSEE, or located on the Premises or Airport Property to which LESSEE has access, (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release) all reasonable costs and expenses incurred by the LESSOR plus a twenty percent (20%) administrative fee in the exercise of any such rights shall be payable by the LESSEE, within fifteen (15) calendar days of written demand by LESSOR.

If an event of default shall have occurred and be continuing, the LESSEE at the request of the LESSOR shall periodically perform, at the LESSEE's expense, an environmental audit and, if reasonably deemed necessary by the LESSOR, an environmental risk assessment, of the Premises, or the hazardous waste management practices and/or hazardous waste disposal sites used by the LESSEE with respect to the Premises. Such audits and/or risk assessments shall be conducted by an environmental consultant satisfactory to the LESSOR, and all environmental audits and environmental risk assessments must be reasonable satisfactory to the LESSOR. Should the LESSEE fail to perform any such environmental audit or risk assessment within 90 days of the written request of the LESSOR, the LESSOR shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the LESSOR in the exercise of such rights, plus a twenty percent (20%) administrative fee, shall be payable by the LESSEE, within fifteen (15) calendar days of written demand by LESSOR.

Neither LESSEE nor LESSOR shall install or permit to be installed in the Premises friable asbestos, lead-based paint, electrical equipment containing polychlorinated biphenyls (PCBs), or any substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material. The LESSEE shall defend, indemnify, and save the Wichita Airport Authority and the City of Wichita harmless from all costs and expenses (including consequential damages) asserted or proven against the LESSEE by any person, as a result of the presence of said substance, and the costs of any removal or compliance with such regulations, if said substance was installed by the LESSEE, or persons within its control.

Subject to any limitations or restrictions imposed by the Kansas Tort Claims Act, Kansas Budget Law or Cash Basis Law, the LESSOR hereby agrees to indemnify and hold harmless the LESSEE from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the

LESSEE by any person or entity for, arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the Term of this Agreement and the period prior to the Term of this Agreement of any Hazardous Material or other substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order of decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Material(s)) if such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by the LESSOR, or persons within the control of the LESSOR, its officers, employees, agents, invitees and/or licensees, or if such Hazardous Material or other substance was owned by the LESSOR, or placed upon the Premises or Airport Property to which LESSEE has access by the LESSOR.

Environmental compliance shall not be limited to those items noted within this Agreement but shall include any current or future federal, state, or local law, statute or regulation, that may be required of LESSEE's operation (storage or use of Hazardous Material or other substance, activities of LESSEE's employees or contracted vendors etc.). LESSEE shall provide LESSOR upon request copies of any plan, training program, training records, material safety data sheet or any other documentation required by said laws.

Wastes not legally permitted and authorized for disposal into the storm and/or sanitary drainage system shall not be discharged, connected or introduced into storm and/or sanitary drains and the storm and/or sanitary drainage system. LESSEE shall take all reasonable precautions to prevent the discharge of material into any drainage system that would create interference with the flow therein, or that would cause a hazard or unlawful contamination thereto. In compliance with current KDHE storm water regulations, or as such regulations may be amended in the future, LESSEE is required to evaluate its operation within its Premises and determine if compliance is required with stormwater regulations (National Pollutant Discharge Elimination System (NPDES) Stormwater Runoff from Industrial Activity General Permit) or written authorization of a "No Exposure Certification" issued by the KDHE. A copy of the LESSEE's NPDES Notice of Intent or "No Exposure Certification" issued by the KDHE shall be provided to the LESSOR within thirty (30) days of LESSEE's occupation of Premises.

The provisions of this article shall survive the termination of this Agreement.

## 31. MAINTENANCE and REPAIR

LESSEE shall maintain and keep at its sole cost and expense, the Premises, Improvements and the fixtures and appurtenances thereto in good condition, subject to reasonable wear and tear, and keep the Premises free of trash, debris and obstructions. LESSEE, at its sole cost and expense, shall maintain and keep in good repair the entirety of the leased Premises and within all improvements placed thereon.

LESSEE's maintenance obligations include, but not limited to, the following:

(a) Exterior of structures, and all exterior mechanical systems (heating, ventilation and air conditioning, and associated motors, boilers, chillers and ducting). "Exterior of structures" shall include but is not limited to the roofs, exterior façade and siding, exterior walls, gutters, downspouts, and load bearing structures of the buildings.

(b) The interior of all structures on the Premises including, but not limited to leasehold improvements, glass, paint, ballast and light bulb replacement, doorways, doors, walls, floors, plumbing, electrical, interior mechanical systems (heating, ventilation and air conditioning, and associated motors, boilers, chillers, ducting and filters), decorations and finishes, plumbing fixtures, equipment and furnishings, telephone, communication and data cables, conduit and accessories, piping, motors, signs, and any other repairs as required or necessary to keep all structures on the Premises in proper condition for the conduct of business.

(c) Grading and drainage systems and drains, paving, lighting, parking lots, fencing, streets and roadways within the Premises.

(d) Snow and ice removal on streets, roadways, parking lots and sidewalks within the Premises.

(e) Repair or replacement of any damaged pavement and/or sub-grade on the Premises.

(f) Connection of all utilities including, but not limited to, underground utility lines and connections within the leased Premises, connection and other fees.

(g) From time to time and as often as required by LESSEE's insurance carrier and in accordance with state and local fire codes, conduct appropriate tests of all fire monitoring, alarm and extinguishing equipment, systems and apparatus located on the Premises. Keep in proper functioning order all fire suppression and extinguishing

systems and equipment located on the Premises as required by LESSEE's insurance carrier and in accordance with NFPA, and state and local fire codes.

(h) All janitorial service, landscaping, landscape maintenance and mowing, and daily routine Premises clean-up work and trash removal to keep the Premises in good and tenantable condition throughout the term of this Agreement.

(i) Removal and disposal of garbage, debris, contaminants and any other waste material (whether solid or liquid) arising out of its occupancy of the leased Premises or out of its operation. Such removal shall conform to all governmental requirements and regulations as more fully described herein. Such removal and disposal of garbage, debris, contaminants, or other waste material is understood to include routine clean-up of the Premises. LESSEE shall immediately react and take prompt corrective actions to remove and dispose of any paper, garbage and debris on Premises upon demand of LESSOR. LESSEE shall provide, and screen from public view, suitable covered receptacles for all garbage, trash and other refuse. Piling of boxes, cartons, barrels, pallets or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden.

(j) Repair or replacement of any damaged paved surfaces and/or sub-grade on the Airport that may be caused due to the LESSEE's negligence or intentional misuse, or consent to use of such facilities of others. Negligence use includes, but is not limited to exceeding the weight bearing capacity limits of the pavements.

LESSOR shall be responsible for maintenance, repair and replacement of common use paved surfaces and storm drainage systems on the Airport not within or upon the Premises.

At any time during the term of this Agreement, LESSOR, its agents or employees, shall have the right to enter upon the Premises and within all improvements placed thereon, to conduct reasonable inspections, and to direct work as needed to meet the above-described maintenance condition in a timely manner.

Should LESSEE fail to perform the requirements of this Section, LESSOR may, but is not required to, accomplish the needed repairs by Airport staff or a contract with a third party, with such repairs being made at LESSEE's expense. A twelve percent (12%) administrative fee will be charged on any task that is performed by the LESSOR or its agent on behalf of LESSEE upon thirty (30) calendar days prior written notice of its intent to do so. The fee will be applied to the total cost incurred by the LESSOR in performing the task. The fee represents the LESSOR's cost to manage the task including procurement services, approval processes, management staff

time, supervision and overhead. In case of emergency action taken in order to protect against personal injury or property damage but not limited to, for which no notice is necessary, LESSOR shall charge the same cost to the expense of LESSEE and a twenty percent (20%) administrative fee.

## 32. TERMINATION BY LESSOR

In the event that LESSEE shall fail to perform, keep and observe any of the terms, covenants or conditions made an obligation of the LESSEE in this Agreement, LESSOR may give written notice to LESSEE to correct such condition or default; and, if LESSEE shall not correct such condition or default within thirty (30) calendar days after such notice, LESSOR may terminate this Agreement by giving ten (10) calendar days notice-of-termination, and the Term hereby demised shall thereupon cease and expire at the end of such ten (10) calendar days in the same manner and effect as if it were the expiration of the then-current term. No default on the part of the LESSEE other than Section 16, Design and Construction shall be deemed to continue so long as LESSEE shall have promptly taken action to correct the same and shall be diligently prosecuting such action to the reasonable satisfaction and approval of the LESSOR. In any case where LESSOR shall be entitled hereunder to terminate this Agreement, LESSOR may at its sole option, as an alternative to termination of the Agreement, perform the obligation imposed under this Agreement for the account of and at the expense of the LESSEE and the same shall be paid by LESSEE as additional rent within thirty (30) calendar days following the date of receipt by LESSEE of an invoice for the expense.

LESSOR may immediately terminate this Agreement and all of its obligations hereunder by giving LESSEE ten (10) calendar days written notice upon or after filing by LESSEE of a voluntary petition in bankruptcy.

LESSOR may terminate this Agreement and all of its obligations hereunder by giving LESSEE sixty (60) calendar days written notice upon or after failure of LESSEE to vacate or set aside the following:

(a) If involuntary proceedings in bankruptcy be instituted against the LESSEE; or

(b) If a court shall take jurisdiction of LESSEE pursuant to proceedings brought under the provisions of any Federal Reorganization Act; or

(c) If permanent receiver of LESSEE's assets be appointed.

LESSOR may terminate this Agreement and all of its obligations hereunder by giving LESSEE written notice upon the happening of either or both the following events:

(a) If LESSEE shall voluntarily abandon and discontinue the conduct and operation of its service on Airport Property for a continuous period of thirty (30) calendar days;

(b) If LESSEE shall abandon any of the Premises for a continuous period of thirty (30) calendar days at any one time, except when such abandonment be caused by fire, devastating natural disaster, war, strike or other calamity beyond LESSEE's control.

No waiver of default by LESSOR of any of the terms, covenants, or conditions hereof to be performed, kept or observed by LESSEE shall be construed to be or act as a waiver of any subsequent default of the terms, covenants, and conditions herein contained to be performed, kept and observed by LESSEE. The acceptance of rental, concession fees, or other compensation by LESSOR for any period or periods after default of any of the terms, conditions, or covenants herein contained to be performed, kept and observed by LESSEE shall not be deemed a waiver of any right on the part of the LESSOR to terminate this Agreement for failure by LESSEE to perform, keep, or observe any of the terms, covenants, or conditions of this Agreement.

## 33. TERMINATION BY LESSEE

The LESSEE, in addition to any other rights to which it may be entitled by law or otherwise, may terminate this Agreement by giving LESSOR written notice in the event of default by LESSOR under this Agreement continuing for more than sixty (60) calendar days after the LESSOR's receipt of written notice of such event of default and opportunity to cure from the LESSEE, upon or after the happening of any one of the following events:

(a) Issuance by any court of competent jurisdiction of a permanent injunction in any way preventing or restraining the use of the Airport or any major part thereof for Airport purposes and the remaining in full force of such permanent injunction for a period of at least one hundred eighty (180) calendar days;

(b) Inability of the LESSEE to use, for a period in excess of one hundred eighty (180) calendar days, the Airport or any part of the facility because of any law, order, rule, regulation or other action or non-action of the Federal Aviation Administration or any other governmental authority having jurisdictional authority, or because of fire,

devastating natural disaster, war, strike or other calamity beyond LESSOR's control.

(c) LESSOR shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSOR are to be performed, kept or observed:

i. LESSEE may give LESSOR written notice to correct such condition or cure such default, and if any such condition or default shall continue for sixty (60) calendar days after receipt of such notice by LESSOR, LESSEE may terminate this Agreement and the term hereof shall cease and expire at the end of such sixty (60) calendar days in the same manner and to the same effect as if it were the expiration of the Initial or Option Terms, unless such condition or default cannot reasonably be corrected within the sixty (60) calendar day period and LESSOR has demonstrated due diligence to the LESSEE's reasonable satisfaction and approval with respect to curing said default, then such cure period may be extended for consecutive periods of thirty (30) calendar days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the term shall cease and expire at the end of the thirty (30) calendar day extension then in effect;

(d) Assumption by the United States Government or any other authorized agency thereof of the operation, control or use of the Airport and the facility herein described, or of any substantial part or parts thereof in such a manner as to substantially restrict the LESSEE for a period of one hundred eighty (180) calendar days from operating on and within the facility.

(e) In the event of destruction of the facilities, improvements, or the demised Premises as more fully described in Section 24, Damage or Destruction.

## 34. WAIVER OF STATUTORY NOTICE

In the event LESSOR exercises its option to terminate this Agreement upon the happenings of any or all of the events set forth in Section 32, "Termination by LESSOR," any notice of termination given pursuant to the provisions of said Section 32 shall be sufficient to terminate and terminate this Agreement; and, upon such termination, LESSEE hereby agrees that it shall forthwith surrender possession of the demised Premises to the Wichita Airport Authority. In this connection, LESSEE hereby expressly waives the receipt of any notice to quit or notice of termination which would otherwise be given by LESSOR under any provisions of the laws of the State of Kansas, including, but not limited to, notices required to be given under any section of the Kansas Statutes.

## 35. TRANSFER OF OWNERSHIP

As of the commencement of this Agreement and thereafter throughout the Initial and any Option Terms, any individual or group of individuals or any other entity owning in excess of a majority equity interest in LESSEE who transfers ownership of a majority or more of the LESSEE without the prior written approval of LESSOR, which shall not be unreasonably withheld, shall have submitted a material breach of this Agreement for which LESSOR may terminate the same under the provisions of Section 32 hereof. Moreover, at least ninety (90) calendar days prior to any contemplated, proposed, anticipated or imminent ownership transfer, LESSEE shall submit a written request to LESSOR showing good and sufficient financial worth and adequate experience in the operation and provision of commercial hotel services on the part of the contemplated purchaser or purchasers and evidencing the intent of such contemplated purchaser or purchasers to expressly assume in writing and agree to be bound by and fulfill all of the terms, covenants, obligations and agreements contained in this Agreement.

## 36. ASSIGNMENT

With the exception of assignment to a parent or "holding" company or subsidiary, LESSEE shall have no right to assign or delegate any of its rights or duties pursuant to this Agreement without the prior written consent of LESSOR. Any assignment or delegation so made and so permitted shall be subject to all terms, conditions and other provisions of this Agreement. Any attempted assignment or delegation in violation of this provision shall be void and have no force or effect whatsoever.

## 37. SUBLEASING, PERMITTING AND CONTRACTING

LESSEE shall not sublease, rent or permit any persons, firms or corporations to occupy any part of the Premises, or to provide any type of commercial or non-commercial operation, aviation or otherwise, on the Premises without having first received the prior written consent of LESSOR, granted only under the following conditions:

(a) Any arrangements must be in the form of a written instrument and must be for purposes and uses of the Premises as authorized under this Agreement, and shall be subject to the provisions of this Agreement. LESSEE shall submit a copy of such proposed instrument at the time of requesting consent of LESSOR.

(b) All sublease(s) must comply with Sections 11, 12, and 13 of this Agreement, and will be reviewed for compliance by LESSOR to that end. Any arrangement for the subleasing of space must be in conformance with the use of the Premises outlined in this Agreement, unless expressly approved otherwise in writing by LESSOR.

(c) LESSEE must keep current records on file and available for LESSOR's inspection, that describes the nature and document the legitimacy of the sub-lessee's business, including all current municipal, state, or local licenses or permits required for the conduct of sub-lessee's business.

(d) LESSEE hereby agrees that it shall incorporate language acceptable to LESSOR into all of its sublease agreements, placing on any sub-lessee and that sub-lessee's affiliated entities, customers, employees, invitees, contractors, and subcontractors similar restrictions, as may be appropriate to its approved uses as those which bind LESSEE and its use of the facility through this Agreement. LESSEE shall also incorporate and make reference to this Agreement, as may be amended from time to time, to ensure sub-lessee's operations and conduct are subject to and are in compliance with the terms and conditions of this Agreement, as may be amended from time to time. Any sublease agreement shall explicitly state that it is subordinate to this Agreement, and that the sub-lessee shall never obtain rights in the Premises greater than those held by LESSEE under this Agreement, as amended. Any sub-lessee shall be specifically subject to eviction from the Premises as a result of termination, cancellation, or expiration of this Agreement, irrespective of sub-lessee's state of compliance with the terms of its sublease.

(e) LESSEE shall at all times during the term(s) of approved sublease(s), remain responsible to LESSOR for the compliance of its sub-lessees with the terms and conditions of any

approved sublease and with this Agreement. LESSOR may look to LESSEE directly to satisfy any failure of sub-lessee to comply with these documents.

(f) Consent to one sublease permit or subcontract shall not be deemed consent to any subsequent sublease permit or subcontract. Prior written consent of the LESSOR shall be required for each sublease permit or subcontract executed by the LESSEE.

It is understood and agreed that this Section is not intended to apply to such contracts for the provision of goods and services by LESSEE to its customers and clients as are common in the hotel and hospitality industry, nor such contracts which may be entered from time-to-time for the provision of goods and services to the LESSEE as are common in the hotel and hospitality industry, or for services of a maintenance and repair nature, so long as such contracts do not involve the subleasing of the Premises or portions thereof.

## 38. RULES AND REGULATIONS

LESSEE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, which are now in force or which may hereafter be promulgated, lawfully exercising authority over the Airport or LESSEE 's operations conducted hereunder.

LESSOR shall not be liable to LESSEE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this Section provided, nor shall LESSEE be entitled to terminate this Agreement by reason thereof unless exercise of such authority shall so interfere with LESSEE 's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 33.

LESSOR shall whenever possible make reasonable efforts to obtain uniform compliance with its rules and regulations; provided, however, LESSOR shall not be liable to LESSEE for any violation or non-observance of such rules and regulations by any other tenant, operator or concessionaire at Airport.

## 39. ENCROACHERS, TRESPASSERS AND OTHER THIRD PARTY HAZARDS

LESSEE shall lawfully remove, or cause to be removed by LESSOR or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.

## 40. SECURITY SYSTEMS

LESSOR may at its sole discretion install, operate and maintain a computer controlled access and monitoring system on Airport Property. The purpose of said security systems is for the provision of safety and security to the general public, airport employees, tenants and permitees and their employees and invitees, primarily within and upon public areas, and not for the exclusive benefit of any single party or category of airport user. LESSEE may, at its sole option and cost, install, operate and maintain private security systems within interior or exterior areas of the Premises; however, any such private security systems shall not interfere with, interrupt, impair or block the security systems or effectiveness of the LESSOR's security surveillance systems.

The LESSOR shall have no rights to install any security surveillance systems within the Premises without the LESSEE's prior approval. LESSOR shall not install security surveillance systems for the exclusive benefit of the LESSEE. LESSEE shall not rely on the surveillance cameras owned and operated by the LESSOR for purposes of risk management or private security from property loss or theft.

## 41. PORTABLE STORAGE CONTAINERS/STRUCTURES

Unless specifically approved in writing, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure. Unless specifically approved, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

LESSOR shall not unreasonably withhold approval of such container(s) and structure(s) if such is of a temporary nature for the purpose of supporting construction, alteration or improvement

activity, or other approved project.

## 42. SIGNS AND ADVERTISING

LESSEE agrees that no exterior signs or advertising material shall be erected on the Premises or on the exterior of any Improvement or facility on the Premises unless the design and layout of such signs and advertising material, together with the materials and method of construction of such signs and advertising material, shall have been approved in advance in writing by LESSOR, which approval shall not be unreasonably withheld or unduly delayed.

LESSEE shall have no right to erect or install, or cause or consent to be erected or installed any commercial outdoor advertising by an outdoor commercial advertising agency on the Premises.

LESSEE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased Premises of the Airport property, any signs, banners, or other similar devices for its own business, or the business of others. This provision shall not have the effect of limiting or restricting LESSEE's right to enter into an agreement with LESSOR'S authorized and permitted marketing, advertising or signage agency for the display of informational, marketing or advertising media at approved designated locations on Airport property.

## 43. NONDISCRIMINATION

The LESSEE shall comply with all the following nondiscrimination provisions to the extent that LESSEE's activities shall be subject to the same:

**(a) Nondiscrimination in Employment**

The LESSEE agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, ancestry, age or disability. The LESSEE shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, ancestry, age or disability. Such actions shall include, but not be limited to, the following: employment, promotion demotion or transfer, recruitment, advertising, lay-off or termination, and selection for training, including apprenticeship. The LESSEE hereby agrees to post, in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this Section.

**(b) Facilities Nondiscrimination**

i. LESSEE shall make its accommodations and/or services available to the public on fair and reasonable terms without discrimination on the basis of sex, age, race, creed, ancestry, color, national origin, or disability, provided, however, nothing herein shall require the furnishing to the general public of the use of any facilities or accommodations customarily furnished by LESSEE solely to its employees, customers, clients, guests, and invitees; and LESSEE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

ii. Noncompliance with any nondiscrimination provision imposed by law related to the accommodations and/or services provide under this Agreement, or noncompliance with any nondiscrimination within this Agreement shall constitute a material breach of this Agreement and, in the event of such noncompliance, LESSOR shall have the right to terminate this Agreement without liability therefore.

iii. LESSEE agrees to insert nondiscrimination language in any leases, agreements, or contracts, etc. by which said LESSEE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises. This subparagraph does not apply to LESSEE's lodging, convention or other similar service contracts with its customers.

## 44. GENERAL PROVISIONS

**(a) <u>Facility Development.</u>** LESSOR reserves the right to further develop or improve the landing area or any other area, building or other improvement within the present or future boundaries of Airport as it sees fit in its sole judgment regardless of the desires or view of LESSEE and without interference or hindrance by LESSEE. Further, LESSOR retains the absolute right to maintain, repair, develop and expand or replace utilities, ramps, taxiways, runways, streets, roadways, sidewalks, any other airport facility, airport improvement or on Airport Property free from any and all liability to LESSEE for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development, expansion or replacement.

(b) **Maintenance, Repair, Direction and Control.** LESSOR reserves the right, but is not obligated to exercise the right, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in this regard. These areas shall include, but are not limited to, those areas which are necessary to serve the aeronautical users of the Airport, except that LESSOR shall not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants, whether such area serves aeronautical users or otherwise.

(c) **Operation of Airport by the United States of America.** This Agreement and all the provisions hereof shall be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

(d) **14 CFR Part 77 of Federal Aviation Regulations.** LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building, structure, or attachment thereto is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Airport. LESSEE by accepting this Agreement expressly agrees for itself, its successors and assigns that it shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Airport which shall exceed such maximum height as may be stipulated by LESSOR. Applicable laws, codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by LESSOR. In the event the aforesaid covenants are breached, LESSOR reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which shall be at the expense of LESSEE and without liability to LESSOR.

(e) **Airspace.** There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of LESSOR shall result from the exercise of this right.

(f) **Easement for Flight.** LESSEE releases LESSOR from any present or future liability whatsoever and covenants not to sue LESSOR for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that LESSOR shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by government authority. LESSOR reserves these rights from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. LESSEE accepts the Premises subject to the risks and activities hereinabove described.

(g) **Airport Hazards.** LESSEE by accepting this Agreement agrees for itself, its successors and assignees, that it shall not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. If during the Term of this Agreement the condition is breached, LESSOR reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of LESSEE without liability to LESSOR of any kind.

(h) **Airport Rules and Regulations, Policies, and Standard Operating Procedures.** LESSOR shall have the right to adopt, amend and enforce reasonable airport rules and regulations, policies and standard operating procedures with respect to use of and the conduct and operation of the Airport, its buildings and facilities or any improvements within the present or future boundaries of the Airport, which LESSEE agrees to observe and obey.

(i) **Federal Aviation Administration Requirements.** LESSOR and LESSEE agree that the requirements of the Federal Aviation Administration (FAA) set out below are approved by both parties, and if applicable, LESSEE agrees to comply with all FAA requirements

with respect to its operations, use of the Airport and this Agreement:

**i.** The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

**ii.** The LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

**iii.** The LESSEE assures that it shall undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The LESSEE assures that it shall require that its covered sub-organizations provide assurances to the LESSEE that they similarly shall undertake affirmative action programs, and that they shall require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

**iv.** Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

**v.** LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that LESSEE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

**vi.** LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of LESSEE in this regard.

**vii.** LESSOR reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of LESSEE, and without interference or hindrance.

**viii.** LESSOR reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of LESSOR, would limit the usefulness of the airport or constitute a hazard to aircraft.

**ix.** During time of war or national emergency LESSOR shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

**x.** Rights granted by this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.

**xi.** There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed,

together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the Airport.

**xii.** This Agreement shall become subordinate to provisions of any existing or future agreement between the LESSOR and the United States of America or any agency thereof relative to the operation, development or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

**(j)** **Modifications for Granting of FAA Funds**. In the event that the LESSOR determines the FAA requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, these modifications or changes shall supersede this Agreement and LESSEE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the LESSOR to fully comply with federal grant assurances and directives and to obtain Federal Aviation Administration grants-in-aid, provided that no such changes shall materially alter the rights or obligations of LESSEE hereunder.

**(k)** **Subordination to Agreements with the U.S. Government.** This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between LESSOR and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to LESSOR for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. LESSOR covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

**(l)** **Non-Waiver of Rights.** No waiver or default by either party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other party.

(m) **Captions.** The captions/headings of the Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

(n) **Severability and Invalid Provisions.** In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained; provided, however, that the invalidity of any such term, covenant, condition or provision does not materially prejudice either the LESSOR or the LESSEE in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this Agreement.

(o) **Waiver of Claims.** LESSEE hereby waives any claim against LESSOR and its officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

(p) **Incorporation of Exhibits.** All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

(q) **Incorporation of Required Provisions.** The parties incorporate in this Agreement by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

(r) **Non-Liability of Agents and Employees.** No member, officer, agent or employee of either party to this Agreement shall be charged personally, or held contractually liable by or to the other party under the terms or provisions of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

(s) **Successors and Assigns Bound.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

(t) **Time of Essence.** Time is of the essence in this Agreement.

(u) **Relationship of the Parties.** It is understood LESSEE is not in any way or for any purpose a partner or joint venturer with or an agent of LESSOR. LESSEE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

(v) **Interpretation.** LESSOR and LESSEE hereby agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

(w) **Kansas Laws to Govern.** This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

## 45. THIRD PARTY RIGHTS

It is agreed between the parties that it is not intended by any of the provisions of this Agreement to create for the public or any member thereof the status of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

## 46. QUIET ENJOYMENT

LESSOR agrees that, on payment of the rentals and fees and performance of the terms, covenants, conditions and agreements on the part of LESSEE to be performed in this Agreement, LESSEE shall have the right to peaceably occupy and enjoy the Premises, subject however, to the GENERAL PROVISIONS contained in Section 44.

## 47. CONDEMNATION

If, during the term, title to, or the temporary use of, all or any part of the Premises shall be condemned by any authority exercising the power of eminent domain, LESSEE shall, within fifteen (15) days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify LESSOR in writing as to the nature and extent of such condemnation and whether it is practicable for LESSEE to acquire or construct substitute improvements, or whether LESSEE shall elect to terminate this lease.

If LESSEE shall determine that such substitution is practicable and desirable and LESSOR shall agree thereto, LESSEE shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any net proceeds received from any award or awards with respect to the Premises or any part thereof made in such condemnation or eminent domain proceeds shall be used and applied for the purpose of paying the cost of such substitution. Any proceeds not required for such costs shall be distributed to the parties in pro-rata distributions as their interests may appear based upon Agreement term remaining and the fair market value of each party's interest at the time the proceeds are received.

If LESSEE shall determine that it is not practicable and desirable to acquire or construct substitute improvements, any net proceeds shall be distributed to the parties in pro-rata distributions as their interests may appear based upon the Agreement term remaining, and the fair market value of each party's interest at the time the proceeds are received.

LESSOR shall cooperate fully with LESSEE in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof. In no event will LESSEE or LESSOR voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Premises without the mutual agreement and written consent of the other party to this Agreement.

## 48. IMPOSITIONS

LESSEE shall, during the life of this Agreement, bear, pay and discharge, before the delinquency thereof, any and all impositions, including all lawful taxes and assessments imposed on the Premises, personal property thereon, or LESSEE's possessory right therein. In the event any impositions may be lawfully paid in installments, LESSEE shall be required to pay only such installments thereof as become due and payable during the life of this Agreement as and when the same become due and payable. LESSOR covenants that without LESSEE's written consent

it will not, unless required by law, take any action intended to cause or induce the levying or assessment of any imposition (other than special assessments levied on account of special benefits or other impositions for benefits or services uniformly imposed) which LESSEE would be required to pay under this Section and that should any such levy or assessment be threatened or occur LESSOR shall, at LESSEE's request, fully cooperate with LESSEE in all reasonable ways to prevent any such levy or assessment. Nothing herein contained shall prevent LESSEE from contesting the legality, validity, or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled to do so.

## 49. NOTICES, CONSENTS, AND APPROVALS

Notices or other communications to LESSOR pursuant to the provisions hereof shall be sufficient if sent by email delivering coupled with either (i) registered or certified mail, postage prepaid, (ii) by a nationally recognized overnight courier, or (iii) facsimile transmission, addressed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209;

Fax: (316) 946-4793

and bills, statements, and notices or communications to LESSEE shall be sufficient and irrefutably deemed received if sent by U.S. Postal Service regular mail, postage prepaid, whether or not actually accepted, or if hand-delivered, to:

Wichita Airport Hotel L.L.C.
9017 Bluestem
Wichita, Kansas 67207

or to such respective addresses as the parties may designate in writing from time to time.

## 50. INTENTION OF PARTIES

This Agreement is intended solely for the benefit of LESSOR and LESSEE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by LESSOR is solely for the benefit of LESSOR and LESSEE.

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the parties hereto. Further, non-parties to this Agreement may not maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement. The parties shall understand and agree that neither the method of payment, nor any other provision contained herein, nor any act(s) of the parties hereto creates a relationship other than the relationship of the LESSOR and the LESSEE.

## 51. ENTIRE AGREEMENT

The parties understand and agree that this instrument contains the entire Agreement between them. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to the Agreement or the making or entry into this Agreement, except as expressed in this Agreement, and that no claim or liability or cause for termination shall be asserted by either party against the other and such party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.

The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein.

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

## 52. AMENDMENT OR MODIFICATION

This Agreement constitutes the entire Agreement between the parties for the lease of Premises set forth and identified under Section 2. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

This Agreement shall not be modified or amended unless in writing with formality equal to this Agreement, executed by the LESSEE and LESSOR on a date subsequent to the execution of this Agreement.

## 53. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY AUTHORITY

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative. Approvals, consents, directions, or designations made at any time by the Director of Airports, and from time to time, may be withdrawn or modified by notice from LESSOR to LESSEE.

## 54. MISCELLANEOUS COVENANTS

LESSEE shall observe and comply with any and all present and future requirements of the constituted public authorities and with all federal, state, or local statutes, ordinances, regulations and standard rules applicable to LESSEE or its use of the Premises, including by way of example but not of limitation, all general rules and regulations promulgated from time to time by the Director in connection with the administration of the Airport.

LESSEE shall bear all operating expenses, including but not limited to, employees' salaries, taxes, licenses and fees required by governmental agencies.

LESSEE hereby agrees to make no claims or file or cause to be filed any legal or equitable actions against LESSOR or The City of Wichita, Kansas for any kind of damages which result from the operation of the Airport, including noise or sound shock waves due to aircraft use of said Airport's facilities.

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

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Carl Brewer, President
"LESSOR"

By _____
Victor D. White, Director of Airports

ATTEST:

WICHITA AIRPORT HOTEL, L.L.C.

By _____

By _____
Raju Sheth, "LESSEE"

APPROVED AS TO FORM: _____ Date: _____
Director of Law

# EXHIBIT A

## HOTEL

WICHITA MID-CONTINENT AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

| DATE | DR. BY | SCALE | SHEET |
|---|---|---|---|
| 4/25/14 | H.G.O. | 1" = 200' | 1 of 1 |

D:\Drawings\202-General Airport\Development\PLANNING\Single Parcels\Web Sheets\Parcel_04.dwg, Hotel, 4/25/2014 4:57:49 PM

Wichita, Kansas
July 14, 2014
10:00 a.m., Monday
Conference Room, 12th Floor

MINUTES - BOARD OF BIDS AND CONTRACTS*

The Board of Bids and Contracts met with Marty Strayer, Administrative Assistant, Public Works Engineering in the Chair; Fanny Chan, Senior Accountant, Finance, representing the Director of Finance, Elizabeth Goltry-Wadle, Senior Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, and Zack Daniel, Management Fellow, representing the City Manager's Office.

Minutes of the regular meeting dated July 7, 2014, were read and on motion approved.

Bids were opened July 11, 2014, pursuant to advertisements published on:

**135th Street West, Maple to Central; 472-84308(706938)**

**Bids Rejected**

**Lateral 437, Four Mile Creek Sewer to serve The Ranch Addition (south of 21st Street North, west of 159th Street East) (468-84919/744361/480053) Traffic to be maintained during construction using flagpersons and barricades. (District II)**

**McCullough Excavation* - $276,800.00**
***Subject to Budget approval by City Council**

**Westgate from the south line of Lot 29, Block C, southeast to the north line of Greenfield, on Greenfield from the east line of Westgate, west to the east line of Lark Lane and on Greenfield Circle from the east line of Greenfield, east to and including the cul-de-sac and that sidewalk be constructed on Westgate and Greenfield to serve Southern Ridge 4th Addition (south of Pawnee, west of Maize) (472-85045/766310/490331) Does not affect existing traffic. (District IV)**

**Cornejo and Sons LLC* - $128,277.25**
***Subject to Budget approval by City Council**

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

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

**PUBLIC WORKS AND UTILITIES DEPARTMENT/FLEET AND FACILITIES DIVISION: Riding front deck flex-wing mower.**

Defer one week

**WICHITA TRANSIT: Janitorial service-transit center/bus interior.**

Crowders Cleaning Service* - $41,880.00 Group 1
Heavenly Housekeeping Services LLC * - $24,025.00 Group 2
*Estimate – Contract approved on unit cost basis; refer to attachments.

**PUBLIC WORKS AND UTILITIES DEPARTMENT/MAINTENANCE DIVISION: Salt and Sand Mixture and Sand Only.**

Pearson Construction LLC* - $102,423.00
*Estimate – Contract approved on unit cost basis; refer to attachments.

**PUBLIC WORKS AND UTILITIES/PRODUCTION AND PUMPING DIVISION: Chain/Scraper flights 3 bays c/p N. straight lines.**

Evoqua Water Technologies LLC* - $186,039.00
*Purchases utilizing Sole Source of Supply Ordinance No. 35-856, Section 2. (b)

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

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

On motion the Board of Bids adjourned.

Marty Strayer, Administrative Assistant
Department of Public Works

Janis Edwards, CMC
Deputy City Clerk

**EXHIBIT A**

# FORMAL BID REPORT

**TO:** Robert Layton, City Manager
**DATE:** July 14, 2014

**ENGINEERING BIDS – GARY JANZEN, CITY ENGINEER**
**July 11, 2014**

Paving – 135th Street West, Maple to Central – Public Works & Utilities Department/Engineering Division
**(All Bids Rejected)**

Lateral 437, Four Mile Creek Sewer to serve The Ranch Addition – Public Works & Utilities Department/Engineering Division
**McCullough Excavation** **(Subject to Budget Approval by City Council)** **$276,800.00**

Paving – Westgate (south of Pawnee, west of Maize) – Public Works & Utilities Department/Engineering Div.
**Cornejo & Sons, LLC** **(Subject to Budget Approval by City Council)** **$128,277.25**

**PURCHASING BIDS – MELINDA A. WALKER, PURCHASING MANAGER**
**July 11, 2014**

Riding Front Deck Flex-Wing Mower – Public Works & Utilities Department/Fleet & Facilities Division
**(Defer to July 21, 2014)**

Janitorial Services for Transit Center & Bus Interior – Wichita Transit (Deferred from July 7, 2014) (See Exhibit B for Itemized Pricing in the Formal Bid Report)
**Crowders Cleaning Service** **(Group 1)** **$41,880.00**
**Heavenly Housekeeping Services, LLC** **(Group 2)** **$24,025.00**

Salt & Sand Mixture and Sand Only for Ice Control – Public Works & Utilities Department/Maintenance Division
**Pearson Construction, LLC** **(Deferred from July 7, 2014)** **Sand Only Delivered (Per Ton)** **$9.03**
**Salt and Sand Mix Delivered (Per Ton)** **$8.46**

Chain/Scraper Flights 3 Bays C/P N. Straight Lines – Public Works & Utilities Department/Production & Pumping Division
**Evoqua Water Technologies, LLC** **Sole Source of Supply, Ordinance No. 35-856, Section 2(b)** **$186,039.00**

**ITEMS TO BE PURCHASED AS ADVERTISED IN THE OFFICIAL CITY NEWSPAPER.**

Melinda A. Walker

**Melinda A. Walker**
**Purchasing Manager**

# PAVING BID TABULATION SUMMARY

**BOARD OF BIDS - July 11, 2014**

**RQ440706/RQ440707**

| FB440117 | | Engineer's Construction Estimate | APAC - Kansas Inc | Conspec Inc. DBA Kansas Paving | Cornejo & Sons, LLC |
|---|---|---|---|---|---|
| **135th Street West, Maple to Central** | | | $3,724,418.35 | $3,271,453.59 | $3,397,791.28 |
| | BID BOND | | | | |
| | ADDENDA | 2 | X | X | X |
| 472-84308 (706938) | | | | | |
| | | Engineer's Construction Estimate | Dondlinger & Sons | | |
| **135th Street West, Maple to Central** | | | | | |
| | BID BOND | | | | |
| | ADDENDA | 2 | | | |
| 472-84308 (706938) | | | | | |
| | | Engineer's Construction Estimate | | | |
| **135th Street West, Maple to Central** | | | | | |
| | BID BOND | | | | |
| | ADDENDA | 2 | | | |
| 472-84308 (706938) | | | | | |
| | | Engineer's Construction Estimate | | | |
| **135th Street West, Maple to Central** | | | | | |
| | BID BOND | | | | |
| | ADDENDA | 2 | | | |
| 472-84308 (706938) | | | | | |
| REJECT BIDS | | | | | |

CHECKED BY: VP

REVIEWED BY: SM

# SANITARY SEWER BID TABULATION SUMMARY

**BOARD OF BIDS - July 11, 2014**

**RQ440721**

| FB440119 | | Engineer's Construction Estimate | Dondlinger & Sons | Duling Construction | Mies Construction |
|---|---|---|---|---|---|
| **Lateral 437, Four Mile Creek Sewer** | | $290,314.00 | $344,354.00 | | |
| **The Ranch Addition** | BID BOND | | | | |
| 468-84919 | ADDENDA | 0 | | | |
| (744361) | | | | | |
| | | Engineer's Construction Estimate | McCullough Excavation | Nowak Construction | Utilities Plus |
| **Lateral 437, Four Mile Creek Sewer** | | $290,314.00 | $276,800.00 | | |
| **The Ranch Addition** | BID BOND | | | | |
| 468-84919 | ADDENDA | 0 | | | |
| (744361) | | | | | |
| | | Engineer's Construction Estimate | Wildcat Construction | Stannard Construction d/b/a WB Carter | |
| **Lateral 437, Four Mile Creek Sewer** | | $290,314.00 | | | |
| **The Ranch Addition** | BID BOND | | | | |
| 468-84919 | ADDENDA | 0 | | | |
| (744361) | | | | | |
| | | Engineer's Construction Estimate | | | |
| **Lateral 437, Four Mile Creek Sewer** | | $290,314.00 | | | |
| **The Ranch Addition** | BID BOND | | | | |
| 468-84919 | ADDENDA | 0 | | | |
| (744361) | | | | | |

CHECKED BY: KP

REVIEWED BY: SM

# PAVING BID TABULATION SUMMARY

**BOARD OF BIDS - July 11, 2014**

**RQ440635**

| FB440120 | | Engineer's Construction Estimate | APAC - Kansas Inc | Kansas Paving | Cornejo & Sons, LLC |
|---|---|---|---|---|---|
| **Westgate** | | $133,607.00 | | $133,477.00 | $128,277.25 |
| **(south of Pawnee, west of Maize)** | BID BOND | | | | |
| | ADDENDA | 0 | | | |
| 472-85045 (766310) | | | | | |
| | | Engineer's Construction Estimate | Dondlinger & Sons | | |
| **Westgate** | | $133,607.00 | | | |
| **(south of Pawnee, west of Maize)** | BID BOND | | | | |
| | ADDENDA | 0 | | | |
| 472-85045 (766310) | | | | | |
| | | Engineer's Construction Estimate | | | |
| **Westgate** | | $133,607.00 | | | |
| **(south of Pawnee, west of Maize)** | BID BOND | | | | |
| | ADDENDA | 0 | | | |
| 472-85045 (766310) | | | | | |
| | | Engineer's Construction Estimate | | | |
| **Westgate** | | $133,607.00 | | | |
| **(south of Pawnee, west of Maize)** | BID BOND | | | | |
| | ADDENDA | 0 | | | |
| 472-85045 (766310) | | | | | |

CHECKED BY: KP

REVIEWED BY: SM

City of Wichita, Kansas

# BID RESULTS

Registration Solicitations Document Inquiry Login Help

This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

Vendor Group Line

**Solicitation:** FB440116 **Riding Front Deck Flex-Wing Mower** **Close Date/Time:** 7/11/2014 10:00 AM CST

**Solicitation Type:** Formal Bid

**Award Method:** Aggregate Cost

**Department:** Public Works Fleet & Facilities

Return to the Bid List

**Responses:** 2

| Vendors | Complete | Bid Total | City Comments |
|---|---|---|---|
| PRAIRIELAND PARTNERS INC. | Complete | $95,840.00 | Defer 07/21/2014 Public Works & Utilities Department/Fleet & Facilities Division |
| PROFESSIONAL TURF PRODUCTS LP | Complete | $98,504.00 | |

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City of Wichita, Kansas

# BID RESULTS



This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

**Vendor** **Group** **Line**

**Solicitation:** FB440101 **Janitorial Serv-Transit Ctr/Bus Interior** **Close Date/Time:** 6/20/2014 10:00 AM CST

**Solicitation Type:** Formal Bid

**Award Method:** Group

**Department:** Wichita Transit

**Return to the Bid List**

**Responses:** 8

| Vendors | Complete | Bid Total | City Comments |
|---|---|---|---|
| IMPERIAL SERVICES | Complete | $74,180.00 | Nonresponsive bid |
| EH TECHNICAL SOLUTIONS INC | Complete | $79,129.00 | |
| ABLE JANITORIAL INC | Complete | $85,678.04 | |
| HEAVENLY HOUSEKEEPING SERVICES LLC | Complete | $88,585.00 | Award 07/15/14, Group 2, Wichita Transit |
| BEST CORPORATION INC | Complete | $96,980.00 | |
| CROWDERS CLEANING SERVICE | Partial | $41,880.00 | Award 07/15/14, Group 1, Wichita Transit |
| TRIPLE L CLEANING | Partial | $42,193.00 | |
| ELITE FRANCHISING INC | Partial | $101,799.12 | |

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City of Wichita, Kansas

# BID RESULTS

Registration Solicitations Document Inquiry Login Help

This page summarizes bids by the totals for each group listed on the solicitation.

Vendor Group Line

**Solicitation:** FB440101 **Janitorial Serv-Transit Ctr/Bus Interior** **Close Date/Time:** 6/20/2014 10:00 AM CST

**Solicitation Type:** Formal Bid

**Award Method:** Group

**Department:** Wichita Transit

**Go to:** 1

Return to the Bid List

**Responses:** 8

## Group 1

| Vendors | Complete | Group Total Net Bid |
|---|---|---|
| IMPERIAL SERVICES | Complete | $36,360.00 |
| CROWDERS CLEANING SERVICE | Complete | $41,880.00 |
| ABLE JANITORIAL INC | Complete | $43,440.00 |
| EH TECHNICAL SOLUTIONS INC | Complete | $44,904.00 |
| ELITE FRANCHISING INC | Complete | $46,003.20 |
| BEST CORPORATION INC | Complete | $47,040.00 |
| HEAVENLY HOUSEKEEPING SERVICES LLC | Complete | $64,560.00 |
| TRIPLE L CLEANING | In-Complete | $0.00 |

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## Group 2

| Vendors | Complete | Group Total Net Bid |
|---|---|---|
| HEAVENLY HOUSEKEEPING SERVICES LLC | Complete | $24,025.00 |
| EH TECHNICAL SOLUTIONS INC | Complete | $34,225.00 |
| IMPERIAL SERVICES | Complete | $37,820.00 |
| TRIPLE L CLEANING | Complete | $42,193.00 |
| ABLE JANITORIAL INC | Complete | $42,238.04 |
| BEST CORPORATION INC | Complete | $49,940.00 |
| CROWDERS CLEANING SERVICE | In-Complete | $0.00 |
| ELITE FRANCHISING INC | Partial | $55,795.92 |

Top of the Page

**Line 003** | GROUP 2 Janitorial Services for the Downtown Transit Center at 214 S. Topeka. Cost per month.

| Vendors | QTY | UOM | Price | Extended Cost | Complete | Comments |
|---|---|---|---|---|---|---|
| HEAVENLY HOUSEKEEPING SERVICES LLC | 12 | Month | $2,000.0000 | $24,000.00 | Complete | |
| EH TECHNICAL SOLUTIONS INC | 12 | Month | $2,850.0000 | $34,200.00 | Complete | |
| IMPERIAL SERVICES | 12 | Month | $3,150.0000 | $37,800.00 | Complete | |
| TRIPLE L CLEANING | 12 | Month | $3,515.0000 | $42,180.00 | Complete | |
| ABLE JANITORIAL INC | 12 | Month | $3,518.6700 | $42,224.04 | Complete | |
| BEST CORPORATION INC | 12 | Month | $4,160.0000 | $49,920.00 | Complete | |
| ELITE FRANCHISING INC | 12 | Month | $4,649.6600 | $55,795.92 | Complete | |
| CROWDERS CLEANING SERVICE | | | | **No Bid.** | | |

**Line 004** | GROUP 2 On call service. Cost per hour.

| Vendors | QTY | UOM | Price | Extended Cost | Complete | Comments |
|---|---|---|---|---|---|---|
| TRIPLE L CLEANING | 1 | Hour | $13.0000 | $13.00 | Complete | |
| ABLE JANITORIAL INC | 1 | Hour | $14.0000 | $14.00 | Complete | |
| BEST CORPORATION INC | 1 | Hour | $20.0000 | $20.00 | Complete | |
| IMPERIAL SERVICES | 1 | Hour | $20.0000 | $20.00 | Complete | |
| EH TECHNICAL SOLUTIONS INC | 1 | Hour | $25.0000 | $25.00 | Complete | |
| HEAVENLY HOUSEKEEPING SERVICES LLC | 1 | Hour | $25.0000 | $25.00 | Complete | |
| CROWDERS CLEANING SERVICE | | | | **No Bid.** | | |
| ELITE FRANCHISING INC | | | | **No Bid.** | | |

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WICHITA POWERED BY COGSDALE

City of Wichita, Kansas

# BID RESULTS

Registration Solicitations Document Inquiry Login Help

This page summarizes vendor bids by the extended cost for each commodity line on the solicitation.

Vendor Group Line

**Solicitation:** FB440101 **Janitorial Serv-Transit Ctr/Bus Interior** **Close Date/Time:** 6/20/2014 10:00 AM CST

**Solicitation Type:** Formal Bid

**Award Method:** Group

**Department:** Wichita Transit

**Go to:** 001

Return to the Bid List

**Responses:** 8

**Line 001** | GROUP 1 Base Cleaning. Cost per bus/trolley.

| Vendors | QTY | UOM | Price | Extended Cost | Complete | Comments |
|---|---|---|---|---|---|---|
| IMPERIAL SERVICES | 624 | Each | $54.5000 | $34,008.00 | Complete | |
| CROWDERS CLEANING SERVICE | 624 | Each | $62.5000 | $39,000.00 | Complete | |
| ABLE JANITORIAL INC | 624 | Each | $65.0000 | $40,560.00 | Complete | |
| EH TECHNICAL SOLUTIONS INC | 624 | Each | $67.5000 | $42,120.00 | Complete | |
| ELITE FRANCHISING INC | 624 | Each | $68.8000 | $42,931.20 | Complete | |
| BEST CORPORATION INC | 624 | Each | $70.0000 | $43,680.00 | Complete | |
| HEAVENLY HOUSEKEEPING SERVICES LLC | 624 | Each | $95.0000 | $59,280.00 | Complete | |
| TRIPLE L CLEANING | | | | No Bid. | | |

**Line 002** | GROUP 1 Shampoo seats. Cost per bus.

| Vendors | QTY | UOM | Price | Extended Cost | Complete | Comments |
|---|---|---|---|---|---|---|
| IMPERIAL SERVICES | 96 | Each | $24.5000 | $2,352.00 | Complete | |
| EH TECHNICAL SOLUTIONS INC | 96 | Each | $29.0000 | $2,784.00 | Complete | |
| CROWDERS CLEANING SERVICE | 96 | Each | $30.0000 | $2,880.00 | Complete | |
| ABLE JANITORIAL INC | 96 | Each | $30.0000 | $2,880.00 | Complete | |
| ELITE FRANCHISING INC | 96 | Each | $32.0000 | $3,072.00 | Complete | |
| BEST CORPORATION INC | 96 | Each | $35.0000 | $3,360.00 | Complete | |
| HEAVENLY HOUSEKEEPING SERVICES LLC | 96 | Each | $55.0000 | $5,280.00 | Complete | |
| TRIPLE L CLEANING | | | | No Bid. | | |

City of Wichita, Kansas

# BID RESULTS



This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

**Vendor** **Group** **Line**

**Solicitation:** FB440108 **Salt & Sand Mixture & Sand Only** **Close Date/Time:** 6/27/2014 10:00 AM CST

**Solicitation Type:** Formal Bid

**Award Method:** Aggregate Cost

**Department:** Public Works Maintenance Division

**Return to the Bid List**

**Responses:** 3

| Vendors | Complete | Bid Total | City Comments |
|---|---|---|---|
| PEARSON CONSTRUCTION LLC | Complete | $102,423.00 | Award 07/15/2014 Public Works & Utilities Department/Maintenance Division |
| CORNEJO & SONS LLC | Complete | $111,430.00 | |
| APEX TRUCKING INC | Complete | $155,485.00 | |

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City of Wichita, Kansas

# BID RESULTS

Registration Solicitations Document Inquiry Login Help

This page summarizes vendor bids by the extended cost for each commodity line on the solicitation.

Vendor Group Line

**Solicitation:** FB440108 **Salt & Sand Mixture & Sand Only** **Close Date/Time:** 6/27/2014 10:00 AM CST

**Solicitation Type:** Formal Bid **Return to the Bid List**

**Award Method:** Aggregate Cost

**Department:** Public Works Maintenance Division **Responses:** 3

**Go to:** 001

**Line 001** | Sand Only Delivered

| Vendors | QTY | UOM | Price | Extended Cost | Complete | Comments |
|---|---|---|---|---|---|---|
| PEARSON CONSTRUCTION LLC | 100 | Ton | $9.0300 | $903.00 | Complete | |
| CORNEJO & SONS LLC | 100 | Ton | $10.3000 | $1,030.00 | Complete | |
| APEX TRUCKING INC | 100 | Ton | $12.8500 | $1,285.00 | Complete | |

**Line 002** | Salt and Sand Mixture (50% Salt and 50% Sand) Delivered. Salt to be furnished by the City of Wichita

| Vendors | QTY | UOM | Price | Extended Cost | Complete | Comments |
|---|---|---|---|---|---|---|
| PEARSON CONSTRUCTION LLC | 12000 | Ton | $8.4600 | $101,520.00 | Complete | |
| CORNEJO & SONS LLC | 12000 | Ton | $9.2000 | $110,400.00 | Complete | |
| APEX TRUCKING INC | 12000 | Ton | $12.8500 | $154,200.00 | Complete | |

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July 14, 2014

# Purchases Utilizing Sole Source of Supply

## Ordinance No. 35-856 Section 2. (b)

**SUBJECT:** Chain/Scraper flights 3 bays c/p N. straight lines

504 each – chain, convy HS730, 603-81421-85 W2T319512
126 each – flight-sigma, V14-0667-10-1 W3T315197
252 each – spacer-flight, 303-70267-1 W2T292219

FOR A TOTAL OF $186,039.00

This is a sole source of supply when material to be purchased is available from a sole distributor.

Department: PUBLIC WORKS & UTILITIES/PRODUCTION & PUMPING DIVISION

| Vendor | Reference Authority | Cost |
|---|---|---|
| Evoqua Water Technologies LLC. | Ordinance No. 35-856 Section 2 (b) | $186,039.00 |
| | | |

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Revised Petition for Paving Improvements in Southern Ridge Fourth Addition (District IV)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve the revised petition and adopt the amending resolution.

**Background:** On February 12, 2013, the City Council approved a petition for paving improvements to serve Southern Ridge Fourth Addition. An attempt to award a construction contract within the budget amount set by the petition was not successful. The developer has submitted a new petition with an increased budget. The signature on the petition represents 100% of the improvement district and the petition is valid per Kansas Statute 12-6a01.

**Analysis:** The project will provide paving improvements as required for a new residential development located south of Pawnee, west of Maize.

**Financial Considerations:** The original petition total was $141,000, and the new petition total is $170,000. The funding source is special assessments.

**Legal Considerations:** The Law Department has reviewed and approved the revised petition and amending resolution as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the revised petition, adopt the amending resolution, and authorize the necessary signatures.

**Attachments:** Map, budget sheet, revised petition, and amending resolution.

**766310**

**First Published in the Wichita Eagle on July 18, 2014**

**RESOLUTION NO. 14-189**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON **WESTGATE FROM THE SOUTH LINE OF LOT 29, BLOCK C, SOUTHEAST TO THE NORTH LINE OF GREENFIELD, ON GREENFIELD FROM THE EAST LINE OF WESTGATE, WEST TO THE EAST LINE OF LARK LANE AND ON GREENFIELD CIRCLE FROM THE EAST LINE OF GREENFIELD, EAST TO AND INCLUDING THE CUL-DE-SAC AND THAT SIDEWALK BE CONSTRUCTED ON WESTGATE AND GREENFIELD (SOUTH OF PAWNEE, WEST OF MAIZE) 472-85045** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON **WESTGATE FROM THE SOUTH LINE OF LOT 29, BLOCK C, SOUTHEAST TO THE NORTH LINE OF GREENFIELD, ON GREENFIELD FROM THE EAST LINE OF WESTGATE, WEST TO THE EAST LINE OF LARK LANE AND ON GREENFIELD CIRCLE FROM THE EAST LINE OF GREENFIELD, EAST TO AND INCLUDING THE CUL-DE-SAC AND THAT SIDEWALK BE CONSTRUCTED ON WESTGATE AND GREENFIELD (SOUTH OF PAWNEE, WEST OF MAIZE) 472-85045** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. **13-035** adopted on **February 12, 2013** is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to pave **Westgate from the south line of Lot 29, Block C, southeast to the north line of Greenfield, on Greenfield from the east line of Westgate, west to the east line of Lark Lane and on Greenfield Circle from the east line of Greenfield, east to and including the cul-de-sac and that sidewalk be constructed on Westgate and Greenfield (south of Pawnee, west of Maize) 472-85045.**

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be **One Hundred Seventy Thousand Dollars ($170,000)** exclusive of interest on financing and administrative and financing costs, with 100 Percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **December 1, 2012**, exclusive of the costs of temporary financing.

SECTION 4. 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:

**SOUTHERN RIDGE 4TH ADDITION**
Lots 30 through 42, Block C
Lot 7, Block D

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 30 through 42, Block C, and Lot 7, Block D, SOUTHERN RIDGE 4TH ADDITION shall each pay 1/14 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. 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 7. 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 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 1980 Supp. 12-6a01 et seq.

SECTION 9. 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 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

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

July, 2014.

_____
CARL BREWER, MAYOR

ATTEST:

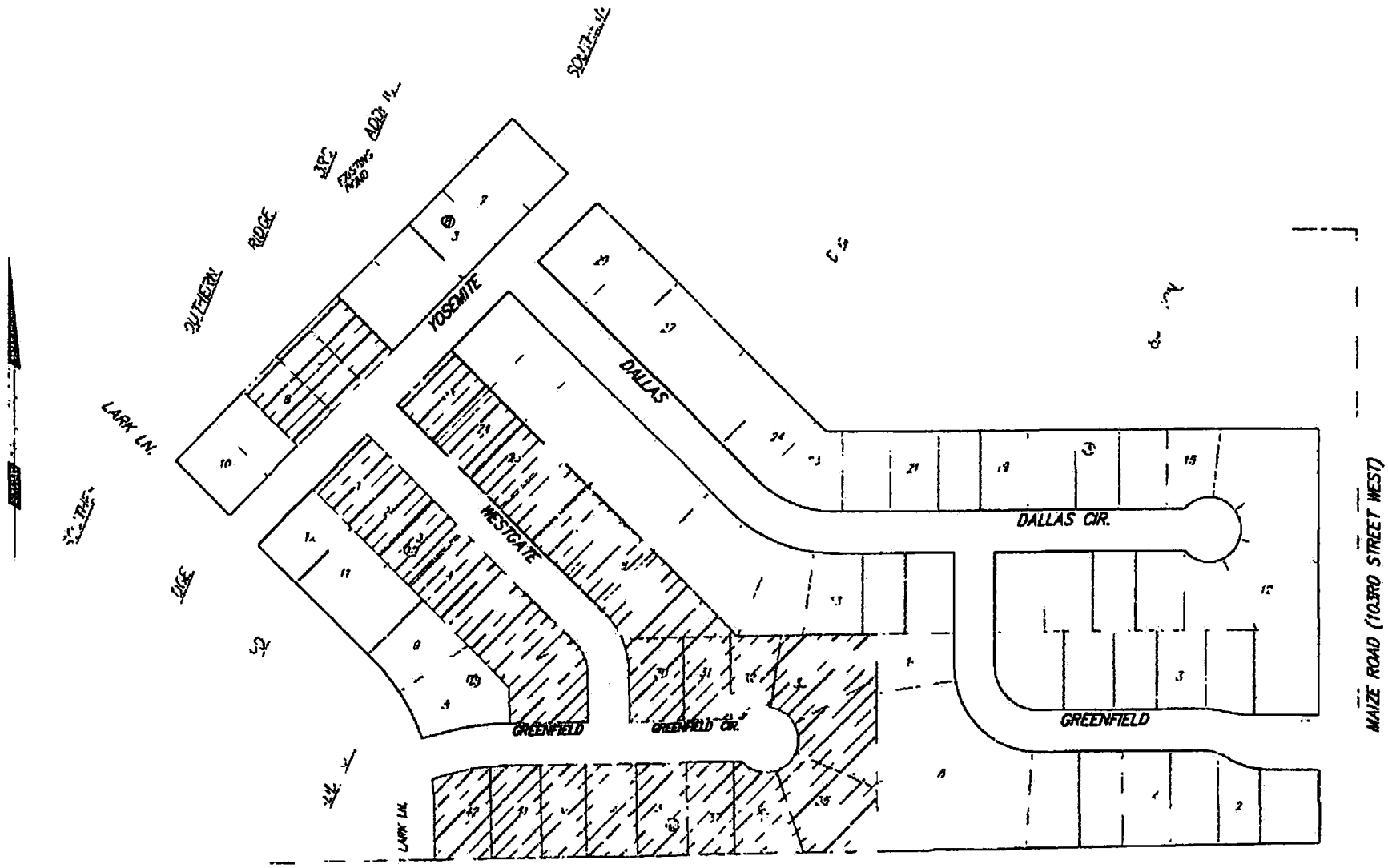
_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

# SOUTHERN RIDGE 4TH ADDITION




PROPOSED IMPROVEMENT DISTRICT

(ACTUAL ALIGNMENT TO BE DETERMINED BY DESIGN ENGINEER)

Wichita

1999

THE CITY OF WICHITA

CITY ENGINEER'S OFFICE

# Project Request

○ CIP ◉ Non-CIP

☒ NEIGHBORHOOD IMPROVEMENT ○ ORDERED BY WCC ◉ PETITION PETITION PERCENTAGE: 100

DEPARTMENT: 13 Public Works & Utilities DIVISION: Engineering RESOLUTION/ORDINANCE #: 14-

ENGINEERING REFERENCE #: 472-85045

FUND: 400 Street Improvements SUBFUND: 490 Paving N.I.

COUNCIL DISTRICT: 04 Council District 4 DATE COUNCIL APPROVED: Jul 15, 2014 REQUEST DATE:

PROJECT # : 490331 PROJECT TITLE: Westgate/Greenfield in Southern Ridge 4th Addition

PROJECT DETAIL # : 01 PROJECT DETAIL DESCRIPTION: Westgate/Greenfield in Southern Ridge 4th Addition

OCA # : 766310 OCA TITLE: Westgate/Greenfield in Southern Ridge 4th Addition

PERSON COMPLETING FORM: Joni Chamberlain PHONE #: 268-4548

PROJECT MANAGER: Julianne Kallman PHONE #: 268-4236

○ NEW BUDGET ◉ REVISED BUDGET

| Revenue Object Level 3 | Original Budget | Adjustment | New Budget |
|---|---|---|---|
| 9730 S.A. Bonds | $141,000.00 | $29,000.00 | $170,000.00 |
| | $0.00 | $0.00 | $0.00 |
| | $0.00 | $0.00 | $0.00 |
| | $0.00 | $0.00 | $0.00 |
| | $141,000.00 | $29,000.00 | $170,000.00 |

| Expense Object Level 3 | | | |
|---|---|---|---|
| 2999 Contractuals | $141,000.00 | $29,000.00 | $170,000.00 |
| | $0.00 | $0.00 | $0.00 |
| | $0.00 | $0.00 | $0.00 |
| | $0.00 | $0.00 | $0.00 |
| **Total Expense:** | $141,000.00 | $29,000.00 | $170,000.00 |

NOTES:

Print Form

**SIGNATURES REQUIRED**

DIVISION HEAD: _____ DATE: _____

DEPARTMENT HEAD: _____ DATE: _____

BUDGET OFFICER: _____ DATE: _____

CITY MANAGER: _____ DATE: _____

RECEIVED
JUN 23 '14
CITY CLERK OFFICE

**PAVING PETITION**
(Phase 2B)

**REVISED**
**Project No. ~~472-84343~~**

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

472-85045

**SOUTHERN RIDGE 4th ADDITION**
Lots 30 through 42, Block C
Lot 7, Block D

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended, as follows:

(a) That there be constructed pavement on Westgate from the south line Lot 29, Block C, southeast to the north line of Greenfield, on Greenfield from the east line of Westgate, west to the east line of Lark Ln., and on Greenfield Cir. from the east line of Greenfield, east to and including the cul-de-sac.

That said pavement between aforesaid limits be constructed for a width of thirty (30) feet from gutter line to gutter line, and each gutter to be two (2) feet in width, making a total roadway width of thirty-four (34) feet with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas. Drainage to be installed where necessary.

That sidewalk be constructed on Westgate and Greenfield, according to plans and specifications to be furnished by the City Engineer.

(b) That the estimated and probable cost of the foregoing improvement being One Hundred Seventy Thousand Dollars ($170,000), with 100 percent payable by the improvement district. Said estimated cost as above setforth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata of 1 percent per month from and after December 1, 2012.

(c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

(d) That the method of assessment of all costs of the improvement or which the improvement district shall be liable shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 30 through 42, Block C, and Lot 7, Block D, SOUTHERN RIDGE 4th ADDITION shall each pay 1/14 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature in order to form one public improvement project.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment

under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

| LEGAL DESCRIPTION | SIGNATURE | DATE |
|---|---|---|
| **SOUTHERN RIDGE 4TH ADDITION**<br>Lots 30 through 42, Block C<br>Lot 7, Block D | Maize Road, L.L.C.<br><br>By: _____<br>Jay W. Russell, Managing Member | |

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and the signatures thereon are the genuine signatures of the persons they support to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the resident owners whose signatures appears on the petition.

Name

Baughman Company, P.A.
315 Ellis, Wichita, KS 67211
Address

262-7271
Telephone No.

Sworn to and subscribed before me this 23 day of June 2014.

THE CITY OF WICHITA SEDGWICK COUNTY, KANSAS

Deputy City Clerk

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Sanitary Sewer Improvements for The Ranch Addition and Stonebridge Second Addition (District II)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the revised petitions and adopt the amending resolutions.

**Background:** On November 19, 2013, the City Council approved petitions for two phases of sanitary sewer improvements to serve The Ranch Addition and Stonebridge Second Addition. An attempt to award a construction contract for Phase 1 of the improvements within the budget amount set by the petition was not successful. The developer has submitted revised petitions for both improvement phases. The revised petition for Phase 1 reflects an increased budget and includes one lot in The Ranch Addition, ,hich was previously scheduled for Phase 2. The revised petition for Phase 2 reflects the decreased improvement district. The signature on the petition represents 100% of the improvement district and the petition is valid per Kansas Statute 12-6a01.

**Analysis:** The project will provide sanitary sewer improvements as required for new residential developments located south of 21st Street North, west of 159th Street East.

**Financial Considerations:** The original petition total for Phase 1 was $251,000, and the revised petition total is $335,000. A benefit fee of $56,335 will also be assessed. The petition total for Phase 2 remains $161,000, plus a benefit fee assessment of $51,578, as previously approved. The funding source for both projects is special assessments.

**Legal Considerations:** The Law Department has reviewed and approved the revised petitions and amending resolutions as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the revised petitions, adopt the amending resolutions, and authorize the necessary signatures.

**Attachments:** Map, budget sheet, revised petitions, and amending resolutions.

**744361**

**First Published in the Wichita Eagle on July 18, 2014**

**RESOLUTION NO. 14-190**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 437, FOUR MILE CREEK SEWER (SOUTH OF 21ST ST. NORTH, WEST OF 159TH ST. EAST) 468-84919** 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 437, FOUR MILE CREEK SEWER (SOUTH OF 21ST ST. NORTH, WEST OF 159TH ST. EAST) 468-84919** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution **No. 13-200** adopted on **November 19, 2013** is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to construct **Lateral 437, Four Mile Creek Sewer (south of 21st St. North, west of 159th St. East) 468-84919.**

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be **Three Hundred Thirty-Five Thousand Dollars ($335,000)** exclusive of interest on financing and administrative and financing costs, 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 a portion of 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 Fifty-Six Thousand Three Hundred Thirty-Five Dollars ($56,335).

SECTION 4. 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:

**THE RANCH**
Lots 1 through 12, Block A
Lots 31 through 33, Block A

**STONEBRIDGE 2ND ADDITION**
Lots 17 through 23, Block B

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcel of substantially comparable size and/or value: Lots 1 through 12, Block A, THE RANCH shall each pay 52/1000 of the total cost of the improvements; Lots 31 through 33, Block A, THE RANCH shall each pay 88/1000 of the total cost of the improvements; and Lots 17 through 23, Block B, STONEBRIDGE 2ND ADDITION, shall each pay 16/1000 of the total cost of the improvements.

That the method of assessment of all costs of the sanitary sewer benefit fee for which the improvement district is liable shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 through 12, Block A, THE RANCH shall each pay 17/300 of the total cost of the improvements; and Lots 31 through 33, Block A, THE RANCH shall each pay 32/300 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. 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 7. 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 8. 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 9. 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 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 15th day of July, 2014.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

**132019**

**First Published in the Wichita Eagle on July 18, 2014**

**RESOLUTION NO. 14-191**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 438, FOUR MILE CREEK SEWER (SOUTH OF 21ST ST. NORTH, WEST OF 159TH ST. EAST) 468-84920** 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 438, FOUR MILE CREEK SEWER (SOUTH OF 21ST ST. NORTH, WEST OF 159TH ST. EAST) 468-84920** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. **13-201** adopted on **November 19, 2013** is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to construct **Lateral 438, Four Mile Creek Sewer (south of 21st St. North, west of 159th St. East) 468-84920.**

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be **One Hundred Sixty-One Thousand Dollars ($161,000)** 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 a portion of 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 Fifty-One Thousand Five Hundred Seventy Eight Dollars ($51,578).

SECTION 4. 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:

**THE RANCH**
Lots 13 through 30, Block A

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcel of substantially comparable size and/or value: Lots 13 through 28, Block A, THE RANCH shall each pay 5/98 of the total cost of the improvements; Lots 29 and 30, Block A, THE RANCH shall each pay 9/98 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. 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 7. 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 8. 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 9. 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 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 15th day of July, 2014.

_____
CARL BREWER, MAYOR

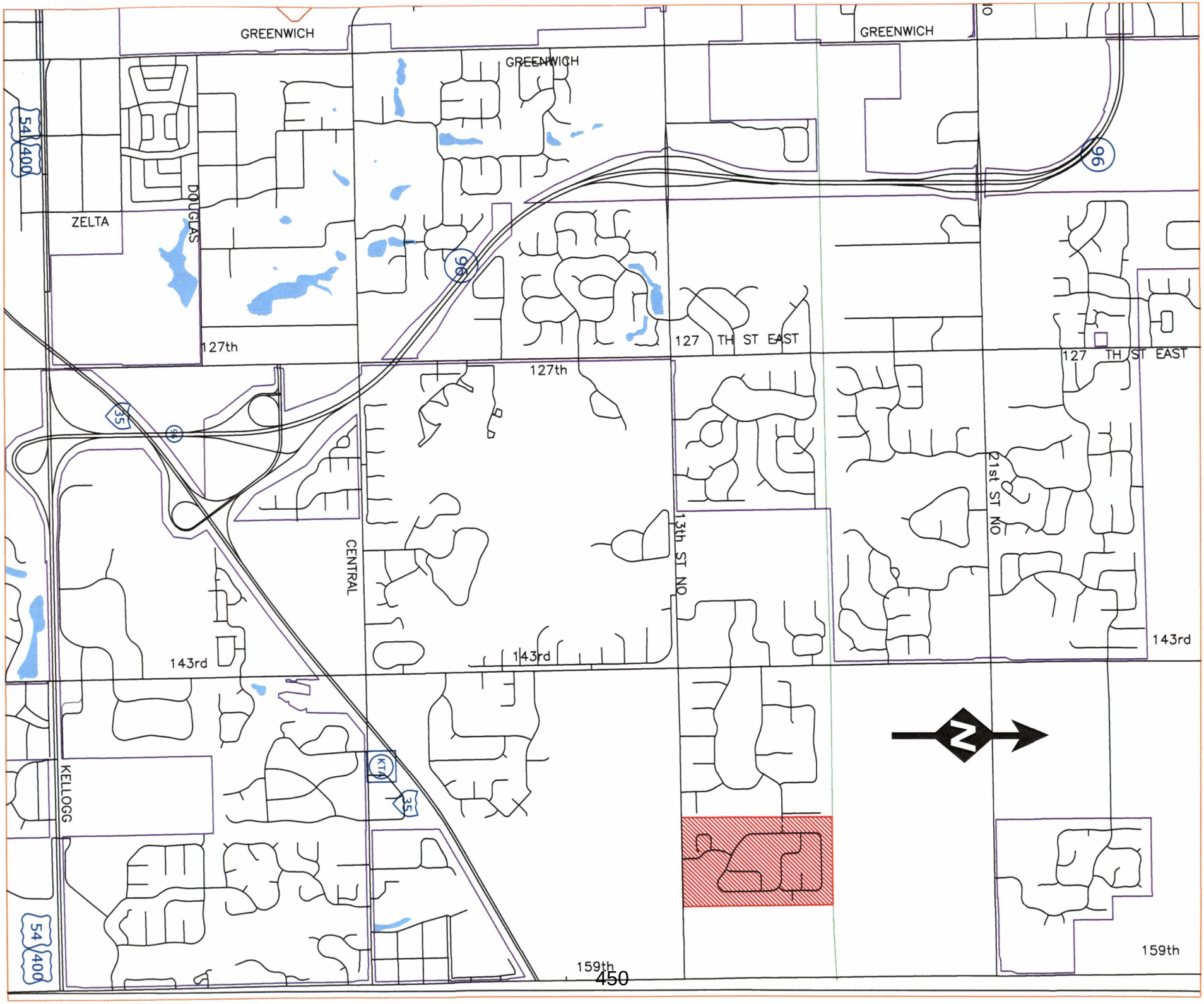
ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW


GREENWICH
GREENWICH
GREENWICH
ZELTA
DOUGLAS
127th
127th
127 TH ST EAST
127 TH ST EAST
CENTRAL
13th ST NO
21st ST NO
143rd
143rd
143rd
KELLOGG
159th
159th
54
400
96
96
35
35
KTA
N

# Project Request

○ CIP ◉ Non-CIP

☒ NEIGHBORHOOD IMPROVEMENT ○ ORDERED BY WCC ◉ PETITION PETITION PERCENTAGE: 100

DEPARTMENT: 13 Public Works & Utilities DIVISION: Engineering RESOLUTION/ORDINANCE #: 14-

ENGINEERING REFERENCE #: 468-84919

FUND: 480 Sewer Improvements N.I. SUBFUND: 480 Sanitary Sewers N.I.

COUNCIL DISTRICT: 02 Council District 2 DATE COUNCIL APPROVED: Jul 15, 2014 REQUEST DATE:

PROJECT # : 480053 PROJECT TITLE: Lat 437, FMC for The Ranch Addition

PROJECT DETAIL # : 01 PROJECT DETAIL DESCRIPTION: Lat 437, FMC for The Ranch Addition

OCA # : 744361 OCA TITLE: Lat 437, FMC for The Ranch Addition

PERSON COMPLETING FORM: Joni Chamberlain PHONE #: 268-4548

PROJECT MANAGER: Julianne Kallman PHONE #: 268-4236

○ NEW BUDGET ◉ REVISED BUDGET

| Revenue Object Level 3 | Original Budget | Adjustment | New Budget |
|---|---|---|---|
| 9730 S.A. Bonds | $251,000.00 | $84,000.00 | $335,000.00 |
| | $0.00 | $0.00 | $0.00 |
| | $0.00 | $0.00 | $0.00 |
| | $0.00 | $0.00 | $0.00 |
| | $251,000.00 | $84,000.00 | $335,000.00 |

| Expense Object Level 3 | | | |
|---|---|---|---|
| 2999 Contractuals | $251,000.00 | $84,000.00 | $335,000.00 |
| | $0.00 | $0.00 | $0.00 |
| | $0.00 | $0.00 | $0.00 |
| | $0.00 | $0.00 | $0.00 |
| **Total Expense:** | $251,000.00 | $84,000.00 | $335,000.00 |

NOTES:

Print Form

**SIGNATURES REQUIRED**

DIVISION HEAD: Gary Jones DATE: 06/26/14

DEPARTMENT HEAD: [illegible] DATE: 6/30/14

BUDGET OFFICER: Catherine McAlley DATE: 6/30/14

CITY MANAGER: DATE:

# Project Request

○ CIP ◉ Non-CIP

☒ NEIGHBORHOOD IMPROVEMENT ○ ORDERED BY WCC ◉ PETITION PETITION PERCENTAGE: 100

DEPARTMENT: 13 Public Works & Utilities DIVISION: Engineering RESOLUTION/ORDINANCE #: 14-

ENGINEERING REFERENCE #: 468-84920

FUND: 480 Sewer Improvements N.I. SUBFUND: 480 Sanitary Sewers N.I.

COUNCIL DISTRICT: 02 Council District 2 DATE COUNCIL APPROVED: Jul 15, 2014 REQUEST DATE:

PROJECT # : PROJECT TITLE: Lat 438, FMC for The Ranch Addition

PROJECT DETAIL # : 01 PROJECT DETAIL DESCRIPTION: Lat 438, FMC for The Ranch Addition

OCA # : OCA TITLE: Lat 438, FMC for The Ranch Addition

PERSON COMPLETING FORM: Joni Chamberlain PHONE #: 268-4548

PROJECT MANAGER: Julianne Kallman PHONE #: 268-4236

◉ NEW BUDGET ○ REVISED BUDGET

| REVENUE | | EXPENSE | |
|---|---|---|---|
| **Object Level 3** | **Budget** | **Object Level 3** | **Budget** |
| 9730 S.A. Bonds | $161,000.00 | 2999 Contractuals | $161,000.00 |
| | $0.00 | | $0.00 |
| | $0.00 | | $0.00 |
| | $0.00 | | $0.00 |
| | $0.00 | | $0.00 |
| | $0.00 | | $0.00 |
| | $0.00 | | $0.00 |
| **REVENUE TOTAL:** | $161,000.00 | **EXPENSE TOTAL:** | $161,000.00 |

NOTES: HOLD FOR LOC

Print Form

**SIGNATURES REQUIRED**

DIVISION HEAD: Gary Jones DATE: 06/26/14

DEPARTMENT HEAD: Alan DATE: 6/30/14

BUDGET OFFICER: Catherine McKilley DATE: 6/30/14

CITY MANAGER: DATE:

RECEIVED
JUN 27 '14
CITY CLERK OFFICE

**SANITARY SEWER PETITION**
PHASE 1

To the Mayor and City Council
Wichita, Kansas

**REVISED**
**#468-84919**
Lat 437, FMC

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

**THE RANCH**
Lots 1 through 12, Block A
Lots 31 through 33, Block A

6

**STONEBRIDGE 2ND ADDITION**
Lots 17 through 23, Block B

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq., as follows:

(a) That there be constructed a lateral sanitary sewer to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas, said lateral sanitary sewer to connect to an existing sanitary sewer main.

(b) That the estimated and probable cost of the lateral sanitary sewer is Three Hundred Thirty-Five Thousand Dollars ($335,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of one percent per month from and after November 1, 2013.

(c) That, in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against a portion of 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 Fifty-Six Thousand Three Hundred Thirty-Five Dollars ($56,335).

(d) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the lateral sanitary sewer for which the improvement district is liable, plus the benefit fee.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement

under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

(e) (i.) That the method of assessment of all costs of the lateral sanitary sewer for which the improvement district is liable shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 through 12, Block A, THE RANCH shall each pay 52/1000 of the total cost of the improvements; Lots 31 through 33, Block A, THE RANCH shall each pay 88/1000 of the total cost of the improvements; and Lots 17 through 23, Block B, STONEBRIDGE 2ND ADDITION, shall each pay 16/1000 of the total cost of the improvements.

(ii.) That the method of assessment of all costs of the sanitary sewer benefit fee for which the improvement district is liable shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 through 12, Block A, THE RANCH shall each pay 17/300 of the total cost of the improvements; and Lots 31 through 33, Block A, THE RANCH shall each pay 32/300 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. (a) It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature to form one public improvement project.

(b) Signatures on this petition are made with full knowledge and understanding that said signatures constitute a waiver of the

limitations contained in K.S.A. 13-1013, which appear to limit the assessment for a lateral sewer to not more than one lateral sewer.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use if and when such improvements are necessary to serve any building that may be constructed on the real property after the date on this petition.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

| LEGAL DESCRIPTION | SIGNATURE | DATE |
|---|---|---|
| **THE RANCH**<br>Lots 1 through 12, Block A<br>Lots 31 through 33, Block A | RBR Land, LLC<br>By: Ritchie Associates, Inc., Manager<br><br>By:_____<br>Kevin M. Mullen, President | 6/25/14 |
| **STONEBRIDGE 2ND ADDITION**<br>Lots 17 through 23, Block B | FKLS Land Development, LLC<br><br>By:_____<br>Steven R. Barrett, Member | 6/25/14 |

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and the signatures thereon are the genuine signatures of the persons they support to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the resident owners whose signatures appears on the petition.

Donald M. Howard
Name

Baughman Company, P.A.
315 Ellis, Wichita, KS 67211
Address

262-7271
Telephone No.

Sworn to and subscribed before me this 27 day of June, 2014.

THE CITY OF WICHITA SEDGWICK COUNTY, KANSAS

Jeris Edwards
Deputy City Clerk

RECEIVED
JUN 27 '14
CITY CLERK OFFICE

**REVISED**
468-84920
Lat. 438, FMC

**SANITARY SEWER PETITION**
PHASE 2

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

**THE RANCH**
Lots 13 through 30, Block A

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq., as follows:

(a) That there be constructed a lateral sanitary sewer to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas, said lateral sanitary sewer to connect to an existing sanitary sewer main.

(b) That the estimated and probable cost of the lateral sanitary sewer is One Hundred Sixty-One Thousand Dollars ($161,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of one percent per month from and after November 1, 2013.

(c) That, in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against a portion of 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 Fifty-One Thousand Five Hundred Seventy-Eight Dollars ($51,578).

(d) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the lateral sanitary sewer for which the improvement district is liable, plus the benefit fee.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of

Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

(e) That the method of assessment of all costs of the lateral sanitary sewer, plus the benefit fee, for which the improvement district is liable shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 13 through 28, Block A, THE RANCH shall each pay 5/98 of the total cost of the improvements, and Lots 29 and 30, Block A, THE RANCH shall each pay 9/98 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. (a) It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature to form one public improvement project.

(b) Signatures on this petition are made with full knowledge and understanding that said signatures constitute a waiver of the limitations contained in K.S.A. 13-1013, which appear to limit the assessment for a lateral sewer to not more than one lateral sewer.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed

and placed in use if and when such improvements are necessary to serve any building that may be constructed on the real property after the date on this petition.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

| LEGAL DESCRIPTION | SIGNATURE | DATE |
|---|---|---|
| **THE RANCH**<br>Lots 13 through 28, Block A<br>Lot 30, Block A | RBR Land, LLC<br>By: Ritchie Associates, Inc., Manager<br><br>By:_____<br>Kevin M. Mullen, President | 6/25/14 |
| **THE RANCH**<br>Lot 29, Block A | ~~Ranch 21, LLC~~<br>~~By: Laham Development Company, LLC~~<br>~~Its Manager~~<br><br>~~By:_____~~ | |

and placed in use if and when such improvements are necessary to serve any building that may be constructed on the real property after the date on this petition.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

| LEGAL DESCRIPTION | SIGNATURE | DATE |
|---|---|---|
| **THE RANCH**<br>Lots 13 through 28, Block A<br>Lot 30, Block A | RBR Land, LLC<br>By: Ritchie Associates, Inc., Manager<br><br>By:_____<br>Kevin M. Mullen, President | |
| **THE RANCH**<br>Lot 29, Block A | Ranch 21, LLC<br>By: Laham Development Company, LLC<br>Its Manager<br><br>By:_____ | 6/26/14 |

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and the signatures thereon are the genuine signatures of the persons they support to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the resident owners whose signatures appears on the petition.

Donald R. Howard
Name

Baughman Company, P.A.
315 Ellis, Wichita, KS 67211
Address

262-7271
Telephone No.

Sworn to and subscribed before me this 27 day of June 2014.

THE CITY OF WICHITA SEDGWICK COUNTY, KANSAS

Jeni Edwards
Deputy City Clerk

**STATEMENTS OF COST:**

a. Statement of Cost for improving **47TH Street South, Meridian to Seneca**– Total Cost - $5,734,795.71; plus temporary note interest - $4,795.07; plus idle fund interest - $2,621.74; less KDOT reimbursements - $3,483,049.52; less financing previously issued - $2,196,363.00. Financing to be issued at this time - $62,800.00 (706935/472-84296/205401).

b. Statement of Cost for improving **37th Street North, Tyler to Maize** – Total Cost - $2,535,694.52; plus temporary note interest - $1,329.70; less idle fund interest - $209.22; less financing previously issued - $2,512,015.00. Financing to be issued at this time - $24,800.00 (706977/472-84693/208443).

c. Statement of Cost for improving **119th Street West, Pawnee to Kellogg** – Total Cost - $3,974,877.80; plus temporary note interest - $2,725.67; plus idle fund interest - $164.53; less fi-nancing previously issued - $3,756,068.00. Financing to be issued at this time - $221,700.00 (706988/472-84694/208453)

d. Statement of Cost for improving **Greenwich, Harry to Kellogg** – Total Cost - $6,510,134.99; plus temporary note interest - $1,981.12; less idle fund interest - $312.22; less KDOT reimbursements - $4,645,111.89; less financing previously issued - $1,557,492.00. Financing to be issued at this time - $309,200.00 (707010/472-84863/209475).

e. Statement of Cost for improving **119th Street West, Kellogg to Maple** – Total Cost - $4,997.985.89; plus temporary note interest - $2,549.53; plus idle fund interest - $134.87; less KDOT reimbursements - $2,535,991.46; less other financing – $24,578.83; less financing previously issued - $2,067,200.00. Financing to be issued at this time - $372,900.00 (707011/472-84850/209476).

f. Statement of Cost for improving **135th Street West, 13th to 21st Street North** – Total Cost - $6,096,661.85; plus temporary note interest - $2,724.58; plus idle fund interest - $541.57; less financing previously issued - $4,300,128.00. Financing to be issued at this time - $1,799,800.00 (707021/472-84925/210486).

g. Statement of Cost for improving **Tyler Road, 21st to 29th Street North** – Total Cost - $2,245,807.53; plus temporary note interest - $2,111.50; plus idle fund interest - $253.97; less financing previously issued - $2,169,773.00. Financing to be issued at this time - $78,400.00 (707028/472-84921/210493).

h. Statement of Cost for conducting **Pavement Condition Survey, Assessment and Inventory** – Total Cost - $496,449.02; plus temporary note interest - $440.02; plus idle fund interest - $210.96; less financing previously issued - $312,200.00. Financing to be issued at this time - $184,900.00 (707050/472-85054/211505).

**AMENDED STATEMENT OF COST:**

i. Amended Statement of Cost for improving **Oliver, Harry to Kellogg** – Total Cost - $5,767,914.34; plus temporary note interest - $2,278.88; plus idle fund interest - $403.95; less KDOT reimbursements - $4,199,697.17; less financing previously issued - $1,200,000.00. Financing to be issued at this time - $370,900.00 (706993/472-84749/208458).

j. Amended Statement of Cost for improving **West Street, Maple to Central** – Total Cost - $8,115,267.60; plus temporary note interest - $4,645.39; less idle fund interest - $2,113.00; less KDOT reimbursements - $599,999.99; less financing previously issued - $6,997,200.00. Financing to be issued at this time - $520,600.00 (706995/472-84761/208460).

**STATEMENTS OF COST**
**SPECIAL ASSESSMENTS**
**FEBRUARY, 2015**

## WATER:

a. Statement of Cost for constructing Water Distribution System to serve Bridgeport Industrial Park 1 (south of 37th Street North, east of Broadway) – Total Cost - $40,658.43 (plus idle fund interest estimated - $122.86, plus temporary financing estimated - $118.71). Financing to be issued at this time - $40,900.00 (735483/448-90585/470-156).

b. Statement of Cost for constructing Water Distribution System to serve Waterfront 6th Addition (north of 13th Street North, west of Greenwich) – Total Cost - $65,373.28 (plus idle fund interest estimated - $134.65, plus temporary financing estimated - $192.07). Financing to be issued at this time - $65,700.00 (735485/448-90343/470-158).

c. Statement of Cost for constructing Water Distribution System to serve Newmarket V Addition (south of 29th Street North, west of Maize Road) – Total Cost - $158,452.41 (plus idle fund interest estimated - $182.73, plus temporary financing estimated - $464.86). Financing to be issued at this time - $159,100.00 (735486/448-90331/470-159).

d. Statement of Cost for constructing Water Distribution System to serve Krug South Addition (south of 21st Street North, west of 143rd Street East) – Total Cost - $47,978.89 (plus idle fund interest estimated - $182.57, plus temporary financing estimated - $138.54, plus main benefit fee - $26,938.00). Financing to be issued at this time - $75,238.00 (735487/448-90563/470-160).

e. Statement of Cost for constructing Water Distribution System to serve Frontgate Addition (south of Central, west of 127th Street East) – Total Cost - $79,569.12 (plus idle fund interest estimated $200.59, plus temporary financing estimated - $230.29, plus main benefit fee - $6,482.00)). Financing to be issued at this time - $86,482.00 (735488/448-90592/470-161).

f. Statement of Cost for constructing Water Distribution System to serve Northborough 3rd Addition (south of 21st Street North, east of Woodlawn) – Total Cost - $40,064.27 (plus idle fund interest estimated - $130.72, plus temporary financing estimated - $105.01, plus main benefit fee - $49,000.00). Financing to be issued at this time - $89,300.00 (735491/448-90600/470-164).

g. Statement of Cost for constructing Water Distribution System to serve Bay Country Addition (west of 119th Street West, south of Central) – Total Cost - $74,599.35 (plus idle fund interest estimated - $262.11, plus temporary financing estimated - $38.54). Financing to be issued at this time - $74,900.00 (735492/448-90598/470-165).

h. Statement of Cost for constructing Water Distribution System to serve The Woods Addition (east of 151st Street West, north of Maple) – Total Cost - $56,393.09 (plus idle fund interest estimated - $306.91). Financing to be issued at this time - $56,700.00 (735493/448-90505/470-166).

i. Statement of Cost for constructing Water Distribution System to serve Mission Addition (north of Central, east of Hoover) – Total Cost - $23,548.98 (plus idle fund interest estimated - $211.24, plus temporary financing estimated - $39.78, plus main benefit fee - $80,000.00). Financing to be issued at this time - $103,800.00 (735494/448-90597/470-167).

j. Statement of Cost for constructing Water Distribution System to serve Woods North 3rd Addition (south of 29th Street North, west of 127th Street East) – Total Cost - $58,220.84 (plus idle fund interest estimated - $279.16). Financing to be issued at this time - $58,500.00 (735495/448-90555/470-168).

k. Statement of Cost for constructing Water Distribution System to serve Tara Creek Addition (north of Pawnee, west of 127th Street East) – Total Cost - $36,861.07 (plus idle fund interest estimated - $238.93). Financing to be issued at this time - $37,100.00 (735497/448-90298/470-170).

l. Statement of Cost for constructing Water Distribution System to serve Falcon Falls 2nd Addition (north of 45th Street North, west of Hillside) – Total Cost - $36,196.51 (plus idle fund interest estimated - $203.49). Financing to be issued at this time - $36,400.00 (735501/448-90108/470-174).

**SANITARY SEWER:**

m. Statement of Cost for constructing Lateral 8, Main 18 Four Mile Creek Sewer to serve Bellechase 3rd Addition (north of Harry, east of 127th Street East)– Total Cost - $162,451.31 (plus idle fund interest estimated - $163.10, plus temporary financing estimated - $485.59). Financing to be issued at this time - $163,100.00 (744345/468-84858/480-037).

n. Statement of Cost for constructing Lateral 60, Main 24 War Industries Sewer to serve Waterfront 8th Addition (north of 13th Street North, west of Greenwich) – Total Cost - $28,785.96 (plus idle fund interest estimated - $129.77, plus temporary financing estimated - $84.27). Financing to be issued at this time - $29,000.00 (744347/468-84871/480-039).

o. Statement of Cost for constructing Lateral 136, War Industries Sewer to serve Huntington Park Addition (south of 13th Street North, west of Maize) – Total Cost - $29,788.11 (plus idle fund interest estimated - $211.89). Financing to be issued at this time - $30,000.00 (744349/468-84883/480-041).

p. Statement of Cost for constructing Lateral 433, Four Mile Creek Sewer to serve Frontgate Addition (south of Central, west of 127th Street East) – Total Cost - $152,393.79 (plus idle fund interest estimated - $158.91, plus temporary financing estimated - $447.30). Financing to be issued at this time - $153,000 (744350/468-84879/480-042).

q. Statement of Cost for constructing Lateral 22, Main 20 War Industries Sewer to serve Northborough 3rd Addition (south of 21st Street North, east of Woodlawn – Total Cost - $54,120.88 (plus idle fund interest estimated - $140.74, plus temporary financing estimated - $138.38, plus main benefit fee - $34,930.00). Financing to be issued at this time - $89,330.00 (744353/468-84894/480-045).

r. Statement of Cost for constructing Lateral 62, Cowskin Interceptor Sewer to serve Bay Country Addition (west of 119th Street West, south of Central) – Total Cost - $123,410.12 (plus idle fund interest estimated - $420.75, plus temporary financing estimated - $69.13). Financing to be issued at this time - $123,900.00 (744354/468-84890/480-046).

s. Statement of Cost for constructing Lateral 539, Southwest Interceptor Sewer to serve Dewitt 5th Addition (south of Harry, west of Hoover) – Total Cost - $14,310.13 (plus idle fund interest estimated - $189.87, plus main benefit fee - $8,248.00). Financing to be issued at this time - $22,748.00 (744355/468-84855/480-047).

t. Statement of Cost for constructing Lateral 430, Four Mile Creek Sewer to serve Woods North 3rd Addition (south of 29th Street North, west of 127th Street East) – Total Cost - $126,543.39 (plus idle fund interest estimated - $414.25, plus temporary financing estimated - $42.36, plus main benefit fee - $19,329.00). Financing to be issued at this time - $146,329.00 (744357/468-84822/480-049).

u. Statement of Cost for constructing Lateral 5, Main 8, Four Mile Creek Sewer to serve Tara Creek Addition (north of Pawnee, west of 127th Street East) – Total Cost - $54,338.29 (plus idle fund interest estimated - $261.71). Financing to be issued at this time - $54,600.00 (744359/468-84363/480-051).

## STORM WATER:

v. Statement of Cost for constructing Storm Water Drain No. 376, to serve Newmarket Office 2nd Addition (north of 29th Street North, west of Maize Road)– Total Cost - $516, 421.30; (plus idle fund interest estimated - $225.82, plus temporary financing estimated - $1,952.88). Financing to be issued at this time - $518,600.00 (751498/468-84753/485-389).

w. Statement of Cost for constructing Storm Water Sewer No. 660, to serve Berkeley Square 1st Addition (north of 13th Street North, west of Greenwich) – Total Cost - $735,238.79; (plus idle fund interest estimated - $332.55, plus temporary financing estimated - $4,728.66). Financing to be issued at this time - $740,300.00 (751502/468-84732/485-393).

x. Statement of Cost for constructing Storm Water Sewer No. 669, to serve Krug South Addition (south of 21st Street North, west of 143rd Street East) – Total Cost - $119,357.23; (plus idle fund interest estimated - $200.73, plus temporary financing estimated - $342.04). Financing to be issued at this time - $119,900.00 (751516/468-84835/485-407).

y. Statement of Cost for constructing Storm Water Drain No. 387 to serve Frontgate Addition (south of Central, west of 127th Street East) – Total Cost - $360,294.24 (plus idle fund interest estimated - $322.45, plus temporary financing estimated - $883.31). Financing to be issued at this time - $361,500.00 (751517/468-84880/485-408).

z. Statement of Cost for constructing Storm Water Drain No. 388 to serve Huntington Park Addition (south of 13th Street North, west of Maize) – Total Cost - $69,675.58 (plus idle fund interest estimated - $324.42). Financing to be issued at this time - $70,000.00 (751515/468-84884/485-406).

aa. Statement of Cost for constructing Storm Water Drain No. 389, to serve Bay Country Addition (west of 119th Street West, south of Central) – Total Cost - $228,330.74; (plus idle fund interest estimated - $243.65, plus temporary financing estimated - $625.61). Financing to be issued at this time - $229,200.00 (751520/468-84887/485-411).

bb. Statement of Cost for constructing Storm Water Sewer No. 670, to serve Bay Country Addition (west of 119th Street West, south of Central) – Total Cost - $72,271.92; (plus idle fund interest estimated - $328.08). Financing to be issued at this time - $72,600.00 (751521/468-84888/485-412).

## PAVING:

cc. Statement of Cost for constructing Paving on Brush Creek Circle, Brush Creek Court and Westlakes Parkway to serve Fox Ridge Addition (north of 29th Street North, west of Tyler) – Total Cost - $626,270.98, (plus idle fund interest estimated - $256.86, plus temporary financing estimated - $3,672.16). Financing to be issued at this time - $630,200.00 (766272/472-83791/490-290).

dd. Statement of Cost for constructing Paving on 29th Street North, from the east line of Greenwich to a point 295 feet east of the northeast corner of Lot 7, Block 1 to serve Greenwich Business Center Addition (east of Greenwich, south of 29th Street North) – Total Cost - $173,260.51, (plus idle fund interest estimated - $218.33, plus temporary financing estimated - $521.16). Financing to be issued at this time - $174,000.00 (766283/472-84983/490-300).

ee. Statement of Cost for constructing Paving on 29th Street North from 200 feet east of the northwest corner of Stoney Pointe Addition (east of Greenwich, south of 29th Street North) – Total Cost - $125,064.41, (plus idle fund interest estimated - $185.86, plus temporary financing estimated - $349.73). Financing to be issued at this time - $125,600.00 (766284/472-84980/490-301).

ff. Statement of Cost for constructing Paving on Parkdale Circle from 29th Street North to the south line of Reserve "D" to serve Newmarket Office 2nd Addition (north of 29th Street North, west of Maize Road) – Total Cost - $531,810.12, (plus idle fund interest estimated - $193.77, plus temporary financing estimated - $1,596.11). Financing to be issued at this time - $533,600.00 (766288/472-84990/490-306).

gg. Statement of Cost for constructing Paving on Split Rail Street to serve Krug South Addition (south of 21st Street North, west of 143rd Street East) – Total Cost - $258,499.46, (plus idle fund interest estimated - $250.00, plus temporary financing estimated - $750.54). Financing to be issued at this time - $259,500.00 (766295/472-85059/490-313).

hh. Statement of Cost for constructing Paving on Jennie Street and Jennie Court to serve Bay Country Addition (west of 119th Street West, south of Central) – Total Cost - $254,315.62, (plus idle fund interest estimated - $784.38). Financing to be issued at this time - $255,100.00 (766297/472-85103/490-315).

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90585

OCA# 735483
PPN# 470156

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Water Distribution System to serve Bridgeport Industrial Park 1 (south of 37th Street North, east of Broadway)

| | |
|---|---|
| Contract Amount | $29,750.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $1,037.52 |
| Engineering & Inspection | $9,630.36 |
| Publication | $220.55 |
| Abstract | $20.00 |
| Construction Cost | $40,658.43 |
| Idle Fund Interest Estimated | $122.86 |
| Temporary Financing Estimated | $118.71 |
| Subtotal | $40,900.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $40,900.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | |
|---|---|
| Property | $18,875.35 |
| WUF | $22,024.65 |
| Benefit Fee | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $75,000.00
Increase by 1% per month after: February 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90343

OCA# 735485
PPN# 470158

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:

Water Distribution System to serve Waterfront 6th Addition (north of 13th Street North, west of Greenwich)

| | |
|---|---|
| Contract Amount | $47,950.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $1,312.73 |
| Administration | $1,653.01 |
| Engineering & Inspection | $14,279.94 |
| Publication | $157.60 |
| Abstract | $20.00 |
| Construction Cost | $65,373.28 |
| Idle Fund Interest Estimated | $134.65 |
| Temporary Financing Estimated | $192.07 |
| Subtotal | $65,700.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $65,700.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $65,700.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $73,000.00
Increase by 1% per month after: September 1, 2007

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90331

OCA# 735486
PPN# 470159

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Water Distribution System to serve Newmarket V Addition (south of 29th Street North, west of Maize Road)

| | |
|---|---|
| Contract Amount | $114,874.93 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $2,440.82 |
| Administration | $3,996.40 |
| Engineering & Inspection | $36,863.81 |
| Publication | $256.45 |
| Abstract | $20.00 |
| Construction Cost | $158,452.41 |
| Idle Fund Interest Estimated | $182.73 |
| Temporary Financing Estimated | $464.86 |
| Subtotal | $159,100.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $159,100.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $159,100.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $193,000.00
Increase by 1% per month after: April 19, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90563

OCA# 735487
PPN# 470160

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Water Distribution System to serve Krug South Addition (south of 21st Street North, west of 143rd Street East)

| | |
|---|---|
| Contract Amount | $33,877.38 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $1,217.05 |
| Engineering & Inspection | $12,605.21 |
| Publication | $259.25 |
| Abstract | $20.00 |
| Construction Cost | $47,978.89 |
| Idle Fund Interest Estimated | $182.57 |
| Temporary Financing Estimated | $138.54 |
| Subtotal | $48,300.00 |
| Main Benefit Fee (Water or Sewer projects only) | $26,938.00 |
| TOTAL COST | $75,238.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $48,300.00 |
| | 0 | $0.00 |
| Benefit Fee | | $26,938.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $52,000.00
Increase by 1% per month after: May 1, 2012

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90592
OCA# 735488
PPN# 470161

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Water Distribution System to serve Frontgate Adddition (south of Central, west of 127th Street East)

| | |
|---|---|
| Contract Amount | $58,900.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $3,387.94 |
| Administration | $2,007.05 |
| Engineering & Inspection | $14,832.63 |
| Publication | $421.50 |
| Abstract | $20.00 |
| Construction Cost | $79,569.12 |
| Idle Fund Interest Estimated | $200.59 |
| Temporary Financing Estimated | $230.29 |
| Subtotal | $80,000.00 |
| Main Benefit Fee (Water or Sewer projects only) | $6,482.00 |
| TOTAL COST | $86,482.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $80,000.00 |
| | 0 | $0.00 |
| Benefit Fee | | $6,482.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $97,000.00
Increase by 1% per month after: May 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90600
OCA# 735491
PPN# 470164

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Water Distribution System to serve Northborough 3rd Addition (south of 21st Street North, east of Woodlawn)

| | |
|---|---|
| Contract Amount | $27,502.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $1,010.35 |
| Engineering & Inspection | $11,291.57 |
| Publication | $240.35 |
| Abstract | $20.00 |
| Construction Cost | $40,064.27 |
| Idle Fund Interest Estimated | $130.72 |
| Temporary Financing Estimated | $105.01 |
| Subtotal | $40,300.00 |
| Main Benefit Fee (Water or Sewer projects only) | $49,000.00 |
| TOTAL COST | $89,300.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $40,300.00 |
| | 0 | $0.00 |
| Benefit Fee | | $49,000.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $40,810.00
Increase by 1% per month after: July 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90598
OCA# 735492
PPN# 470165

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Water Distribution System to serve Bay Country Addition (west of 119th Street West, south of Central)

| | |
|---|---|
| Contract Amount | $54,900.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $1,838.03 |
| Engineering & Inspection | $17,381.27 |
| Publication | $460.05 |
| Abstract | $20.00 |
| Construction Cost | $74,599.35 |
| Idle Fund Interest Estimated | $262.11 |
| Temporary Financing Estimated | $38.54 |
| Subtotal | $74,900.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $74,900.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $74,900.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $131,000.00
Increase by 1% per month after: June 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90505

OCA# 735493
PPN# 470166

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Water Distribution System to serve The Woods Addition (east of 151st Street West, north of Maple)

| | |
|---|---|
| Contract Amount | $41,728.50 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $1,375.44 |
| Engineering & Inspection | $12,978.05 |
| Publication | $291.10 |
| Abstract | $20.00 |
| Construction Cost | $56,393.09 |
| Idle Fund Interest Estimated | $306.91 |
| Temporary Financing Estimated | $0.00 |
| Subtotal | $56,700.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $56,700.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $56,700.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $60,480.00
Increase by 1% per month after: December 1, 2010

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90597
OCA# 735494
PPN# 470167

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Water Distribution System to serve Mission Addition (north of Central, east of Hoover)

| | |
|---|---|
| Contract Amount | $9,359.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $1,569.25 |
| Administration | $588.02 |
| Engineering & Inspection | $11,786.66 |
| Publication | $226.05 |
| Abstract | $20.00 |
| Construction Cost | $23,548.98 |
| Idle Fund Interest Estimated | $211.24 |
| Temporary Financing Estimated | $39.78 |
| Subtotal | $23,800.00 |
| Main Benefit Fee (Water or Sewer projects only) | $80,000.00 |
| TOTAL COST | $103,800.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $103,800.00 |
| | 0 | $0.00 |
| Benefit Fee | | $80,000.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $80,000.00
Increase by 1% per month after: June 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90555
OCA# 735495
PPN# 470168

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Water Distribution System to serve Woods North 3rd Addition (south of 29th Street North, west of 127th Street East)

| | |
|---|---|
| Contract Amount | $41,399.35 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $1,420.02 |
| Engineering & Inspection | $15,054.02 |
| Publication | $327.45 |
| Abstract | $20.00 |
| Construction Cost | $58,220.84 |
| Idle Fund Interest Estimated | $279.16 |
| Temporary Financing Estimated | $0.00 |
| Subtotal | $58,500.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $58,500.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $58,500.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $69,000.00
Increase by 1% per month after: April 1, 2012

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90298

OCA# 735497
PPN# 470170

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Water Distribution System to serve Tara Creek Addition (north of Pawnee, west of 127th Street East)

| | |
|---|---|
| Contract Amount | $24,012.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $899.05 |
| Engineering & Inspection | $11,668.42 |
| Publication | $261.60 |
| Abstract | $20.00 |
| Construction Cost | $36,861.07 |
| Idle Fund Interest Estimated | $238.93 |
| Temporary Financing Estimated | $0.00 |
| Subtotal | $37,100.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $37,100.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $37,100.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $40,000.00
Increase by 1% per month after: February 1, 2007

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
448-90108

OCA# 735501
PPN# 470174

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:

Water Distribution System to serve Falcon Falls 2nd Addition (north of 45th Street North, west of Hillside)

| | |
|---|---|
| Contract Amount | $23,760.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $882.84 |
| Engineering & Inspection | $11,282.27 |
| Publication | $251.40 |
| Abstract | $20.00 |
| Construction Cost | $36,196.51 |
| Idle Fund Interest Estimated | $203.49 |
| Temporary Financing Estimated | $0.00 |
| Subtotal | $36,400.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $36,400.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $36,400.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $57,000.00
Increase by 1% per month after: July 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84858

OCA# 744345
PPN# 480037

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Lateral 8, Main 18 Four Mile Creek Sewer to serve Bellechase 3rd Addition (north of Harry, east of 127th Street East)

| | |
|---|---|
| Contract Amount | $126,700.35 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $4,133.93 |
| Engineering & Inspection | $30,866.88 |
| Publication | $730.15 |
| Abstract | $20.00 |
| Construction Cost | $162,451.31 |
| Idle Fund Interest Estimated | $163.10 |
| Temporary Financing Estimated | $485.59 |
| Subtotal | $163,100.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $163,100.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $163,100.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $169,560.00
Increase by 1% per month after: October 1, 2012

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84871

OCA# 744347
PPN# 480039

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:

Lateral 60, Main 24 War Industries Sewer to serve Waterfront 8th Addition (north of 13th Street North, west of Greenwich)

| | |
|---|---|
| Contract Amount | $15,350.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $773.32 |
| Engineering & Inspection | $12,427.79 |
| Publication | $214.85 |
| Abstract | $20.00 |
| Construction Cost | $28,785.96 |
| Idle Fund Interest Estimated | $129.77 |
| Temporary Financing Estimated | $84.27 |
| Subtotal | $29,000.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $29,000.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $29,000.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $37,000.00
Increase by 1% per month after: March 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84883

OCA# 744349
PPN# 480041

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Lateral 136 Westlink Sanitary Sewer to serve Huntington Park Addition (south of 13th Street North, west of Maize)

| | |
|---|---|
| Contract Amount | $16,100.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $726.54 |
| Engineering & Inspection | $12,639.87 |
| Publication | $301.70 |
| Abstract | $20.00 |
| Construction Cost | $29,788.11 |
| Idle Fund Interest Estimated | $211.89 |
| Temporary Financing Estimated | $0.00 |
| Subtotal | $30,000.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $30,000.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $30,000.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $30,000.00
Increase by 1% per month after: June 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84879

OCA# 744350
PPN# 480042

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Lateral 433, Four Mile Creek Sewer to serve Frontgate Addition (south of Central, west of 127th Street East)

| | |
|---|---|
| Contract Amount | $110,258.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $3,911.07 |
| Engineering & Inspection | $37,725.02 |
| Publication | $479.70 |
| Abstract | $20.00 |
| Construction Cost | $152,393.79 |
| Idle Fund Interest Estimated | $158.91 |
| Temporary Financing Estimated | $447.30 |
| Subtotal | $153,000.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $153,000.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $153,000.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $155,000.00
Increase by 1% per month after: May 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84894
OCA# 744353
PPN# 480045

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Lateral 22, Main 20 War Industries Sewer to serve Northborough 3rd Addition (south of 21st Street North, east of Woodlawn)

| | |
|---|---|
| Contract Amount | $39,708.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $1,407.83 |
| Engineering & Inspection | $12,772.90 |
| Publication | $212.15 |
| Abstract | $20.00 |
| Construction Cost | $54,120.88 |
| Idle Fund Interest Estimated | $140.74 |
| Temporary Financing Estimated | $138.38 |
| Subtotal | $54,400.00 |
| Main Benefit Fee (Water or Sewer projects only) | $34,930.00 |
| TOTAL COST | $89,330.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $54,400.00 |
| | 0% | $0.00 |
| Benefit Fee | | $34,930.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $64,000.00
Increase by 1% per month after: July 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84890
OCA# 744354
PPN# 480046

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Lateral 62, Cowskin Interceptor Sewer to serve Bay Country Addition (west of 119th Street West, south of Central)

| | |
|---|---|
| Contract Amount | $89,250.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $3,075.37 |
| Engineering & Inspection | $30,601.70 |
| Publication | $463.05 |
| Abstract | $20.00 |
| Construction Cost | $123,410.12 |
| Idle Fund Interest Estimated | $420.75 |
| Temporary Financing Estimated | $69.13 |
| Subtotal | $123,900.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $123,900.00 |

Respectfully Submitted,

Gary Janzen, P.E. City Engineer

| | | |
|---|---|---|
| Property | | $123,900.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

| | |
|---|---|
| Petition/Resolution Amount: | $207,000.00 |
| Increase by 1% per month after: | June 1, 2013 |

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84855
OCA# 744355
PPN# 480047

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Lateral 539 Southwest Interceptor Sewer to serve Dewitt 5th Addition (south of Harry, west of Hoover)

| | |
|---|---|
| Contract Amount | $7,951.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $349.03 |
| Engineering & Inspection | $5,788.85 |
| Publication | $201.25 |
| Abstract | $20.00 |
| Construction Cost | $14,310.13 |
| Idle Fund Interest Estimated | $189.87 |
| Temporary Financing Estimated | $0.00 |
| Subtotal | $14,500.00 |
| Main Benefit Fee (Water or Sewer projects only) | $8,248.00 |
| TOTAL COST | $22,748.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $22,748.00 |
| | 0 | $0.00 |
| Benefit Fee | | $8,248.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $17,000.00
Increase by 1% per month after: December 1, 2012

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84822

OCA# 744357
PPN# 480049

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:

Lateral 430 Four Mile Creek Sewer to serve Woods North 3rd Addition (south of 29th Street North, west of 127th Street East)

| | |
|---|---|
| Contract Amount | $95,943.46 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $3,153.74 |
| Engineering & Inspection | $27,111.74 |
| Publication | $314.45 |
| Abstract | $20.00 |
| Construction Cost | $126,543.39 |
| Idle Fund Interest Estimated | $414.25 |
| Temporary Financing Estimated | $42.36 |
| Subtotal | $127,000.00 |
| Main Benefit Fee (Water or Sewer projects only) | $19,329.00 |
| TOTAL COST | $146,329.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | |
|---|---|
| Property | $119,545.10 |
| WUF | $7,454.90 |
| Benefit Fee | $19,329.00 |

March 17, 2015
Chesney 816
15 years

| | |
|---|---|
| Petition/Resolution Amount: | $150,000.00 |
| Increase by 1% per month after: | April 1, 2012 |

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84363

OCA# 744359
PPN# 480051

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:

Lateral 5, Main 8, Four Mile Creek Sewer to serve Tara Creek Addition (north of Pawnee, west of 127th Street East)

| | |
|---|---|
| Contract Amount | $39,501.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $1,325.32 |
| Engineering & Inspection | $13,297.22 |
| Publication | $194.75 |
| Abstract | $20.00 |
| Construction Cost | $54,338.29 |
| Idle Fund Interest Estimated | $261.71 |
| Temporary Financing Estimated | $0.00 |
| Subtotal | $54,600.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $54,600.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $54,600.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $96,000.00
Increase by 1% per month after: February 1, 2007

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84753
OCA# 751498
PPN# 485389

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Storm Water Drain No. 376 to serve Newmarket Office 2nd Addition (north of 29th Street North, west of Maize Road)

| | |
|---|---|
| Contract Amount | $377,529.49 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $15,039.54 |
| Engineering & Inspection | $123,681.22 |
| Publication | $151.05 |
| Abstract | $20.00 |
| Construction Cost | $516,421.30 |
| Idle Fund Interest Estimated | $225.82 |
| Temporary Financing Estimated | $1,952.88 |
| Subtotal | $518,600.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $518,600.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

Property $518,600.00

0 $0.00
Benefit Fee $0.00

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $848,000.00
Increase by 1% per month after: April 1, 2011

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84732

OCA# 751502
PPN# 485393

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Storm Water Sewer No. 660 to serve Berkeley Square 1st Addition (north of 13th Street North, west of Greenwich)

| | |
|---|---|
| Contract Amount | $658,327.23 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $20,105.34 |
| Engineering & Inspection | $56,591.72 |
| Publication | $194.50 |
| Abstract | $20.00 |
| Construction Cost | $735,238.79 |
| Idle Fund Interest Estimated | $332.55 |
| Temporary Financing Estimated | $4,728.66 |
| Subtotal | $740,300.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $740,300.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $740,300.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $838,250.00
Increase by 1% per month after: February 1, 2011

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84835
OCA# 751516
PPN# 485407

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Storm Water Sewer No. 669 to serve Krug South Addition (south of 21st Street North, west of 143rd Street East)

| | |
|---|---|
| Contract Amount | $97,890.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $3,051.64 |
| Engineering & Inspection | $17,930.89 |
| Publication | $464.70 |
| Abstract | $20.00 |
| Construction Cost | $119,357.23 |
| Idle Fund Interest Estimated | $200.73 |
| Temporary Financing Estimated | $342.04 |
| Subtotal | $119,900.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $119,900.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $119,900.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $140,000.00
Increase by 1% per month after: May 1, 2012

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84880

OCA# 751517
PPN# 485408

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Storm Water Drain #387 to serve Frontgate Addition (south of Central, west of 127th Street East)

| | |
|---|---|
| Contract Amount | $315,764.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $9,015.96 |
| Engineering & Inspection | $35,077.58 |
| Publication | $416.70 |
| Abstract | $20.00 |
| Construction Cost | $360,294.24 |
| Idle Fund Interest Estimated | $322.45 |
| Temporary Financing Estimated | $883.31 |
| Subtotal | $361,500.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $361,500.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $361,500.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $410,000.00
Increase by 1% per month after: May 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84884

OCA# 751515
PPN# 485406

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Storm Water Drain No. 388 to serve Huntington Park Addition (south of 13th Street North, west of Maize Road)

| | |
|---|---|
| Contract Amount | $51,050.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $1,699.40 |
| Engineering & Inspection | $16,645.83 |
| Publication | $260.35 |
| Abstract | $20.00 |
| Construction Cost | $69,675.58 |
| Idle Fund Interest Estimated | $324.42 |
| Temporary Financing Estimated | $0.00 |
| Subtotal | $70,000.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $70,000.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $70,000.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $100,000.00
Increase by 1% per month after: June 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84887

OCA# 751520
PPN# 485411

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Storm Water Drain No. 389 to serve Bay Country Addition (west of 119th Street West, south of Central)

| | |
|---|---|
| Contract Amount | $173,392.10 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $5,736.85 |
| Engineering & Inspection | $48,719.34 |
| Publication | $462.45 |
| Abstract | $20.00 |
| Construction Cost | $228,330.74 |
| Idle Fund Interest Estimated | $243.65 |
| Temporary Financing Estimated | $625.61 |
| Subtotal | $229,200.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $229,200.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $229,200.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $412,000.00
Increase by 1% per month after: June 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
468-84888
OCA# 751521
PPN# 485412

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Storm Water Sewer No. 670 to serve Bay Country Addition (west of 119th Street West, south of Central)

| | |
|---|---|
| Contract Amount | $54,790.00 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $1,762.73 |
| Engineering & Inspection | $15,299.74 |
| Publication | $399.45 |
| Abstract | $20.00 |
| Construction Cost | $72,271.92 |
| Idle Fund Interest Estimated | $328.08 |
| Temporary Financing Estimated | $0.00 |
| Subtotal | $72,600.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $72,600.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $72,600.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $87,000.00
Increase by 1% per month after: June 1, 2013

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
472-83791
OCA# 766272
PPN# 490290

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Brush Creek Circle, Brush Creek Court and Westlakes Parkway to serve Fox Ridge Addition
(north of 29th Street North, west of Tyler)

| | |
|---|---|
| Contract Amount | $535,768.99 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $16,848.56 |
| Engineering & Inspection | $73,193.63 |
| Publication | $439.80 |
| Abstract | $20.00 |
| Construction Cost | $626,270.98 |
| Idle Fund Interest Estimated | $256.86 |
| Temporary Financing Estimated | $3,672.16 |
| Subtotal | $630,200.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $630,200.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $630,200.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $530,000.00
Increase by 1% per month after: June 1, 2003

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
472-84983
OCA# 766283
PPN# 490300

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:

29th Street North, from the east line of Greenwich to a point 295 feet east of the northeast corner of Lot 7, Block 1 to serve Greenwich Business Center Addition (east of Greenwich, south of 29th Street North)

| | |
|---|---|
| Contract Amount | $135,878.95 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $4,586.84 |
| Engineering & Inspection | $32,458.72 |
| Publication | $316.00 |
| Abstract | $20.00 |
| Construction Cost | $173,260.51 |
| Idle Fund Interest Estimated | $218.33 |
| Temporary Financing Estimated | $521.16 |
| Subtotal | $174,000.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $174,000.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $174,000.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $266,000.00
Increase by 1% per month after: February 1, 2011

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
472-84980
OCA# 766284
PPN# 490301

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
29th Street North from 200 feet east of the northwest corner of Stoney Pointe Addition (east of Greenwich, south of 29th Street North)

| | |
|---|---|
| Contract Amount | $105,721.60 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $3,278.64 |
| Engineering & Inspection | $15,819.67 |
| Publication | $224.50 |
| Abstract | $20.00 |
| Construction Cost | $125,064.41 |
| Idle Fund Interest Estimated | $185.86 |
| Temporary Financing Estimated | $349.73 |
| Subtotal | $125,600.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $125,600.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $125,600.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $131,000.00
Increase by 1% per month after: January 1, 2011

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
472-84990
OCA# 766288
PPN# 490306

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Parkdale Circle from 29th Street North to the south line of Reserve "D" to serve Newmarket Office 2nd Addition (north of 29th Street North, west of Maize Road)

| | |
|---|---|
| Contract Amount | $443,106.25 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $13,417.81 |
| Engineering & Inspection | $75,100.11 |
| Publication | $165.95 |
| Abstract | $20.00 |
| Construction Cost | $531,810.12 |
| Idle Fund Interest Estimated | $193.77 |
| Temporary Financing Estimated | $1,596.11 |
| Subtotal | $533,600.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $533,600.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $533,600.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $577,000.00
Increase by 1% per month after: April 1, 2011

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
472-85059
OCA# 766295
PPN# 490313

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Split Rail Street to serve Krug South Addition (south of 21st Street North, west of 143rd Street East)

| | |
|---|---|
| Contract Amount | $211,947.85 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $6,543.89 |
| Engineering & Inspection | $39,630.07 |
| Publication | $357.65 |
| Abstract | $20.00 |
| Construction Cost | $258,499.46 |
| Idle Fund Interest Estimated | $250.00 |
| Temporary Financing Estimated | $750.54 |
| Subtotal | $259,500.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $259,500.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $259,500.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $271,000.00
Increase by 1% per month after: May 1, 2012

**PROJECT STATEMENT OF COST**

Approved /Accepted by City Council

Wichita, Kansas
October 21, 2014
472-85103
OCA# 766297
PPN# 490315

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:
Jennie Street and Jennie Court to serve Bay Country Addition (west of 119th Street West, south of Central)

| | |
|---|---|
| Contract Amount | $211,293.84 |
| Measured Items - Driveways | $0.00 |
| Water Department Parts and Installation | $0.00 |
| Administration | $6,202.82 |
| Engineering & Inspection | $36,426.51 |
| Publication | $372.45 |
| Abstract | $20.00 |
| Construction Cost | $254,315.62 |
| Idle Fund Interest Estimated | $784.38 |
| Temporary Financing Estimated | $0.00 |
| Subtotal | $255,100.00 |
| Main Benefit Fee (Water or Sewer projects only) | $0.00 |
| TOTAL COST | $255,100.00 |

Respectfully Submitted,

Gary Janzen, P.E., City Engineer

| | | |
|---|---|---|
| Property | | $255,100.00 |
| | 0 | $0.00 |
| Benefit Fee | | $0.00 |

March 17, 2015
Chesney 816
15 years

Petition/Resolution Amount: $319,000.00
Increase by 1% per month after: June 1, 2013

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Temporary Street Closure: 55th Street South, west of Seneca (District IV)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve the temporary street closures.

**Background:** A private project to construct sanitary sewer improvements in Southern Shores Addition was approved by the City Council on June 17, 2014. The improvements will provide sanitary sewer to the new residential development.

**Analysis:** Construction of the improvements will require a street closure to allow a connection to be made to the existing sanitary sewer main in 55th Street. The temporary closure of 55th Street South, between Seneca and Meridian, is requested from July 22 to July 25, 2014, to allow construction of the improvements.

Westbound traffic on 55th Street will be diverted north on Seneca to 47th Street, west on 47th Street to Meridian, then south back to 55th Street. Eastbound traffic on 55th Street will be diverted north on Meridian to 47th Street, east on 47th Street to Seneca, then south on Seneca to 55th Street. Message boards will be used to alert traffic prior to the closure.

**Financial Considerations:** There is no cost to the City associated with this closure.

**Legal Considerations:** The City Council has legislative authority under the powers granted in the Kansas Constitution, Art. 12, § 5 to temporarily close a street not a part of a designated Federal or state highway system in order to secure the public safety and welfare. A motion is the appropriate format for such action.

**Recommendation/Actions:** It is recommended that the City Council approve the temporary street closure.

**Attachment:** Map.

LOCATION
151 ST ST WEST
135 TH ST WEST
119th ST W
SCHULTE
31st ST SO
PAWNEE
MAPLE
13TH ST NO
21ST ST NO
29TH STREET NO
37 TH ST NO
MAIZE
53 RD ST NO
45 TH ST NO
55th ST SO
63rd ST SO
47th ST SO
TYLER
CENTRAL
RIDGE
HOOVER
McCARTHUR RD
AIRPORT
MID-CONTINENT
WICHITA
HARRY
WEST
TRACY
2nd ST
9th ST
SHERIDAN
MERIDIAN
SOUTHWEST BLVD
McLEAN BLVD
DOUGLAS
KELLOGG
McCORMICK
ORIENT
SENECA
McLEAN
NIMS
BITTING
WACO
ARKANSAS
BROADWAY
LINCOLN
ST FRANCIS
WASHINGTON
WASSAL
HYDRAULIC
GROVE
HILLSIDE
YALE
BLUFF
MURDOCK
OLIVER
EDGEMOOR
WOODLAWN
ROCK RD
WEBB RD
GREENWICH
127th ST EAST
OAKLAWN
AIR FORCE BASE
Mc CONNELL
PARK CITY
BEL AIRE
KECHI
COLWICH
N

**Agenda Item No. II-6b**

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Vacation Bible School Block Party (District I)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

---

**Recommendation:** Approve the request for temporary street closure.

**Background:** In accordance with the Community Events procedure the event promoter Aujanae Bennett is coordinating the First Church of God In Christ Vacation Bible School Block Party with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure request has been submitted:

**Vacation Bible School Block Party July 19, 2014 11:00 am – 7:00 pm**

- North Piatt Street, 13th Street North to 14th Street North

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

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

**Legal Consideration:** There are no legal considerations.

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to; 1) Hiring of off-duty certified law enforcement officers as required and 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments.

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Century II Planning and Design Study Contract Amendment No. 1 (All Districts)

**INITIATED BY:** Department of Public Works & Utilities and Division of Arts & Cultural Services

**AGENDA:** Consent

---

**Recommendation:** Approve the contract amendment and authorize the necessary signatures.

**Background:** Century II Performing Arts and Convention Center, a multi-purpose convention and performing arts venue was originally completed in 1969. Additional convention space was added in 1985 with the construction of the Bob Brown Expo Hall. Century II has served the community well and has provided a venue for a wide variety of events; however, the building is beginning to show signs of being outdated as well as losing some of its functionality as a convention center due to the changing needs and requirements of convention clientele.

In March 2013, the City Council approved Bonding Resolution 13-052 that included a partnership project between the City and Go Wichita Convention and Visitors Bureau (Go Wichita). The partnership was created so that a Convention Center Facility and Services Study with market demand assessment could be performed. Once the Bonding Resolution was approved by the City Council, Go Wichita used its funds to hire Convention Sports & Leisure (CSL) to perform the study that included an evaluation of the current and future feasibility of possible Century II renovations. The design for renovation and expansion of the Convention Hall portion of Century II would be based on the findings and recommendations of the study.

Upon the completion of the Convention Center Facility and Services Study, the need for a similar Study of the Performing Arts Facilities and Services was realized. The Arts Council, Go Wichita, Music Theatre Wichita, the Wichita Symphony Orchestra and the Wichita Grand Opera agreed to pay for this study and moved forward with the selection process of a consultant. After consideration of multiple proposals, AMS Planning and Research (AMS) and Fischer Dachs Associates (FDA) were selected to provide the Performing Arts Facilities and Services Study.

On November 19, 2013, the City Council approved a contract between the City and the selected consultant team of Populous Architecture and GLMV for convention center concept design improvements. This team was selected through the City selection process to provide concept design services based on the findings of the Convention Center Facility and Services Study conducted by CSL and will include findings from the Performing Arts Facilities and Services Study conducted by the AMS and FDA team. The design process was initiated in early 2014.

**Analysis:** The Populous Architecture and GLMV design team have vast experience in the design of convention centers; however, these groups have less experience with performing arts centers. The AMS and FDA team brings valuable knowledge and expertise of the needs of performing arts centers based on its years of experience consulting for and designing such centers worldwide. To ensure that both convention and performing arts needs are met throughout the phases of the design study, it is recommended that the AMS and FDA team be hired as sub-consultants to Populous Architecture and GLMV for the remainder of the design process.

**Financial Considerations:** The addition of the AMS and FDA team to the design study process as sub-consultants will be at a cost of $34,000. The additional cost and resulting services will be added to the original contract as an amendment and will be paid for by the City. The previously approved design study costs were $240,000.

**Legal Considerations:** The Law Department has reviewed and approved the contract amendment as to form.

**Recommendation/Action:** It is recommended that the City Council approve the Century II Planning and Design Study Contract Amendment No. 1 and authorize the necessary signatures.

**Attachments:** Century II Planning and Design Study Contract Amendment No. 1.

**AMENDMENT NUMBER ONE**

THIS AMENDMENT, Made the _____day of _____2014,

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

AND POPULOUS, INC.
hereinafter referred to as
**"CONSULTANT"**

WHEREAS, the parties have heretofore, on the 19th day of November 2013, entered into a Contract; and

WHEREAS, the parties wish to modify the "SCOPE OF SERVICES" in connection with the Century II Complex Modification/Expansion Evaluation for Pre-Design Services which is the subject matter of such Contract.

NOW, THEREFORE, in consideration of the promises and covenants herein contained and to be performed, the parties hereto agree as follows:

I. The Contract between the parties dated November 19th, 2013 shall be amended to change the Basic Services (EXHIBIT "A") to be performed by the **CONSULTANT** as follows:

The **CONSULTANT** will evaluate and incorporate studies and services of AMS Planning and Research, (AMS) and Fisher Dachs Associates (FDA) pertaining to the Performing Arts function of the complex, and utilize their services/expertise in a Sub-Consultant fashion. The **CONSULTANT** will consult with the **OWNER** to finalize data and information resulting from subsequent studies by AMS and FDA and utilize their services in preparing the recommendations of the future use of the facility, as well as the conceptual presentations.

The **CONSULTANT** will obtain approvals of State or other agencies as necessary to complete the evaluation.

Federal and state laws prohibit discrimination based on disability. Section 504 of the Rehabilitation Act of 1073, as amended (504), and the Americans with Disabilities Act of 1990 (ADA) require that the City of Wichita and all organizations or firms contracting with the City of Wichita, except those providing tangible goods, comply with ADA/504 accessibility requirements. We understand that reasonable accommodation is required in both program services and employment, except where to do so would cause an undue hardship or burden. We also agree that all new construction, alterations, or additions to City of Wichita buildings or facilities, performed by my organization or its subcontractors, must comply with all city, state, and federal laws, including related building guidelines/codes, and specifically the Americans with Disabilities Accessibility Guidelines (ADAAG).

The **CONSULTANT** will prepare proposals, forms, and all deliverables as spelled out in the original Contract dated November 19th, 2013.

II. The Contract between the parties dated November 19th, 2013 shall be amended to change the **PAYMENTS**. The **OWNER** agrees to pay the **CONSULTANT** for services rendered under this Amendment Number One, a total fee established as follows:

Items identified in Paragraph I above a single stipulated lump sum fee including reimbursable expenses of $35,000. This fee is based on a total budget as follows:

This fee shall constitute complete compensation for the services. (See attached proposals a copy of which is attached hereto and which is incorporated herein by reference.)

This fee shall be payable in monthly installments, and in proportion to the services performed, payable upon the satisfactory performance of the service.

III. All other provisions of the November 19th, 2013 Contract and subsequent Amendments between the parties hereto not modified herein shall remain in full force and effect.

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

CITY OF WICHITA, KANSAS

by _____
Carl Brewer, Mayor

Attest:

_____
Karen Sublett, City Clerk

City Seal:

Approved as to form:

_____
Gary E. Rebenstorf
Director of Law

Populous, Inc.

by_____
Todd C. Voth, Senior Principal

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Capital Improvement Project Design Contracts (Districts I and II)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendations:** Approve the concept design agreements and adopt the resolutions.

**Background:** On April 17, 2014, the Staff Screening and Selection Committee interviewed eight of the 12 consulting firms that responded to the City's request for proposals for six street and intersection design projects. Selections were made for all six projects as listed below, along with the concept design fees.

- 37th Street, Oliver to Woodlawn: Professional Engineering Consultants (PEC) ($51,344)
  - Selection was based on PEC's knowledge of the corridor. PEC noted the challenges of many access points and the Tree Top Nursery parking lot encroachment into street right-of-way, as well as utilities, railroad, and drainage impacts.

- 127th Street, 13th to 21st Streets North: MKEC ($67,500)
  - Selection was based on MKEC's extensive knowledge of drainage conditions in the area, which may be impacted by the street improvements. MKEC also noted the petroleum pipeline that runs parallel to 127th Street that should be taken into consideration during design.

- 143rd Street, Kellogg to Central: TranSystems ($35,000)
  - Selection was based on TranSystems' extensive knowledge of the project area and identification of issues affecting design, such as transition from the Kansas Turnpike Authority Bridge and the presence of the Southern Star utility substation.

- 45th and Hillside Intersection: TranSystems ($55,000)
  - Selection was based on TranSystems' knowledge of traffic patterns generated by Heights High School, Stuckey Middle School, and Koch Industries. The impact that traffic volumes and directional travel have on the intersection was a key consideration as well. Additionally, TranSystems noted possible impacts the project will have to adjacent railroad crossings east and south of the intersection.

- 37th and Hillside Intersection: PEC ($9,800)
  - Selection was based on PEC's knowledge of traffic in the area and familiarity with the intersection from recent work on 37th Street from Hillside to Oliver. PEC is also familiar with the Koch expansion project and the impact its additional traffic will have on the intersection.

- 13th and Edgemoor Intersection: Poe & Associates ($21,330)
  - Selection was based on Poe's previous work on the corridor in 2005, which was part of the Discovery Phase for 13th Street from I-135 to Woodlawn. Additionally, Poe's recent design work on 13th between I-135 and Oliver, including intersection improvements and traffic signal design at 13th and Roosevelt, was a positive consideration.

**Analysis:** All of the projects will provide protected turning movements, signalization where warranted, pedestrian and bicycle access, and drainage improvements. Additionally, all pavement will be replaced on the projects, most of which is in deteriorating condition.

The proposed initial agreements between the City and the consultants provide for the development of design concepts. Timing of the Federal funding for construction requires that design begin as soon as possible. The projects will be returned to the City Council at a later date for approval of design concepts and final design agreements.

Projects receiving over $100,000 of Federal funding that are programmed in the Wichita Area Metropolitan Planning Organization (WAMPO) Transportation Improvement Program (TIP) will be assessed a TIP fee per the WAMPO Fiscal Agreement that the City Council approved on June 11, 2013. The TIP fee is equal to one percent of the Federal construction funding amount.

**Financial Considerations:** The estimated fees for the above projects total $338,744, with $239,974 for the concept design fees and $98,770 for the TIP fees. The 2011-2020 Adopted Capital Improvement Program (CIP) has General Obligation (GO) bond funding available in the 127th Street and 143rd Street projects. The 127th Street project has $250,000 in 2013 and the 143rd Street project has $250,000 in 2012, for a total of $500,000. Staff recommends initiating the full $500,000 at this time to allow design work to begin on all six projects. The funding will be used to pay for concept design and TIP fees, as well as Engineering staff costs for design oversight. The $500,000 will be spread among the six project budgets as follows:

| | |
|---|---|
| 37th Street North, Oliver – Woodlawn | $90,000 |
| 127th Street East, 13th – 21st Streets North | $90,000 |
| 143rd Street East, Kellogg – Central | $60,000 |
| 45th and Hillside Intersection | $80,000 |
| 37th and Hillside Intersection | $45,000 |
| 13th and Edgemoor Intersection | $135,000 |
| | $500,000 |

The Adopted CIP currently includes a total of $7.7 million in GO at-large funding for two of the six street projects: 127th between 13th and 21st and 143rd from Central to Kellogg. With the exception of the 37th and Hillside intersection project, five of the projects are now in the TIP and will receive Federal funding. Total construction costs for these six projects are estimated at $16.3 million. A total of $8.9 million in Federal funds is budgeted, and $800,000 in other local government support is expected, reducing the GO at-large total to $6.6 million. Initiating design work on these projects will allow the City to reduce GO at-large funding budgeted through 2017 by an estimated $1.1 million, by leveraging other funds to complete all six road projects.

**Legal Considerations:** The resolutions and agreements have been reviewed and approved as to form by the Law Department.

**Recommendation/Actions:** It is recommended that the City Council approve the design concept agreements, adopt the resolutions, and authorize the necessary signatures.

**Attachments:** Maps, resolutions, and agreements.

**RESOLUTION NO. 14-192**

**A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.**

---

**WHEREAS,** the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

**WHEREAS**, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

**WHEREAS,** the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

**Design of improvements to the intersection of 45th Street North and Hillside as necessary for a major traffic facility.**

(the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

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

**Section 1. Project Authorization.** It is hereby authorized ordered and directed that the Project be acquired and/or constructed at an estimated cost of **$80,000** in accordance with the plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; and plans and specification to be placed on file in the office of the City Engineer.

**Section 2. Project Financing.** All or portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimbursed 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. Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing body.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 15, 2014.

CARL BREWER, MAYOR

(SEAL)

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF,
DIRECTOR OF LAW

**RESOLUTION NO. 14-193**

**A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.**

---

**WHEREAS,** the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

**WHEREAS**, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

**WHEREAS,** the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

**Design of improvements to 37th Street North, between Oliver and Woodlawn, as necessary for a major traffic facility.**

(the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

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

**Section 1. Project Authorization.** It is hereby authorized ordered and directed that the Project be acquired and/or constructed at an estimated cost of **$90,000** in accordance with the plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; and plans and specification to be placed on file in the office of the City Engineer.

**Section 2. Project Financing.** All or portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimbursed 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. Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing body.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 15, 2014.

_____

CARL BREWER, MAYOR

(SEAL)

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF,
DIRECTOR OF LAW

**RESOLUTION NO. 14-194**

**A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.**

---

**WHEREAS,** the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

**WHEREAS**, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

**WHEREAS,** the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

**Design of improvements to the intersection of 13th Street North and Edgemoor as necessary for a major traffic facility.**

(the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

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

**Section 1. Project Authorization.** It is hereby authorized ordered and directed that the Project be acquired and/or constructed at an estimated cost of **$135,000** in accordance with the plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; and plans and specification to be placed on file in the office of the City Engineer.

**Section 2. Project Financing.** All or portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimbursed 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. Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing body.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 15, 2014.

_____
CARL BREWER, MAYOR

(SEAL)

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF,
DIRECTOR OF LAW

**RESOLUTION NO. 14-195**

**A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.**

---

**WHEREAS,** the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

**WHEREAS**, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

**WHEREAS,** the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

**Design of improvements to the intersection of 37th Street North and Hillside as necessary for a major traffic facility.**

(the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

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

**Section 1. Project Authorization.** It is hereby authorized ordered and directed that the Project be acquired and/or constructed at an estimated cost of **$45,000** in accordance with the plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; and plans and specification to be placed on file in the office of the City Engineer.

**Section 2. Project Financing.** All or portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimbursed 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. Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing body.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 15, 2014.

CARL BREWER, MAYOR

(SEAL)

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF,
DIRECTOR OF LAW

**RESOLUTION NO. 14-196**

**A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.**

---

**WHEREAS,** the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

**WHEREAS**, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

**WHEREAS,** the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

**Design of improvements to 127th Street East, between 13th and 21st Streets North, as necessary for a major traffic facility.**

(the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

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

**Section 1. Project Authorization.** It is hereby authorized ordered and directed that the Project be acquired and/or constructed at an estimated cost of **$90,000** in accordance with the plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; and plans and specification to be placed on file in the office of the City Engineer.

**Section 2. Project Financing.** All or portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimbursed 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. Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing body.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 15, 2014.

_____

CARL BREWER, MAYOR

(SEAL)

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF,
DIRECTOR OF LAW

**RESOLUTION NO. 14-197**

**A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.**

---

**WHEREAS,** the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

**WHEREAS**, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

**WHEREAS,** the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

**Design of improvements to 143rd Street East, between Kellogg and Central, as necessary for a major traffic facility.**

(the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

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

**Section 1. Project Authorization.** It is hereby authorized ordered and directed that the Project be acquired and/or constructed at an estimated cost of **$60,000** in accordance with the plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; and plans and specification to be placed on file in the office of the City Engineer.

**Section 2. Project Financing.** All or portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimbursed 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. Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing body.

ADOPTED by the City Council of the City of Wichita, Kansas, on July 15, 2014.

_____

CARL BREWER, MAYOR

(SEAL)

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF,
DIRECTOR OF LAW

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

POE & ASSOCIATES, INC.

for

13TH STREET NORTH AND EDGEMOOR

THIS AGREEMENT, made this _____ day of _____, 2014, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and POE & ASSOCIATES, INC., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

**13TH STREET NORTH AND EDGEMOOR** (Project No. 472-85162_707069).

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in 13th Street North and Edgemoor and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

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

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

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

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

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

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

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

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

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

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 472 85162 $21,330.00

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

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

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

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

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

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

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

Robert Layton, City Manager

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

by SLD

POE & ASSOCIATES, INC.

(Name & Title)
James M. Ubert, P.E., Sr. Vice President

ATTEST:

Carol R. Barnes, Assistant Secretary

**EXHIBIT "A"**

# SCOPE OF SERVICES

## CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A".**

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT.

CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be

changed except for unforeseen conditions, which may arise. (It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER 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.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita if not included in the ENGINEER'S fee estimate.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls,**

**etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to

suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments. The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) **S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all bridges within the project limits regardless of initial structure size.**

## Attachment No. 1 to Exhibit "A" – CIP Scope of Services

### Plan Submittal

*Water* projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

### Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES ALL PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

## Attachment No. 2 to Exhibit "A" – CIP Scope of Services

## Required Plan Coordinate Information

## Arterial Street Projects & Infill (Existing Neighborhoods)

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

### II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

**THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.**

## Sub-Division Projects

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

### II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
  - centerline @ 100' Sta on tangent sections
  - pc/pt points & 50' along curves
- special drainage swales
  - pc/pt points, pi's & 50' Sta in between
- ponds
  - any grades breaks between pond bottom and rear property line
  - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

## VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

**In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.**

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street.
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details

- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs
- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

**Attachment No. 3 to Exhibit "A" – CIP Scope of Services**

# Project Name

**Utility Location Verification for ULCC Sub-Committee (Date)**

**Field Check:** ☐ **Office Check:** ☐

**UTILITY:** _____ **Checked by**_____ **on** _____

**Utility Location:**

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (IF applicable)

**Briefly Describe Type and Location of Facilities within Project:**

_____

_____

**Estimate Time for Relocation:** ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

**Weather Sensitive:** ☐ Yes ☐ No If yes, please explain: _____

**Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):**

_____

_____

**Utility Plan Review:**

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

**Corrections necessary on plan sheets:**

_____

_____

**Additional Information requested from Consultant:** _____

_____

**Utility Requests Paper Plans** (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

**Please email this form on or before Date to:**

| | |
|---|---|
| Project Engineer Consultant | Leslie Hicks |
| Company | City of Wichita |
| E-mail | lhicks@wichita.gov |

## Attachment No. 4 to Exhibit "A" – CIP Scope of Services

| Individual Project Name (i.e., Amidon, 21st to 29th Street North) | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Current Date | KDOT Proj. NO/ City Proj. NO | City Design Manager | Consultant | Date of First ULCC | Date of Second ULCC | Date of Plan Revision Distribution | Date of Second Plan Revision Distribution | R/W Purchased Y/N | Date Utilities notified of R/W completion | | Project Proposed Bid Date | Proposed Utility Clear Date (project) |
| 2/21/2013 | 1111111/ 2222222 | Kallman | Ken Lee/ Ruggles & Bohn | 2/21/2013 | 2/21/2013 | | | No | | | | |
| | | | Utility Contact | Utility needs to relocate (Y/N) | Utility in Private Easement (Y/N) | | | Utility needs PROPOSED R/W to relocate (Y/N) | Relocation Weather Sensitive (Y/N) | Estimated Date of Utility Design Completion | Time needed for relocation after utility design complete | Individual Utility Clear Date |
| **Westar (Distribution)** | | | | | | | | | | | | |
| **Location in Project: (Describe Existing Facilities)** | | | | | | | | | | | | |
| **Relocation Needs:** | | | | | | | | | | | | |
| **Comments:** | | | | | | | | | | | | |
| **Westar (Transmission)** | | | | | | | | | | | | |
| **Location in Project: (Describe Existing Facilities)** | | | | | | | | | | | | |
| **Relocation Needs:** | | | | | | | | | | | | |
| **Comments:** | | | | | | | | | | | | |

| | | |
|---|---|---|
| KGS | | |
| Location in Project: (Describe Existing Facilities) | | |
| Relocation Needs: | | |
| Comments: | | |
| Black Hills | | |
| Location in Project: (Describe Existing Facilities) | | |
| Relocation Needs: | | |
| Comments: | | |
| AT&T | | |
| Location in Project: (Describe Existing Facilities) | | |
| Relocation Needs: | | |
| Comments: | | |

| | | |
|---|---|---|
| **Cox** | | |
| **Location in Project: (Describe Existing Facilities)** | | |
| **Relocation Needs:** | | |
| **Comments:** | | |
| **Water** | | |
| **Location in Project: (Describe Existing Facilities)** | | |
| **Relocation Needs:** | | |
| **Comments:** | | |
| **Sewer** | | |
| **Location in Project: (Describe Existing Facilities)** | | |
| **Relocation Needs:** | | |
| **Comments:** | | |

| Stormwater |
| --- |
| Location in Project:<br>(Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Other |
| Location in Project:<br>(Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |

**EXHIBIT "B"**

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

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

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

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

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, suppli-

er, 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.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

for

37TH STREET, OLIVER TO WOODLAWN

THIS AGREEMENT, made this _____ day of _____, 2014, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and PROFESSIONAL ENGINEERING CONSULTANTS, P.A., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

**37th STREET, OLIVER TO WOODLAWN** (Project No. 472-85157_707064).

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in 37th Street, Oliver to Woodlawn and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

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

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

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

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

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

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

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

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

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

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

**Project No. 472 85157 $51,344.00 (Concept $27,100 and Survey $24,244)**

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

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

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

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

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

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

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf
_____
Gary Rebenstorf, Director of Law
By SM

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

Principal
_____
(Name & Title)

ATTEST:

_____

**EXHIBIT "A"**

# SCOPE OF SERVICES

## CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A".**

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT.

CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be

changed except for unforeseen conditions, which may arise. (It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER 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.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita if not included in the ENGINEER'S fee estimate.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls,**

**etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to

suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments. The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

**(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all bridges within the project limits regardless of initial structure size.**

## Attachment No. 1 to Exhibit "A" – CIP Scope of Services

### Plan Submittal

*Water* projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

### Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES ALL PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

## Attachment No. 2 to Exhibit "A" – CIP Scope of Services

## Required Plan Coordinate Information

## Arterial Street Projects & Infill (Existing Neighborhoods)

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

### II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

**THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.**

## Sub-Division Projects

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

### II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

## VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

**In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.**

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details

- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs
- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

**Attachment No. 3 to Exhibit "A" – CIP Scope of Services**

# Project Name

**Utility Location Verification for ULCC Sub-Committee (Date)**

**Field Check:** ☐ **Office Check:** ☐

**UTILITY:** _____ **Checked by**_____ **on** _____

**Utility Location:**

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (IF applicable)

**Briefly Describe Type and Location of Facilities within Project:**

_____

_____

**Estimate Time for Relocation:** ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

**Weather Sensitive:** ☐ Yes ☐ No If yes, please explain: _____

**Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):**

_____

_____

**Utility Plan Review:**

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

**Corrections necessary on plan sheets:**

_____

_____

**Additional Information requested from Consultant:** _____

_____

**Utility Requests Paper Plans** (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

**Please email this form on or before Date to:**

| | |
|---|---|
| Project Engineer Consultant | Leslie Hicks |
| Company | City of Wichita |
| E-mail | lhicks@wichita.gov |

## Attachment No. 4 to Exhibit "A" – CIP Scope of Services

| Individual Project Name (i.e., Amidon, 21st to 29th Street North) | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Current Date | KDOT Proj. NO/ City Proj. NO | City Design Manager | Consultant | Date of First ULCC | Date of Second ULCC | Date of Plan Revision Distribution | Date of Second Plan Revision Distribution | R/W Purchased Y/N | Date Utilities notified of R/W completion | | Project Proposed Bid Date | Proposed Utility Clear Date (project) |
| 2/21/2013 | 1111111/ 2222222 | Kallman | Ken Lee/ Ruggles & Berrin | 2/21/2013 | 2/21/2013 | | | No | | | | |
| | | | Utility Contact | Utility needs to relocate (Y/N) | Utility in Private Easement (Y/N) | | | Utility needs PROPOSED R/W to relocate (Y/N) | Relocation Weather Sensitive (Y/N) | Estimated Date of Utility Design Completion | Time needed for relocation after utility design complete | Individual Utility clear Date |
| Westar (Distribution) | | | | | | | | | | | | |
| Location in Project: (Describe Existing Facilities) | | | | | | | | | | | | |
| Relocation Needs: | | | | | | | | | | | | |
| Comments: | | | | | | | | | | | | |
| Westar (Transmission) | | | | | | | | | | | | |
| Location in Project: (Describe Existing Facilities) | | | | | | | | | | | | |
| Relocation Needs: | | | | | | | | | | | | |
| Comments: | | | | | | | | | | | | |

| |
|---|
| **XGS** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **Black Hills** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **AT&T** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |

| |
|---|
| Cox |
| Location in Project:<br>(Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Water |
| Location in Project:<br>(Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Sewer |
| Location in Project:<br>(Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |

| Stormwater |
| --- |
| Location in Project: (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Other |
| Location in Project: (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |

**EXHIBIT "B"**

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

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

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

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

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, suppli-

er, 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.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

for

37TH STREET NORTH AND HILLSIDE

THIS AGREEMENT, made this _____ day of _____, 2014, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and PROFESSIONAL ENGINEERING CONSULTANTS, P.A., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

**37TH STREET NORTH AND HILLSIDE** (Project No. 472-85161_707068).

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in 37th Street North and Hillside and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

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

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

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

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

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

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

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

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

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

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

**Project No. 472 85161 $9,800.00 (Concept $2,800 and Survey $7,000)**

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

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

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

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

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

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

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

Robert Layton, City Manager

SEAL

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

Principal

(Name & Title)

ATTEST:

EXHIBIT "A"

# SCOPE OF SERVICES

## CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A".**

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT.

CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be

changed except for unforeseen conditions, which may arise. (It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER 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.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita if not included in the ENGINEER'S fee estimate.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls,**

etc. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to

suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a preconstruction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments. The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

**(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all bridges within the project limits regardless of initial structure size.**

## Attachment No. 1 to Exhibit "A" – CIP Scope of Services

### Plan Submittal

*Water* projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

### Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES ALL PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

## Attachment No. 2 to Exhibit "A" – CIP Scope of Services

## Required Plan Coordinate Information

## Arterial Street Projects & Infill (Existing Neighborhoods)

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

### II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

**THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.**

## Sub-Division Projects

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

### II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

## VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

**In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.**

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details

- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs
- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

**Attachment No. 3 to Exhibit "A" – CIP Scope of Services**

# Project Name

**Utility Location Verification for ULCC Sub-Committee (Date)**

**Field Check:** ☐ **Office Check:** ☐

**UTILITY:** _____ **Checked by**_____ **on** _____

**Utility Location:**

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (IF applicable)

**Briefly Describe Type and Location of Facilities within Project:**

_____

_____

**Estimate Time for Relocation:** ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

**Weather Sensitive:** ☐ Yes ☐ No If yes, please explain: _____

**Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):**

_____

_____

**Utility Plan Review:**

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

**Corrections necessary on plan sheets:**

_____

_____

**Additional Information requested from Consultant:** _____

_____

**Utility Requests Paper Plans** (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

**Please email this form on or before Date to:**

| | |
|---|---|
| Project Engineer Consultant | Leslie Hicks |
| Company | City of Wichita |
| E-mail | lhicks@wichita.gov |

## Attachment No. 4 to Exhibit "A" – CIP Scope of Services

| Individual Project Name (i.e., Amidon, 21st to 29th Street North) | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Current Date | KDOT Proj. NO/ City Proj. NO | City Design Manager | Consultant | Date of First ULCC | Date of Second ULCC | Date of Plan Revision Distribution | Date of Second Plan Revision Distribution | R/W Purchased Y/N | Date Utilities notified of R/W completion | | Project Proposed Bid Date | Proposed Utility Clear Date (project) |
| 2/21/2013 | 1111111/ 2222222 | Kallman | Ken Lee/ Ruggles & Bohm | 2/21/2013 | 2/21/2013 | | | No | | | | |
| | | | Utility Contact | Utility needs to relocate (Y/N) | Utility in Private Basement (Y/N) | | | Utility needs PROPOSED R/W to relocate (Y/N) | Relocation Weather Sensitive (Y/N) | Estimated Date of Utility Design Completion | Time needed for relocation after utility design complete | Individual Utility Clear Date |
| Westar (Distribution) | | | | | | | | | | | | |
| Location in Project: (Describe Existing Facilities) | | | | | | | | | | | | |
| Relocation Needs: | | | | | | | | | | | | |
| Comments: | | | | | | | | | | | | |
| Westar (Transmission) | | | | | | | | | | | | |
| Location in Project: (Describe Existing Facilities) | | | | | | | | | | | | |
| Relocation Needs: | | | | | | | | | | | | |
| Comments: | | | | | | | | | | | | |

| |
|---|
| **KGS** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **Black Hills** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **AT&T** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |

| |
|---|
| Gas |
| Location in Project (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Water |
| Location in Project (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Sewer |
| Location in Project (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |

| Stormwater |
| --- |
| Location in Project:<br>(Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Other |
| Location in Project:<br>(Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |

**EXHIBIT "B"**

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

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

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

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

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, suppli-

er, 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.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

TRANSYSTEMS CORPORATION

for

45TH AND HILLSIDE INTERSECTION

THIS AGREEMENT, made this _____ day of _____, 2014, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and TRANSYSTEMS CORPORATION, party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

**45TH AND HILLSIDE INTERSECTION** (Project No. 472-85160_707067).

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for the 45th and Hillside Intersection and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

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

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

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

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

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

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

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

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

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

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

**Project No. 472-85160 $55,000.00**

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

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

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

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

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

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

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

TRANSYSTEMS CORPORATION

(Name & Title)
BRETT A. LETKOWSKI
SENIOR VICE PRESIDENT

ATTEST:

JEFFREY R. LACKEY, P.E.
DIVISION LEADER

EXHIBIT "A"

# SCOPE OF SERVICES

## CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A".**

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT.

CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be

changed except for unforeseen conditions, which may arise. (It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER 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.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita if not included in the ENGINEER'S fee estimate.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls,**

etc. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to

suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments. The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

**(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all bridges within the project limits regardless of initial structure size.**

## Attachment No. 1 to Exhibit "A" – CIP Scope of Services

### Plan Submittal

*Water* projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

### Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES ALL PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

## Attachment No. 2 to Exhibit "A" – CIP Scope of Services

## Required Plan Coordinate Information

## Arterial Street Projects & Infill (Existing Neighborhoods)

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons; other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

### II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

**THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.**

## Sub-Division Projects

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

### II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
  - centerline @ 100' Sta on tangent sections
  - pc/pt points & 50' along curves
- special drainage swales
  - pc/pt points, pi's & 50' Sta in between
- ponds
  - any grades breaks between pond bottom and rear property line
  - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

## VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

**In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.**

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details

- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs
- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

# Project Name

**Utility Location Verification for ULCC Sub-Committee (Date)**

**Field Check:** ☐ **Office Check:** ☐

**UTILITY:** _____ **Checked by**_____ **on** _____

**Utility Location:**

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (IF applicable)

**Briefly Describe Type and Location of Facilities within Project:**

_____

_____

**Estimate Time for Relocation:** ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

**Weather Sensitive:** ☐ Yes ☐ No If yes, please explain: _____

**Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):**

_____

_____

**Utility Plan Review:**

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

**Corrections necessary on plan sheets:**

_____

_____

**Additional Information requested from Consultant:** _____

_____

**Utility Requests Paper Plans** (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

**Please email this form on or before Date to:**

Project Engineer Consultant
Company
E-mail

Leslie Hicks
City of Wichita
lhicks@wichita.gov

**Attachment No. 4 to Exhibit "A" – CIP Scope of Services**

| |
|---|
| [redacted] |
| Westar (Distribution) |
| Location in Project: (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Westar (Transmission) |
| Location in Project: (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |

| |
|---|
| **KGS** |
| **Location in Project: (Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **Black Hills** |
| **Location in Project: (Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **AT&T** |
| **Location in Project: (Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |

| |
|---|
| Gas |
| Location in Project: (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Water |
| Location in Project: (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Sewer |
| Location in Project: (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |

| Stormwater |
| --- |
| Location in Project: (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Other |
| Location in Project: (Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |

**EXHIBIT "B"**

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

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

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

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

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, suppli-

er, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

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

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

D. Exempted from these requirements are:

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

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

**Exhibit "C"**
**Project Specific - Scope of Service**
**45th and Hillside Intersection**

## PROJECT UNDERSTANDING

The general project improvements as agreed upon by City of Wichita and TranSystems Corporation for the design efforts for this intersection shall include a Discovery Phase and a Concept Design stage. These phases shall include developing recommended intersection geometrics, coordination with the Union Pacific Railroad (UPRR), initial work on understanding waterline and sanitary sewer work to be completed and accommodations for future bicycle lane or paved shoulder through the intersection. These phases shall also include conceptual storm water design, traffic signalization and brick crosswalks to accommodate future sidewalks at the intersection. The project location is at the intersection of 45th and Hillside in Wichita, KS. Although somewhat dependent on the Discovery Phase report, the project limits are anticipated to extend approximately 1200' south of the intersection, 1000' east of the intersection, 600' west of the intersection and 500' north of the intersection. Traffic counts and field surveys will extend beyond these limits as detailed in the scope below.

## FINAL DELIVERABLES

The City will be provided one discovery phase report and one full size (22" x 36") electronic PDF set and the Engineer's Probable Construction Cost of the concept plans.

## PROJECT TASKS

The study will be conducted in five phases, which are listed below with a brief description for each phase.

| | |
|---|---|
| **Phase 100 – Discovery Phase** | Data Collection, Initial Analysis |
| **Phase 200 – Concept Plans** | Conceptual Plans |
| ***Phase 300 – Field Check Plans** | Further Refinement of Project, and detail development. |
| ***Phase 400 - Final Check Plans** | Final Review of plans |
| ***Phase 500 - Final Plans** | Completion of Plans |

*Phases 300-500 will be handled under a supplemental agreement.

**Phase 100 – Discovery Phase**

**Task 100 Counts**

101. Machine Counts - Obtain from the City daily two-way machine traffic volume counts at the following locations. The counts will be collected in 15-minute intervals for a typical 7-day period.
    - Hillside north and south of 45th Street
    - 45th Street east and west of Hillside
102. Intersection Traffic Volume Counts – Conduct Miovision traffic volume counts (including video) at the following intersections within the study area during the designated time periods. Counts will be collected in 15-minute intervals on a typical weekday (7:00 a.m. to 9:00 a.m. and 3:00 p.m. to 6:00 p.m.).
    - 45th & Hillside Intersection
    - NB K-254 exit ramp & 45th Street

- NB K-254 entrance ramp & Hillside Road
- SB K-254 exit ramp & Hillside Road
- SB K-254 entrance ramp & Hillside Road
- SB K-254 entrance ramp & 45th Street

103. Weave Movements – Weave counts from the US-254 entrance ramps through the intersection will be collected manually for 15 minute intervals during peak hours.

104. Existing Plans and Studies – The City of Wichita will provide the existing studies or plats that have been completed that may influence the corridor. These studies may include:
    - Adjacent plats
    - Existing intersection/interchange plans
    - Traffic Impact Analyses

**Task 200 Engineering/Design**

201. Develop Future Projections – Utilizing traffic count data, development and land use plans, and projections from the WAMPO traffic model, estimate the future traffic volumes along the corridor for a typical weekday A.M. and P.M. peak hour for 20 year and ultimate conditions.

202. Identify Corridor Alternatives – Identify up to three alternatives for the 45th Street and Hillside Road corridor. The alternatives will potentially include the number and types of travel lanes, the location of medians, the consolidation or elimination of driveways and the need for local streets to provide suitable circulation. One ultimate configuration for the interchange ramps and intersection will be completed in addition to up to two concept designs for the intersection.

203. Operational Assessments – Evaluate the corridor alternatives, documenting operational levels of service along the corridor. Operational analysis will be conducted using programs consistent with the Highway Capacity Manual methodology including isolated intersection analyses and micro-simulation models.

204. UPRR Coordination – TranSystems will coordinate with the UPRR on upgrades for the 45th Street and Hillside Street crossings, including identifying proposed upgrade needs for the crossings.

205. Utility Coordination - In addition to contacting Kansas One-call, TranSystems will contact utility companies with facilities within the project limits to inform them of the project and review the accuracy of the utilities located with the topographic survey. One set of full size utility plans will be provided to the utilities electronically for review and accuracy.

206. TranSystems will attend one (1) utility coordination meeting during the Discovery Phase. TranSystems will provide a roll plot of the project with the base map and proposed improvements of the project to introduce the utility companies to the project at the Discovery Phase meeting. TranSystems will be responsible for locating existing utilities located using the Kansas "One Call" system. Utilities located within the corridor but not marked by Kansas One Call will be shown in their approximate locations on the plans by information provided by the utility owners.

**Phase 100 – Concept Plans**

**Task 100 Survey/Basemap**

101. Control-Establish and supplement Horizontal Control throughout the project limits on Kansas State Plane Coordinate System, NAD83 (1997 adjustment), South Zone. Reference tie and control sketches on all control points along project. Estimation of twelve (12) Control Points will

be established for future project use. Establish and supplement Vertical Control throughout the project limits on NGVD 88 Datum. Set a minimum of five (5) benchmarks along project limits with tied references to their locations.

102. Topographical Survey- TranSystems will provide field survey necessary for preparation of roadway plans. Project survey limits are anticipated to extend approximately 1400' south of the intersection, 1200' east of the intersection, 800' west of the intersection and 700' north of the intersection. Approximate survey limits are shown in green below:

Survey limits will also include additional widths at intersections, drainage structures, driveways and side streets. Survey will include locating, but not limited to the following features within the project limits as described (pavements, driveways, building faces, utilities, drainage structures with measure rim down for flow line elevations, natural ground elevations, trees 6" or above noted with size and type, curbing, power poles, signs, fences and etc.)

103. Utilities- All utilities will be located using the Kansas "One Call" system. The resulting markings will be surveyed at the same time as the topographic survey. No physical locates of any underground utilities will be completed as a part of the survey. TranSystems will collect the flow lines of any surveyed gravity storm or sanitary sewer lines that have easily accessible manholes.

104. Existing storm sewers and channels-Existing storm sewers, storm inlets, channels and reinforced box culverts will be located and flow lines surveyed.

105. Base Map Development- The raw field survey, topographic features and utility data gathered will be used to develop the base map of the planimetric features along with the ground surface model to create contours for the project. The base map will be a plan view representation of the project with contours presented at 1-foot minor and 5-foot major intervals. The maps will be prepared in English units and at a scale of 1:20.

106. Property Research- TranSystems will obtain necessary property research items such as, but not limited to, parcel tax maps, printouts of ownership, utility maps, plats, road records and road plans. TranSystems will also obtain any needed Title Reports that will include copies of all easements and encumbrances and existing survey data for up to thirty (13) parcels along the project. TranSystems will make a reasonable effort (using a metal detector, existing property pin or section corner information) to find existing property corners, quarter section corners and section corners (estimated 5 quarter/section corners) along the project and outside of project if necessary to assist in establishing existing right of way and ownership base map. Field survey will be tied to nearest section corners and quarter section corners. Existing roadway alignment pins (if available) will be used to help establish K-254 right of way. Should the corner not exist, costs for the re-establishment of the corner are not included in the contract, however, if the City desires corner re-establishment, TranSystems may enter into a supplemental agreement to reestablish missing section and/or quarter corners. Prepare an ownership boundary and existing right of way strip map along the project alignment showing but not limited to section lines, property lines, existing easements and ownership.

**Task 200 Plans and Estimates**

201. Plan Preparation – A concept plan sheet will be completed showing anticipated work to be completed which will include:

- Pole locations
- Lane configurations and Median locations
- Driveway details
- Crossing gate details
- ADA Ramp locations
- Miscellaneous other improvements necessary for ADA compliance at the intersection

**Task 300 Communications**

301. Meet with Staff – Meet with City staff to kick-off the project, to address coordination between all parties, to provide access for survey efforts, plan submittals, schedules and necessary permitting as required for this project. A second meeting with staff will be held to discuss the proposed concept plans.

**Proposal Conditions**

The following is a list of conditions that were the basis for this proposal:

- The design will include Type 2070 equipment as required by the City for the controller and auxiliary equipment.
- City of Wichita supplemented with KDOT Construction Specifications will be used as the governing specifications for the project and will be supplemented by Special Provisions as required.

- No aesthetics including special lighting, graphics, form liner, artwork or landscaping are including in the plans.
- English units will be used for this project.
- Bidding and construction management or testing services are not included in this proposal. These services can be provided by TranSystems via a supplemental agreement.
- No lighting design is included as part of this proposal.
- The City will prepare the base specifications, contract documents, and perform the bidding services.
- Preparation of other bid documents and assistance in the bid and construction process are not included in this scope of services, but are services that TranSystems can provide.
- Suggested timings will be developed as part of the plans but generally, during installation traffic timings should be adjusted to fit actual conditions.
- The scope of work does not include waters of the U.S. mitigation (likely not required).
- It is assumed that others will be providing the following if necessary:
    - Threatened and endangered species surveys and habitat studies.
    - Cultural resource/archaeological surveys.
- Floodplain development permit or FEMA flood map revisions are not included in this contract.
- No geotechnical borings are considered as part of this project. Should geotechnical borings or other work be necessary, this work will be handled through a supplemental contract.

It is anticipated that the City will provide the following:

- Review and comment on project alignment and design details.
- Submit prepared permits and the associated fees.
- Acquire all right-of-way.
- Provide construction-engineering and staking services.
- Provide rights of entry for survey or geotechnical work on private property.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MKEC ENGINEERING, INC.

for

127TH STREET EAST FROM 13TH TO 21ST STREET NORTH

THIS AGREEMENT, made this _____ day of _____, 2014, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and MKEC ENGINEERING, INC., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

**127TH STREET EAST FROM 13TH TO 21ST STREET NORTH** (Project No. 472-85158_707065).

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in 127th Street East, 13th to 21st Street North and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

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

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

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

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

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

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

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

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

**Project No. 472 85158 $67,500.00**

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

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

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

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

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

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

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

By SD

MKEC ENGINEERING, INC.

(Name & Title)

Jay Anglemyer, P.E.

ATTEST:

Cynthia A. Womack, Admin. Asst.

**EXHIBIT "A"**

# SCOPE OF SERVICES

## CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A".**

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT.

CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be

changed except for unforeseen conditions, which may arise. (It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER 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.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita if not included in the ENGINEER'S fee estimate.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls,**

**etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to

suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments. The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

**(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all bridges within the project limits regardless of initial structure size.**

## Attachment No. 1 to Exhibit "A" – CIP Scope of Services

### Plan Submittal

*Water* projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

### Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

## Attachment No. 2 to Exhibit "A" – CIP Scope of Services

## Required Plan Coordinate Information

## Arterial Street Projects & Infill (Existing Neighborhoods)

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

### II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

**THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.**

## Sub-Division Projects

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

### II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
  - centerline @ 100' Sta on tangent sections
  - pc/pt points & 50' along curves
- special drainage swales
  - pc/pt points, pi's & 50' Sta in between
- ponds
  - any grades breaks between pond bottom and rear property line
  - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

## VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

**In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.**

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details

- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs
- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

**Attachment No. 3 to Exhibit "A" – CIP Scope of Services**

# Project Name

**Utility Location Verification for ULCC Sub-Committee (Date)**

**Field Check:** ☐ **Office Check:** ☐

**UTILITY:** _____ **Checked by**_____ **on** _____

**Utility Location:**

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (IF applicable)

**Briefly Describe Type and Location of Facilities within Project:**

_____

_____

**Estimate Time for Relocation:** ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

**Weather Sensitive:** ☐ Yes ☐ No If yes, please explain: _____

**Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):**

_____

_____

**Utility Plan Review:**

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

**Corrections necessary on plan sheets:**

_____

_____

**Additional Information requested from Consultant:** _____

_____

**Utility Requests Paper Plans** (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

**Please email this form on or before Date to:**

| | |
|---|---|
| Project Engineer Consultant | Leslie Hicks |
| Company | City of Wichita |
| E-mail | lhicks@wichita.gov |

## Attachment No. 4 to Exhibit "A" – CIP Scope of Services

| Individual Project Name (i.e., Amidon, 21st to 29th Street North) | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Current Date | KDOT Proj. NO/ City Proj. NO | City Design Manager | Consultant | Date of First ULCC | Date of Second ULCC | Date of Plan Revision Distribution | Date of Second Plan Revision Distribution | R/W Purchased Y/N | Date Utilities notified of R/W completion | | Project Proposed Bid Date | Proposed Utility Clear Date (project) |
| 2/21/2013 | 1111111/ 2222222 | Kallman | Ken Lee/ Ruggles & Belm | 2/21/2013 | 2/21/2013 | | | No | | | | |
| | | | Utility Contact | Utility needs to relocate (Y/N) | Utility in Private Easement (Y/N) | | | Utility needs PROPOSED R/W to relocate (Y/N) | Relocation Weather Sensitive (Y/N) | Estimated Date of Utility Design Completion | Time needed for relocation after utility design complete | Individual Utility Clear Date |
| Westar (Distribution) | | | | | | | | | | | | |
| Location in Project: (Describe Existing Facilities) | | | | | | | | | | | | |
| Relocation Needs: | | | | | | | | | | | | |
| Comments: | | | | | | | | | | | | |
| Westar (Transmission) | | | | | | | | | | | | |
| Location in Project: (Describe Existing Facilities) | | | | | | | | | | | | |
| Relocation Needs: | | | | | | | | | | | | |
| Comments: | | | | | | | | | | | | |

| |
|---|
| **KGS** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **Black Hills** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **AT&T** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |

| |
|---|
| Cox |
| Location in Project:<br>(Describe Existing<br>Facilities) |
| Relocation Needs: |
| Comments: |
| Water |
| Location in Project:<br>(Describe Existing<br>Facilities) |
| Relocation Needs: |
| Comments: |
| Sewer |
| Location in Project:<br>(Describe Existing<br>Facilities) |
| Relocation Needs: |
| Comments: |

| Stormwater |
| --- |
| Location in Project:<br>(Describe Existing<br>Facilities) |
| Relocation Needs: |
| Comments: |
| Other |
| Location in Project:<br>(Describe Existing<br>Facilities) |
| Relocation Needs: |
| Comments: |

**EXHIBIT "B"**

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

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

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

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

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, suppli-

er, 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.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

TRANSYSTEMS CORPORATION

for

143RD STREET, KELLOGG TO CENTRAL

THIS AGREEMENT, made this _____ day of _____, 2014, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and TRANSYSTEMS CORPORATION, party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

**143RD STREET, KELLOGG TO CENTRAL** (Project No. 472-85159_707066).

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for the 143rd Street, Kellogg to Central and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

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

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

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

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

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

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

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

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

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

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

**Project No. 472-85159 $35,000.00**

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

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

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

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

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

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

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

TRANSYSTEMS CORPORATION

(Name & Title)
BRETT A. LETKOWSKI
SENIOR VICE PRESIDENT

ATTEST:

JEFFREY A. LACKEY, P.E.
DIVISION LEADER

EXHIBIT "A"

# SCOPE OF SERVICES

## CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A".**

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT.

CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be

changed except for unforeseen conditions, which may arise. (It should be noted it is in the ENGINEER'S best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER 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.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

(a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita if not included in the ENGINEER'S fee estimate.

(d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

(e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

(f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls,**

**etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to

suit PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments. The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

**(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all bridges within the project limits regardless of initial structure size.**

## Attachment No. 1 to Exhibit "A" – CIP Scope of Services

### Plan Submittal

*Water* projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

### Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES ALL PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

## Attachment No. 2 to Exhibit "A" – CIP Scope of Services

## Required Plan Coordinate Information

## Arterial Street Projects & Infill (Existing Neighborhoods)

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

### II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

**THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.**

## Sub-Division Projects

### I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

### II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

### IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

### V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
  - centerline @ 100' Sta on tangent sections
  - pc/pt points & 50' along curves
- special drainage swales
  - pc/pt points, pi's & 50' Sta in between
- ponds
  - any grades breaks between pond bottom and rear property line
  - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

## VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

**In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.**

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details

- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs
- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

**Attachment No. 3 to Exhibit "A" – CIP Scope of Services**

# Project Name

**Utility Location Verification for ULCC Sub-Committee (Date)**

**Field Check:** ☐ **Office Check:** ☐

**UTILITY:** _____ **Checked by**_____ **on** _____

**Utility Location:**

☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary

☐ Utility will need to relocate ☐ Utility is located in Private Easement

☐ Private Easement Documentation Attached

☐ Utility will need to relocate and is interested in **proposed** ROW (IF applicable)

**Briefly Describe Type and Location of Facilities within Project:**

_____

_____

**Estimate Time for Relocation:** ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

**Weather Sensitive:** ☐ Yes ☐ No If yes, please explain: _____

**Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):**

_____

_____

**Utility Plan Review:**

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

**Corrections necessary on plan sheets:**

_____

_____

**Additional Information requested from Consultant:** _____

_____

**Utility Requests Paper Plans** (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

**Please email this form on or before Date to:**

Project Engineer Consultant
Company
E-mail

Leslie Hicks
City of Wichita
lhicks@wichita.gov

**Attachment No. 4 to Exhibit "A" – CIP Scope of Services**

| |
|---|
| **Westar (Distribution)** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **Westar (Transmission)** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |

| |
|---|
| **KGS** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **Black Hills** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **AT&T** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |

| |
|---|
| **Cox** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **Water** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |
| **Sewer** |
| **Location in Project:**<br>**(Describe Existing Facilities)** |
| **Relocation Needs:** |
| **Comments:** |

| Stormwater |
| --- |
| Location in Project:<br>(Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |
| Other |
| Location in Project:<br>(Describe Existing Facilities) |
| Relocation Needs: |
| Comments: |

**EXHIBIT "B"**

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

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

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

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

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, suppli-

er, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

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

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

D. Exempted from these requirements are:

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

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

# Exhibit "C"
# Project Specific - Scope of Services
# Discovery Phase
# 143rd Street from Kellogg to Central Avenue
# Wichita, KS

**PROJECT UNDERSTANDING**
The general project improvements as agreed upon by the city of Wichita and TranSystems include full reconstruction of the roadway that includes a 5-lane section including curb and gutter, storm sewer, inlets, asphalt or concrete paving and bike/pedestrian facilities.

**FINAL DELIVERABLES**
TranSystems will submit one (1) full size strip map of the conceptual design of the project and one (1) full size strip map of the existing right of way that will be suitable for public meetings. Electronic copies of these exhibits will be provided along with the topographic survey files and probable estimate of construction costs.

**PROJECT TASKS**
This scope of services includes a Discovery Phase only. Upon approval of the Discovery Phase, TranSystems can provide plan development services under a separate agreement.

When authorized by the City of Wichita, TranSystems will initiate the Discovery Phase. The following services will be provided during this phase of the project.

**PHASE 100 PRELIMINARY PLANS**
**Task 100 Survey/Basemap**

101. Control-Establish and supplement Horizontal Control throughout the project limits on Kansas State Plane Coordinate System, NAD83 (1997 adjustment), South Zone. Reference tie and control sketches on all control points along project. Estimation of twelve (12) Control Points will be established for future project use. Establish and supplement Vertical Control throughout the project limits on NGVD 88 Datum. Set a minimum of six (6) benchmarks along project limits with tied references to their locations.

102. Topographical Survey- TranSystems will provide field survey necessary for preparation of roadway plans. Project survey limits will begin 650 feet south of the Kellogg and 143rd Street intersection and proceed north to the north curb returns of the Kellogg and Central Avenue intersection. The topographic survey along the 143rd Street corridor will consist of a total width of 125 feet (75' each side of the existing centerline of the 143rd Street). Survey limits will also include an additional 200 feet at the intersecting sidestreets of Kellogg Avenue, the private driveway east of 143rd Street and south of the KTA bridge, the private driveway immediately north of Quiktrip, Siefkes Street and both Cardinal Lane Streets. Survey limits will also include additional widths at intersections, drainage structures, driveways and side streets. Survey will include locating, but not limited to the following features within the project limits as described (pavements, driveways, building faces, utilities, drainage structures with measure rim down for flow line elevations, natural ground elevations, trees 6" or above noted with size and type, curbing, power poles, signs, fences and etc.)

103. Utilities- All utilities will be located using the Kansas "One Call" system. The resulting markings will be surveyed at the same time as the topographic survey. No physical locates of any underground utilities will be completed as a part of the survey. TranSystems will verify the flow lines of any surveyed gravity storm or sanitary sewer lines that have easily accessible manholes.

104. Existing storm sewers and channels-Existing storm sewers, storm inlets, channels and reinforced box culverts will be located and flow lines surveyed.

105. Base Map Development- The raw field survey, topographic features and utility data gathered will be used to develop the base map of the planimetric features along with the ground surface model to create contours for the project. The base map will be a plan view representation of the project with contours presented at 1-foot minor and 5-foot major intervals. The maps will be prepared in English units and at a scale of 1:20.

106. Property Research- TranSystems will obtain necessary property research items such as, but not limited to, parcel tax maps, printouts of ownership, utility maps, plats, road records and road plans. TranSystems will also obtain any needed Title Reports that will include copies of all easements and encumbrances and existing survey data for up to thirty (30) parcels along the project. TranSystems will make a reasonable effort (using a metal detector, existing property pin or section corner information) to find existing property corners, quarter section corners and section corners (estimated 10 quarter/section corners) along the project and outside of project if necessary to assist in establishing existing right of way and ownership base map. Field survey will be tied to nearest section corners and quarter section corners. Should the corner not exist, costs for the re-establishment of the corner are not included in the contract, however, if the City desires corner re-establishment, TranSystems may enter into a supplemental agreement to reestablish missing section and/or quarter corners. Prepare an ownership boundary and existing right of way strip map along the project alignment showing but not limited to section lines, property lines, existing easements and ownership.

**Task 200 Preliminary Concepts, Alignments and Estimates**

201. Preliminary Concepts/Alignments- One Preliminary Concept and Alignment will be prepared. Preliminary Cost estimates will be prepared for the concept developed. It is assumed that the following concept will be developed:
    a. Five (5) lane facility with curb and gutters and storm sewers.
    b. Right turn decel lanes at key intersections along the project.
    c. A joint use path for bicycle and pedestrian movements along the corridor.
    d. Development of turn lane lengths at the 143rd Street and Kellogg intersection based on future traffic volumes.
    e. Dual northbound left turn lanes at 143rd Street and Kellogg.
    f. Preliminary vertical alignments.

    The design concept will be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the Project.

202. Conduct a detailed study to explore alternative design concepts concerning drainage for the Project. Present the findings in writing identifying recommendations to the City, including preliminary probable construction cost estimates.

203. Prepare preliminary water and sanitary sewer line horizontal and vertical alignments if they are in conflict with proposed improvements along the corridor.

**Task 300 Preliminary Scoping and Utilities**

301. Meet with Agencies – Meet with City Staff to kick-off the project, to address coordination between all parties to provide access for survey, to review plan submittals and schedules and necessary permitting as required for this project. A site visit will take place to confirm the extent of the improvements.

302. Utility Meetings – In addition to contacting Kansas One-call, TranSystems will contact utility companies with facilities within the project limits to inform them of the project and review the accuracy of the utilities located with the topographic survey. One set of full size utility plans will be provided to the utilities electronically for review and accuracy.

303. TranSystems will attend one (1) utility coordination meeting during the Discovery Phase. TranSystems will provide a roll plot of the project with the base map and proposed improvements of the project to introduce the utility companies to the project at the Discovery Phase meeting. TranSystems will be responsible for locating existing utilities located using the Kansas "One Call" system. Utilities located within the corridor but not marked by Kansas One Call will be shown in their approximate locations on the plans by information provided by the utility owners.

PROJECT NO. 87 N-0616-01
STP-N061(601)
INTERSECTION IMPROVEMENTS
CITY OF WICHITA, KANSAS

# AGREEMENT

This Agreement is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the "Secretary") and the **City of Wichita, Kansas** ("City"), **collectively**, the "Parties."

## RECITALS:

A. The City has requested and Secretary has authorized a project, as further described in this Agreement.

B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets utilizing federal funds.

C. The Secretary and the City desire to construct the Project and the City assumes sponsorship of the Project.

D. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of Kansas.

**NOW THEREFORE**, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

## ARTICLE I

**DEFINITIONS:** The following terms as used in this Agreement have the designated meanings:

1. **"Agreement"** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.

2. **"City"** means the City of Wichita, Kansas, with its place of business at 455 N Main Street, 7th Floor, Wichita, KS 67202.

3. **"Construction"** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.

4. **"Construction Contingency Items"** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.

5. **"Construction Engineering"** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.

6. **"Consultant"** means any engineering firm or other entity retained to perform services for the Project.

7. **"Contractor"** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.

8. **"Design Plans"** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.

9. **"Effective Date"** means the date this Agreement is signed by the Secretary or the Secretary's designee.

10. **"Encroachment"** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.

11. **"FHWA"** means the Federal Highway Administration, a federal agency of the United States.

12. **"Hazardous Waste"** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.

13. **"KDOT"** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.

14. **"Letting" or "Let"** means the process of receiving bids prior to an award of a Construction contract for any portion of the Project.

15. **"Non-Participating Costs"** means the costs of any items or services which the Secretary, acting on the Secretary's own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.

16. **"Participating Costs"** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.

17. **"Parties"** means the Secretary of Transportation and KDOT, individually and collectively, and the City.

18. **"Preliminary Engineering"** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.

19. **"Project"** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **Intersection improvements at 45th Street North and Hillside, in Wichita, Kansas**, and is the subject of this Agreement.

20. **"Project Limits"** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.

21. **"Responsible Bidder"** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.

22. **"Right of Way"** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.

23. **"Secretary"** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.

24. **"Utilities" or "Utility"** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

## ARTICLE II

### SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives such that the City may obtain participation of federal funds in the cost of the Project.

2. **Payment of Costs.** The Secretary agrees to reimburse the City for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed $223,303.00 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $279,129.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, or Utility adjustments for the Project.

3. **Reimbursement Payments.** The Secretary agrees to make partial payments to the City for amounts not less than $1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer employed by the City that the Project is being constructed within substantial compliance of the Design Plans.

## ARTICLE III

**CITY RESPONSIBILITIES:**

1. **Secretary Authorization.** The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

2. **Legal Authority.** The City agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

3. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project.

4. **Letting and Administration by City.** The City shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the Secretary. The City further agrees to administer the construction of the Project in accordance with the Design Plans, in the manner required by the FHWA and the current version of the City's approved 2012 Project Development Procedures Manual, and administer the payments due the Contractor, including the portion of the cost borne by the Secretary.

5. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the City's approved 2012 Project Development Procedures Manual, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions required by the Secretary or by the City with the Secretary's concurrence, and with the rules and regulations of the FHWA pertaining to the Project.

6. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 5 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

7. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 5 above, in all contracts between the City and any Consultant with whom

the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 5 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

(a) Completion of Design. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.

(b) Progress Reports. Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

(c) Third Party Beneficiary. Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

"Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement."

8. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the City's and its Consultant's duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

9. **Prevailing Wages.** The City will require the Contractor to pay prevailing wages. The City will incorporate into the Construction contract the current general wage decision for the county in which the Project is being constructed. The City can obtain the current wage decision from KDOT's Bureau of Construction and Materials website.

10. **Required Construction Contract Provisions.** The City will obtain the mandatory Required Contract Provisions from KDOT's Bureau of Construction and Materials website and incorporate those provisions into the Construction contract.

11. **Performance Bond.** The City further agrees to require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

12. **Plan Retention.** The City will maintain a complete set of final Design Plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The City further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The City shall provide access to or copies of all the above-mentioned documents to the Secretary.

13. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act as applicable, the City will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, agents, subcontractors or its consultants. The City shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

14. **Indemnification by Contractors.** The City agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

15. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

16. **Right of Way.** The City agrees to the following with regard to Right of Way:

(a) Right of Way Acquisition. The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The City agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) Right of Way Documentation. The City will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and

sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) Relocation Assistance. The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

(d) Non-Highway Use of Right of Way. Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. If federal funds are used in the acquisition of Right of Way, any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) Trails and Sidewalks on KDOT Right of Way. Intentionally deleted.

17. **Removal of Encroachments.** The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

18. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

19. **Utilities.** The City agrees to the following with regard to Utilities:

(a) Utility Relocation. The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

(b) Status of Utilities. The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The City shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) Indemnification. To the extent permitted by law, the City will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state and federal laws.

20. **Hazardous Waste.** The City agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The City shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The City shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

21. **Inspections.** The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the City's approved 2012 Project Development Procedures Manual. Any subsequent changes to the Project Procedures Manuals by the City during the construction engineering inspection of the Project will require prior approval of the changes by the Secretary.

(a) By City personnel. City personnel who are fully qualified to perform the inspection services in a competent and professional manner may be utilized by the City to inspect the Project, in which case the City shall provide the Secretary with a list of such personnel who will act as the assigned inspectors and their certifications.

(b) By a Consultant. If the City does not have sufficient qualified engineering employees to accomplish the Construction Engineering on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary services. The Consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the FHWA and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications.

(c) Protective Clothing. The City will require at a minimum all City personnel and all Consultant personnel performing Construction Engineering comply with the high visibility apparel requirements of the *KDOT Safety Manual*, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for Construction Engineering, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

22. **Corrective Work.** Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the City, the contractor, the consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the contractor's errors, omissions or deviations from the final Design Plans.

23. **Traffic Control.** The City agrees to the following with regard to traffic control for the Project:

(a) Temporary Traffic Control. The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same.

(b) Permanent Traffic Control. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, must conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to FHWA approval.

(c) Parking Control. The City will control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) Traffic Movements. The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The City shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

24. **Access Control.** The City will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

25. **Entrance Control.** The City will control the construction or use of any entrances along the Project within the City including those shown on the final Design Plans.

26. **Maintenance.** When the Project is completed and final acceptance is issued the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

27. **Financial Obligation.** The City will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to $279,129.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $279,129.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the

Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

28. **Prior Costs Incurred.** The City shall be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the FHWA.

29. **Audit.** All local governmental units, Non-Profit Organizations, and Indian Tribal governments shall comply with Federal-Aid Transportation Act and OMB Circular A-133 "Audits of State and Local Governments, and Non-Profit Organizations." Further, the City agrees to the following provisions:

(a) Common Rule. It is the policy of the Secretary to make any final payments to the City for services related to the Project in a timely manner. The Single Audit Standards set forth in Federal O.M.B. Circular A-133, "Audits of States, Local Governments and Non Profit Organizations" in 49 C.F.R. Part 18 (Common Rule), require an audit be performed by an independent certified public accountant in accordance with these standards. All information audited shall comply with 49 C.F.R. Part 18 (Common Rule).

(b) Single Audit. The Secretary may pay any final amount due for the authorized work performed based upon the City's most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of KDOT's Bureau of Fiscal Services. The City, by acceptance of this Agreement, acknowledges the final payment is subject to all single audits which cover the time period of the expenses being claimed for reimbursement. The Parties agree as the Single Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the Secretary will review the Single Audit Report for items which are declared as not eligible for reimbursement. The City agrees to refund payment made by the Secretary to the City for items subsequently found to be not eligible for reimbursement by audit.

30. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

31. **Organizational Registration Requirements.**

(a) Dun & Bradstreet. If it has not already done so, the City shall obtain a Data Universal Numbering System (DUNS) number, which may be obtained from Dun and Bradstreet, Inc. (D & B) by telephone (currently 866-705-5711) or the Internet (currently http://fedgov.dnb.com/webform).

(b) System for Award Management. The City agrees it shall maintain current registrations in the System for Award Management (http://www.sam.gov) at all times during which it has active federal awards.

32. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

## ARTICLE IV

### GENERAL PROVISIONS:

1. **Incorporation of Documents.** The final Design Plans, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for Construction Engineering services (if applicable) and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference and made a part of this Agreement.

2. **FHWA Approval.** Decisions as to what Project costs are federal Participating Costs will be made in accordance with the requirements of the FHWA.

3. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

4. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

5. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not be deemed to control or affect the meaning or construction or the provisions herein.

6. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

7. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

***The signature page immediately follows this paragraph.***

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF WICHITA, KANSAS

_____

CITY CLERK (Date)

_____

MAYOR

(SEAL)

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

Michael S. King, Secretary of Transportation
Kansas Department of Transportation

By: _____

Jerome T. Younger, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

# KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

## NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

## CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

## Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.

2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.

5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.

6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,

   (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or

   (b) cancellation, termination or suspension of the contract, in whole or in part.

7) Disadvantaged Business Obligation

   (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.

   (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.

   (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

8) Executive Order 12898

   (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.

9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

(Revised 9/29/11)

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

**CONTRACTUAL PROVISIONS ATTACHMENT**

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue**: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

   Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

   The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

PROJECT NO. 87 N-0615-01
STP-N061(501)
ROAD RECONSTRUCTION
CITY OF WICHITA, KANSAS

# AGREEMENT

This Agreement is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the "Secretary") and the **City of Wichita, Kansas** ("City"), **collectively**, the "Parties."

## RECITALS:

A. The City has requested and Secretary has authorized a project, as further described in this Agreement.

B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets utilizing federal funds.

C. The Secretary and the City desire to construct the Project and the City assumes sponsorship of the Project.

D. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of Kansas.

**NOW THEREFORE**, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

## ARTICLE I

**DEFINITIONS:** The following terms as used in this Agreement have the designated meanings:

1. **"Agreement"** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.

2. **"City"** means the City of Wichita, Kansas, with its place of business at 455 N Main Street, 7th Floor, Wichita, KS 67202.

3. **"Construction"** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.

4. **"Construction Contingency Items"** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.

5. **"Construction Engineering"** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.

6. **"Consultant"** means any engineering firm or other entity retained to perform services for the Project.

7. **"Contractor"** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.

8. **"Design Plans"** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.

9. **"Effective Date"** means the date this Agreement is signed by the Secretary or the Secretary's designee.

10. **"Encroachment"** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.

11. **"FHWA"** means the Federal Highway Administration, a federal agency of the United States.

12. **"Hazardous Waste"** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.

13. **"KDOT"** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.

14. **"Letting" or "Let"** means the process of receiving bids prior to an award of a Construction contract for any portion of the Project.

15. **"Non-Participating Costs"** means the costs of any items or services which the Secretary, acting on the Secretary's own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.

16. **"Participating Costs"** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.

17. **"Parties"** means the Secretary of Transportation and KDOT, individually and collectively, and the City.

18. **"Preliminary Engineering"** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.

19. **"Project"** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **Construct 3-lane roadway on 127th Street East from 13th Street North to 21st Street North, in Wichita, Kansas**, and is the subject of this Agreement.

20. **"Project Limits"** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.

21. **"Responsible Bidder"** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.

22. **"Right of Way"** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.

23. **"Secretary"** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.

24. **"Utilities" or "Utility"** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

## ARTICLE II

**SECRETARY RESPONSIBILITIES:**

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives such that the City may obtain participation of federal funds in the cost of the Project.

2. **Payment of Costs.** The Secretary agrees to reimburse the City for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed $2,650,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $3,312,500.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, or Utility adjustments for the Project.

3. **Reimbursement Payments.** The Secretary agrees to make partial payments to the City for amounts not less than $1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer employed by the City that the Project is being constructed within substantial compliance of the Design Plans.

## ARTICLE III

**CITY RESPONSIBILITIES:**

1. **Secretary Authorization.** The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

2. **Legal Authority.** The City agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

3. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project.

4. **Letting and Administration by City.** The City shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the Secretary. The City further agrees to administer the construction of the Project in accordance with the Design Plans, in the manner required by the FHWA and the current version of the City's approved 2012 Project Development Procedures Manual, and administer the payments due the Contractor, including the portion of the cost borne by the Secretary.

5. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the City's approved 2012 Project Development Procedures Manual, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions required by the Secretary or by the City with the Secretary's concurrence, and with the rules and regulations of the FHWA pertaining to the Project.

6. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 5 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

7. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 5 above, in all contracts between the City and any Consultant with whom

the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 5 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

(a) Completion of Design. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.

(b) Progress Reports. Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

(c) Third Party Beneficiary. Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

"Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement."

8. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the City's and its Consultant's duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

9. **Prevailing Wages.** The City will require the Contractor to pay prevailing wages. The City will incorporate into the Construction contract the current general wage decision for the county in which the Project is being constructed. The City can obtain the current wage decision from KDOT's Bureau of Construction and Materials website.

10. **Required Construction Contract Provisions.** The City will obtain the mandatory Required Contract Provisions from KDOT's Bureau of Construction and Materials website and incorporate those provisions into the Construction contract.

11. **Performance Bond.** The City further agrees to require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

12. **Plan Retention.** The City will maintain a complete set of final Design Plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The City further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The City shall provide access to or copies of all the above-mentioned documents to the Secretary.

13. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act as applicable, the City will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, agents, subcontractors or its consultants. The City shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

14. **Indemnification by Contractors.** The City agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

15. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

16. **Right of Way.** The City agrees to the following with regard to Right of Way:

(a) Right of Way Acquisition. The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The City agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) Right of Way Documentation. The City will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and

sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) Relocation Assistance. The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

(d) Non-Highway Use of Right of Way. Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. If federal funds are used in the acquisition of Right of Way, any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) Trails and Sidewalks on KDOT Right of Way. Intentionally deleted.

17. **Removal of Encroachments.** The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

18. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

19. **Utilities.** The City agrees to the following with regard to Utilities:

(a) Utility Relocation. The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

(b) Status of Utilities. The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The City shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) Indemnification. To the extent permitted by law, the City will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state and federal laws.

20. **Hazardous Waste.** The City agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The City shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The City shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

21. **Inspections.** The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the City's approved 2012 Project Development Procedures Manual. Any subsequent changes to the Project Procedures Manuals by the City during the construction engineering inspection of the Project will require prior approval of the changes by the Secretary.

(a) By City personnel. City personnel who are fully qualified to perform the inspection services in a competent and professional manner may be utilized by the City to inspect the Project, in which case the City shall provide the Secretary with a list of such personnel who will act as the assigned inspectors and their certifications.

(b) By a Consultant. If the City does not have sufficient qualified engineering employees to accomplish the Construction Engineering on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary services. The Consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the FHWA and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications.

(c) Protective Clothing. The City will require at a minimum all City personnel and all Consultant personnel performing Construction Engineering comply with the high visibility apparel requirements of the *KDOT Safety Manual*, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for Construction Engineering, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

22. **Corrective Work.** Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the City, the contractor, the consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the contractor's errors, omissions or deviations from the final Design Plans.

23. **Traffic Control.** The City agrees to the following with regard to traffic control for the Project:

(a) Temporary Traffic Control. The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same.

(b) Permanent Traffic Control. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, must conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to FHWA approval.

(c) Parking Control. The City will control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) Traffic Movements. The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The City shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

24. **Access Control.** The City will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

25. **Entrance Control.** The City will control the construction or use of any entrances along the Project within the City including those shown on the final Design Plans.

26. **Maintenance.** When the Project is completed and final acceptance is issued the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

27. **Financial Obligation.** The City will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to $3,312,500.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $3,312,500.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for

the Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

28. **Prior Costs Incurred.** The City shall be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the FHWA.

29. **Audit.** All local governmental units, Non-Profit Organizations, and Indian Tribal governments shall comply with Federal-Aid Transportation Act and OMB Circular A-133 "Audits of State and Local Governments, and Non-Profit Organizations." Further, the City agrees to the following provisions:

(a) Common Rule. It is the policy of the Secretary to make any final payments to the City for services related to the Project in a timely manner. The Single Audit Standards set forth in Federal O.M.B. Circular A-133, "Audits of States, Local Governments and Non Profit Organizations" in 49 C.F.R. Part 18 (Common Rule), require an audit be performed by an independent certified public accountant in accordance with these standards. All information audited shall comply with 49 C.F.R. Part 18 (Common Rule).

(b) Single Audit. The Secretary may pay any final amount due for the authorized work performed based upon the City's most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of KDOT's Bureau of Fiscal Services. The City, by acceptance of this Agreement, acknowledges the final payment is subject to all single audits which cover the time period of the expenses being claimed for reimbursement. The Parties agree as the Single Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the Secretary will review the Single Audit Report for items which are declared as not eligible for reimbursement. The City agrees to refund payment made by the Secretary to the City for items subsequently found to be not eligible for reimbursement by audit.

30. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

31. **Organizational Registration Requirements.**

(a) Dun & Bradstreet. If it has not already done so, the City shall obtain a Data Universal Numbering System (DUNS) number, which may be obtained from Dun and Bradstreet, Inc. (D & B) by telephone (currently 866-705-5711) or the Internet (currently http://fedgov.dnb.com/webform).

(b) System for Award Management. The City agrees it shall maintain current registrations in the System for Award Management (http://www.sam.gov) at all times during which it has active federal awards.

32. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

## ARTICLE IV

### GENERAL PROVISIONS:

1. **Incorporation of Documents.** The final Design Plans, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for Construction Engineering services (if applicable) and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference and made a part of this Agreement.

2. **FHWA Approval.** Decisions as to what Project costs are federal Participating Costs will be made in accordance with the requirements of the FHWA.

3. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

4. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

5. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not be deemed to control or affect the meaning or construction or the provisions herein.

6. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

7. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

***The signature page immediately follows this paragraph.***

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

_____

CITY CLERK (Date)

(SEAL)

THE CITY OF WICHITA, KANSAS

_____

MAYOR

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

Michael S. King, Secretary of Transportation
Kansas Department of Transportation

By: _____

Jerome T. Younger, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

# KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

## NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

## CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

## Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.

2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.

5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.

6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,

   (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or

   (b) cancellation, termination or suspension of the contract, in whole or in part.

7) Disadvantaged Business Obligation

   (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.

   (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.

   (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

8) Executive Order 12898

   (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.

9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

(Revised 9/29/11)

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

**CONTRACTUAL PROVISIONS ATTACHMENT**

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue**: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

   Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

   The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Agreement No. 300-14

PROJECT NO. 87 N-0614-01
STP-N061(401)
ROAD RECONSTRUCTION
CITY OF WICHITA, KANSAS

# AGREEMENT

This Agreement is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the "Secretary") and the **City of Wichita, Kansas** ("City"), **collectively**, the "Parties."

## RECITALS:

A. The City has requested and Secretary has authorized a project, as further described in this Agreement.

B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets utilizing federal funds.

C. The Secretary and the City desire to construct the Project and the City assumes sponsorship of the Project.

D. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of Kansas.

**NOW THEREFORE**, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

## ARTICLE I

**DEFINITIONS:** The following terms as used in this Agreement have the designated meanings:

1. **"Agreement"** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.

2. **"City"** means the City of Wichita, Kansas, with its place of business at 455 N Main Street, 7th Floor, Wichita, KS 67202.

3. **"Construction"** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.

4. **"Construction Contingency Items"** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.

5. **"Construction Engineering"** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.

6. **"Consultant"** means any engineering firm or other entity retained to perform services for the Project.

7. **"Contractor"** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.

8. **"Design Plans"** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.

9. **"Effective Date"** means the date this Agreement is signed by the Secretary or the Secretary's designee.

10. **"Encroachment"** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.

11. **"FHWA"** means the Federal Highway Administration, a federal agency of the United States.

12. **"Hazardous Waste"** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.

13. **"KDOT"** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.

14. **"Letting" or "Let"** means the process of receiving bids prior to an award of a Construction contract for any portion of the Project.

15. **"Non-Participating Costs"** means the costs of any items or services which the Secretary, acting on the Secretary's own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.

16. **"Participating Costs"** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.

17. **"Parties"** means the Secretary of Transportation and KDOT, individually and collectively, and the City.

18. **"Preliminary Engineering"** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.

19. **"Project"** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when authorized by the Secretary prior to Letting, being: **Construction of 5-lane roadway at 143rd Street East from Kellogg Avenue to Central Avenue in Wichita, Kansas**, and is the subject of this Agreement.

20. **"Project Limits"** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.

21. **"Responsible Bidder"** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.

22. **"Right of Way"** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.

23. **"Secretary"** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.

24. **"Utilities" or "Utility"** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

## ARTICLE II

### SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives such that the City may obtain participation of federal funds in the cost of the Project.

2. **Payment of Costs.** The Secretary agrees to reimburse the City for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed $2,750,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $3,437,500.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, or Utility adjustments for the Project.

3. **Reimbursement Payments.** The Secretary agrees to make partial payments to the City for amounts not less than $1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer employed by the City that the Project is being constructed within substantial compliance of the Design Plans.

## ARTICLE III

**CITY RESPONSIBILITIES:**

1. **Secretary Authorization.** The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

2. **Legal Authority.** The City agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

3. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project.

4. **Letting and Administration by City.** The City shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the Secretary. The City further agrees to administer the construction of the Project in accordance with the Design Plans, in the manner required by the FHWA and the current version of the City's approved 2012 Project Development Procedures Manual, and administer the payments due the Contractor, including the portion of the cost borne by the Secretary.

5. **Conformity with State and Federal Requirements.** The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the City's approved 2012 Project Development Procedures Manual, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions required by the Secretary or by the City with the Secretary's concurrence, and with the rules and regulations of the FHWA pertaining to the Project.

6. **Submission of Design Plans to Secretary.** Upon their completion, the City shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 5 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

7. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 5 above, in all contracts between the City and any Consultant with whom

the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 5 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

(a) Completion of Design. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.

(b) Progress Reports. Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

(c) Third Party Beneficiary. Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

"Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement."

8. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the City's and its Consultant's duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

9. **Prevailing Wages.** The City will require the Contractor to pay prevailing wages. The City will incorporate into the Construction contract the current general wage decision for the county in which the Project is being constructed. The City can obtain the current wage decision from KDOT's Bureau of Construction and Materials website.

10. **Required Construction Contract Provisions.** The City will obtain the mandatory Required Contract Provisions from KDOT's Bureau of Construction and Materials website and incorporate those provisions into the Construction contract.

11. **Performance Bond.** The City further agrees to require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

12. **Plan Retention.** The City will maintain a complete set of final Design Plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The City further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The City shall provide access to or copies of all the above-mentioned documents to the Secretary.

13. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act as applicable, the City will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, agents, subcontractors or its consultants. The City shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

14. **Indemnification by Contractors.** The City agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

15. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

16. **Right of Way.** The City agrees to the following with regard to Right of Way:

(a) Right of Way Acquisition. The City will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The City agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) Right of Way Documentation. The City will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and

sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The City further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) Relocation Assistance. The City will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

(d) Non-Highway Use of Right of Way. Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public street purposes. If federal funds are used in the acquisition of Right of Way, any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) Trails and Sidewalks on KDOT Right of Way. Intentionally deleted.

17. **Removal of Encroachments.** The City shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

18. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

19. **Utilities.** The City agrees to the following with regard to Utilities:

(a) Utility Relocation. The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

(b) Status of Utilities. The City shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The City will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The City shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the City as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The City shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the City's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The City shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) Indemnification. To the extent permitted by law, the City will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the City except as provided by state and federal laws.

20. **Hazardous Waste.** The City agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The City shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The City shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

21. **Inspections.** The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the City's approved 2012 Project Development Procedures Manual. Any subsequent changes to the Project Procedures Manuals by the City during the construction engineering inspection of the Project will require prior approval of the changes by the Secretary.

(a) By City personnel. City personnel who are fully qualified to perform the inspection services in a competent and professional manner may be utilized by the City to inspect the Project, in which case the City shall provide the Secretary with a list of such personnel who will act as the assigned inspectors and their certifications.

(b) By a Consultant. If the City does not have sufficient qualified engineering employees to accomplish the Construction Engineering on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary services. The Consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the FHWA and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications.

(c) Protective Clothing. The City will require at a minimum all City personnel and all Consultant personnel performing Construction Engineering comply with the high visibility apparel requirements of the *KDOT Safety Manual,* Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for Construction Engineering, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

22. **Corrective Work.** Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the City, the contractor, the consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the contractor's errors, omissions or deviations from the final Design Plans.

23. **Traffic Control.** The City agrees to the following with regard to traffic control for the Project:

(a) Temporary Traffic Control. The City shall provide a temporary traffic control plan within the Design Plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same.

(b) Permanent Traffic Control. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, must conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to FHWA approval.

(c) Parking Control. The City will control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) Traffic Movements. The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The City shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

24. **Access Control.** The City will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

25. **Entrance Control.** The City will control the construction or use of any entrances along the Project within the City including those shown on the final Design Plans.

26. **Maintenance.** When the Project is completed and final acceptance is issued the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

27. **Financial Obligation.** The City will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to $3,437,500.00 for the Project. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed $3,437,500.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for

the Project. The City shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

28. **Prior Costs Incurred.** The City shall be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the FHWA.

29. **Audit.** All local governmental units, Non-Profit Organizations, and Indian Tribal governments shall comply with Federal-Aid Transportation Act and OMB Circular A-133 "Audits of State and Local Governments, and Non-Profit Organizations." Further, the City agrees to the following provisions:

(a) Common Rule. It is the policy of the Secretary to make any final payments to the City for services related to the Project in a timely manner. The Single Audit Standards set forth in Federal O.M.B. Circular A-133, "Audits of States, Local Governments and Non Profit Organizations" in 49 C.F.R. Part 18 (Common Rule), require an audit be performed by an independent certified public accountant in accordance with these standards. All information audited shall comply with 49 C.F.R. Part 18 (Common Rule).

(b) Single Audit. The Secretary may pay any final amount due for the authorized work performed based upon the City's most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of KDOT's Bureau of Fiscal Services. The City, by acceptance of this Agreement, acknowledges the final payment is subject to all single audits which cover the time period of the expenses being claimed for reimbursement. The Parties agree as the Single Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the Secretary will review the Single Audit Report for items which are declared as not eligible for reimbursement. The City agrees to refund payment made by the Secretary to the City for items subsequently found to be not eligible for reimbursement by audit.

30. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

31. **Organizational Registration Requirements.**

(a) Dun & Bradstreet. If it has not already done so, the City shall obtain a Data Universal Numbering System (DUNS) number, which may be obtained from Dun and Bradstreet, Inc. (D & B) by telephone (currently 866-705-5711) or the Internet (currently http://fedgov.dnb.com/webform).

(b) System for Award Management. The City agrees it shall maintain current registrations in the System for Award Management (http://www.sam.gov) at all times during which it has active federal awards.

32. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

## ARTICLE IV

### GENERAL PROVISIONS:

1. **Incorporation of Documents.** The final Design Plans, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for Construction Engineering services (if applicable) and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference and made a part of this Agreement.

2. **FHWA Approval.** Decisions as to what Project costs are federal Participating Costs will be made in accordance with the requirements of the FHWA.

3. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

4. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

5. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not be deemed to control or affect the meaning or construction or the provisions herein.

6. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

7. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

***The signature page immediately follows this paragraph.***

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF WICHITA, KANSAS

_____

CITY CLERK (Date)

_____

MAYOR

(SEAL)

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

Michael S. King, Secretary of Transportation
Kansas Department of Transportation

By: _____

Jerome T. Younger, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

# KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

## NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

## CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

## Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.

2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.

5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.

6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,

   (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or

   (b) cancellation, termination or suspension of the contract, in whole or in part.

7) Disadvantaged Business Obligation

   (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.

   (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.

   (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

8) Executive Order 12898

   (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.

9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

(Revised 9/29/11)

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

**CONTRACTUAL PROVISIONS ATTACHMENT**

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20____.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue**: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

   Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

   The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Change Order for K-96 and Greenwich Interchange (District II)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendations:** Approve the change order.

**Background:** On January 7, 2014, the City Council approved a final construction budget for improvements to the interchange at K-96 and Greenwich. A construction contract with Dondlinger & Sons Construction, Inc. was approved by the City Council on February 4, 2014. Construction began in March 2014. Three change orders have been processed for this project to date. The change orders were all under $10,000, so the City Council's approval was not required. None of the change orders resulted in an extension of the contract completion time.

**Change Order History**

| Change Order | Date Processed | What Was Provided | Cost |
|---|---|---|---|
| No. 1 | April 1, 2014 | Installation of a concrete cap over NuStar Energy's high pressure gas main to provide minimum coverage as required by the Kansas Department of Transportation (KDOT) and the utility. Originally, the gas main was to be relocated by NuStar at a cost to the City of $30,000. The concrete cap method was determined feasible after field measurements were obtained, resulting in significant time and cost savings. | $8,545 |
| No. 2 | April 17, 2014 | Changed overhead sign structure footings as required by KDOT. Incorrect footing details were provided during design and later revised by KDOT during review of shop drawings. | $9,575 |
| No. 3 | May 2, 2014 | Installation of 50 additional feet of concrete cap over NuStar's high pressure gas main, granular backfill for wingwalls, and extension of a fire hydrant water main. The additional concrete cap and granular backfill were required due to adjusted measurements and the fire hydrant extension was required to maintain proper grade. | $4,754 |
| | | Original contract amount | $6,761,573 |
| | | **Total contract cost to date** | **$6,784,447** |

**Analysis:** Platting and utility plans for two developments on the east side of Greenwich were finalized after construction plans for the interchange improvements were complete. The developments require water and sanitary sewer main extensions. Constructing these extensions with the interchange project will prevent utility patches and damage to new pavement in the future, as well as provide some cost savings. A change order has been prepared to allow the work to be completed under the current construction contract. No adjustment to the contract completion time is necessary.

**Financial Considerations:** The cost of the additional work is $40,891, which brings the contract total to $6,825,338. This change order plus previous change orders represents 0.9% of the original contract amount, which is within the 25% of contract cost limit set by City Council policy. The additional work will be funded through the approved Sales Tax and Revenue (STAR) bond district or special assessments to the improvement district.

**Legal Considerations:** The Law Department has reviewed and approved the change order as to form. The change order amount is within the 25% of contract cost limit set by City Council policy.

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

**Attachments:** Change Order No. 4.

CITY OF WICHITA

PUBLIC WORKS-ENGINEERING

June 6, 2014

**CHANGE ORDER**

**To:** Dondlinger & Sons Construction Co., Inc.
**Change Order No.:** 4
**Purchase Order No.: 440135**
**CHARGE TO OCA No.: 707041**

**Project:** K-96 & Greenwich Interchange
**Project No.:** 472-85066
**OCA No.: 707041**/620661
**PPN: 211506**/774069

**Please perform the following extra work at a cost not to exceed** $40,891.00

**Additional Work**: Add water and sewer extensions to the east right-of-way of Greenwich Road, north of K-96.

**Reason for Additional Work**: The development on the east side of Greenwich Road and north of K-96, K-96 & Greenwich North Addition, requires water main and sanitary sewer extensions to serve future development. Platting and utility plans for this development have finalized since construction plans were completed on the current project. In order to prevent future utility patches and damage to new pavement on Greenwich Road, the water main and sanitary sewer extension will be constructed with the current project.

The water main extension will require an additional fee of $3,700 for a 16"x12" tapping sleeve and valve supplied by the Public Works and Utilities Department, which will be processed internally. The contractor will install approximately 180 feet of 12 inch waterline, across Greenwich to the east right-of-way line. The sanitary sewer extension will include approximately 28 feet of eight inch sanitary sewer capped at the right-of-way. The contractor will sand fill both water and sanitary sewer trenches per specifications. The work will be funded through the approved Star Bond district and/or Special Assessments to the benefit district. No adjustment to contract completion date is required.

| Line # | KDOT # | Item | Negotiated/ Bid | Qty | Unit Price | Extension |
|---|---|---|---|---|---|---|
| 188 | N.A. | K-96 & Greenwich North water extension | Negot'd | 1 LS | $17,610.00 | $17,610.00 |
| 190 | N.A. | K-96 & Greenwich North sewer extension | Negot'd | 1 LS | $5,532.00 | $5,532.00 |
| | | | | | **Total =** | **$23,142.00** |

**Additional Work**: Add water and sewer extensions to the east right-of-way of Greenwich Road, south of K-96.

**Reason for Additional Work**: The development on the east side of Greenwich Road and south of K-96, Kensington Gardens Addition, requires water main and sanitary sewer extensions to serve future development. Platting and utility plans for this development have finalized since construction plans were completed on the current project. In order to prevent future utility patches and damage to new pavement on Greenwich Road, the water main and sanitary sewer extension will be constructed with the current project.

The water main extension will require an additional fee of $3,700 for a 16"x12" tapping sleeve and valve supplied by the Public Works and Utilities Department, which will be processed internally. The contractor will install approximately 130 feet of 12 inch waterline, across Greenwich to the east right-of-way line. The sanitary sewer extension will include approximately 28 feet of eight inch sanitary sewer capped at the right-of-way. The contractor will sand fill both water and sanitary sewer trenches per specifications. The work will be funded through the approved Star Bond district and/or Special Assessments to the benefit district. No adjustment to contract completion date is required.

| Line # | KDOT # | Item | Negotiated/ Bid | Qty | Unit Price | Extension |
|---|---|---|---|---|---|---|
| 191 | N.A. | Kensington Gardens Addition water extension | Negot'd | 1 LS | $13,293.00 | $13,293.00 |
| 192 | N.A. | Kensington Gardens Addition sewer extension | Negot'd | 1 LS | $4,456.00 | $4,456.00 |
| | | | | | **Total =** | **$17,749.00** |

| | | | |
|---|---|---|---|
| **CIP Budget Amount:** | **$10,250,000.00 (707041)**<br>$90,000.00 (620661) | **Original Contract Amt.:** | $6,761,573.16 |
| **Consultant:** PEC | | **Current CO Amt.:** | $40,891.00 |
| **Total Exp. & Encum. To Date:** | $ 8,619,906.92 | **Amt. of Previous CO's:** | $22,874.00 |
| **CO Amount:** | $ 40,891.00 | **Total of All CO's:** | $63,765.00 |
| **Unencum. Bal. After CO:** | $ 1,589,202.08 | **% of Orig. Contract / 25% Max.:** | 0.94% |
| | | **Adjusted Contract Amt.:** | $6,825,338.16 |

**Recommended By**: James Wagner, P.E.

Steve Degenhardt, P.E. Date
Construction Division Manager

**Approved:**

Gary Janzen, P.E. Date
City Engineer

**Approved:**

Contractor Date

**Approved:**

Alan King Date
Director of Public Works & Utilities

**Approved as to Form:**

Gary Rebenstorf Date
Director of Law

**By Order of the City Council:**

Carl Brewer Date
Mayor

**Attest:**
City Clerk

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Emergency Solutions Grant Contracts

**INITIATED BY:** Housing and Community Services Department

**AGENDA:** Consent

---

**Recommendation:** Approve the allocation of funds remaining from prior years, and authorize the necessary signatures and contracts as a supplement to the 2014-2015 One Year Action Plan.

**Background:** The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009 created the Emergency Solutions Grant (ESG) funding category. Eligible activities in the ESG program include homeless assistance, homeless prevention, rapid re-housing, and homeless management information system administration. The Act also provides a maximum of 7.5% for program administration. Prior to the passage of the HEARTH Act, the City of Wichita received Emergency Shelter grant funds which provided for similar activities. The City of Wichita received an annual allocation of ESG funds in the amount of $125,133 for 2010; $195,313 for 2011; $223,388 for 2012; and $187,471 for 2013. Any funds not expended during the program year are recaptured and available for reprograming to other eligible activities. All remaining funds from grant years prior to and including 2012 must be expended by December 31, 2014.

**Analysis:** As a result of re-captured funds, a total of $19,375 is available for reallocation. Of this amount, $15,925 was previously allocated for homeless assistance activities serving victims of domestic violence. The remaining amount, $3,450, is a result of unspent funds initially allocated for other ESG activities in the homeless assistance category. Based on input received during the public comment period regarding the development of the 2014-2015 One Year Action Plan, it is recommended that supplemental contracts be developed to fund eligible activities for victims of domestic violence provided by Catholic Charities Harbor House - $7,480 and Y.W.C.A Women's Crisis Center - $8,445. A supplemental contract for the balance of $3,450 will fund activities provided by United Methodist Open Door Homeless Resource Center, which provides services and resources for homeless citizens served by all ESG-funded shelters in our community.

The ESG requires a dollar for dollar match. The match will be provided by the agencies who receive the funds.

**Financial Considerations:** All funds associated with this action are federal. No general funds will be involved in the contracts.

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

**Recommendations/Actions:** It is recommended that the City Council approve the allocation of funds remaining from prior years, and authorize the necessary signatures and contracts as a supplement to the 2014-2015 One Year Action Plan.

**Attachments:** Contracts

# CONTRACT AGREEMENT

**between**

**THE CITY OF WICHITA**
**HOUSING AND COMMUNITY SERVICES DEPARTMENT**

**and**

**CATHOLIC CHARITIES – HARBOR HOUSE**

**For**

**Homeless Assistance**

**Funded through the**

**Emergency Solutions Grant (ESG) Program**
**2014-15 Supplemental Allocation- prior year funds**

**Contract period: July 15, 2014 – December 31, 2014**

Housing and Community Services Department
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3724
Fax (316) 337-9103

Date Contract Fully Executed: _____

**PART A**
**AGREEMENT**

**THIS CONTRACT** (hereinafter the "Agreement") entered into this 15th day of July, 2014 by and between the City of Wichita, Kansas (hereinafter the "City") and Catholic Charities, Inc. – Diocese of Wichita (hereinafter the "Subrecipient"), located at 437 N. Topeka Street, Wichita, Kansas.

**WITNESSETH THAT:**

**WHEREAS,** the City of Wichita has entered into a funding Agreement with the United States of America for the Department of Housing and Urban Development (hereinafter referred to as HUD) for the execution of projects and activities under Title IV of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371-11378) under the Emergency Solutions Grant Program (ESG) hereinafter referred to as ESG; and

**WHEREAS,** the City has entered into a contract with the United States of America for the implementation of a program of local assistance for the City of Wichita pursuant to HUD for an ESG program; and

**WHEREAS**, the department of Housing and Community Services is authorized to act on behalf of the City in implementing this grant Agreement; and

**WHEREAS,** the cooperation of the City and the Subrecipient is essential for the successful implementation of a emergency shelter project under the ESG program; and

**WHEREAS**, funds in the amount of $7,480 are remaining from prior year ESG allocations for homeless assistance activities; and

**WHEREAS**, Catholic Charities, Inc. – Diocese of Wichita operates an emergency shelter for victims of domestic violence; and

**WHEREAS**, on July 15, 2014, the Wichita City Council allocated $7,480 in remaining ESG funds, for the execution of the approved activity;

**NOW, THEREFORE**, the parties hereto do mutually agree that this Agreement is entered into predicated upon the following terms and/or conditions, all and every one of which the parties hereto agree to observe and perform:

## DEFINITION OF HOMELESS

For the purpose of this contract, persons eligible to receive homeless assistance must meet the following criteria for the category of fleeing/attempting to flee domestic violence: Individual or family who: (i) is fleeing, or is attempting to flee, domestic violence; (ii) has no other residence; and (iii) lacks the resources or support networks to obtain other permanent housing.

### 1. SCOPE OF SERVICES

1. Scope of Services: Catholic Charities, Inc. – Diocese of Wichita will meet the expectations of the funding source ESG to provide emergency shelter for homeless individuals or families. Funds may provide **essential services** such as case management, childcare, education service, employment assistance and job training, outpatient health services, legal services, life skills training mental health services, substance abuse treatment services, transportation and services for special populations; or **shelter operations**, including maintenance, rent, repair, security, fuel, equipment, insurance, utilities, relocation, and furnishings. Project effectiveness will be demonstrated by the number of individuals and families receiving shelter, length of stay in shelter, and housing status upon exit from shelter. Funds from this allocation will be used to replace video surveillance system, and purchase food, hygiene, and laundry supplies for program participants.

   The Subrecipient, assuming responsibility for the implementation of actual operation of a certain project herein specified, shall perform services in a satisfactory and proper manner as determined by the City and as outlined per PART B.

2. Revision of Scope: The performance criteria and objectives may be modified, revised or amended upon the joint written consent of the parties. The City may revise the approved objectives, accomplishments, and budget items in PART B when necessary. The Subrecipient may request a budget revision at any time throughout the duration of this Agreement. However, prior to any purchases under the new budget, the City must approve the revision in writing. Approval may be in the form of a letter, a fax, or an email.

### 2. COMMENCEMENT AND COMPLETION

1. Time of Performance: The services of the Subrecipient are to commence as soon as practicable on or after the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract through a period ending October 31, 2014.

2. Close-out Period: The Subrecipient has 30 days following the performance of this activity during which to conduct and complete close-out requirements associated with this Agreement. Final accomplishment and outcome reports are due to the City by November 30, 2014. All expenditures associated with close-out of this activity must be submitted for reimbursement by that date.

3. Contract Completion Date: Unless an extension has been approved by the City in advance, OR unless this Agreement is terminated earlier in accordance with other provisions herein, this agreement will end on December 31, 2014.

### 3. COMPENSATION AND USE OF FUNDS

Regulation for Use of Funds: The use of funds received pursuant to this Agreement shall be in accordance with the requirements of the Housing and Community Development Act of 1974 (as

amended), 24 CFR part 576 and 24 CFR part 85, as applicable, other regulations governing the use of Contract funds, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement; and the McKinney Vento Homeless Assistance Act As Amended by S896 HEARTH Act of 2009. ***It is the Subrecipient's responsibility to read, understand, and comply with these regulations.***

1. Uniform Grant Administrative Requirements and Cost Principles: During the administration of this contract, the Subrecipient shall comply with, and adhere to:
   a. Office of Management and Budget (OMB) Circular No. A-87, Cost principles for State, Local and Indian Tribal Governments; and
   b. OMB Circular No. A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations; and
   c. OMB Circular No. A-122, Cost Principles for Nonprofit Organizations.

2. Total Payments: Total amount of funds provided by the City to the Subrecipient under this Agreement shall not exceed $7,480 and must be drawn on a regular basis. At the sole discretion of the City, any funds remaining unexpended as of the termination date of this Agreement may be de-obligated from this Agreement and made available for other eligible projects, as determined appropriate by the City.

3. Required Matching Funds: This contract requires that the Subrecipient provide a cash or in-kind match in an equal amount of funds from cash or the following in-kind sources: new staff or volunteer time. Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or sub-recipient's organization. If the recipient or sub-recipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers. The value of time and services contributed by volunteers to carry out the project of the Sub-recipient shall be calculated at a current rate of $5 per hour. (Note: Volunteers providing professional services such as medical or legal services are valued at the reasonable and customary rate in the community. Proposers may use the Independent Sector's valuation of volunteer time of $18.13/hour, or other documented valuation method.)

4. Reimbursement Requests: This is a cost-reimbursement Agreement. Disbursement of funds under this Agreement may be requested only for necessary, reasonable, and allowable costs described in PART B, and for which the Subrecipient has made payment during the period of performance set forth in Section 2.1 above. The City agrees to reimburse the Subrecipient for such costs, and payment shall be made upon receipt of a request for reimbursement form (PART C) accompanied by a monthly accomplishment report from the Subrecipient specifying the services performed or expenses incurred. All requests for reimbursement must be accompanied by two sets of documentation: 1) case file data which confirms eligibility of the clients on whose behalf payments have been made; and 2) documentation of payment for eligible expenses (i.e., invoices, receipts, bills from vendors, copies of checks, time sheets, etc.), documentation of matching funds (i.e., volunteer time logs, time sheets, mock invoices for donated items, copies of donation checks, copies of checks from other grants etc.) received and expended, and other supporting documentation. Supporting documentation must be accompanied by an agency payment voucher providing this information and a copy of the signed check with which the payment was made. Requests for reimbursement must be received by the fifteenth day of the month following the month during which the expense was paid.

5. Double Reimbursement: The Subrecipient shall not claim reimbursement from the City under this Agreement for any portion of its obligations that has been paid by another source of revenue.

6. Restriction on Disbursements: No entitlement funds shall be disbursed to a Subrecipient or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this contract. Disbursements may be suspended or terminated under this contract upon refusal to accept any additional conditions that may be imposed by the City at any time or if the entitlement funds to the City of Wichita under the Federal Act(s) are suspended or terminated.

7. Withholding Payments: All payments to the Subrecipient are subject to the Subrecipient's compliance with this Agreement. A breach of the Agreement is grounds for non-payment until such corrective measures are made which will resolve Agreement non-compliance.

8. Closeout Reimbursement: Closeout billings are to be submitted by November 30, 2014, as set forth in Section 2.2, above. If not submitted, the unexpended funds shall revert to the City of Wichita.

## 4. Use and Disposition of Property

1. Disposition of Expendable/Non-Expendable Personal Property: This contract does not provide for the purchase of property for the Subrecipient's use in administering the program.

2. Disposition of Real Property: See 4.1 above.

## 5. Assignments

1. Assignability: Neither the City nor the Subrecipient shall assign, sublet, or transfer their interest in this Agreement without the prior written consent of the other.

2. Subcontracting/Third Party Contracts: The Subrecipient agrees to furnish the City with a copy of any and all third party contracts that it executes in the performance of the work to be undertaken within the scope of this Agreement.

   The Subrecipient agrees to incorporate or cause to be incorporated in all third party contracts or subcontracts funded under the CDBG program provisions requiring all applicable Federal, State, and local laws, rules, and regulations to be adhered to in accordance with all parts of this Agreement. Specifically, the Subrecipient agrees to require and monitor compliance by all contractors, subcontractors, and other third parties. Any third party contract that is not in accordance with the outlined budget in this Agreement shall be subject to the advance, written approval of the City. Furthermore, the City shall not be obligated or liable hereunder to any party other than the Subrecipient.

## 6. Audits and Inspections

1. Audits and Inspections: The Subrecipient must establish an adequate accounting system on a current basis in accordance with generally accepted accounting principles and standards and in accordance with any specific requirements of the Controller of the City of Wichita. Subrecipient personnel will make available to City staff and any other auditor authorized by the City, all accounting records needed to conduct an evaluation of the accounting system and accounting records. If any portion of the funds approved by this contract is subcontracted to other organizations for the delivery of objectives and criteria, the Subrecipient will ensure that the fiscal and accomplishment records of the subcontractor will be available for inspection by Comptroller Office personnel or duly authorized

auditors. In order to ensure this, the Subrecipient will include an appropriate clause in all of its subcontracts.

The Subrecipient shall comply as applicable with the provisions of OMB Circular No. A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations. A single or program-specific audit is required if $500,000 or more in Federal awards are expended during the fiscal year.

Any Subrecipient receiving less than $500,000 in Federal funding shall not be required by the City to undergo an annual independent audit of the ESG expenditures under this Agreement. Furthermore, no expenditures with respect to any such audit undertaken by the Subrecipient of its own initiative shall be chargeable to the funds under this Agreement. All audit reports are due on or before one year after the close of the program year. Before the due date, the Subrecipient should submit to the City (a) an audit report or (b) a letter giving the reason for non-compliance with the due date and requesting an extension of time with a specific date the report will be submitted. In the event of the latter, the City will respond in writing to the Subrecipient to approve or disapprove the request.

## 7. Subrecipient Responsibilities

1. Compliance with Laws: All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments. Further, the Subrecipient agrees to perform services pursuant to the provisions of this contract and Federal and City regulations, rules and policies and special assurances included therein.

2. Non-Municipal Personnel and Services: All services required herein will be performed by the Subrecipient under the direction of its Board of Directors or other governing body. Any services, which the Subrecipient deems necessary to assign to a subcontractor, must first have written approval from the City unless otherwise specified in PART B.

## 8. Documentation and Record Keeping

1. Establishment and Maintenance of Records: The Subrecipient shall establish and maintain records as prescribed by the U.S. Department of Housing and Urban Development, hereinafter referred to as HUD, and/or the City, with respect to all matters covered by this contract. Such records shall include but are not limited to:
   a. Records providing a full description of each activity undertaken;
   b. Records required to determine the eligibility of activities;
   c. Records documenting that the Subrecipient has procedures in place to convey the availability of facilities and services to all on a nondiscriminatory basis.
   d. Financial records that document all transactions and that can be properly documented and audited, as required by 24 CFR part 85 and OMB Circular A-110;
   e. Other records necessary to document compliance with Subpart E of 24 CFR 576;
   f. Copies of all bid documents, bids received, RFPs, RFQs, and any other procurement documents related to the services funded under this Agreement;
   g. Copies of all third party or subcontracts related to services funded under this Agreement; and
   h. Detailed records on Subrecipient's organization, financial and administrative systems, and the specific ESG-funded project(s) or activities.

Please note that the above descriptions are brief and provide only a summary of the records the Subrecipient is required to maintain. The Subrecipient must consult 24 CFR 576 for a detailed description of the required records.

2. Record Requirements: Section 4169f of the McKinney-Vento Homeless Assistance Act requires that recipients of funding under the Emergency Solutions Grant program maintain records in the Homeless Management Information System (HMIS).
   (A) In accordance with 24 CFR Part 580.25(d) *"Victim service providers shall not directly enter or contribute data into an HMIS if they are legally prohibited from participating in HMIS. Legal service providers may choose not to use HMIS if it is necessary to protect attorney-client privilege. Victim service providers and legal service providers that are recipients of funds that require participation in HMIS that do not directly enter or contribute data to an HMIS must use a comparable database instead."*

3. Retention: The Subrecipient shall retain all records of all project expenses, activities, correspondence, records pertinent to any and all expenditures incurred under this Agreement, and any other information as requested by the City or by HUD for a period of five years after the termination of all activities funded under this Agreement, or after the resolution of all Federal audit findings, whichever occurs later. The Subrecipient will ensure confidentiality of records pertaining to the provision of family violence prevention or treatment services with assistance under this program as set forth in 42 U.S.C. 11375 (c) (5). If any litigation, claim, negotiation, or other action involving the records has been started before the expiration of the five year period, the records must be retained until completion of the action and resolution of issues which arise from it, or until the end of the five year period, whichever is later. All files and records will be made available during normal business hours and other reasonable times for review by the City or by HUD.

4. Documentation of Costs: All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

5. Inventory Management: The Subrecipient must submit an annual statement identifying the status of all equipment and non-real property items purchased with ESG funds by the contract termination date. The status report should inventory all equipment and non-real properties purchased with ESG funds and state the condition of the equipment and its location.

6. Access to Records: The Subrecipient agrees that the City, HUD, or any authorized representative has access to and the right to examine all records, books, papers, or documents related to the project. The City reserves the right, on demand and without notice, to review all of the Subrecipient's files associated with this Agreement where payments are based on a record of time, salaries, materials, or actual expenses. The same right to review will be imposed upon any third party or subcontractor of the Subrecipient; therefore, it is the Subrecipient's responsibility to ensure that any contract entered into with a third party or subcontractor contains all necessary clauses and language required by the City and/or HUD to ensure compliance with this Agreement and with all local, state, and Federal regulations.

## 9. PROJECT EVALUATION

1. Performance Measures: During the Grant Agreement Period, the Subrecipient agrees to work diligently towards the objectives and projected accomplishments outlined in PART B, and to assist the City in demonstrating appropriate program benefit for the project activities implemented by Subrecipient. If it is determined that any of these objectives will not be completed within the identified timeframe, a request for an extension must be submitted to the City for consideration. However in no instance may accomplishment data reflect activity occurring after October 31, 2014. Such a request must identify the reasons for the extension and must be accompanied by a proposed project timeline that can reasonably be accomplished. Failure to meet the objectives in PART B will represent grounds for imposition of sanctions as found in Section 11.2. Incidents of nonperformance will suspend grant operations until corrective measures are implemented. If the grant is conditioned, access to grant funds will be suspended pending a satisfactory cure to the related incident of nonperformance.

2. Reporting: The Subrecipient shall be required to submit monthly accomplishment reports (which may include HMIS reports with all required data elements for each client served during the month) as specified in PART B no later than the 15th day of each month following the month reported, unless otherwise specified, as well as other information and data required by the City to respond to current HUD regulations and for the preparation of the Consolidated Annual Performance and Evaluation Report (CAPER) and/or the Integrated Disbursement Information System (IDIS) project set-up and completion activities. Accomplishment and financial reports must be received before the City can honor requests for funds. As stated in Section 11.2, sanctions may be imposed upon the Subrecipient for failure to satisfy report due dates.

3. Accomplishment Reports must include:
   a. Data for all clients served, fully entered into the HMIS (providers serving victims fleeing domestic violence excluded from HMIS requirements);
   b. A description of all project activities that have taken place during the reporting period, including all outreach activities and public participation events;
   c. A description of any anticipated problems or obstacles, and a plan for how those future obstacles will be addressed;
   d. A description of how objectives specified for achievement by that date have been met, OR a description of obstacles that have prevented those objectives from being met, how those obstacles are being addressed, and a new anticipated date of completion for those objectives;
   e. A description and dollar amount of funds spent to date, and how much of those funds have already been reimbursed;
   f. A description and dollar amount equivalent of matching funds (including in-kind) expended to date;
   g. A description of the number of eligiblepersons or households assisted to date;
   h. Other supportive information or documentation, as applicable; and
   i. Any other reports or documentation as requested by the City or HUD.

4. Client Data: The Subrecipient agrees to maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, each household member's name, address, ethnicity, race, gender, age, head of household, income level, disability, homeless status, or other basis for determining eligibility, and a description of the service provided. Documentation of homeless status must be documented by written observation of outreach worker; or written referral by another housing or service provider; or certification by the individual or head of household seeking assistance stating that (s)he was living on the streets or in shelter. For victim service

providers, an oral statement by the individual or head of household seeking assistance which states that they are fleeing; they have no subsequent residence; and they lack resources. This statement must be documented by self-certification or a certification by the intake worker. Confidentiality of records pertaining to the provision of family violence prevention or treatment services with assistance under this program as set forth in 42 U.S.C. 11375 (c) (5), must be maintained. All data will be entered into HMIS.

5. Final Accomplishment Reports: Final accomplishment reports will also serve as the final project report, and will include, in addition to the requirements listed in item 9.3 above, a narrative summary of the project, including successes and weaknesses; a comparison of projected accomplishments and objectives to actual accomplishments and goals achieved, including reasons for any discrepancies between the two. This final report will be due November 30, 2014 or the date of final reimbursement, whichever is sooner.

## 10. Program Monitoring

1. General: City staff will evaluate progress based on the objectives, criteria, work schedule and budget in PART B, to determine if it is consistent with the initial purpose of the project, the City's strategies, comprehensive and neighborhood plans, and if it has a positive impact on the City and its neighborhoods. All data necessary to review and monitor project progress as determined by the City will be made available to City personnel. This includes, but is not limited to, accomplishment records and interviews with the Subrecipient staff and project participants, as required by the City. City personnel will also make field inspections at the office/job site(s) if:
    a. The Subrecipient fails to take recommended corrective action on two consecutive desk audits;
    b. Projects are at high risk of error for activities that serve large number of people;
    c. Projects are at high risk based on the amount of funds involved.

2. Financial Monitoring: City staff shall monitor, review, and evaluate the financial procedures of the Subrecipient through documents submitted to the City and on-site monitoring. The Subrecipient shall provide and make available to the City such reports and records that will be necessary for a proper financial evaluation. With reasonable notice being given to the Subrecipient, the City may schedule at least one on-site visit and other visits that may be needed during the course of this Agreement.

3. Programmatic Monitoring: City staff shall monitor, review, and evaluate the Subrecipient. Fiscal reports will be reviewed and evaluated in terms of the total budget and accomplishments in relationship to expenditures. With reasonable notice being given to the Subrecipient, the City may schedule at least one on-site visit and other visits that may be needed during the course of this Agreement. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, data, and information as may be necessary.

   The Subrecipient shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

4. Monitoring Letters and Reports: Written reports of the City's monitoring findings will be provided to the Subrecipient within 30 days of an official monitoring visit. Such reports will note outstanding performance as well as findings or concerns and recommendations for improvement.

5. Subrecipient Response: The Subrecipient shall have 30 days from the receipt of a financial or programmatic monitoring visit letter to address any findings or concerns.

## 11. Termination, Sanctions and Closeouts

1. Termination: In the event that the Subrecipient fails to comply with any term of this Agreement, the City may suspend or terminate this Agreement, in whole or in part, or take other remedial action in accordance with 24 CFR 576.67. The City may also terminate this Agreement for convenience in accordance with 24 CFR 85.44.

   Furthermore, funding to be made available by the City under this Agreement has been approved by the U.S. Congress. In the event that sufficient funds are not appropriated, at the sole discretion of the City, this Agreement may be terminated in whole or in part.

   In the event of termination of this Agreement by the City due to Subrecipient noncompliance as set forth above, the Subrecipient shall forfeit all unexpended monies provided under the Agreement. At the City's discretion, the Subrecipient may also be required to refund all funds awarded during the period of this Agreement that have already been spent by the Subrecipient and reimbursed by the City.

   Should the City desire to terminate this Agreement for noncompliance, it shall first give written notice of the reason for proposed termination. The notice shall set forth the following:
   a. Reasonable description of the default/reason for termination;
   b. Demand for a cure; and
   c. Statement of reasonable time within which a cure must be affected. Such reasonable time will be presumed to be not less than five, nor more than fifteen, business days. Such times shall be measured from the actual receipt of said notice.

   If the Subrecipient cures the default within the reasonable period of time set forth in the notice, or as otherwise agreed between the parties, the City shall not terminate the Agreement and the written notice of proposed termination shall be deemed revoked, null and void.

2. Imposition of Sanctions: The City reserves the right to impose sanctions on the Subrecipient for the violation of any terms of this Agreement, failure to comply with any terms of this Agreement, or failure to undertake the project in a timely manner. Sanctions may include, but are not necessarily limited to, suspension of grant operations until corrective measures are implemented, withholding any and all project funds, termination of the Agreement, requiring the Non-profit Subrecipient to return funds already received, or barring the Non-profit Subrecipient from future funding. No sanction may be imposed pursuant to this paragraph unless the (1) City provides the Non-profit Subrecipient written notice of the alleged violation of a term of this Agreement or alleged failure to comply with any term of this Agreement which (a) provides a reasonable description of the alleged default or reason for proposed imposition of sanction; (b) demands a cure; and (c) provides a reasonable period of time within which a cure must be affected which is not less than five, nor more than fifteen, business days measured from the actual receipt of said notice; and (2) the Non-profit

Subrecipient fails to cure the alleged default within the reasonable period of time provided for in the notice or as otherwise agreed between the parties.

3. Closeout: The Subrecipient's obligation to the City shall not end until all closeout requirements are completed. Activities during the close-out period shall include, but are not limited to, making final payments, submitting final reimbursement request and final activity/accomplishment report to the City, disposing of project assets (including the return of all equipment, and receivable accounts to the City), and determining the custodianship of records. Grant closeout is not considered final until the City is fully satisfied that project objectives have been met, at which point the City will issue a close-out/grant finalization letter to the Subrecipient.

4. Property of the City: Any data or material furnished by the City to the Subrecipient shall remain the property of the City, and when said data or material is no longer needed by the Subrecipient for the performance of this Agreement, it shall be returned to the City.

## 12. Taxes

1. Payment of Taxes: The City shall not be liable for the payment of any taxes levied by the City, State, or Federal Governments against the Subrecipient, and all such taxes shall be paid by Subrecipient; however, should the City nevertheless pay any such taxes, the Subrecipient shall immediately reimburse the City.

## 13. Laws, Regulations and Special Conditions

The information in this Article is included for the convenience of the Subrecipient and to inform the Subrecipient of the diverse statutory and regulatory requirements to which the acceptance of funds makes it subject. ***For the actual regulatory or statutory requirements, the Subrecipient should consult the actual laws, regulations, and documents referenced in this Article.*** In addition to the other requirements set forth herein, the Subrecipient shall likewise comply with the applicable provisions of 24 CFR 576, in accordance with the type of project assisted. All of the referenced regulations are available online, and upon request, the City may provide these materials to the Subrecipient.

1. Environmental Review: In accordance with 24 CFR 576.57, the activities under this Agreement are subject to environmental review requirements. Such requirements may include, but are not necessarily limited to, activities related to historic districts and/or properties, floodplain management and wetland protection, noise, wild and scenic rivers, air quality, farmlands protection, environmental justice, airports, site contamination, and hazardous facilities. There shall not be any costs incurred or funds obligated until such time as an Environmental Review (ER) is completed for each project (generally one per project). The ER shall be completed by the City. The Subrecipient also agrees to comply with the following regulations insofar as they apply to the use of ESG funds:
   a. Clean Air Act, 42 U.S.C., 1857, et seq.;
   b. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under;
   c. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50, as amended;
   d. National Environmental Policy Act of 1969; and
   e. HUD Environmental Review Procedures (24 CFR 58).

Subrecipient should note that completion of the ER is the City's responsibility. Nothing in this section or in any other part of this Agreement should be construed as relieving the City of this responsibility or placing this responsibility on the Subrecipient.

2. Property Standards and Lead-Based Paint: All housing assisted shall meet the Statewide Building Code, the International Building Code, and the lead-based paint requirements in 24 CFR 576.57 In accordance with regulations, the Subrecipient shall adhere to lead-based paint notification and abatement practices, as applicable, and in no case shall use lead-based paint in the construction or rehabilitation of the properties assisted under this Agreement.

3. Section 104 (d) - Relocation and Replacement Requirements: In accordance with 24 CFR 576.59, the Subrecipient shall take all reasonable steps to minimize displacement as a result of the activities funded under this Agreement. Any persons displaced as a result of the activities funded under this Agreement shall be provided relocation assistance to the extent permitted and required under applicable regulations.

   If the Subrecipient conducts any acquisition, rehabilitation, or demolition of real property, and any negotiations for acquisition, rehabilitation, or demolition of real property with Federal funds, it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 CFR 24 and 24 CFR 570.606. The Subrecipient shall provide all notices, advisory assistance, relocation benefits, and replacement dwelling units as required by said regulations and documents. The Subrecipient hereby agrees to defend, to pay, and to indemnify the City from and against any and all claims and liabilities for relocation benefits or the provision of replacement dwelling units required by Federal statutes and regulations in connection with projects undertaken pursuant to this Agreement.

4. Discrimination Prohibited: No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Subrecipient receiving funds pursuant to this contract.

   The Subrecipient further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements" as provided in Attachment A.

5. Nepotism: No person shall be employed or contracted with if a member of his or her immediate family is on the Board of Directors of the Subrecipient or is employed in an administrative capacity by the Subrecipient. For the purposes of this section, "immediate family" includes: wife, husband, daughter, son, mother, father, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, aunt, uncle, niece, nephew, stepparent and stepchild; "administrative capacity" includes those who have selection, hiring, supervisory or operational responsibility for the program.

6. Conflict of Interest: The Subrecipient hereby severally warrants that it will establish and adopt safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others,

particularly those with whom they have family, business, or other ties. Further, In accordance with 24 CFR 576.57, no member, officer, or employee of the Subrecipient who exercises any functions or responsibility with respect to the program during his or her tenure, or for one year thereafter, shall have any financial interest or benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, either for themselves or those with whom they have family or business ties, for work to be performed in connection with the program assisted under this Agreement.

7. Lobbying Prohibited: None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas. The Subrecipient shall assure compliance with the regulations at 24 CFR Part 87 by submitting, and requiring all applicable subcontractors to submit, a certification of compliance with this provision.

   The Subrecipient certifies to the best of its knowledge and belief that:

   a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

8. Faith-Based Activities: Subrecipient agrees to follow the regulations of 24 CFR 576.23-Faith-Based activities.

   a. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Emergency Solutions Grants program. Neither the Federal government nor a State or local government receiving funds under Emergency Solutions Grants programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

   b. Organizations that are directly funded under the Emergency Solutions Grants program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

   c. A religious organization that participates in the Emergency Solutions Grants program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Emergency Solutions Grants funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Emergency Solutions Grants-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an Emergency Solutions Grants-funded religious organization retains its authority over

its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

d. An organization that participates in the Emergency Solutions Grants program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

e. Emergency Solutions Grants may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Emergency Solutions grants may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, Emergency Solutions Grants may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to Emergency Solutions Grants in this part. Sanctuaries, chapels, or other rooms that an Emergency Solutions Grants-funded religious congregation uses as its principal place of worship, however, are ineligible for Emergency Solutions Grants-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

f. If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

## 14. Miscellaneous Clauses and Notices

1. Findings Confidential: Except as provided by law, all reports, information, data, and documentation prepared or assessed by the City or the Subrecipient under this Agreement are confidential. The Subrecipient agrees that the reports shall not be made available to any individual or organization without the prior written approval of the City.

2. Dissemination of Information: The Subrecipient, at such times and in such forms as HUD and/or the City may require, shall furnish to HUD and/or the City, such statements, records, reports, data and information as HUD and/or the City may request pertaining to matters covered by this contract. All reports, information, data and other related materials, prepared or assembled by the Subrecipient under this contract, are confidential and shall not be made available to anyone other than an appropriate agency of the United States government without the prior written approval of the City or as set forth in K.S.A. 45-201 et. seq.

3. Identification of Documents and Projects: All projects, reports, maps, news releases and/or other documents undertaken as part of this contract, other than documents exclusively for internal use with City staff, shall contain the following posted information at the project site or the front cover or title page of any reports or documents, or in the case of maps, in an appropriate block: "City of Wichita", then name of the Subrecipient, and, in the case of written material, the month and year of preparation and the following information regarding Federal assistance: "The (preparation/funding) of this project, report, map, document, etc., was financed (in whole or in part) through a grant from the U.S.

Department of Housing and Urban Development and the City of Wichita under the provision of Title IV of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371-11378)."

4. Training Required: It shall be the responsibility of the Subrecipient to participate in all appropriate training conducted by the department of Housing and Community Services or approved by the City of Wichita. The City shall provide timely notice of all training.

5. Copyrights: If this contract results in a book or other material that may be copyrighted, the author is free to copyright the work, subject to HUD regulations. HUD and the City reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material that can be copyrighted.

6. Patents: Any discovery or invention arising out of or developed in the course of work aided by this contract shall promptly and fully be reported to HUD and the City for determination by HUD and the City as to whether patent protection on such invention or patent discovery shall be sought and how the rights in the invention or discovery, including rights under the patent issued thereon, shall be disposed of and administered, in order to protect the public interest. All such determinations are subject to HUD regulations.

7. Anti-Trust Litigation: For good cause, and as consideration for executing this contract, the Subrecipient, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Subrecipient pursuant to this contract.

## 15. APPENDICES

All attachments referenced in this Agreement, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Attachment A – Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements
- Part A – Agreement
- Part B – Performance Criteria/Objectives
- Part C – Budget Detail/Request for Reimbursement
- Part D – Accomplishment Reports

## 16. AUTHORIZATION TO ENTER INTO CONTRACT

The undersigned person signing as an officer on behalf of the Subrecipient, a party to this Agreement, hereby severally warrants and represents that said person has authority to enter into this Agreement on behalf of said Subrecipient and to bind the Subrecipient to this Agreement, and further that said Subrecipient has authority to enter into this Agreement and that there are no restrictions or prohibitions contained in any article of incorporation or bylaw against entering into this Agreement.

**SUBRECIPIENT**

_____

Michael Burrus Executive Director
Catholic Charities, Inc. – Diocese
of Wichita

**CITY OF WICHITA**

_____

Carl Brewer, Mayor

**ATTEST:**

_____

Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

Gary E. Rebenstorf, BKM

Gary E. Rebenstorf, City Attorney
City of Wichita

## 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 Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

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

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, sub-purchase order or sub-agreement so that such provisions will be binding upon each subcontractor, sub-vendor or sub-supplier;

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

D. Exempted from these requirements are:

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

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

## PART B
## PERFORMANCE CRITERIA AND OBJECTIVES

**ACTIVITY NAME:** CATHOLIC CHARITIES – HARBOR HOUSE DUNS #:11-977-0428

### SUBRECIPIENT INFORMATION

| | |
|---|---|
| **NAME:** | Catholic Charities, Inc. – Diocese of Wichita |
| **EXECUTIVE DIRECTOR:** | Michael Burrus |
| **CONTACT PERSON(S):** | Martha mcCabe |
| **PHONE:** | 316 264-8344 X 1264 |
| **EMAIL:** | mmccabe@catholiccharitieswichita.org |
| **PERFORMANCE PERIOD:** | July 15, 2014 through October 31, 2014 |
| **CONTRACT PERIOD:** | July 15, 2014 through December 31, 2014 |
| **FUNDING SOURCE(S):** | ☒ESG |
| **PROJECT ELIGIBILITY:** | According to 24 CFR Part 576.103 this project qualifies for Emergency Solutions Grant funds to be used for:<br><br>☒Homeless Assistance |

The Subrecipient agrees:

1. It is the principal administrative and coordinating agency for this project, contracting and/or subcontracting outside services, as may be necessary, subject to compliance with all applicable local, state and federal laws; and

2. It is the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of the contact entered into; and

3. It will maintain, during the term of this Agreement, a filing with the Secretary of the State of Kansas as a not for profit corporation, or shall be designated a 501 (c)(3) tax-exempt organization by the Internal Revenue Service. Evidence of such status will be provided to the City upon request.

Project Description: Catholic Charities, Inc. – Diocese of Wichita will assist homeless individuals and/or families by providing emergency shelter services to \ women and children fleeing domestic violence. Shelter services shall also include determination and documentation of eligibility, documentation of services provided, and documentation of exit, includinghousing status.

Project Content: The Subrecipient shall complete the following objective(s) in a manner acceptable to the City, in accordance with the schedule, budget and conditions detailed herein. The City reserves the right to revise or otherwise alter established objective(s) and criteria during the program year in an effort

to allow for meaningful project measurement and evaluation which will directly impact future funding recommendations.

Goal: The ESG program provides funding to help operate emergency shelters for homeless individuals and families and/or to provide essential services to shelter residents.

Objectives: Provide shelter services for women and children fleeing domestic violence.

Annual Outcome Measurements:

- Total number of program participants
- Average length of stay for all program participants
- Number/percentage of participants who, upon exit, have obtained safe and stable housing.

Project Administration: The Subrecipient executive director will supervise operations and administration on a day-to-day basis.

Procurement Methods: The Subrecipient shall use its own procurement practices which comply with applicable state and local laws, rules and regulations so long as those practices do not unduly limit bidding competition. Additionally, procurement made with federal grant funds shall adhere to the standards set forth in OMB Circular A-110, including:

1. Maintaining a code or standard of conduct governing the performance of the Subrecipient's officers, employees or agents engaged in awarding and administering contracts supported with Federal funds.

2. Advertising of procurement transactions as appropriate without regard to a dollar value in a manner allowing maximum free and open competition. No sole source procurement (obtaining only one bid) is permitted without prior approval for all purchases except small purchase procedures defined in OMB Circular A-110.

3. Invitations for bids shall be based on specifications developed by the Subrecipient. Said specifications shall be detailed to the extent necessary to solicit comparable bids without unduly limiting competitive bidding.

4. Bids will be awarded on the basis of the lowest and best bid, price and other factors considered.

5. The Subrecipient agrees to purchase services, goods and materials on an "as needed basis" and at the "lowest price obtainable".

6. The Subrecipient will maintain procurement files outlining procurement efforts for each bid, including names and addresses of bidders solicited, information pertaining to advertising, and solicitation of Small and Emerging Business Enterprise participation. Information will be maintained of bid tabulations, justification of bid award, letters of notification to bidders regarding bid award, and any other pertinent information.

Funding: It is mutually agreed by and between the City and the Subrecipient that for reimbursement of eligible and necessary expenses up to $7,480, the Subrecipient will provide emergency shelter services for victims fleeing domestic violence. Said funds will be used as set forth in the sections entitled Budget and Method of Payment. Any cost in excess of $7,480 is the responsibility of the Subrecipient.

Method of Payment: The Subrecipient agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita, and ESG program.

1. The City and the Subrecipient also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $25,000, other than those within the scope of this agreement must be approved by the City Council.

2. The Subrecipient will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this Agreement will be retained in the Subrecipient's files for five (5) years after the final audit of expenditures made under this contract.

Accomplishment Reports, Financial and Client Files: The Subrecipient shall establish and maintain accounting and project records specifically for the use of ESG funds. Original documentation supporting all reimbursed expenditures and other project records will be retained by the Subrecipient for five (5) years after the final audit of expenditures made under this contract.

1. The Subrecipient shall maintain records of persons served by race, ethnicity, gender, marital status, age, subpopulation, residential and non-residential, and type of assistance provided. All required data elements shall be entered into the HMIS system. Such records are subject to review by the City to ensure the accuracy and validity of information reported in monthly accomplishment reports. In accordance with 24 CFR Part 580.25(d) *"Victim service providers shall not directly enter or contribute data into an HMIS if they are legally prohibited from participating in HMIS. Legal service providers may choose not to use HMIS if it is necessary to protect attorney-client privilege. Victim service providers and legal service providers that are recipients of funds that require participation in HMIS that do not directly enter or contribute data to an HMIS must use a comparable database instead."*

2. On Part D, monthly accomplishment reports must be submitted by the 15th of the month. Narrative reports may also be provided noting services provided and progress toward meeting the performance standards contained herein.

3. Records shall be maintained documenting receipts and/or volunteer hours for and expenditure of matching funds. Regulations require that the Subrecipient provide a dollar for dollar match to the grant award under the ESG programs. Therefore a minimum match of $7,480 must be documented.

4. Requests for reimbursement must be submitted by the 15th of the month following the month during which the expense was paid on Part C Request for Reimbursement.

Project Evaluation: The City shall evaluate this project based on the objective(s) stated in the Part B. Failure by the Subrecipient to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Subrecipient on a pro rata basis with level of service. Subrecipient records are subject to review by the City to ensure the accuracy and validity of information reported in quarterly accomplishment reports.

## CITY OF WICHITA
## FEDERAL, STATE AND FOUNDATION GRANT BUDGET FORM

Form No. 21-012 (2010) E-print, scan or save as pdf and drag following documentation to Laserfiche/Performance/Grants/Your Department.
New Grant: Budget form, notice of award and grant agreement.
Budget revision: Revised budget form.
Name grant award file OCA# - Grant # Program Title (Rev # as appropriate)
Send voting email to Department Director and Budget Analyst. Set results to go to assigned Controller accountant.

| | | | |
|---|---|---|---|
| OCA Title: | Catholic Charities Harbor House 14-15 Supple | Formal Grant Title: | Emergency Solutions Grant |
| Grant period: From : | 7/15/2014 To : 12/31/2014 | Grantor Agency: | HUD |
| Department #: | 09 | CFDA Number: | 14.231 |
| OCA #: | | HUD activity number#: | |
| Grant #: | | Federal/State Project #: | |
| Grant Detail#: | | CC Approval date: | |

**Set Expenditure Controls at (box one)** Object level 1 or Expenditure Total Expenditure Total will be utilized if no selection made.

| Source of funding: | Object Level 3 | Original Budget | Revisions Increase | Revisions Decrease | Revised Budget | Revision # |
|---|---|---|---|---|---|---|
| Federal contributions | 8000 | 7,480.00 | | | 7,480.00 | |
| State contributions | 8030 | | | | 0.00 | |
| Federal to State | 8062 | | | | 0.00 | |
| Federal to County | 8090 | | | | 0.00 | |
| City - cash transfer | 9800 | | | | 0.00 | |
| Private contributions | 9713 | | | | 0.00 | |
| City - in-kind | 9714 | | | | 0.00 | |
| **REVENUE TOTAL** | | 7,480.00 | 0.00 | 0.00 | 7,480.00 | |
| **Expenditures:** | | | | | | |
| **Personal services (1xxx):** | | | | | | |
| Bi-Weekly Wages | 1100 | | | | 0.00 | |
| FICA | 1400 | | | | 0.00 | |
| Employees Pension | 1401 | | | | 0.00 | |
| Worker's Compensation | 1403 | | | | 0.00 | |
| Unemployment Compensation | 1404 | | | | 0.00 | |
| Group Health Insurance | 1405 | | | | 0.00 | |
| Group Life Insurance | 1406 | | | | 0.00 | |
| **Total Personal Services** | | 0.00 | 0.00 | 0.00 | 0.00 | |
| **Contractual services (2xxx):** | | | | | | |
| Delegate Agencies - Utilities | 2195 | | | | 0.00 | |
| Delegate Agencies - Telephone | 2295 | | | | 0.00 | |
| Advertising | 2902 | | | | 0.00 | |
| Printing & Photocopying | 2917 | | | | 0.00 | |
| | | | | | | |
| City Administrative Charge | 2900 | | | | 0.00 | |
| **Total Contractual Services** | | 0.00 | 0.00 | 0.00 | 0.00 | |
| **Commodities (3xxx):** | | | | | | |
| Delegage Agencies - Supplies | 3195 | 2,480.00 | | | 2,480.00 | |
| Delegage Agencies - Other commodi | 3999 | 5,000.00 | | | 5,000.00 | |
| | | | | | 0.00 | |
| **Total Commodities** | | 7,480.00 | 0.00 | 0.00 | 7,480.00 | |
| **EXPENDITURE TOTAL** | | 7,480.00 | 0.00 | 0.00 | 7,480.00 | |

**Department Director or Designee approval is required. Electronic approval acceptable.**
**Electronic approval from Budget Officer or Designee is required.**

ACCOMPLISHMENT REPORT

AGENCY: _____

PROGRAM: _____ QUARTER REPORTED: _____

| | NEW (This Period) | | | | | UNDUPLICATED # SERVED | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | ADULT | | CHILD | | | ADULT | | CHILD | | |
| Race | Non- Hispanic Origin | Hispanic Origin | Non- Hispanic Origin | Hispanic Origin | This Period TOTAL | Non- Hispanic Origin | Hispanic Origin | Non- Hispanic Origin | Hispanic Origin | Cumulative TOTAL |
| White | | | | | | | | | | |
| Black/African American | | | | | | | | | | |
| Asian | | | | | | | | | | |
| American Indian/Alaskan Native | | | | | | | | | | |
| Native Hawaiian/Other Pacific Islander | | | | | | | | | | |
| American Indian/Alaskan Native & White | | | | | | | | | | |
| Asian & White | | | | | | | | | | |
| Black/African American & White | | | | | | | | | | |
| American Indian/Alaskan Native & Black African American | | | | | | | | | | |
| Other Multi-Racial | | | | | | | | | | |
| Number of Participants (Unduplicated) | 0 | | | 0 | 0 | 0 | | | 0 | 0 |

| OPERATIONS ONLY | NEW (This Period) | | | | |
|---|---|---|---|---|---|
| Type of Shelter Provided | ADULT | | CHILD | | TOTAL |
| Barracks: | | | | | |
| Group/Large House: | | | | | |
| Scattered Site Apartment: | | | | | |
| Single Family Detached House: | | | | | |
| Single Room Occupancy: | | | | | |
| Mobile Home/Trailer: | | | | | |
| Hotel/Motel: | | | | | |
| Other: | | | | | |
| Total: | | | | | |
| **Description of Beneficiaries** | | | | | |
| Chronically Homeless (Emergency Shelter only) | | | | | |
| Chronically Mentally Ill | | | | | |
| Chronic Substance Abuse | | | | | |
| Other Disability | | | | | |
| HIV/AIDS | | | | | |
| Victims of Domestic violence | | | | | |
| Elderly | | | | | |
| Other (Describe) | | | | | |
| Total: | | | | | |

| ESSENTIAL SERVICES ONLY | NEW (This Period) | | | | |
|---|---|---|---|---|---|
| Type of Service Provided | ADULT | | CHILD | | TOTAL |
| Drop-In Center | | | | | |
| Food Pantry | | | | | |
| Mental Health | | | | | |
| Alcohol/Drug Program | | | | | |
| Child Care | | | | | |
| Outreach | | | | | |
| Soup Kitchen/Meal Distribution | | | | | |
| Health Care | | | | | |
| HIV/AIDS Services | | | | | |
| Employment | | | | | |
| Other (Describe) | | | | | |

| Narrative: Describe activities/accomplishments this period |
|---|
| |
| |
| |
| |
| |
| |
| |
| |

| Outcome Measurements (Reported Quarterly) | Target | This Period | Cumulative |
|---|---|---|---|
| 1. Specific outcome measure | % | (#/#) = % | (#/#) = % |
| 2. Specific outcome measure | | | |
| 3. Specific outcome measure | | | |
| 3. Specific outcome measure | | | |

# CONTRACT AGREEMENT

**between**

**THE CITY OF WICHITA**
**HOUSING AND COMMUNITY SERVICES DEPARTMENT**

**and**

**UNITED METHODIST OPEN DOOR, INC.**

**For**

**Homeless Assistance**

**Funded through the**

**Emergency Solutions Grant (ESG) Program**
**2014-15 Supplemental Allocation – prior year funds**

**Contract period: July 15, 2014 – December 31, 2014**

Housing and Community Services Department
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3724
Fax (316) 337-9103

Date Contract Fully Executed: _____

**PART A**
**AGREEMENT**

**THIS CONTRACT** (hereinafter the "Agreement") entered into this 15th day of July, 2014 by and between the City of Wichita, Kansas (hereinafter the "City") and United Methodist Open Door, Inc. (hereinafter the "Subrecipient"), located at P.O. Box 2756, Wichita, KS.

**WITNESSETH THAT:**

**WHEREAS,** the City of Wichita has entered into a funding Agreement with the United States of America for the Department of Housing and Urban Development (hereinafter referred to as HUD) for the execution of projects and activities under Title IV of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371-11378) under the Emergency Solutions Grant Program (ESG) hereinafter referred to as ESG; and

**WHEREAS,** the City has entered into a contract with the United States of America for the implementation of a program of local assistance for the City of Wichita pursuant to HUD for an ESG program; and

**WHEREAS**, the department of Housing and Community Services is authorized to act on behalf of the City in implementing this grant Agreement; and

**WHEREAS,** the cooperation of the City and the Subrecipient is essential for the successful implementation of a emergency shelter project under the ESG program; and

**WHEREAS**, funds in the amount of $3,450 are remaining from prior year ESG allocations for homeless assistance activities; and

**WHEREAS**, United Methodist Open Door, Inc. operate a homeless resource center and day shelter; and

**WHEREAS**, on July 15, 2014, the Wichita City Council allocated $3,450 in remaining ESG funds for the execution of the approved activity;

**NOW, THEREFORE**, the parties hereto do mutually agree that this Agreement is entered into predicated upon the following terms and/or conditions, all and every one of which the parties hereto agree to observe and perform:

## DEFINITION OF HOMELESS

For the purpose of this contract, persons eligible to receive homeless assistance must meet the following criteria for the category of literally homeless: Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning: (i) has a primary nighttime residence that is a public or private place not meant for human habitation; (ii) is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state and local government programs; or (iii) is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

### 1. Scope of Services

1. Scope of Services: United Methodist Open Door, Inc. will meet the expectations of the funding source ESG to provide emergency shelter for homeless individuals or families. Funds may provide **essential services** such as case management, childcare, education service, employment assistance and job training, outpatient health services, legal services, life skills training mental health services, substance abuse treatment services, transportation and services for special populations; or **shelter operations**, including maintenance, rent, repair, security, fuel, equipment, insurance, utilities, relocation, and furnishings. Project effectiveness will be demonstrated by the number of individuals and families receiving shelter, length of stay in shelter, and housing status upon exit from shelter.

   The Subrecipient, assuming responsibility for the implementation of actual operation of a certain project herein specified, shall perform services in a satisfactory and proper manner as determined by the City and as outlined per PART B.

2. Revision of Scope: The performance criteria and objectives may be modified, revised or amended upon the joint written consent of the parties. The City may revise the approved objectives, accomplishments, and budget items in PART B when necessary. The Subrecipient may request a budget revision at any time throughout the duration of this Agreement. However, prior to any purchases under the new budget, the City must approve the revision in writing. Approval may be in the form of a letter, a fax, or an email.

### 2. Commencement and Completion

1. Time of Performance: The services of the Subrecipient are to commence as soon as practicable on or after the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract through a period ending October 31, 2014

2. Close-out Period: The Subrecipient has 30 days following the performance of this activity during which to conduct and complete close-out requirements associated with this Agreement. Final accomplishment and outcome reports are due to the City by November 30, 2014. All expenditures associated with close-out of this activity must be submitted for reimbursement by that date.

3. Contract Completion Date: Unless an extension has been approved by the City in advance, OR unless this Agreement is terminated earlier in accordance with other provisions herein, this agreement will end on December 31, 2014.

## 3. Compensation and Use of Funds

Regulation for Use of Funds: The use of funds received pursuant to this Agreement shall be in accordance with the requirements of the Housing and Community Development Act of 1974 (as amended), 24 CFR part 576 and 24 CFR part 85, as applicable, other regulations governing the use of Contract funds, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement; and the McKinney Vento Homeless Assistance Act As Amended by S896 HEARTH Act of 2009. ***It is the Subrecipient's responsibility to read, understand, and comply with these regulations.***

1. Uniform Grant Administrative Requirements and Cost Principles: During the administration of this contract, the Subrecipient shall comply with, and adhere to:
   a. Office of Management and Budget (OMB) Circular No. A-87, Cost principles for State, Local and Indian Tribal Governments; and
   b. OMB Circular No. A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.
   c. OMB Circular No. A-122, Cost Principles for Nonprofit Organizations; and

2. Total Payments: Total amount of funds provided by the City to the Subrecipient under this Agreement shall not exceed $3,450 and must be drawn on a regular basis. At the sole discretion of the City, any funds remaining unexpended as of the termination date of this Agreement may be de-obligated from this Agreement and made available for other eligible projects, as determined appropriate by the City.

3. Required Matching Funds: This contract requires that the Subrecipient provide a cash or in-kind match in an equal amount of funds from cash or the following in-kind sources: new staff or volunteer time. Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or sub-recipient's organization. If the recipient or sub-recipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers. The value of time and services contributed by volunteers to carry out the project of the Sub-recipient shall be calculated at a current rate of $5 per hour. (Note: Proposers may use the Independent Sector's valuation of volunteer time of $18.13/hour, or other documented valuation method.Volunteers providing professional services such as medical or legal services are valued at the reasonable and customary rate in the community).

4. Reimbursement Requests: This is a cost-reimbursement Agreement. Disbursement of funds under this Agreement may be requested only for necessary, reasonable, and allowable costs described in PART B, and for which the Subrecipient has made payment during the period of performance set forth in Section 2.1 above. The City agrees to reimburse the Subrecipient for such costs, and payment shall be made upon receipt of a request for reimbursement form (PART C) accompanied by a monthly accomplishment report from the Subrecipient specifying the services performed or expenses incurred. All requests for reimbursement must be accompanied by two sets of documentation: 1) case file data which confirms eligibility of the clients on whose behalf payments have been made; and 2) documentation of payment for eligible expenses (i.e., invoices, receipts, bills from vendors, copies of checks, time sheets, etc.), documentation of matching funds (i.e., volunteer time logs, time sheets, mock invoices for donated items, copies of donation checks, copies of checks from other grants etc.) received and expended, and other supporting documentation. Supporting documentation mustbe accompanied by an agency payment voucher providing this information and a copy of the signed check with which the payment was made. Requests for reimbursement must be received by the fifteenth day of the month following the month during which the expense was paid.

5. Double Reimbursement: The Subrecipient shall not claim reimbursement from the City under this Agreement for any portion of its obligations that has been paid by another source of revenue.

6. Restriction on Disbursements: No entitlement funds shall be disbursed to a Subrecipient or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this contract. Disbursements may be suspended or terminated under this contract upon refusal to accept any additional conditions that may be imposed by the City at any time or if the entitlement funds to the City of Wichita under the Federal Act(s) are suspended or terminated.

7. Withholding Payments: All payments to the Subrecipient are subject to the Subrecipient's compliance with this Agreement. A breach of the Agreement is grounds for non-payment until such corrective measures are made which will resolve Agreement non-compliance.

8. Closeout Reimbursement: Closeout billings are to be submitted by November 30, 2014, as set forth in Section 2.2, above. If not submitted, the unexpended funds shall revert to the City of Wichita.

## 4. Use and Disposition of Property

1. Disposition of Expendable/Non-Expendable Personal Property: This contract does not provide for the purchase of property for the Subrecipient's use in administering the program.

2. Disposition of Real Property: See 4.1 above.

## 5. Assignments

1. Assignability: Neither the City nor the Subrecipient shall assign, sublet, or transfer their interest in this Agreement without the prior written consent of the other.

2. Subcontracting/Third Party Contracts: The Subrecipient agrees to furnish the City with a copy of any and all third party contracts that it executes in the performance of the work to be undertaken within the scope of this Agreement.

   The Subrecipient agrees to incorporate or cause to be incorporated in all third party contracts or subcontracts funded under the CDBG program provisions requiring all applicable Federal, State, and local laws, rules, and regulations to be adhered to in accordance with all parts of this Agreement. Specifically, the Subrecipient agrees to require and monitor compliance by all contractors, subcontractors, and other third parties. Any third party contract that is not in accordance with the outlined budget in this Agreement shall be subject to the advance, written approval of the City. Furthermore, the City shall not be obligated or liable hereunder to any party other than the Subrecipient.

## 6. Audits and Inspections

1. Audits and Inspections: The Subrecipient must establish an adequate accounting system on a current basis in accordance with generally accepted accounting principles and standards and in accordance with any specific requirements of the Controller of the City of Wichita. Subrecipient personnel will make available to City staff and any other auditor authorized by the City, all accounting records needed to conduct an evaluation of the accounting system and accounting records. If any portion of the funds approved by this contract is subcontracted to other organizations for the delivery of objectives and criteria, the Subrecipient will ensure that the fiscal and accomplishment records of the

subcontractor will be available for inspection by Comptroller Office personnel or duly authorized auditors. In order to ensure this, the Subrecipient will include an appropriate clause in all of its subcontracts.

The Subrecipient shall comply as applicable with the provisions of OMB Circular No. A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations. A single or program-specific audit is required if $500,000 or more in Federal awards are expended during the fiscal year.

Any Subrecipient receiving less than $500,000 in Federal funding shall not be required by the City to undergo an annual independent audit of the ESG expenditures under this Agreement. Furthermore, no expenditures with respect to any such audit undertaken by the Subrecipient of its own initiative shall be chargeable to the funds under this Agreement. All audit reports are due on or before one year after the close of the program year. Before the due date, the Subrecipient should submit to the City (a) an audit report or (b) a letter giving the reason for non-compliance with the due date and requesting an extension of time with a specific date the report will be submitted. In event of the latter, the City will respond in writing to the Subrecipient to approve or disapprove the request.

## 7. Subrecipient Responsibilities

1. Compliance with Laws: All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments. Further, the Subrecipient agrees to perform services pursuant to the provisions of this contract and Federal and City regulations, rules and policies and special assurances included therein.

2. Non-Municipal Personnel and Services: All services required herein will be performed by the Subrecipient under the direction of its Board of Directors or other governing body. Any services, which the Subrecipient deems necessary to assign to a subcontractor, must first have written approval from the City unless otherwise specified in PART B.

## 8. Documentation and Record Keeping

1. Establishment and Maintenance of Records: The Subrecipient shall establish and maintain records as prescribed by the U.S. Department of Housing and Urban Development, hereinafter referred to as HUD, and/or the City, with respect to all matters covered by this contract. Such records shall include but are not limited to:
   a. Records providing a full description of each activity undertaken;
   b. Records required to determine the eligibility of activities;
   c. Records documenting that the Subrecipient has procedures in place to convey the availability of facilities and services to all on a nondiscriminatory basis.
   d. Financial records that document all transactions and that can be properly documented and audited, as required by 24 CFR part 85 and OMB Circular A-110;
   e. Other records necessary to document compliance with Subpart E of 24 CFR 576;
   f. Copies of all bid documents, bids received, RFPs, RFQs, and any other procurement documentsrelated to the services funded under this Agreement;
   g. Copies of all third party or subcontracts related to services funded under this Agreement; and
   h. Detailed records on Subrecipient's organization, financial and administrative systems, and the specific ESG-funded project(s) or activities.

Please note that the above descriptions are brief and provide only a summary of the records the Subrecipient is required to maintain. The Subrecipient must consult 24 CFR 576 for a detailed description of the required records.

2. Record Requirements: Section 4169f of the McKinney-Vento Homeless Assistance Act requires that recipients of funding under the Emergency Solutions Grant program maintain records in the Homeless Management Information System (HMIS).
   (A) In accordance with 24 CFR Part 580.25(d) *"Victim service providers shall not directly enter or contribute data into an HMIS if they are legally prohibited from participating in HMIS. Legal service providers may choose not to use HMIS if it is necessary to protect attorney-client privilege. Victim service providers and legal service providers that are recipients of funds that require participation in HMIS that do not directly enter or contribute data to an HMIS must use a comparable database instead."*

3. Retention: The Subrecipient shall retain all records of all project expenses, activities, correspondence, records pertinent to any and all expenditures incurred under this Agreement, and any other information as requested by the City or by HUD for a period of five years after the termination of all activities funded under this Agreement, or after the resolution of all Federal audit findings, whichever occurs later.The Subrecipient will ensure confidentiality of records pertaining to the provision of family violence prevention or treatment services with assistance under this program as set forth in 42 U.S.C. 11375 (c) (5). If any litigation, claim, negotiation, or other action involving the records has been started before the expiration of the five year period, the records must be retained until completion of the action and resolution of issues which arise from it, or until the end of the five year period, whichever is later. All files and records will be made available during normal business hours and other reasonable times for review by the City or by HUD.

4. Documentation of Costs: All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

5. Inventory Management: The Subrecipient must submit an annual statement identifying the status of all equipment and non-real property items purchased with ESG funds by the contract termination date. The status report should inventory all equipment and non-real properties purchased with ESG funds and state the condition of the equipment and its location.

6. Access to Records: The Subrecipient agrees that the City, HUD, or any authorized representative has access to and the right to examine all records, books, papers, or documents related to the project. The City reserves the right, on demand and without notice, to review all of the Subrecipient's files associated with this Agreement where payments are based on a record of time, salaries, materials, or actual expenses. The same right to review will be imposed upon any third party or subcontractor of the Subrecipient; therefore, it is the Subrecipient's responsibility to ensure that any contract entered into with a third party or subcontractor contains all necessary clauses and language required by the City and/or HUD to ensure compliance with this Agreement and with all local, state, and Federal regulations.

## 9. PROJECT EVALUATION

1. Performance Measures: During the Grant Agreement Period, the Subrecipient agrees to work diligently towards the objectives and projected accomplishments outlined in PART B, and to assist the City in demonstrating appropriate program benefit for the project activities implemented by Subrecipient. If it is determined that any of these objectives will not be completed within the identified timeframe, a request for an extension must be submitted to the City for consideration. However in no instance may accomplishment data reflect activity occurring after October 31, 2014. Such a request must identify the reasons for the extension and must be accompanied by a proposed project timeline that can reasonably be accomplished. Failure to meet the objectives in PART B will represent grounds for imposition of sanctions as found in Section 11.2. Incidents of nonperformance will suspend grant operations until corrective measures are implemented. If the grant is conditioned, access to grant funds will be suspended pending a satisfactory cure to the related incident of nonperformance.

2. Reporting: The Subrecipient shall be required to submit monthly accomplishment reports (which may include HMIS reports with all required data elements for each client served during the month) as specified in PART B no later than the 15th day of each month following the month reported, unless otherwise specified, as well as other information and data required by the City to respond to current HUD regulations and for the preparation of the Consolidated Annual Performance and Evaluation Report (CAPER) and/or the Integrated Disbursement Information System (IDIS) project set-up and completion activities. Accomplishment and financial reports must be received before the City can honor requests for funds. As stated in Section 11.2, sanctions may be imposed upon the Subrecipient for failure to satisfy report due dates.

3. Accomplishment Reports must include:
   a. Data for all clients served, fully entered into the HMIS;
   b. A description of all project activities that have taken place during the reporting period, including all outreach activities and public participation events;
   c. A description of any anticipated problems or obstacles, and a plan for how those future obstacles will be addressed;
   d. A description of how objectives specified for achievement by that date have been met, OR a description of obstacles that have prevented those objectives from being met, how those obstacles are being addressed, and a new anticipated date of completion for those objectives;
   e. A description and dollar amount of funds spent to date, and how much of those funds have already been reimbursed;
   f. A description and dollar amount equivalent of matching funds (including in-kind) expended to date;
   g. A description of the number of eligible persons or households assisted to date;
   h. Other supportive information or documentation, as applicable; and
   i. Any other reports or documentation as requested by the City or HUD.

4. Client Data: The Subrecipient agrees to maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, each household member's name, address, ethnicity, race, gender, age, head of household, income level, disability, homeless status, or other basis for determining eligibility, and a description of the service provided. Documentation of homeless status must be documented by written observation of outreach worker; or written referral by another housing or service provider; or certification by the individual or head of household seeking assistance stating that (s)he was living on the streets or in shelter. For victim service

providers, an oral statement by the individual or head of household seeking assistance which states that they are fleeing; they have no subsequent residence; and they lack resources. This statement must be documented by self-certification or a certification by the intake worker. Confidentiality of records pertaining to the provision of family violence prevention or treatment services with assistance under this program as set forth in 42 U.S.C. 11375 (c) (5), must be maintained. All data will be entered into HMIS.

5. Final Accomplishment Reports: Final accomplishment reports will also serve as the final project report, and will include, in addition to the requirements listed in item 9.3 above, a narrative summary of the project, including successes and weaknesses; a comparison of projected accomplishments and objectives to actual accomplishments and goals achieved, including reasons for any discrepancies between the two. This final report will be due November 30, 2014 or the date of final reimbursement, whichever is sooner.

## 10. PROGRAM MONITORING

1. General: City staff will evaluate progress based on the objectives, criteria, work schedule and budget in PART B, to determine if it is consistent with the initial purpose of the project, the City's strategies, comprehensive and neighborhood plans, and if it has a positive impact on the City and its neighborhoods. All data necessary to review and monitor project progress as determined by the City will be made available to City personnel. This includes, but is not limited to, accomplishment records and interviews with the Subrecipient staff and project participants, as required by the City. City personnel will also make field inspections at the office/job site(s) if:
    a. The Subrecipient fails to take recommended corrective action on two consecutive desk audits;
    b. Projects are at high risk of error for activities that serve large number of people;
    c. Projects are at high risk based on the amount of funds involved.

2. Financial Monitoring: City staff shall monitor, review, and evaluate the financial procedures of the Subrecipient through documents submitted to the City and on-site monitoring. The Subrecipient shall provide and make available to the City such reports and records that will be necessary for a proper financial evaluation. With reasonable notice being given to the Subrecipient, the City may schedule at least one on-site visit and other visits that may be needed during the course of this Agreement.

3. Programmatic Monitoring: City staff shall monitor, review, and evaluate the Subrecipient. Fiscal reports will be reviewed and evaluated in terms of the total budget and accomplishments in relationship to expenditures. With reasonable notice being given to the Subrecipient, the City may schedule at least one on-site visit and other visits that may be needed during the course of this Agreement. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, data, and information as may be necessary.

   The Subrecipient shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

4. Monitoring Letters and Reports: Written reports of the City's monitoring findings will be provided to the Subrecipient within 30 days of an official monitoring visit. Such reports will note outstanding performance as well as findings or concerns and recommendations for improvement.

5. Subrecipient Response: The Subrecipient shall have 30 days from the receipt of a financial or programmatic monitoring visit letter to address any findings or concerns.

## 11. Termination, Sanctions and Closeouts

1. Termination: In the event that the Subrecipient fails to comply with any term of this Agreement, the City may suspend or terminate this Agreement, in whole or in part, or take other remedial action in accordance with 24 CFR 576.67. The City may also terminate this Agreement for convenience in accordance with 24 CFR 85.44.

   Furthermore, funding to be made available by the City under this Agreement has been approved by the U.S. Congress. In the event that sufficient funds are not appropriated, at the sole discretion of the City, this Agreement may be terminated in whole or in part.

   In the event of termination of this Agreement by the City due to Subrecipient noncompliance as set forth above, the Subrecipient shall forfeit all unexpended monies provided under the Agreement. At the City's discretion, the Subrecipient may also be required to refund all funds awarded during the period of this Agreement that have already been spent by the Subrecipient and reimbursed by the City.

   Should the City desire to terminate this Agreement for noncompliance, it shall first give written notice of the reason for proposed termination. The notice shall set forth the following:
   a. Reasonable description of the default/reason for termination;
   b. Demand for a cure; and
   c. Statement of reasonable time within which a cure must be affected. Such reasonable time will be presumed to be not less than five, nor more than fifteen, business days. Such times shall be measured from the actual receipt of said notice.

   If the Subrecipient cures the default within the reasonable period of time set forth in the notice, or as otherwise agreed between the parties, the City shall not terminate the Agreement and the written notice of proposed termination shall be deemed revoked, null and void.

2. Imposition of Sanctions: The City reserves the right to impose sanctions on the Subrecipient for the violation of any terms of this Agreement, failure to comply with any terms of this Agreement, or failure to undertake the project in a timely manner. Sanctions may include, but are not necessarily limited to, suspension of grant operations until corrective measures are implemented, withholding any and all project funds, termination of the Agreement, requiring the Non-profit Subrecipient to return funds already received, or barring the Non-profit Subrecipient from future funding. No sanction may be imposed pursuant to this paragraph unless the (1) City provides the Non-profit Subrecipient written notice of the alleged violation of a term of this Agreement or alleged failure to comply with any term of this Agreement which (a) provides a reasonable description of the alleged default or reason for proposed imposition of sanction; (b) demands a cure; and (c) provides a reasonable period of time within which a cure must be affected which is not less than five, nor more than fifteen, business days measured from the actual receipt of said notice; and (2) the Non-profit

Subrecipient fails to cure the alleged default within the reasonable period of time provided for in the notice or as otherwise agreed between the parties.

3. Closeout: The Subrecipient's obligation to the City shall not end until all closeout requirements are completed. Activities during the close-out period shall include, but are not limited to, making final payments, submitting final reimbursement request and final activity/accomplishment report to the City, disposing of project assets (including the return of all equipment, and receivable accounts to the City), and determining the custodianship of records. Grant closeout is not considered final until the City is fully satisfied that project objectives have been met, at which point the City will issue a close-out/grant finalization letter to the Subrecipient.

4. Property of the City: Any data or material furnished by the City to the Subrecipient shall remain the property of the City, and when said data or material is no longer needed by the Subrecipient for the performance of this Agreement, it shall be returned to the City.

## 12. Taxes

1. Payment of Taxes: The City shall not be liable for the payment of any taxes levied by the City, State, or Federal Governments against the Subrecipient, and all such taxes shall be paid by Subrecipient; however, should the City nevertheless pay any such taxes, the Subrecipient shall immediately reimburse the City.

## 13. Laws, Regulations and Special Conditions

The information in this Article is included for the convenience of the Subrecipient and to inform the Subrecipient of the diverse statutory and regulatory requirements to which the acceptance of funds makes it subject. ***For the actual regulatory or statutory requirements, the Subrecipient should consult the actual laws, regulations, and documents referenced in this Article.*** In addition to the other requirements set forth herein, the Subrecipient shall likewise comply with the applicable provisions of 24 CFR 576, in accordance with the type of project assisted. All of the referenced regulations are available online, and upon request, the City may provide these materials to the Subrecipient.

1. Environmental Review: In accordance with 24 CFR 576.57, the activities under this Agreement are subject to environmental review requirements. Such requirements may include, but are not necessarily limited to, activities related to historic districts and/or properties, floodplain management and wetland protection, noise, wild and scenic rivers, air quality, farmlands protection, environmental justice, airports, site contamination, and hazardous facilities. There shall not be any costs incurred or funds obligated until such time as an Environmental Review (ER) is completed for each project (generally one per project). The ER shall be completed by the City. The Subrecipient also agrees to comply with the following regulations insofar as they apply to the use of ESG funds:
   a. Clean Air Act, 42 U.S.C., 1857, et seq.;
   b. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under;
   c. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50, as amended;
   d. National Environmental Policy Act of 1969; and
   e. HUD Environmental Review Procedures (24 CFR 58).

Subrecipient should note that completion of the ER is the City's responsibility. Nothing in this section or in any other part of this Agreement should be construed as relieving the City of this responsibility or placing this responsibility on the Subrecipient.

2. Property Standards and Lead-Based Paint: All housing assisted shall meet the Statewide Building Code, the International Building Code, and the lead-based paint requirements in 24 CFR 576.57 In accordance with regulations, the Subrecipient shall adhere to lead-based paint notification and abatement practices, as applicable, and in no case shall use lead-based paint in the construction or rehabilitation of the properties assisted under this Agreement.

3. Section 104 (d) - Relocation and Replacement Requirements: In accordance with 24 CFR 576.59, the Subrecipient shall take all reasonable steps to minimize displacement as a result of the activities funded under this Agreement. Any persons displaced as a result of the activities funded under this Agreement shall be provided relocation assistance to the extent permitted and required under applicable regulations.

   If the Subrecipient conducts any acquisition, rehabilitation, or demolition of real property, and any negotiations for acquisition, rehabilitation, or demolition of real property with Federal funds, it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 CFR 24 and 24 CFR 570.606. The Subrecipient shall provide all notices, advisory assistance, relocation benefits, and replacement dwelling units as required by said regulations and documents. The Subrecipient hereby agrees to defend, to pay, and to indemnify the City from and against any and all claims and liabilities for relocation benefits or the provision of replacement dwelling units required by Federal statutes and regulations in connection with projects undertaken pursuant to this Agreement.

4. Discrimination Prohibited: No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Subrecipient receiving funds pursuant to this contract.

   The Subrecipient further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements" as provided in Attachment A.

5. Nepotism: No person shall be employed or contracted with if a member of his or her immediate family is on the Board of Directors of the Subrecipient or is employed in an administrative capacity by the Subrecipient. For the purposes of this section, "immediate family" includes: wife, husband, daughter, son, mother, father, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, aunt, uncle, niece, nephew, stepparent and stepchild; "administrative capacity" includes those who have selection, hiring, supervisory or operational responsibility for the program.

6. Conflict of Interest: The Subrecipient hereby severally warrants that it will establish and adopt safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others,

particularly those with whom they have family, business, or other ties. Further, In accordance with 24 CFR 576.57, no member, officer, or employee of the Subrecipient who exercises any functions or responsibility with respect to the program during his or her tenure, or for one year thereafter, shall have any financial interest or benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, either for themselves or those with whom they have family or business ties, for work to be performed in connection with the program assisted under this Agreement.

7. Lobbying Prohibited: None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas. The Subrecipient shall assure compliance with the regulations at 24 CFR Part 87 by submitting, and requiring all applicable subcontractors to submit, a certification of compliance with this provision.

   The Subrecipient certifies to the best of its knowledge and belief that:

   a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

8. Faith-Based Activities: Subrecipient agrees to follow the regulations of 24 CFR 576.23-Faith-Based activities.

   a. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Emergency Solutions Grants program. Neither the Federal government nor a State or local government receiving funds under Emergency Solutions Grants programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

   b. Organizations that are directly funded under the Emergency Solutions Grants program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

   c. A religious organization that participates in the Emergency Solutions Grants program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Emergency Solutions Grants funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Emergency Solutions Grants-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an Emergency Solutions Grants-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its

board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

d. An organization that participates in the Emergency Solutions Grants program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

e. Emergency Solutions Grants may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Emergency Solutions grants may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, Emergency Solutions Grants may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to Emergency Solutions Grants in this part. Sanctuaries, chapels, or other rooms that an Emergency Solutions Grants-funded religious congregation uses as its principal place of worship, however, are ineligible for Emergency Solutions Grants-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

f. If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

## 14. Miscellaneous Clauses and Notices

1. Findings Confidential: Except as provided by law, all reports, information, data, and documentation prepared or assessed by the City or the Subrecipient under this Agreement are confidential. The Subrecipient agrees that the reports shall not be made available to any individual or organization without the prior written approval of the City.

2. Dissemination of Information: The Subrecipient, at such times and in such forms as HUD and/or the City may require, shall furnish to HUD and/or the City, such statements, records, reports, data and information as HUD and/or the City may request pertaining to matters covered by this contract. All reports, information, data and other related materials, prepared or assembled by the Subrecipient under this contract, are confidential and shall not be made available to anyone other than an appropriate agency of the United States government without the prior written approval of the City or as set forth in K.S.A. 45-201 et. seq.

3. Identification of Documents and Projects: All projects, reports, maps, news releases and/or other documents undertaken as part of this contract, other than documents exclusively for internal use with City staff, shall contain the following posted information at the project site or the front cover or title page of any reports or documents, or in the case of maps, in an appropriate block: "City of Wichita", then name of the Subrecipient, and, in the case of written material, the month and year of preparation and the following information regarding Federal assistance: "The (preparation/funding) of this project, report, map, document, etc., was financed (in whole or in part) through a grant from the U.S. Department of Housing and Urban Development and the City of Wichita under the provision of Title IV of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371-11378)."

4. Training Required: It shall be the responsibility of the Subrecipient to participate in all appropriate training conducted by the department of Housing and Community Services or approved by the City of Wichita. The City shall provide timely notice of all training.

5. Copyrights: If this contract results in a book or other material that may be copyrighted, the author is free to copyright the work, subject to HUD regulations. HUD and the City reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material that can be copyrighted.

6. Patents: Any discovery or invention arising out of or developed in the course of work aided by this contract shall promptly and fully be reported to HUD and the City for determination by HUD and the City as to whether patent protection on such invention or patent discovery shall be sought and how the rights in the invention or discovery, including rights under the patent issued thereon, shall be disposed of and administered, in order to protect the public interest. All such determinations are subject to HUD regulations.

7. Anti-Trust Litigation: For good cause, and as consideration for executing this contract, the Subrecipient, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Subrecipient pursuant to this contract.

## 15. APPENDICES

All attachments referenced in this Agreement, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Attachment A – Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements
- Part A – Agreement
- Part B – Performance Criteria/Objectives
- Part C – Budget Detail/Request for Reimbursement
- Part D – Accomplishment Reports

## 16. AUTHORIZATION TO ENTER INTO CONTRACT

The undersigned person signing as an officer on behalf of the Subrecipient, a party to this Agreement, hereby severally warrants and represents that said person has authority to enter into this Agreement on behalf of said Subrecipient and to bind the Subrecipient to this Agreement, and further that said Subrecipient has authority to enter into this Agreement and that there are no restrictions or prohibitions contained in any article of incorporation or bylaw against entering into this Agreement.

**SUBRECIPIENT**

_____
G. Deann Smith,
Executive Director

**CITY OF WICHITA**

_____
Carl Brewer, Mayor

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

Gary E. Rebenstorf, City Attorney
City of Wichita

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

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

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

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

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, sub-purchase order or sub-agreement so that such provisions will be binding upon each subcontractor, sub-vendor or sub-supplier;

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

D. Exempted from these requirements are:

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

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

## PART B
## PERFORMANCE CRITERIA AND OBJECTIVES

**ACTIVITY NAME:** UNITED METHODIST OPEN DOOR DUNS #:04-723-7131

### SUBRECIPIENT INFORMATION

| | |
|---|---|
| **NAME:** | United Methodist Open Door, Inc. |
| **EXECUTIVE DIRECTOR:** | G. Deann Smith |
| **CONTACT PERSON(S):** | same |
| **PHONE:** | 316-265-9371 |
| **EMAIL:** | dsmith@umopendoor.org |
| **PERFORMANCE PERIOD:** | July 15, 2014 through October 31, 2014 |
| **CONTRACT PERIOD:** | July 15, 2014 through December 31, 2014 |
| **FUNDING SOURCE(S):** | ☒ESG |
| **PROJECT ELIGIBILITY:** | According to 24 CFR Part 576.103 this project qualifies for Emergency Solutions Grant funds to be used for:<br><br>☒Homeless Assistance |

The Subrecipient agrees:

1. It is the principal administrative and coordinating agency for this project, contracting and/or subcontracting outside services, as may be necessary, subject to compliance with all applicable local, state and federal laws; and

2. It is the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of the contact entered into; and

3. It will maintain, during the term of this Agreement, a filing with the Secretary of the State of Kansas as a not for profit corporation, or shall be designated a 501 (c)(3) tax-exempt organization by the Internal Revenue Service. Evidence of such status will be provided to the City upon request.

Project Description: United Methodist Open Door, Inc.will assist homeless individuals and/or families by providing emergency shelter drop-in services to homeless individuals. Shelter services shall also include determination and documentation of eligibility and documentation of services provided.

Project Content: The Subrecipient shall complete the following objective(s) in a manner acceptable to the City, in accordance with the schedule, budget and conditions detailed herein. The City reserves the right to revise or otherwise alter established objective(s) and criteria during the program year in an effort

to allow for meaningful project measurement and evaluation which will directly impact future funding recommendations.

Goal: The ESG program provides funding to help operate emergency shelters for homeless individuals and families and/or to provide essential services to shelter residents.

Objectives: Provide shelter services for homeless individuals.

Annual Outcome Measurements:

- Total number of program participants
- Number/percentage of participants who have obtained stablehousing

Project Administration: The Subrecipient homeless services executive director will supervise operations and administration on a day-to-day basis.

Procurement Methods: The Subrecipient shall use its own procurement practices which comply with applicable state and local laws, rules and regulations so long as those practices do not unduly limit bidding competition. Additionally, procurement made with federal grant funds shall adhere to the standards set forth in OMB Circular A-110, including:

1. Maintaining a code or standard of conduct governing the performance of the Subrecipient's officers, employees or agents engaged in awarding and administering contracts supported with Federal funds.

2. Advertising of procurement transactions as appropriate without regard to a dollar value in a manner allowing maximum free and open competition. No sole source procurement (obtaining only one bid) is permitted without prior approval for all purchases except small purchase procedures defined in OMB Circular A-110.

3. Invitations for bids shall be based on specifications developed by the Subrecipient. Said specifications shall be detailed to the extent necessary to solicit comparable bids without unduly limiting competitive bidding.

4. Bids will be awarded on the basis of the lowest and best bid, price and other factors considered.

5. The Subrecipient agrees to purchase services, goods and materials on an "as needed basis" and at the "lowest price obtainable".

6. The Subrecipient will maintain procurement files outlining procurement efforts for each bid, including names and addresses of bidders solicited, information pertaining to advertising, and solicitation of Small and Emerging Business Enterprise participation. Information will be maintained of bid tabulations, justification of bid award, letters of notification to bidders regarding bid award, and any other pertinent information.

Funding: It is mutually agreed by and between the City and the Subrecipient that for reimbursement of eligible and necessary expenses up to $3,450, the Subrecipient will provide emergency drop-in services for homeless individuals. Said funds will be used as set forth in the sections entitled Budget and Method of Payment. Any cost in excess of $3,450 is the responsibility of the Subrecipient.

Method of Payment: The Subrecipient agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita, and ESG program.

1. The City and the Subrecipient also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $25,000, other than those within the scope of this agreement must be approved by the City Council.

2. The Subrecipient will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this Agreement will be retained in the Subrecipient's files for five (5) years after the final audit of expenditures made under this contract.

Accomplishment Reports, Financial and Client Files: The Subrecipient shall establish and maintain accounting and project records specifically for the use of ESG funds. Original documentation supporting all reimbursed expenditures and other project records will be retained by the Subrecipient for five (5) years after the final audit of expenditures made under this contract.

1. The Subrecipient shall maintain records of persons served by race, ethnicity, gender, marital status, age, subpopulation, residential and non-residential, and type of assistance provided. All required data elements shall be entered into the HMIS system. Such records are subject to review by the City to ensure the accuracy and validity of information reported in monthly accomplishment reports. In accordance with 24 CFR Part 580.25(d) *"Victim service providers shall not directly enter or contribute data into an HMIS if they are legally prohibited from participating in HMIS. Legal service providers may choose not to use HMIS if it is necessary to protect attorney-client privilege. Victim service providers and legal service providers that are recipients of funds that require participation in HMIS that do not directly enter or contribute data to an HMIS must use a comparable database instead."*

2. On Part D, monthly accomplishment reports must be submitted by the 15th of the month. Narrative reports may also be provided noting services provided and progress toward meeting the performance standards contained herein.

3. Records shall be maintained documenting receipts and/or volunteer hours for and expenditure of matching funds. Regulations require that the Subrecipient provide a dollar for dollar match to the grant award under the ESG programs. Therefore a minimum match of $3,450 must be documented.

4. Requests for reimbursement must be submitted by the 15th of the month following the month during which the expense was paid on Part C Request for Reimbursement.

Project Evaluation: The City shall evaluate this project based on the objective(s) stated in the Part B. Failure by the Subrecipient to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Subrecipient on a pro rata basis with level of service. Subrecipient records are subject to review by the City to ensure the accuracy and validity of information reported in quarterly accomplishment reports.

## CITY OF WICHITA
## FEDERAL, STATE AND FOUNDATION GRANT BUDGET FORM

Form No. 21-012 (2010)

E-print, scan or save as pdf and drag following documentation to Laserfiche/Performance/Grants/Your Department.
New Grant: Budget form, notice of award and grant agreement.
Budget revision: Revised budget form.
Name grant award file OCA# - Grant # Program Title (Rev # as appropriate)
Send voting email to Department Director and Budget Analyst. Set results to go to assigned Controller accountant.

| | | | |
|---|---|---|---|
| OCA Title: | UMOD 14-15 Supplement | Formal Grant Title: | Emergency Solutions Grant |
| Grant period: From : | 7/15/2014 To : 12/31/2014 | Grantor Agency: | HUD |
| Department #: | 09 | CFDA Number: | 14.231 |
| OCA #: | | HUD activity number#: | |
| Grant #: | | Federal/State Project #: | |
| Grant Detail#: | | CC Approval date: | |

Set Expenditure Controls at (box one) | Object level 1 | or | Expenditure Total | Expenditure Total will be utilized if no selection made.

| Source of funding: | Object Level 3 | Original Budget | Revisions Increase | Revisions Decrease | Revised Budget | Revision # |
|---|---|---|---|---|---|---|
| Federal contributions | 8000 | 3,450.00 | | | 3,450.00 | |
| State contributions | 8030 | | | | 0.00 | |
| Federal to State | 8062 | | | | 0.00 | |
| Federal to County | 8090 | | | | 0.00 | |
| City - cash transfer | 9800 | | | | 0.00 | |
| Private contributions | 9713 | | | | 0.00 | |
| City - in-kind | 9714 | | | | 0.00 | |
| **REVENUE TOTAL** | | 3,450.00 | 0.00 | 0.00 | 3,450.00 | |
| **Expenditures:** | | | | | | |
| **Personal services (1xxx):** | | | | | | |
| Bi-Weekly Wages | 1100 | | | | 0.00 | |
| Delegate Agencies - Payroll | 1195 | 3,450.00 | | | 3,450.00 | |
| FICA | 1400 | | | | 0.00 | |
| Employees Pension | 1401 | | | | 0.00 | |
| Worker's Compensation | 1403 | | | | 0.00 | |
| Unemployment Compensation | 1404 | | | | 0.00 | |
| Group Health Insurance | 1405 | | | | 0.00 | |
| Group Life Insurance | 1406 | | | | 0.00 | |
| **Total Personal Services** | | 3,450.00 | 0.00 | 0.00 | 3,450.00 | |
| **Contractual services (2xxx):** | | | | | | |
| Delegate Agencies - Utilities | 2195 | 0.00 | | | 0.00 | |
| Delegate Agencies - Building Mainter | 2805 | | | | 0.00 | |
| Printing & Photocopying | 2917 | | | | 0.00 | |
| | | | | | | |
| City Administrative Charge | 2900 | | | | 0.00 | |
| **Total Contractual Services** | | 0.00 | 0.00 | 0.00 | 0.00 | |
| **Commodities (3xxx):** | | | | | | |
| Delegage Agencies - Supplies | 3195 | | | | 0.00 | |
| | | | | | 0.00 | |
| | | | | | 0.00 | |
| **Total Commodities** | | 0.00 | 0.00 | 0.00 | 0.00 | |
| **EXPENDITURE TOTAL** | | 3,450.00 | 0.00 | 0.00 | 3,450.00 | |

**Department Director or Designee approval is required. Electronic approval acceptable.**
**Electronic approval from Budget Officer or Designee is required.**

ACCOMPLISHMENT REPORT

AGENCY: _____

PROGRAM: _____ QUARTER REPORTED: _____

| | NEW (This Period) | | | | | UNDUPLICATED # SERVED | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | ADULT | | CHILD | | | ADULT | | CHILD | | |
| Race | Non- Hispanic Origin | Hispanic Origin | Non- Hispanic Origin | Hispanic Origin | This Period TOTAL | Non- Hispanic Origin | Hispanic Origin | Non- Hispanic Origin | Hispanic Origin | Cumulative TOTAL |
| White | | | | | | | | | | |
| Black/African American | | | | | | | | | | |
| Asian | | | | | | | | | | |
| American Indian/Alaskan Native | | | | | | | | | | |
| Native Hawaiian/Other Pacific Islander | | | | | | | | | | |
| American Indian/Alaskan Native & White | | | | | | | | | | |
| Asian & White | | | | | | | | | | |
| Black/African American & White | | | | | | | | | | |
| American Indian/Alaskan Native & Black African American | | | | | | | | | | |
| Other Multi-Racial | | | | | | | | | | |
| **Number of Participants (Unduplicated)** | 0 | | | 0 | 0 | 0 | | | 0 | 0 |

| OPERATIONS ONLY | NEW (This Period) | | | | |
|---|---|---|---|---|---|
| Type of Shelter Provided | ADULT | | CHILD | | TOTAL |
| Barracks: | | | | | |
| Group/Large House: | | | | | |
| Scattered Site Apartment: | | | | | |
| Single Family Detached House: | | | | | |
| Single Room Occupancy: | | | | | |
| Mobile Home/Trailer: | | | | | |
| Hotel/Motel: | | | | | |
| Other: | | | | | |
| Total: | | | | | |
| **Description of Beneficiaries** | | | | | |
| Chronically Homeless (Emergency Shelter only) | | | | | |
| Chronically Mentally Ill | | | | | |
| Chronic Substance Abuse | | | | | |
| Other Disability | | | | | |
| HIV/AIDS | | | | | |
| Victims of Domestic violence | | | | | |
| Elderly | | | | | |
| Other (Describe) | | | | | |
| Total: | | | | | |

| ESSENTIAL SERVICES ONLY | NEW (This Period) | | | | |
|---|---|---|---|---|---|
| Type of Service Provided | ADULT | | CHILD | | TOTAL |
| Drop-In Center | | | | | |
| Food Pantry | | | | | |
| Mental Health | | | | | |
| Alcohol/Drug Program | | | | | |
| Child Care | | | | | |
| Outreach | | | | | |
| Soup Kitchen/Meal Distribution | | | | | |
| Health Care | | | | | |
| HIV/AIDS Services | | | | | |
| Employment | | | | | |
| Other (Describe) | | | | | |

| Narrative: Describe activities/accomplishments this period |
|---|
| |
| |
| |
| |
| |
| |
| |
| |

| Outcome Measurements (Reported Quarterly) | Target | This Period | Cumulative |
|---|---|---|---|
| 1. Specific outcome measure | % | (#/#) = % | (#/#) = % |
| 2. Specific outcome measure | | | |
| 3. Specific outcome measure | | | |
| 3. Specific outcome measure | | | |

# CONTRACT AGREEMENT

**between**

**THE CITY OF WICHITA**
**HOUSING AND COMMUNITY SERVICES DEPARTMENT**

**and**

**YWCA WOMEN'S CRISIS CENTER**

**For**

**Homeless Assistance**

**Funded through the**

**Emergency Solutions Grant (ESG) Program**
**2014-15 Supplemental Allocation – prior year funds**

**Contract period: July 15, 2014 – December 31, 2014**

Housing and Community Services Department
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3724
Fax (316) 337-9103

Date Contract Fully Executed: _____

**PART A**
**AGREEMENT**

**THIS CONTRACT** (hereinafter the "Agreement") entered into this 15th day of July, 2014 by and between the City of Wichita, Kansas (hereinafter the "City") and YWCA Women's Crisis Center, (hereinafter the "Subrecipient"), located at P.O. Box 1740, Wichita, Kansas.

**WITNESSETH THAT:**

**WHEREAS,** the City of Wichita has entered into a funding Agreement with the United States of America for the Department of Housing and Urban Development (hereinafter referred to as HUD) for the execution of projects and activities under Title IV of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371-11378) under the Emergency Solutions Grant Program (ESG) hereinafter referred to as ESG; and

**WHEREAS,** the City has entered into a contract with the United States of America for the implementation of a program of local assistance for the City of Wichita pursuant to HUD for an ESG program; and

**WHEREAS**, the department of Housing and Community Services is authorized to act on behalf of the City in implementing this grant Agreement; and

**WHEREAS,** the cooperation of the City and the Subrecipient is essential for the successful implementation of a emergency shelter project under the ESG program; and

**WHEREAS**, funds in the amount of $8,445 are remaining from prior year ESG allocations for homeless assistance activities; and

**WHEREAS**, YWCA Women's Crisis Center operates an emergency shelter for victims of domestic violence; and

**WHEREAS**, on July 15, 2014, the Wichita City Council allocated $8,445 in remaining ESG funds for the execution of the approved activity;

**NOW, THEREFORE**, the parties hereto do mutually agree that this Agreement is entered into predicated upon the following terms and/or conditions, all and every one of which the parties hereto agree to observe and perform:

## DEFINITION OF HOMELESS

For the purpose of this contract, persons eligible to receive homeless assistance must meet the following criteria for the category of fleeing/attempting to flee domestic violence: Individual or family who: (i) is fleeing, or is attempting to flee, domestic violence; (ii) has no other residence; and (iii) lacks the resources or support networks to obtain other permanent housing.

### 1. Scope of Services

1. Scope of Services: YWCA Women's Crisis Center will meet the expectations of the funding source ESG to provide emergency shelter for homeless individuals or families. Funds may provide **essential services** such as case management, childcare, education service, employment assistance and job training, outpatient health services, legal services, life skills training mental health services, substance abuse treatment services, transportation and services for special populations; or **shelter operations**, including maintenance, rent, repair, security, fuel, equipment, insurance, utilities, relocation, and furnishings. Project effectiveness will be demonstrated by the number of individuals and families receiving shelter, length of stay in shelter, and housing status upon exit from shelter. Funds from this allocation will be used for shelter maintenance and improvement activities.

   The Subrecipient, assuming responsibility for the implementation of actual operation of a certain project herein specified, shall perform services in a satisfactory and proper manner as determined by the City and as outlined per PART B.

2. Revision of Scope: The performance criteria and objectives may be modified, revised or amended upon the joint written consent of the parties. The City may revise the approved objectives, accomplishments, and budget items in PART B when necessary. The Subrecipient may request a budget revision at any time throughout the duration of this Agreement. However, prior to any purchases under the new budget, the City must approve the revision in writing. Approval may be in the form of a letter, a fax, or an email.

### 2. Commencement and Completion

1. Time of Performance: The services of the Subrecipient are to commence as soon as practicable on or after the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract through a period ending October 31, 2014.

2. Close-out Period: The Subrecipient has 30 days following the performance of this activity during which to conduct and complete close-out requirements associated with this Agreement. Final accomplishment and outcome reports are due to the City by November 30, 2014. All expenditures associated with close-out of this activity must be submitted for reimbursement by that date.

3. Contract Completion Date: Unless an extension has been approved by the City in advance, OR unless this Agreement is terminated earlier in accordance with other provisions herein, this agreement will end on December 31, 2014.

### 3. Compensation and Use of Funds

Regulation for Use of Funds: The use of funds received pursuant to this Agreement shall be in accordance with the requirements of the Housing and Community Development Act of 1974 (as amended), 24 CFR part 576 and 24 CFR part 85, as applicable, other regulations governing the use of

Contract funds, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement; and the McKinney Vento Homeless Assistance Act As Amended by S896 HEARTH Act of 2009. ***It is the Subrecipient's responsibility to read, understand, and comply with these regulations.***

1. Uniform Grant Administrative Requirements and Cost Principles: During the administration of this contract, the Subrecipient shall comply with, and adhere to:
   a. Office of Management and Budget (OMB) Circular No. A-87, Cost principles for State, Local and Indian Tribal Governments; and
   b. OMB Circular No. A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations; and
   c. OMB Circular No. A-122, Cost Principles for Nonprofit Organizations.

2. Total Payments: Total amount of funds provided by the City to the Subrecipient under this Agreement shall not exceed $8,445 and must be drawn on a regular basis. At the sole discretion of the City, any funds remaining unexpended as of the termination date of this Agreement may be de-obligated from this Agreement and made available for other eligible projects, as determined appropriate by the City.

3. Required Matching Funds: This contract requires that the Subrecipient provide a cash or in-kind match in an equal amount of funds from cash or the following in-kind sources: new staff or volunteer time. Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or sub-recipient's organization. If the recipient or sub-recipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers. The value of time and services contributed by volunteers to carry out the project of the Sub-recipient shall be calculated at a current rate of $5 per hour. (Note: Proposers may use the Independent Sector's valuation of volunteer time of $18.13/hour, or other documented valuation method. Volunteers providing professional services such as medical or legal services are valued at the reasonable and customary rate in the community).

4. Reimbursement Requests: This is a cost-reimbursement Agreement. Disbursement of funds under this Agreement may be requested only for necessary, reasonable, and allowable costs described in PART B, and for which the Subrecipient has made payment during the period of performance set forth in Section 2.1 above. The City agrees to reimburse the Subrecipient for such costs, and payment shall be made upon receipt of a request for reimbursement form (PART C) accompanied by a monthly accomplishment report from the Subrecipient specifying the services performed or expenses incurred. All requests for reimbursement must be accompanied by two sets of documentation: 1) case file data which confirms eligibility of the clients on whose behalf payments have been made; and 2) documentation of payment for eligible expenses (i.e., invoices, receipts, bills from vendors, copies of checks, time sheets, etc.), documentation of matching funds (i.e., volunteer time logs, time sheets, mock invoices for donated items, copies of donation checks, copies of checks from other grants etc.) received and expended, and other supporting documentation. Supporting documentation must be accompanied by an agency payment voucher providing this information and a copy of the signed check with which the payment was made. Requests for reimbursement must be received by the fifteenth day of the month following the month during which the expense was paid.

5. Double Reimbursement: The Subrecipient shall not claim reimbursement from the City under this Agreement for any portion of its obligations that has been paid by another source of revenue.

6. Restriction on Disbursements: No entitlement funds shall be disbursed to a Subrecipient or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this contract. Disbursements may be suspended or terminated under this contract upon refusal to accept any additional conditions that may be imposed by the City at any time or if the entitlement funds to the City of Wichita under the Federal Act(s) are suspended or terminated.

7. Withholding Payments: All payments to the Subrecipient are subject to the Subrecipient's compliance with this Agreement. A breach of the Agreement is grounds for non-payment until such corrective measures are made which will resolve Agreement non-compliance.

8. Closeout Reimbursement: Closeout billings are to be submitted by November 30, 2014, as set forth in Section 2.2, above. If not submitted, the unexpended funds shall revert to the City of Wichita.

## 4. Use and Disposition of Property

1. Disposition of Expendable/Non-Expendable Personal Property: This contract does not provide for the purchase of property for the Subrecipient's use in administering the program.

2. Disposition of Real Property: See 4.1 above.

## 5. Assignments

1. Assignability: Neither the City nor the Subrecipient shall assign, sublet, or transfer their interest in this Agreement without the prior written consent of the other.

2. Subcontracting/Third Party Contracts: The Subrecipient agrees to furnish the City with a copy of any and all third party contracts that it executes in the performance of the work to be undertaken within the scope of this Agreement.

   The Subrecipient agrees to incorporate or cause to be incorporated in all third party contracts or subcontracts funded under the CDBG program provisions requiring all applicable Federal, State, and local laws, rules, and regulations to be adhered to in accordance with all parts of this Agreement. Specifically, the Subrecipient agrees to require and monitor compliance by all contractors, subcontractors, and other third parties. Any third party contract that is not in accordance with the outlined budget in this Agreement shall be subject to the advance, written approval of the City. Furthermore, the City shall not be obligated or liable hereunder to any party other than the Subrecipient.

## 6. Audits and Inspections

1. Audits and Inspections: The Subrecipient must establish an adequate accounting system on a current basis in accordance with generally accepted accounting principles and standards and in accordance with any specific requirements of the Controller of the City of Wichita. Subrecipient personnel will make available to City staff and any other auditor authorized by the City, all accounting records needed to conduct an evaluation of the accounting system and accounting records. If any portion of the funds approved by this contract is subcontracted to other organizations for the delivery of objectives and criteria, the Subrecipient will ensure that the fiscal and accomplishment records of the subcontractor will be available for inspection by Comptroller Office personnel or duly authorized auditors. In order to ensure this, the Subrecipient will include an appropriate clause in all of its subcontracts.

The Subrecipient shall comply as applicable with the provisions of OMB Circular No. A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations. A single or program-specific audit is required if $500,000 or more in Federal awards are expended during the fiscal year.

Any Subrecipient receiving less than $500,000 in Federal funding shall not be required by the City to undergo an annual independent audit of the ESG expenditures under this Agreement. Furthermore, no expenditures with respect to any such audit undertaken by the Subrecipient of its own initiative shall be chargeable to the funds under this Agreement. All audit reports are due on or before one year after the close of the program year. Before the due date, the Subrecipient should submit to the City (a) an audit report or (b) a letter giving the reason for non-compliance with the due date and requesting an extension of time with a specific date the report will be submitted. In the event of the latter, the City will respond in writing to the Subrecipient to approve or disapprove the request.

## 7. Subrecipient Responsibilities

1. Compliance with Laws: All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments. Further, the Subrecipient agrees to perform services pursuant to the provisions of this contract and Federal and City regulations, rules and policies and special assurances included therein.

2. Non-Municipal Personnel and Services: All services required herein will be performed by the Subrecipient under the direction of its Board of Directors or other governing body. Any services, which the Subrecipient deems necessary to assign to a subcontractor, must first have written approval from the City unless otherwise specified in Part B.

## 8. Documentation and Record Keeping

1. Establishment and Maintenance of Records: The Subrecipient shall establish and maintain records as prescribed by the U.S. Department of Housing and Urban Development, hereinafter referred to as HUD, and/or the City, with respect to all matters covered by this contract. Such records shall include but are not limited to:
   a. Records providing a full description of each activity undertaken;
   b. Records required to determine the eligibility of activities;
   c. Records documenting that the Subrecipient has procedures in place to convey the availability of facilities and services to all on a nondiscriminatory basis.
   d. Financial records that document all transactions and that can be properly documented and audited, as required by 24 CFR part 85 and OMB Circular A-110;
   e. Other records necessary to document compliance with Subpart E of 24 CFR 576;
   f. Copies of all bid documents, bids received, RFPs, RFQs, and any other procurement documents related to the services funded under this Agreement;
   g. Copies of all third party or subcontracts related to services funded under this Agreement; and
   h. Detailed records on Subrecipient's organization, financial and administrative systems, and the specific ESG-funded project(s) or activities.

Please note that the above descriptions are brief and provide only a summary of the records the Subrecipient is required to maintain. The Subrecipient must consult 24 CFR 576 for a detailed description of the required records.

2. Record Requirements: Section 4169f of the McKinney-Vento Homeless Assistance Act requires that recipients of funding under the Emergency Solutions Grant program maintain records in the Homeless Management Information System (HMIS).
   a. In accordance with 24 CFR Part 580.25(d) *"Victim service providers shall not directly enter or contribute data into an HMIS if they are legally prohibited from participating in HMIS. Legal service providers may choose not to use HMIS if it is necessary to protect attorney-client privilege. Victim service providers and legal service providers that are recipients of funds that require participation in HMIS that do not directly enter or contribute data to an HMIS must use a comparable database instead."*

3. Retention: The Subrecipient shall retain all records of all project expenses, activities, correspondence, records pertinent to any and all expenditures incurred under this Agreement, and any other information as requested by the City or by HUD for a period of five years after the termination of all activities funded under this Agreement, or after the resolution of all Federal audit findings, whichever occurs later. The Subrecipient will ensure confidentiality of records pertaining to the provision of family violence prevention or treatment services with assistance under this program as set forth in 42 U.S.C. 11375 (c) (5). If any litigation, claim, negotiation, or other action involving the records has been started before the expiration of the five year period, the records must be retained until completion of the action and resolution of issues which arise from it, or until the end of the five year period, whichever is later. All files and records will be made available during normal business hours and other reasonable times for review by the City or by HUD.

4. Documentation of Costs: All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

5. Inventory Management: The Subrecipient must submit an annual statement identifying the status of all equipment and non-real property items purchased with ESG funds by the contract termination date. The status report should inventory all equipment and non-real properties purchased with ESG funds and state the condition of the equipment and its location.

6. Access to Records: The Subrecipient agrees that the City, HUD, or any authorized representative has access to and the right to examine all records, books, papers, or documents related to the project. The City reserves the right, on demand and without notice, to review all of the Subrecipient's files associated with this Agreement where payments are based on a record of time, salaries, materials, or actual expenses. The same right to review will be imposed upon any third party or subcontractor of the Subrecipient; therefore, it is the Subrecipient's responsibility to ensure that any contract entered into with a third party or subcontractor contains all necessary clauses and language required by the City and/or HUD to ensure compliance with this Agreement and with all local, state, and Federal regulations.

## 9. Project Evaluation

1. Performance Measures: During the Grant Agreement Period, the Subrecipient agrees to work diligently towards the objectives and projected accomplishments outlined in Part B, and to assist the City in demonstrating appropriate program benefit for the project activities implemented by Subrecipient. If it is determined that any of these objectives will not be completed within the identified timeframe, a request for an extension must be submitted to the City for consideration.

However in no instance may accomplishment data reflect activity occurring after October 31, 2014. Such a request must identify the reasons for the extension and must be accompanied by a proposed project timeline that can reasonably be accomplished. Failure to meet the objectives in PART B will represent grounds for imposition of sanctions as found in Section 11.2. Incidents of nonperformance will suspend grant operations until corrective measures are implemented. If the grant is conditioned, access to grant funds will be suspended pending a satisfactory cure to the related incident of nonperformance.

2. Reporting: The Subrecipient shall be required to submit monthly accomplishment reports (which may include HMIS reports with all required data elements for each client served during the month) as specified in PART B no later than the 15th day of each month following the month reported, unless otherwise specified, as well as other information and data required by the City to respond to current HUD regulations and for the preparation of the Consolidated Annual Performance and Evaluation Report (CAPER) and/or the Integrated Disbursement Information System (IDIS) project set-up and completion activities. Accomplishment and financial reports must be received before the City can honor requests for funds. As stated in Section 11.2, sanctions may be imposed upon the Subrecipient for failure to satisfy report due dates.

3. Accomplishment Reports must include:
   a. Data for all clients served, fully entered into the HMIS;
   b. A description of all project activities that have taken place during the reporting period, including all outreach activities and public participation events;
   c. A description of any anticipated problems or obstacles, and a plan for how those future obstacles will be addressed;
   d. A description of how objectives specified for achievement by that date have been met, OR a description of obstacles that have prevented those objectives from being met, how those obstacles are being addressed, and a new anticipated date of completion for those objectives;
   e. A description and dollar amount of funds spent to date, and how much of those funds have already been reimbursed;
   f. A description and dollar amount equivalent of matching funds (including in-kind) expended to date;
   g. A description of the number of eligible persons or households assisted to date;
   h. Other supportive information or documentation, as applicable; and
   i. Any other reports or documentation as requested by the City or HUD.

4. Client Data: The Subrecipient agrees to maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, each household member's name, address, ethnicity, race, gender, age, head of household, income level, disability, homeless status, or other basis for determining eligibility, and a description of the service provided. Documentation of homeless status must be documented by written observation of outreach worker; or written referral by another housing or service provider; or certification by the individual or head of household seeking assistance stating that (s)he was living on the streets or in shelter. For victim service providers, an oral statement by the individual or head of household seeking assistance which states that they are fleeing; they have no subsequent residence; and they lack resources. This statement must be documented by self-certification or a certification by the intake worker. Confidentiality of records pertaining to the provision of family violence prevention or treatment services with assistance under this program as set forth in 42 U.S.C. 11375 (c) (5), must be maintained. All data will be entered into HMIS.

5. Final Accomplishment Reports: Final accomplishment reports will also serve as the final project report, and will include, in addition to the requirements listed in item 9.3 above, a narrative summary of the project, including successes and weaknesses; a comparison of projected accomplishments and objectives to actual accomplishments and goals achieved, including reasons for any discrepancies between the two. This final report will be due November 30, 2014 or the date of final reimbursement, whichever is sooner.

## 10. PROGRAM MONITORING

1. General: City staff will evaluate progress based on the objectives, criteria, work schedule and budget in PART B, to determine if it is consistent with the initial purpose of the project, the City's strategies, comprehensive and neighborhood plans, and if it has a positive impact on the City and its neighborhoods. All data necessary to review and monitor project progress as determined by the City will be made available to City personnel. This includes, but is not limited to, accomplishment records and interviews with the Subrecipient staff and project participants, as required by the City. City personnel will also make field inspections at the office/job site(s) if:
   a. The Subrecipient fails to take recommended corrective action on two consecutive desk audits;
   b. Projects are at high risk of error for activities that serve large number of people;
   c. Projects are at high risk based on the amount of funds involved.

2. Financial Monitoring: City staff shall monitor, review, and evaluate the financial procedures of the Subrecipient through documents submitted to the City and on-site monitoring. The Subrecipient shall provide and make available to the City such reports and records that will be necessary for a proper financial evaluation. With reasonable notice being given to the Subrecipient, the City may schedule at least one on-site visit and other visits that may be needed during the course of this Agreement.

3. Programmatic Monitoring: City staff shall monitor, review, and evaluate the Subrecipient. Fiscal reports will be reviewed and evaluated in terms of the total budget and accomplishments in relationship to expenditures. With reasonable notice being given to the Subrecipient, the City may schedule at least one on-site visit and other visits that may be needed during the course of this Agreement. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, data, and information as may be necessary.

   The Subrecipient shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

4. Monitoring Letters and Reports: Written reports of the City's monitoring findings will be provided to the Subrecipient within 30 days of an official monitoring visit. Such reports will note outstanding performance as well as findings or concerns and recommendations for improvement.

5. Subrecipient Response: The Subrecipient shall have 30 days from the receipt of a financial or programmatic monitoring visit letter to address any findings or concerns.

## 11. TERMINATION, SANCTIONS AND CLOSEOUTS

1. Termination: In the event that the Subrecipient fails to comply with any term of this Agreement, the City may suspend or terminate this Agreement, in whole or in part, or take other remedial action in accordance with 24 CFR 576.67. The City may also terminate this Agreement for convenience in accordance with 24 CFR 85.44.

   Furthermore, funding to be made available by the City under this Agreement has been approved by the U.S. Congress. In the event that sufficient funds are not appropriated, at the sole discretion of the City, this Agreement may be terminated in whole or in part.

   In the event of termination of this Agreement by the City due to Subrecipient noncompliance as set forth above, the Subrecipient shall forfeit all unexpended monies provided under the Agreement. At the City's discretion, the Subrecipient may also be required to refund all funds awarded during the period of this Agreement that have already been spent by the Subrecipient and reimbursed by the City.

   Should the City desire to terminate this Agreement for noncompliance, it shall first give written notice of the reason for proposed termination. The notice shall set forth the following:
   a. Reasonable description of the default/reason for termination;
   b. Demand for a cure; and
   c. Statement of reasonable time within which a cure must be affected. Such reasonable time will be presumed to be not less than five, nor more than fifteen, business days. Such times shall be measured from the actual receipt of said notice.

   If the Subrecipient cures the default within the reasonable period of time set forth in the notice, or as otherwise agreed between the parties, the City shall not terminate the Agreement and the written notice of proposed termination shall be deemed revoked, null and void.

2. Imposition of Sanctions: The City reserves the right to impose sanctions on the Subrecipient for the violation of any terms of this Agreement, failure to comply with any terms of this Agreement, or failure to undertake the project in a timely manner. Sanctions may include, but are not necessarily limited to, suspension of grant operations until corrective measures are implemented, withholding any and all project funds, termination of the Agreement, requiring the Non-profit Subrecipient to return funds already received, or barring the Non-profit Subrecipient from future funding. No sanction may be imposed pursuant to this paragraph unless the (1) City provides the Non-profit Subrecipient written notice of the alleged violation of a term of this Agreement or alleged failure to comply with any term of this Agreement which (a) provides a reasonable description of the alleged default or reason for proposed imposition of sanction; (b) demands a cure; and (c) provides a reasonable period of time within which a cure must be affected which is not less than five, nor more than fifteen, business days measured from the actual receipt of said notice; and (2) the Non-profit Subrecipient fails to cure the alleged default within the reasonable period of time provided for in the notice or as otherwise agreed between the parties.

3. Closeout: The Subrecipient's obligation to the City shall not end until all closeout requirements are completed. Activities during the close-out period shall include, but are not limited to, making final payments, submitting final reimbursement request and final activity/accomplishment report to the City, disposing of project assets (including the return of all equipment, and receivable accounts to the City), and determining the custodianship of records. Grant closeout is not considered final until

the City is fully satisfied that project objectives have been met, at which point the City will issue a close-out/grant finalization letter to the Subrecipient.

4. Property of the City: Any data or material furnished by the City to the Subrecipient shall remain the property of the City, and when said data or material is no longer needed by the Subrecipient for the performance of this Agreement, it shall be returned to the City.

## 12. Taxes

1. Payment of Taxes: The City shall not be liable for the payment of any taxes levied by the City, State, or Federal Governments against the Subrecipient, and all such taxes shall be paid by Subrecipient; however, should the City nevertheless pay any such taxes, the Subrecipient shall immediately reimburse the City.

## 13. Laws, Regulations and Special Conditions

The information in this Article is included for the convenience of the Subrecipient and to inform the Subrecipient of the diverse statutory and regulatory requirements to which the acceptance of funds makes it subject. ***For the actual regulatory or statutory requirements, the Subrecipient should consult the actual laws, regulations, and documents referenced in this Article.*** In addition to the other requirements set forth herein, the Subrecipient shall likewise comply with the applicable provisions of 24 CFR 576, in accordance with the type of project assisted. All of the referenced regulations are available online, and upon request, the City may provide these materials to the Subrecipient.

1. Environmental Review: In accordance with 24 CFR 576.57, the activities under this Agreement are subject to environmental review requirements. Such requirements may include, but are not necessarily limited to, activities related to historic districts and/or properties, floodplain management and wetland protection, noise, wild and scenic rivers, air quality, farmlands protection, environmental justice, airports, site contamination, and hazardous facilities. There shall not be any costs incurred or funds obligated until such time as an Environmental Review (ER) is completed for each project (generally one per project). The ER shall be completed by the City. The Subrecipient also agrees to comply with the following regulations insofar as they apply to the use of ESG funds:
   a. Clean Air Act, 42 U.S.C., 1857, et seq.;
   b. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under;
   c. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50, as amended;
   d. National Environmental Policy Act of 1969; and
   e. HUD Environmental Review Procedures (24 CFR 58).

   Subrecipient should note that completion of the ER is the City's responsibility. Nothing in this section or in any other part of this Agreement should be construed as relieving the City of this responsibility or placing this responsibility on the Subrecipient.

2. Property Standards and Lead-Based Paint: All housing assisted shall meet the Statewide Building Code, the International Building Code, and the lead-based paint requirements in 24 CFR 576.57 In accordance with regulations, the Subrecipient shall adhere to lead-based paint notification and abatement practices, as applicable, and in no case shall use lead-based paint in the construction or rehabilitation of the properties assisted under this Agreement.

3. Section 104 (d) - Relocation and Replacement Requirements: In accordance with 24 CFR 576.59, the Subrecipient shall take all reasonable steps to minimize displacement as a result of the activities funded under this Agreement. Any persons displaced as a result of the activities funded under this Agreement shall be provided relocation assistance to the extent permitted and required under applicable regulations.

   If the Subrecipient conducts any acquisition, rehabilitation, or demolition of real property, and any negotiations for acquisition, rehabilitation, or demolition of real property with Federal funds, it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 CFR 24 and 24 CFR 570.606. The Subrecipient shall provide all notices, advisory assistance, relocation benefits, and replacement dwelling units as required by said regulations and documents. The Subrecipient hereby agrees to defend, to pay, and to indemnify the City from and against any and all claims and liabilities for relocation benefits or the provision of replacement dwelling units required by Federal statutes and regulations in connection with projects undertaken pursuant to this Agreement.

4. Discrimination Prohibited: No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Subrecipient receiving funds pursuant to this contract.

   The Subrecipient further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements" as provided in Attachment A.

5. Nepotism: No person shall be employed or contracted with if a member of his or her immediate family is on the Board of Directors of the Subrecipient or is employed in an administrative capacity by the Subrecipient. For the purposes of this section, "immediate family" includes: wife, husband, daughter, son, mother, father, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, aunt, uncle, niece, nephew, stepparent and stepchild; "administrative capacity" includes those who have selection, hiring, supervisory or operational responsibility for the program.

6. Conflict of Interest: The Subrecipient hereby severally warrants that it will establish and adopt safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Further, In accordance with 24 CFR 576.57, no member, officer, or employee of the Subrecipient who exercises any functions or responsibility with respect to the program during his or her tenure, or for one year thereafter, shall have any financial interest or benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, either for themselves or those with whom they have family or business ties, for work to be performed in connection with the program assisted under this Agreement.

7. Lobbying Prohibited: None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of

the United States of America or the Legislature of the State of Kansas. The Subrecipient shall assure compliance with the regulations at 24 CFR Part 87 by submitting, and requiring all applicable subcontractors to submit, a certification of compliance with this provision.

The Subrecipient certifies to the best of its knowledge and belief that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

8. Faith-Based Activities: Subrecipient agrees to follow the regulations of 24 CFR 576.23-Faith-Based activities.

a. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Emergency Solutions Grants program. Neither the Federal government nor a State or local government receiving funds under Emergency Solutions Grants programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

b. Organizations that are directly funded under the Emergency Solutions Grants program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

c. A religious organization that participates in the Emergency Solutions Grants program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Emergency Solutions Grants funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Emergency Solutions Grants-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an Emergency Solutions Grants-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

d. An organization that participates in the Emergency Solutions Grants program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

e. Emergency Solutions Grants may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Emergency Solutions grants may be

used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, Emergency Solutions Grants may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to Emergency Solutions Grants in this part. Sanctuaries, chapels, or other rooms that an Emergency Solutions Grants-funded religious congregation uses as its principal place of worship, however, are ineligible for Emergency Solutions Grants-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

f. If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

## 14. Miscellaneous Clauses and Notices

1. Findings Confidential: Except as provided by law, all reports, information, data, and documentation prepared or assessed by the City or the Subrecipient under this Agreement are confidential. The Subrecipient agrees that the reports shall not be made available to any individual or organization without the prior written approval of the City.

2. Dissemination of Information: The Subrecipient, at such times and in such forms as HUD and/or the City may require, shall furnish to HUD and/or the City, such statements, records, reports, data and information as HUD and/or the City may request pertaining to matters covered by this contract. All reports, information, data and other related materials, prepared or assembled by the Subrecipient under this contract, are confidential and shall not be made available to anyone other than an appropriate agency of the United States government without the prior written approval of the City or as set forth in K.S.A. 45-201 et. seq.

3. Identification of Documents and Projects: All projects, reports, maps, news releases and/or other documents undertaken as part of this contract, other than documents exclusively for internal use with City staff, shall contain the following posted information at the project site or the front cover or title page of any reports or documents, or in the case of maps, in an appropriate block: "City of Wichita", then name of the Subrecipient, and, in the case of written material, the month and year of preparation and the following information regarding Federal assistance: "The (preparation/funding) of this project, report, map, document, etc., was financed (in whole or in part) through a grant from the U.S. Department of Housing and Urban Development and the City of Wichita under the provision of Title IV of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371-11378)."

4. Training Required: It shall be the responsibility of the Subrecipient to participate in all appropriate training conducted by the department of Housing and Community Services or approved by the City of Wichita. The City shall provide timely notice of all training.

5. Copyrights: If this contract results in a book or other material that may be copyrighted, the author is free to copyright the work, subject to HUD regulations. HUD and the City reserve a royalty-free,

non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material that can be copyrighted.

6. Patents: Any discovery or invention arising out of or developed in the course of work aided by this contract shall promptly and fully be reported to HUD and the City for determination by HUD and the City as to whether patent protection on such invention or patent discovery shall be sought and how the rights in the invention or discovery, including rights under the patent issued thereon, shall be disposed of and administered, in order to protect the public interest. All such determinations are subject to HUD regulations.

7. Anti-Trust Litigation: For good cause, and as consideration for executing this contract, the Subrecipient, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Subrecipient pursuant to this contract.

## 15. APPENDICES

All attachments referenced in this Agreement, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Attachment A – Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements
- Part A – Agreement
- Part B – Performance Criteria/Objectives
- Part C – Budget Detail/Request for Reimbursement
- Part D – Accomplishment Reports

## 16. AUTHORIZATION TO ENTER INTO CONTRACT

The undersigned person signing as an officer on behalf of the Subrecipient, a party to this Agreement, hereby severally warrants and represents that said person has authority to enter into this Agreement on behalf of said Subrecipient and to bind the Subrecipient to this Agreement, and further that said Subrecipient has authority to enter into this Agreement and that there are no restrictions or prohibitions contained in any article of incorporation or bylaw against entering into this Agreement.

**SUBRECIPIENT**

_____
Angela Lampe, Executive Director
YWCA Women's Crisis Center

**CITY OF WICHITA**

_____
Carl Brewer, Mayor

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

Gary E. Rebenstorf, DXM
Gary E. Rebenstorf, City Attorney
City of Wichita

## 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 Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color,

sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

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

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, sub-purchase order or sub-agreement so that such provisions will be binding upon each subcontractor, sub-vendor or sub-supplier;

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

D. Exempted from these requirements are:

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

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

## PART B
## PERFORMANCE CRITERIA AND OBJECTIVES

**ACTIVITY NAME:** YWCA WOMEN'S CRISIS CENTER DUNS #: 55-642-1030

### SUBRECIPIENT INFORMATION

| | |
|---|---|
| **NAME:** | YWCA Women's Crisis Center |
| **EXECUTIVE DIRECTOR:** | Angela Lampe |
| **CONTACT PERSON(S):** | Angela Lampe, Debby Zelli, or Debra Whitermore |
| **PHONE:** | 316-263-7501 |
| **EMAIL:** | finance@ywcaofwichita.org |
| **PERFORMANCE PERIOD:** | July 15, 2014 through October 31, 2014 |
| **CONTRACT PERIOD:** | July 15, 2014 through December 31, 2014 |
| **FUNDING SOURCE(S):** | ☒ ESG |
| **PROJECT ELIGIBILITY:** | According to 24 CFR Part 576.103 this project qualifies for Emergency Solutions Grant funds to be used for:<br><br>☒ Homeless Assistance |

The Subrecipient agrees:

1. It is the principal administrative and coordinating agency for this project, contracting and/or subcontracting outside services, as may be necessary, subject to compliance with all applicable local, state and federal laws; and

2. It is the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of the contact entered into; and

3. It will maintain, during the term of this Agreement, a filing with the Secretary of the State of Kansas as a not for profit corporation, or shall be designated a 501 (c)(3) tax-exempt organization by the Internal Revenue Service. Evidence of such status will be provided to the City upon request.

Project Description: YWCA Women's Crisis Center will assist homeless individuals and/or families by providing emergency shelter services to women and children fleeing domestic violence. Shelter services shall also include determination and documentation of eligibility, documentation of services provided, and documentation of exit, including housing status.

Project Content: The Subrecipient shall complete the following objective(s) in a manner acceptable to the City, in accordance with the schedule, budget and conditions detailed herein. The City reserves the right to revise or otherwise alter established objective(s) and criteria during the program year in an effort

to allow for meaningful project measurement and evaluation which will directly impact future funding recommendations.

Goal: The ESG program provides funding to help operate emergency shelters for homeless individuals and families and/or to provide essential services to shelter residents.

Objectives: Provide shelter services for women and children fleeing domestic violence.

Annual Outcome Measurements:

- Total number of program participants
- Average length of stay for all program participants
- Number/percentage of participants who, upon exit, have obtained safe and stable housing.

Project Administration: The Subrecipient executive director will supervise operations and administration on a day-to-day basis.

Procurement Methods: The Subrecipient shall use its own procurement practices which comply with applicable state and local laws, rules and regulations so long as those practices do not unduly limit bidding competition. Additionally, procurement made with federal grant funds shall adhere to the standards set forth in OMB Circular A-110, including:

1. Maintaining a code or standard of conduct governing the performance of the Subrecipient's officers, employees or agents engaged in awarding and administering contracts supported with Federal funds.

2. Advertising of procurement transactions as appropriate without regard to a dollar value in a manner allowing maximum free and open competition. No sole source procurement (obtaining only one bid) is permitted without prior approval for all purchases except small purchase procedures defined in OMB Circular A-110.

3. Invitations for bids shall be based on specifications developed by the Subrecipient. Said specifications shall be detailed to the extent necessary to solicit comparable bids without unduly limiting competitive bidding.

4. Bids will be awarded on the basis of the lowest and best bid, price and other factors considered.

5. The Subrecipient agrees to purchase services, goods and materials on an "as needed basis" and at the "lowest price obtainable".

6. The Subrecipient will maintain procurement files outlining procurement efforts for each bid, including names and addresses of bidders solicited, information pertaining to advertising, and solicitation of Small and Emerging Business Enterprise participation. Information will be maintained of bid tabulations, justification of bid award, letters of notification to bidders regarding bid award, and any other pertinent information.

Funding: It is mutually agreed by and between the City and the Subrecipient that for reimbursement of eligible and necessary expenses up to $8,445, the Subrecipient will emergency shelter services to eligible families. Said funds will be used as set forth in the sections entitled Budget and Method of Payment. Any cost in excess of $8,445 is the responsibility of the Subrecipient.

Method of Payment: The Subrecipient agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita, and ESG program.

1. The City and the Subrecipient also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $25,000, other than those within the scope of this agreement must be approved by the City Council.

2. The Subrecipient will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this Agreement will be retained in the Subrecipient's files for five (5) years after the final audit of expenditures made under this contract.

Accomplishment Reports, Financial and Client Files: The Subrecipient shall establish and maintain accounting and project records specifically for the use of ESG funds. Original documentation supporting all reimbursed expenditures and other project records will be retained by the Subrecipient for five (5) years after the final audit of expenditures made under this contract.

1. The Subrecipient shall maintain records of persons served by race, ethnicity, gender, marital status, age, subpopulation, residential and non-residential, and type of assistance provided. All required data elements shall be entered into the HMIS system. Such records are subject to review by the City to ensure the accuracy and validity of information reported in monthly accomplishment reports.
    a. In accordance with 24 CFR Part 580.25(d) *"Victim service providers shall not directly enter or contribute data into an HMIS if they are legally prohibited from participating in HMIS. Legal service providers may choose not to use HMIS if it is necessary to protect attorney-client privilege. Victim service providers and legal service providers that are recipients of funds that require participation in HMIS that do not directly enter or contribute data to an HMIS must use a comparable database instead."*

b. On Part D, monthly accomplishment reports must be submitted by the 15th of the month. Narrative reports may also be provided noting services provided and progress toward meeting the performance standards contained herein.

3. Records shall be maintained documenting receipts and/or volunteer hours for and expenditure of matching funds. Regulations require that the Subrecipient provide a dollar for dollar match to the grant award under the ESG programs. Therefore a minimum match of $8,445 must be documented.

4. Requests for reimbursement must be submitted by the 15th of the month following the month during which the expense was paid on Part C Request for Reimbursement.

Project Evaluation: The City shall evaluate this project based on the objective(s) stated in the Part B. Failure by the Subrecipient to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Subrecipient on a pro rata basis with level of service. Subrecipient records are subject to review by the City to ensure the accuracy and validity of information reported in quarterly accomplishment reports.

## CITY OF WICHITA
## FEDERAL, STATE AND FOUNDATION GRANT BUDGET FORM

Form No. 21-012 (2010)

E-print, scan or save as pdf and drag following documentation to Laserfiche/Performance/Grants/Your Department.
New Grant: Budget form, notice of award and grant agreement.
Budget revision: Revised budget form.
Name grant award file OCA# - Grant # Program Title (Rev # as appropriate)
Send voting email to Department Director and Budget Analyst. Set results to go to assigned Controller accountant.

| | | | |
|---|---|---|---|
| OCA Title: | YWCA 14-15 Suppliment | Formal Grant Title: | Emergency Solutions Grant |
| Grant period: From : | 7/15/2014 To : 12/31/2014 | Grantor Agency: | HUD |
| Department #: | 09 | CFDA Number: | 14.231 |
| OCA #: | | HUD activity number#: | |
| Grant #: | | Federal/State Project #: | |
| Grant Detail#: | | CC Approval date: | |

Set Expenditure Controls at (box one) | Object level 1 | or | Expenditure Total | Expenditure Total will be utilized if no selection made.

| Source of funding: | Object Level 3 | Original Budget | Revisions Increase | Revisions Decrease | Revised Budget | Revision # |
|---|---|---|---|---|---|---|
| Federal contributions | 8000 | 8,445.00 | | | 8,445.00 | |
| State contributions | 8030 | | | | 0.00 | |
| Federal to State | 8062 | | | | 0.00 | |
| Federal to County | 8090 | | | | 0.00 | |
| City - cash transfer | 9800 | | | | 0.00 | |
| Private contributions | 9713 | | | | 0.00 | |
| City - in-kind | 9714 | | | | 0.00 | |
| REVENUE TOTAL | | 8,445.00 | 0.00 | 0.00 | 8,445.00 | |
| **Expenditures:** | | | | | | |
| **Personal services (1xxx):** | | | | | | |
| Bi-Weekly Wages | 1100 | | | | 0.00 | |
| FICA | 1400 | | | | 0.00 | |
| Employees Pension | 1401 | | | | 0.00 | |
| Worker's Compensation | 1403 | | | | 0.00 | |
| Unemployment Compensation | 1404 | | | | 0.00 | |
| Group Health Insurance | 1405 | | | | 0.00 | |
| Group Life Insurance | 1406 | | | | 0.00 | |
| **Total Personal Services** | | 0.00 | 0.00 | 0.00 | 0.00 | |
| **Contractual services (2xxx):** | | | | | | |
| Delegate Agencies - Utilities | 2195 | | | | 0.00 | |
| Delegate Agencies - Building Mainter | 2895 | 8,445.00 | | | 8,445.00 | |
| Delegate Agencies - Postance & Shi | 2296 | | | | 0.00 | |
| Delegate Agencies - conferences | 2396 | | | | 0.00 | |
| Delegate Agencies - Other contractu | 2996 | | | | 0.00 | |
| **Total Contractual Services** | | 8,445.00 | 0.00 | 0.00 | 8,445.00 | |
| **Commodities (3xxx):** | | | | | | |
| Delegage Agencies - Supplies | 3195 | | | | 0.00 | |
| Delegate Agencies - Misc. Commodit | 3995 | | | | 0.00 | |
| | | | | | 0.00 | |
| **Total Commodities** | | 0.00 | 0.00 | 0.00 | 0.00 | |
| EXPENDITURE TOTAL | | 8,445.00 | 0.00 | 0.00 | 8,445.00 | |

**Department Director or Designee approval is required. Electronic approval acceptable.**
**Electronic approval from Budget Officer or Designee is required.**

# Part D

Part D

ACCOMPLISHMENT REPORT

AGENCY: _____

PROGRAM: _____ QUARTER REPORTED: _____

| | NEW (This Period) | | | | | UNDUPLICATED # SERVED | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | ADULT | | CHILD | | | ADULT | | CHILD | | |
| Race | Non- Hispanic Origin | Hispanic Origin | Non- Hispanic Origin | Hispanic Origin | This Period TOTAL | Non- Hispanic Origin | Hispanic Origin | Non- Hispanic Origin | Hispanic Origin | Cumulative TOTAL |
| White | | | | | | | | | | |
| Black/African American | | | | | | | | | | |
| Asian | | | | | | | | | | |
| American Indian/Alaskan Native | | | | | | | | | | |
| Native Hawaiian/Other Pacific Islander | | | | | | | | | | |
| American Indian/Alaskan Native & White | | | | | | | | | | |
| Asian & White | | | | | | | | | | |
| Black/African American & White | | | | | | | | | | |
| American Indian/Alaskan Native & Black African American | | | | | | | | | | |
| Other Multi-Racial | | | | | | | | | | |
| Number of Participants (Unduplicated) | 0 | | | 0 | 0 | 0 | | | 0 | 0 |

| OPERATIONS ONLY | NEW (This Period) | | | | |
|---|---|---|---|---|---|
| Type of Shelter Provided | ADULT | | CHILD | | TOTAL |
| Barracks: | | | | | |
| Group/Large House: | | | | | |
| Scattered Site Apartment: | | | | | |
| Single Family Detached House: | | | | | |
| Single Room Occupancy: | | | | | |
| Mobile Home/Trailer: | | | | | |
| Hotel/Motel: | | | | | |
| Other: | | | | | |
| Total: | | | | | |

| Description of Beneficiaries | | | | | |
|---|---|---|---|---|---|
| Chronically Homeless (Emergency Shelter only) | | | | | |
| Chronically Mentally Ill | | | | | |
| Chronic Substance Abuse | | | | | |
| Other Disability | | | | | |
| HIV/AIDS | | | | | |
| Victims of Domestic violence | | | | | |
| Elderly | | | | | |
| Other (Describe) | | | | | |
| Total: | | | | | |

| ESSENTIAL SERVICES ONLY | NEW (This Period) | | | | |
|---|---|---|---|---|---|
| Type of Service Provided | ADULT | | CHILD | | TOTAL |
| Drop-In Center | | | | | |
| Food Pantry | | | | | |
| Mental Health | | | | | |
| Alcohol/Drug Program | | | | | |
| Child Care | | | | | |
| Outreach | | | | | |
| Soup Kitchen/Meal Distribution | | | | | |
| Health Care | | | | | |
| HIV/AIDS Services | | | | | |
| Employment | | | | | |
| Other (Describe) | | | | | |

| Narrative: Describe activities/accomplishments this period |
|---|
| |
| |
| |
| |
| |
| |
| |

| Outcome Measurements (Reported Quarterly) | Target | This Period | Cumulative |
|---|---|---|---|
| 1. Specific outcome measure | % | (#/#) = % | (#/#) = % |
| 2. Specific outcome measure | | | |
| 3. Specific outcome measure | | | |
| 3. Specific outcome measure | | | |

**Agenda Item No. II-12**

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Payment for Settlement of Claim

**INITIATED BY:** Law Department

**AGENDA:** Consent

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**Recommendation**: Authorize payment of $50,000 as a full settlement of the subject claim.

**Background**: This claim arises from a traffic accident which occurred on November 23, 2013 involving a Wichita Police Officer. The police vehicle driven by the officer struck the rear of claimant's vehicle.

**Analysis:** The plaintiff has offered to accept a lump sum payment of $50,000 as full settlement of all his claims against the police officer and City of Wichita. Due to the uncertainty and risk of the judgment at trial, the Law Department recommends acceptance of the offer. The settlement of this claim is merely a settlement to resolve a disputed claim.

**Financial Considerations**: Funding for this settlement payment is available from the City's Self Insurance Fund. Finance is directed to make any budget adjustments required and to issue any general obligation bonds, as necessary, to provide for payment of the approved settlement.

**Legal Considerations**: The Law Department recommends settlement of this claim for the amount of $50,000. The bonding resolution has been prepared and approved as to form by the law department.

**Recommendations/Actions**: It is recommended that the City Council authorize payment of $50,000 as full settlement of all possible claims arising out of the events which are the subject of this claim and adopt the resolution.

**Attachments:** Bonding resolution.

**RESOLUTION NO. 14-201**

**A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO FUND A CIVIL LITIGATION SETTLEMENT.**

**WHEREAS**, K.S.A. 75-6113 (the "Act") provides that payment of any judgments, compromises or settlements for which a municipality is liable pursuant to K.S.A. 75-6101 *et seq.*, and amendments thereto, may be made from any funds or moneys of the municipality which lawfully may be utilized for such purpose or if the municipality is authorized by law to levy taxes upon property such payment may be made from moneys received from the issuance of no-fund warrants, temporary notes or general obligation bonds, provided that warrants or temporary notes issued shall mature serially at such yearly dates as to be payable by not more than 10 tax levies and any bonds shall be issued in accordance with the provisions of the general bond law and shall be in addition to and not subject to any bonded debt limitation prescribed by any other law of the state of Kansas; and

**WHEREAS**, the City of Wichita, Kansas (the "City"), is a municipality within the meaning of the Act; and

**WHEREAS**, the governing body of the City has heretofore approved a certain Settlement Agreement relating to an incident occurring on November 23, 2013, involving a Wichita Police Department officer, under which Settlement Agreement the City is liable pursuant to K.S.A. 75-6101 *et seq*. to pay a settlement in the amount of $50,000 and related expenses (the “Settlement”); and

**WHEREAS**, the governing body of the City hereby finds and determines it to be necessary to authorize the issuance of general obligation bonds of the City to finance the Settlement and related costs.

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

**SECTION 1. Financing**. The City is hereby authorized to issue general obligation bonds (the "Bonds") pursuant to the authority of the Act in an amount necessary to pay the costs of the Settlement, plus interest on interim financing and associated financing costs. Bonds may be issued to reimburse Settlement expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

**SECTION 2. Effective Date**. This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**ADOPTED** by the City Council of the City of Wichita, Kansas, on July 15, 2014.

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

JLN\600809.053\\JUDGMENT AUTHORIZATION WPD

**Agenda Item No. II -13**

**City of Wichita**
**City Council Meeting**
July 15, 2014

**TO:** Mayor and City Council

**SUBJECT:** Veterinary Services Group LLC, DBA Veterinary Emergency and Specialty Hospital of Wichita Contract

**INITIATED BY:** Police Department

**AGENDA:** Consent

---

**Recommendation:** Approve the contract with Veterinary Services Group LLC, DBA Veterinary Emergency and Specialty Hospital of Wichita.

**Background:** The Police Department Animal Control is responsible for providing care and services on animals that have been injured and are at large in the Wichita City Limits. To assist the Animal Control personnel, the process to care for an injured animal allows for a citizen to take the animal to a qualified emergency veterinary care facility. These cases are considered "Good Samaritan" cases. When the animal is cared for, the City of Wichita is charged a fee for service by that contracted service provider. In the City of Wichita, there is one facility that can provide this type of care after regular business hours. That is the Veterinary Services Group, LLC dba Veterinary Emergency and Specialty Hospital of Wichita, herein referred to as VESH.

VESH provide emergent care for animals that are considered "Good Samaritan" cases, as well as any cases that are brought to them by Wichita Animal Control after regular vet services that are contracted by the City of Wichita are closed. VESH charges a two tier fee schedule for services. One fee is for "Good Samaritan" cases, the other is for Animal Control Cases. "Good Samaritan" cases are typically cheaper than emergent cases brought in by Animal Control personnel.

This service has been deemed by Wichita Animal Control to be the most expeditious method to provide ethical, quick medical treatment for injured animals.

**Analysis:** VESH is the only 24-hour emergency veterinarian service in Wichita or surrounding area, which provides quality service to the community by performing emergency services on our "Good Samaritan" cases as well as Animal Control cases.

In 2013 from records maintained by the Wichita Police Department, invoices paid to VESH for emergent animal services, was $24,274. That was approximately $2,023 per month for all animal control cases.

In 2014 from the same records, through June, we have paid $17,748 in total invoices. That is currently a monthly average of $2,958. It is projected that 2014 invoices, if all animal control cases are consistent, will be approximately $35,497, under the current terms of contract.

However, with the current contract expired, a new contract was written up. During the contract negotiations with VESH, they bid out the contract at a higher rate for services. VESH provided us with the following information: from June 2013 to May 27th 2014, they received from the City of Wichita $31,875 for such services but the actual cost of service they provided $62,029 of services. The excess amount of $30,154 was written off by VESH. They have bid out the new contract to recover some of that lost cost.

Currently, VESH charge a rate of $100 for each "Good Samaritan" case and $300 for Animal Control cases. They have submitted a bid to increase the rate to $200 for each "Good Samaritan" case and $500 for each Animal Control case. The rate that has been bid is a ceiling rate. In other words, we are charged for services performed and it is capped at the negotiated rate.

In 2013 we had a total of 144 Animal Control cases and 80 "Good Samaritan" cases. If charged the full amount for each case the total for Animal Control cases would have been $43,200 and for "Good Samaritan" cases would have been $8,000 or a total of $51,200. In 2013, the actual amount billed and paid by the City of Wichita for these services was $24,271. This reflects a 47% difference in what was actually billed from what the max allowable per case would have been.

To April of 2014, our case totals have been 47 Animal Control cases and 24 "Good Samaritan" cases. Projecting out for 2014, we anticipate we will have approximately 141 Animal Control cases and 72 "Good Samaritan" cases. From the contract being approved August 1, 2014, we can anticipate 58 Animal Control cases and 30 "Good Samaritan" cases to the year-end 2014.

If each of these cases were charged the maximum amount under the new contract, the cost would be $29,000 for Animal Control cases and $6,000 for "Good Samaritan" cases, or a total of $35,000 from August 1, 2014. Given the same intake and treatment for 2015, at the maximum allowable rate, the cost of the contract would be $70,500 for Animal Control cases and $14,400 for "Good Samaritan" cases, or a total cost of $84,900. If the 47% difference from 2013 was applied, the expected billed amount in 2015 would be approximately $39,903.

**Financial Consideration:** The 2014 Adopted Budget for the Police Department's Animal Control - Shelter veterinary services is $46,000. This amount will need to be adjusted in 2015 to reflect the higher cost of treating animals that need emergency services. It is reasonable to anticipate that emergency animal intake rates will remain consistent as they have over the last three years, and the cost of treatment adjusted will be around 47% of the maximum allowable charge, or an approximately $39,903 per year going forward. VESH is the only veterinarian that provides the emergent care in our area.

**Legal Consideration:** The Law Department has reviewed and approved the contract as to form.

**Recommendations/Actions:** It is recommended that City Council approve the contract with Veterinary Services Group LLC.

**Attachments:** Veterinary Services Group LLC contract.
Billed Animal Control from Performance
VESH cases by year 2011 to April 2014

| Emergency Services Provided by VESH | | |
|---|---|---|
| **Month** | **Year** | |
| | **2013** | **2014** |
| January | $ 1,997.00 | $ 3,342.42 |
| February | $ 1,750.50 | $ 1,954.00 |
| March | $ 620.00 | $ 2,222.00 |
| April | $ 1,331.53 | $ 3,252.00 |
| May | $ 1,971.50 | $ 3,140.16 |
| June | $ 2,482.26 | $ 3,838.00 |
| July | $ 2,359.00 | |
| August | $ 2,776.00 | |
| September | $ 3,063.00 | |
| October | $ 1,229.00 | |
| November | $ 2,373.00 | |
| December | $ 2,321.12 | |
| **Total** | **$ 24,273.91** | **$ 17,748.58** |
| | | |
| Monthly Avg | $ 2,022.83 | $ 2,958.10 |
| Projected yearly cost* | **$ 24,273.91** | **$ 35,497.16** |

*projected yearly cost at the current contract price

CITY OF WICHITA

**Department of Finance**

June 20, 2014
**BP440051**

Veterinary Services Group LLC,
DBA Veterinary Emergency & Specialty Hospital of Wichita
727 South Washington
Wichita KS 67211

Ladies &/or Gentlemen:

Enclosed are two (2) copies of a contract between the City of Wichita and Veterinary Services Group LLC, DBA Veterinary Emergency & Specialty Hospital of Wichita for **Animal Health Services** for the Police Department / Animal Control.

If this contract is satisfactory to you, **please have a managing member of your company sign and return both copies.** Please be sure to identify the title of the person who signs on behalf of your company on the signature page. When the execution of the contract is complete, we will return a copy to you. If there are any questions, please call this office.

Sincerely,

Melinda A. Walker
Purchasing Manager

MAW/HL/sb
Enclosures (2)

**Purchasing Office**

City Hall • 12th Floor • 455 North Main • Wichita, Kansas 67202-1679

**T** 316.268.4636 **F** 316.268.4656

www.wichita.gov

# CONTRACT
# for
# ANIMAL HEALTH SERVICES

## BLANKET PURCHASE ORDER #BP440051

**THIS CONTRACT** entered into this 1st day of August, 2014 and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"**, and **VETERINARY SERVICES GROUP LLC, DBA VETERINARY EMERGENCY AND SPECIALTY HOSPITAL OF WICHITA,** 727 South Washington, Wichita, Kansas, 67211, Telephone Number (316) 262-5321, hereinafter called **"CONTRACTOR"**.

**WITNESSETH:**

**WHEREAS**, the **CITY** has solicited services for **Animal Health Services;** and

**WHEREAS, CONTRACTOR** has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY.**

**NOW, THEREFORE**, the parties hereto agree as follows:

1. **Scope of Services. CONTRACTOR** shall provide to the **CITY** all those commodities and/or services specified in its proposal, which is incorporated herein by this reference the same as if it were fully set forth.

2. **Compensation. CITY** agrees to pay to **CONTRACTOR** the following fees for **Animal Health Services** - half price exams, hospitalization, euthanasia, radiology and IV fluids as per **Contractor's** proposal and as approved by City Council on July 15, 2014. The additional cost limitations shall apply as appropriate.

- **A maximum charge of $200.00 for each Good Samaritan Case**
- **A maximum charge of $500.00 for each Animal Control Case**

3. **Term.** The term of this contract shall be from **August 1, 2014 through July 31, 2015** by mutual agreement of both parties. This contract is subject to cancellation at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other party, to be effective at the end of the next succeeding calendar month.

4. **Indemnification and Insurance.**

a. **CONTRACTOR** shall save and hold the **CITY** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of **CONTRACTOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

5. **Independent Contractor.** The relationship of the **CONTRACTOR** to the **CITY** will be that of an independent contractor. No employee or agent of the **CONTRACTOR** shall be considered an employee of the **CITY**.

6. **Compliance with Laws. CONTRACTOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

7. **No Assignment.** The services to be provided by the **CONTRACTOR** under this Contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

8. **Non-Discrimination. CONTRACTOR** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment/ Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

9. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Contract to create the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.

10. **No Arbitration**. The **CONTRACTOR** and the **CITY** shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

11. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas. The parties agree that this contract has been created in Kansas.

12. **Representative's Authority to Contract.** By signing this Contract, the representative of the contractor represents that he or she is duly authorized by the contractor to execute this contract, and that the **CONTRACTOR** has agreed to be bound by all its provisions.

**IN WITNESS WHEREOF**, the parties have set their hands the day and year first above written.

**ATTEST:**

Janis Edwards
Deputy City Clerk

**CITY OF WICHITA, KANSAS**

Carl Brewer
Mayor

**APPROVED AS TO FORM:**

Gary E. Rebenstorf
Director of Law

By SW

**VETERINARY SERVICES GROUP LLC DBA VETERINARY EMERGENCY AND SPECIALTY HOSPITAL OF WICHITA**

*Signature*

Brock Gfgreen
*Print Name*

Hospital Director
*Title (Managing Member)*

## EXHIBIT A

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

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

A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

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

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

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

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

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

D. Exempted from these requirements are:

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

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

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

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

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

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

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

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

| | Animal Control VESH Cases | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 2011 | | 2012 | | 2013 | | 2014 | |
| | Ours | GS | Ours | GS | Ours | GS | Ours | GS |
| Jan | 13 | 0 | 11 | 7 | 10 | 7 | 9 | 4 |
| Feb | 15 | 0 | 12 | 5 | 4 | 3 | 12 | 5 |
| Mar | 26 | 7 | 10 | 0 | 7 | 7 | 13 | 7 |
| April | 11 | 1 | 11 | 6 | 12 | 2 | 13 | 8 |
| May | 27 | 3 | 10 | 6 | 10 | 10 | | |
| June | 21 | 10 | 10 | 9 | 14 | 10 | | |
| July | 21 | 6 | 13 | 10 | 18 | 8 | | |
| Aug | 20 | 5 | 13 | 8 | 17 | 10 | | |
| Sept | 11 | 1 | 13 | 6 | 9 | 3 | | |
| Oct | 23 | 3 | 8 | 4 | 14 | 5 | | |
| Nov | 9 | 2 | 13 | 5 | 15 | 10 | | |
| Dec | 14 | 0 | 13 | 8 | 14 | 5 | | |
| | **211** | **38** | **137** | **74** | **144** | **80** | **47** | **24** |

| | | |
|---|---|---|
| **Average** | **11.75** | **6** |
| **Yearly Projection** | **141** | **72** |

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council Members

**SUBJECT:** General Obligation Sales Tax Bond Sale

**INITIATED BY**: Department of Finance

**AGENDA:** Consent

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**Recommendation:** Adopt the resolution.

**Background:** The City is planning to offer for sale one series of General Obligation (GO) Sales Tax (LST) Bonds (Series 2014) in an approximate amount of $72,635,000. The public sale of the bonds is scheduled for 10:00 a.m. C.T. on August 12, 2014, at which time bids will be received and the City Council will award the sale of the bonds to the bidder whose proposed interest rates result in the lowest overall cost to the City. A resolution declaring it necessary to issue General Obligation Sales Tax Bonds was adopted by the City Council on June 3, 2014, and as required, this resolution was published twice and the 30-day protest period has been satisfied.

State law stipulates that prior to the issuance of GO Sales Tax Bonds a Financial Feasibility Study must be prepared demonstrating that sufficient sales tax revenue will be available to meet debt service requirements. A Financial Feasibility Study was first prepared in 2002 and has been updated with each subsequent issuance of GO Sales Tax Bonds.

The City is also required to certify that certain parity tests are met if additional bonds are issued pledging sales tax revenues. One test requires that pledged revenues generated by the sales tax for a 12 month period preceding the issuance of the bonds be in an amount equal to at least 110% of the total combined average annual debt service requirements for all ensuing years on the outstanding bonds and proposed parity bonds.

**Analysis:** The Series 2014 Bonds are being issued on a reimbursement basis to finance project costs previously incurred and will allow the continued reconstruction of Kellogg/US-54 to the east and west.

Finance and Public Works staff have prepared and updated a Financial Feasibility Study, demonstrating the ability to meet the debt service parity requirements, as well as the continued development of the Kellogg corridor to the east and to the west.

**Financial Considerations:** The City of Wichita awards the sale of bonds to the bidder with the lowest true interest cost, or "TIC." Using TIC to calculate the bids, accounts for the time value of money. The TIC is the rate that will discount all future cash payments so that the sum of their present value will equal the bond proceeds. Further, using the TIC calculation can potentially result in a municipality saving money because TIC does not ignore the timing of interest payments.

The Series 2014 Bonds will mature serially over 15 years with principal maturities structured to produce level annual payments of principal and interest. The bonds will be callable in 2023 at par. Debt service on the Series 2014 Bonds will be paid from the City's portion of funds derived from a one percent (1%) County-wide retailer's sales tax dedicated by Ordinance 41-815 to paying the costs of local road, highway and bridge improvements, including right-of-way acquisitions.

**Legal Considerations**: The Law Department has approved the resolution as to form, authorizing the sale of the bonds and directing the publication and distribution of the Notice of Sale (prepared by the City's Bond Counsel).

**Recommendations/Actions**: It is recommended the City Council approve the Financial Feasibility Study and adopt the resolution: 1) authorizing the sale of General Obligation Sales Tax Bonds; 2) approving the distribution to prospective bidders of the Preliminary Official Statement, subject to such minor revisions as may be determined necessary by the Director of Finance and Bond Counsel; 3) finding that such Preliminary Official Statement is in a form "deemed final" for the purpose of the Securities Exchange Commission's Rule 15c2-12(b)(l), subject to revision, amendment and completion in the final Official Statement; 4) authorizing distribution of the Notice of Sale; and 5) authorizing City staff, in consultation with Bond Counsel to take such further action reasonably required to implement this Resolution.

**Attachments:** Financial Feasibility Study
Resolution
Official Notice of Sale

Gilmore & Bell, P.C.
06/25/2014

**RESOLUTION NO. 14-198**

**RESOLUTION AUTHORIZING THE OFFERING FOR SALE OF GENERAL OBLIGATION SALES TAX BONDS OF THE CITY OF WICHITA, KANSAS.**

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**WHEREAS**, the City Council (the "Governing Body") of the City of Wichita, Kansas (the "City"), has heretofore authorized the acquisition, construction and equipping of the costs of road, highway and bridge projects in the City and related right-of-way acquisition (collectively, the "Improvements"); and

**WHEREAS**, the Governing Body has heretofore adopted Resolution No. 14-151 (the "Authorizing Resolution") declaring it necessary and advisable to issue general obligation sales tax bonds, pursuant to K.S.A. 12-187 *et seq*., particularly K.S.A. 12-195b (the "Act"), to finance the costs of the Improvements and related interest and financing costs; and

**WHEREAS**, the Authorizing Resolution was published in accordance with the Act and no sufficient protest petition against the issuance of the general obligation sales tax bonds was filed in accordance with the Act; and

**WHEREAS**, the City proposes to issue its general obligation sales tax bonds to permanently finance all or a portion of the costs of the Improvements and related interest and financing costs; and

**WHEREAS**, the City desires to authorize the Director of Finance and other City staff, the Law Department and Gilmore & Bell, P.C., as bond counsel ("Bond Counsel") to proceed with the offering for sale of said general obligation sales tax bonds and related activities, including the preparation and distribution of a preliminary official statement and notice of bond sale.

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

**Section 1**. The Director of Finance is hereby authorized to offer at competitive public sale the General Obligation Sales Tax Bonds, Series 2014 of the City (the "Bonds") as more fully described in the Notice of Bond Sale, which is hereby approved in substantially the form presented to the Governing Body this date.

**Section 2**. The Preliminary Official Statement relating to the Bonds, is hereby approved in substantially the form presented to the Governing Body this date, with such changes or additions as the Mayor or Director of Finance shall deem necessary and appropriate, and such officials and other representatives of the City are hereby authorized to use such document in connection with the public sale of the Bonds.

**Section 3**. The Director of Finance, in conjunction with Bond Counsel, is hereby authorized and directed to give notice of said sale by distributing copies of the Notice of Bond Sale and Preliminary Official Statement to prospective purchasers of the Bonds. Proposals for the purchase of the Bonds shall be submitted upon the terms and conditions set forth in said Notice of Bond Sale, and shall be delivered to the Governing Body at its meeting to be held on the date of such sale, at which meeting the Governing Body shall review such bids and shall award the sale of the Bonds or reject certain or all proposals.

**Section 4**. For the purpose of enabling the purchasers of the Bonds (collectively, the "Purchaser") to comply with the requirements of Rule 15c2-12 of the Securities Exchange Commission (the "Rule"), the Mayor and Director of Finance or appropriate officers of the City are hereby authorized to: (a) approve the form of said Preliminary Official Statement, and to execute the "Certificate Deeming Preliminary Official Statement Final" in substantially the form attached hereto as ***Exhibit A*** as approval of the Preliminary Official Statement, such officials' signature thereon being conclusive evidence of such officials' and the City's approval thereof; (b) covenant to provide continuous secondary market disclosure by annually transmitting certain financial information and operating data and other information necessary to comply with the Rule to certain national repositories and the Municipal Securities Rulemaking Board, as applicable; and (c) take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary; to enable the Purchaser to comply with the requirement of the Rule. The City agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds or within sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, whichever is earlier, sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of the Rule and with the requirements of Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 5**. The Mayor, Director of Finance, Clerk, the City Attorney and the other officers and representatives of the City and Bond Counsel are hereby authorized and directed to take such other action as may be necessary to carry out the sale of the Bonds, including selecting certain other qualified professional firms necessary to complete the issuance of the Bonds.

**Section 6**. 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 15, 2014.

(SEAL)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

JLN\600809.121\LST SALEDOCS (06-25-14)

Gilmore & Bell, P.C.
07/01/2014

# CITY OF WICHITA, KANSAS

## OFFICIAL NOTICE OF BOND SALE

## $72,635,000*
## GENERAL OBLIGATION SALES TAX BONDS, SERIES 2014

(*GENERAL OBLIGATION BONDS PAYABLE FROM UNLIMITED AD VALOREM TAXES*)

**Bids**. Electronic bids for the purchase of the above-referenced bonds (the "Bonds") of the City of Wichita, Kansas (the "City") herein described will be received by the Director of Finance of the City via ***PARITY***® until 10:00 a.m., Central Daylight Time (the "Submittal Hour"), on

**TUESDAY, AUGUST 12, 2014**

(the "Sale Date"). All bids will be publicly evaluated at said time and place and the award of the Bonds to the successful bidder (the "Successful Bidder") will be acted upon by the City Council (the "Governing Body") of the City as soon thereafter as may be practical at its meeting to be held on the Sale Date in the Council Chamber at City Hall. No oral, auction, facsimile or other written bids will be considered and no bid for less than the entire principal amount of the Bonds will be considered. Other capitalized terms not otherwise defined in this Notice of Bond Sale (the "Notice") shall have the meanings set forth in the hereinafter referenced Preliminary Official Statement relating to the Bonds.

**Terms of the Bonds**

***General***. The Bonds will consist of fully registered bonds in the denomination of $5,000 or any integral multiple thereof (the "Authorized Denomination"). The Bonds will be dated September 1, 2014 (the "Dated Date") and will become due as hereinafter set forth. The Bonds will bear interest from the Dated Date at rates to be determined when the Bonds are sold as hereinafter provided, payable semiannually on April 1 and October 1, beginning on April 1, 2015 (collectively, the "Interest Payment Dates"). The Bonds will become due in principal installments as follows:

| Payment Date (October 1) | Principal Amount* | Payment Date (October 1) | Principal Amount* |
|---|---|---|---|
| 2015 | $3,905,000 | 2023 | $4,950,000 |
| 2016 | 4,020,000 | 2024 | 5,095,000 |
| 2017 | 4,145,000 | 2025 | 5,250,000 |
| 2018 | 4,265,000 | 2026 | 5,405,000 |
| 2019 | 4,395,000 | 2027 | 5,570,000 |
| 2020 | 4,525,000 | 2028 | 5,735,000 |
| 2021 | 4,665,000 | 2029 | 5,905,000 |
| 2022 | 4,805,000 | | |

****Principal Amount Subject to Change***. The City reserves the right to adjust the total principal amount of the Bonds and the principal amount of any maturity, depending on the purchase price bid by the Successful Bidder and amounts necessary to finance the public improvements to be financed thereby.

If there is an adjustment in the final aggregate principal amount of the Bonds or the principal amount of any maturity as described above, the City will notify the Successful Bidder by means of telephone or facsimile transmission, subsequently confirmed in writing, no later than 2:00 p.m., Central Daylight Time, on the Sale Date. Adjustments, if required, will be made proportionately to each principal maturity as permitted by the Authorized Denominations. The actual purchase price for the Bonds shall be calculated by applying the percentage of par value bid by the Successful Bidder against the final aggregate principal amount of the Bonds, as adjusted. At the request of the City, the Successful Bidder agrees to execute a revised bid form or repayment schedule reflecting the adjusted principal amounts and purchase price. The Successful Bidder may not withdraw its bid or change the interest rates bid as a result of any changes made to the principal amount of the Bonds or the schedule of principal payments as described herein.

**Place of Payment and Registration**

***Payment.*** The principal of and interest on the Bonds will be payable in lawful money of the United States of America by check or draft of the Treasurer of the State of Kansas, Topeka, Kansas (the "Paying Agent" and "Bond Registrar"). The principal of each Bond will be payable at maturity or earlier redemption to the owners thereof whose names are on the registration books (the "Register") of the Bond Registrar (the "Registered Owner") upon presentation and surrender at the principal office of the Paying Agent. Interest on each Bond will be payable to the Registered Owner of such Bond as of the fifteenth day (whether or not a business day) of the calendar month next preceding each Interest Payment Date (the "Record Date"): (a) mailed by the Paying Agent to the address of such Registered Owner as shown on the Register or at such other address as is furnished to the Paying Agent in writing by such Registered Owner; or (b) in the case of an interest payment to Cede & Co., by wire transfer to such Registered Owner upon written notice given to the Paying Agent by such Registered Owner, not less than 15 days prior to the Record Date for such interest, containing the wire transfer address to which such Registered Owner wishes to have such wire directed.

***Registration***. The Bonds will be registered pursuant to a plan of registration approved by the City and the Attorney General of the State of Kansas. The City will pay for the fees of the Bond Registrar for registration and transfer of the Bonds and will also pay for printing a reasonable supply of registered blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Bond Registrar, will be the responsibility of the Registered Owners.

**Book-Entry-Only System**

The Bonds shall be initially registered in the name of Cede & Co., as the nominee of DTC and no beneficial owner will receive certificates representing their interests in the Bonds. During the term of the Bonds, so long as the book-entry-only system is continued, the City will make payments of principal of, premium, if any, and interest on the Bonds to DTC or its nominee as the Registered Owner of the Bonds, DTC will make book-entry-only transfers among its participants and receive and transmit payment of principal of, premium, if any, and interest on the Bonds to its participants who shall be responsible for transmitting payments to beneficial owners of the Bonds in accordance with agreements between such participants and the beneficial owners. The City will not be responsible for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants. In the event that: (a) DTC determines not to continue to act as securities depository for the Bonds, or (b) the City determines that continuation of the book-entry-only form of evidence and transfer of ownership of the Bonds would adversely affect the interests of the beneficial owners of the Bonds, the City will discontinue the book-entry-only form of registration with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause to be authenticated and delivered to the beneficial owners replacement Bonds in the form of fully registered certificates. Reference is made to the

Preliminary Official Statement for further information regarding the book-entry-only system of registration of the Bonds and DTC.

**Redemption Provisions**

***General.*** Whenever the City is to select Bonds for the purpose of redemption, it will, in the case of Bonds in denominations greater than the minimum Authorized Denomination, if less than all of the Bonds then outstanding are to be called for redemption, treat each minimum Authorized Denomination of face value of each such fully registered Bond as though it were a separate Bond in the minimum Authorized Denomination.

***Optional Redemption***. At the option of the City, the Bonds maturing in the years 2024 and thereafter will be subject to redemption and payment prior to maturity on October 1, 2023, and thereafter, as a whole or in part (selection of the amount of Bonds to be redeemed to be determined by the City in such equitable manner as it may determine) at any time, at a redemption price of 100% (expressed as percentage of the principal amount), plus accrued interest thereon to the date of redemption.

***Mandatory Redemption***. A bidder may elect to have all or a portion of the Bonds scheduled to mature in consecutive years issued as term bonds (the "Term Bonds") and subject to mandatory redemption requirements consistent with the schedule of serial maturities set forth above, subject to the following conditions: (a) not less than all Bonds of the same serial maturity shall be converted to Term Bonds with mandatory redemption requirements; (b) callable and noncallable serial maturities of the Bonds may not be combined in the same Term Bond maturity; and (c) a bidder shall make such an election by completing the applicable information on PARITY®.

***Notice and Effect of Call for Redemption***. Unless waived by any owner of Bonds to be redeemed, if the City shall call any Bonds for redemption and payment prior to the maturity thereof, the City shall give written notice of its intention to call and pay said Bonds to the Bond Registrar and the Successful Bidder. In addition, the City shall cause the Bond Registrar to give written notice of redemption to the registered owners of said Bonds. Each of said written notices shall be deposited in United States first class mail not less than 30 days prior to the date fixed for redemption. All notices of redemption shall state the date of redemption, the redemption price, the Bonds to be redeemed, the place of surrender of Bonds so called for redemption and a statement of the effect of the redemption. The City shall also give such additional notice as may be required by Kansas law or regulation of the Securities and Exchange Commission in effect as of the date of such notice. If any Bond be called for redemption and payment as aforesaid, all interest on such Bond shall cease from and after the date for which such call is made, provided funds are available for its payment at the price hereinbefore specified.

**Authority, Purpose and Security**

***General.*** The Bonds are being issued pursuant to the Constitution and statutes of the State of Kansas, including K.S.A. 12-187 *et seq*., to provide permanent financing for certain road, highway and bridge projects in the City and related right-of-way acquisition, and related financing costs.

***Security***. The Bonds shall be general obligations of the City payable as to both principal and interest from certain local sales tax revenues, as more fully described in the hereinafter referenced Preliminary Official Statement relating to the Bonds (the "Pledged Revenues"), and if not so paid from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City. The full faith, credit and resources of the City are irrevocably pledged for the prompt payment of the principal and interest on the Bonds as the same become due. The lien of the Bonds against the Pledged Revenues Bonds is on a parity with the

payment of the City's general obligation sales tax bonds previously issued and additional bonds to be issued as more fully described in the hereinafter referenced Preliminary Official Statement relating to the Bonds.

**Submission of Bids**

All bids shall be submitted electronically via PARITY® and must be submitted in accordance with its Rules of Participation, as well as the provisions of this Notice. If provisions of this Notice conflict with those of PARITY®, this Notice shall control. Bids must be received prior to the Submittal Hour on the Sale Date accompanied by the Deposit (as hereinafter defined), which shall be submitted separately. The City shall not be responsible for any failure, misdirection or error in the means of transmission selected by any bidder. Information about the electronic bidding services of PARITY® may be obtained from Ipreo at 1359 Broadway, 2nd Floor, New York, New York 10018, Phone No. (212) 849-5023.

**Conditions of Bids**

Proposals will be received on the Bonds bearing such rate or rates of interest as may be specified by the bidders, subject to the following conditions: (a) the same rate shall apply to all Bonds of the same maturity year; (b) no interest rate may exceed a rate equal to the daily yield for the 10-year Treasury Bond published by ***THE BOND BUYER***, in New York, New York, on the Monday next preceding the day on which the Bonds are sold, plus 6%; and (c) no supplemental interest payments will be considered. No bid for less than ***100%*** of the principal amount of the Bonds and accrued interest thereon to the date of delivery will be considered. ***The initial price to the public for each maturity of each issue must be 98.0% or greater.*** Each bid shall specify: (a) the total interest cost (expressed in dollars) during the term of the Bonds on the basis of such bid; (b) the purchase price offered by the bidder; (c) the net interest cost (expressed in dollars) on the basis of such bid; and (d) an estimate of the TIC (as hereinafter defined) on the basis of such bid. Each bidder shall certify to the Issuer the correctness of the information contained on the bid form; the Issuer will be entitled to rely on such certifications. Each bidder agrees that, if it is awarded the Bonds, it will provide the certification as to initial offering prices described under the caption "Certification as to Offering Price" in this Notice.

**Good Faith Deposit**

***General***. Each bid shall be accompanied by a good faith deposit (the Deposit") in an amount equal to 2% of the principal amount of the Bonds as stated on the initial page of this Notice ($1,452,700), payable to the order of the City to secure the City from any loss resulting from the failure of the Successful Bidder to comply with the terms of its bid. Each Deposit, ***which must be received by the City prior to 9:30 a.m. Central Daylight Time on the Sale Date***, must be in the form of: (a) a certified or cashier's check drawn on a bank located in the United States of America, payable to the order of the City; (b) a Financial Surety Bond (as described below) payable to the order of the City; or (c) a wire of Federal Reserve funds (as described below), immediately available for use by the City. If a bid is accepted, the Deposit, or the proceeds thereof, will be held by the City until the Successful Bidder has complied with all of the terms and conditions of this Notice at which time the amount of said Deposit shall be returned to the Successful Bidder or deducted from the purchase price, at the option of the City. If a bid is accepted, but the City fails to deliver the Bonds to the Successful Bidder in accordance with the terms and conditions of this Notice, said Deposit, or the proceeds thereof, will be returned to the Successful Bidder. If a bid is accepted but the Successful Bidder defaults in the performance of any of the terms and conditions of this Notice, the proceeds of such Deposit will be retained by the City as and for liquidated damages. No interest on any Deposit shall be paid by the City.

***Deposit Submission Details***.

(a) *Certified or Cashier's Check.* Certified or cashier's checks must be delivered to the Debt Coordinator at the address set forth on the last page of this Notice.

(b) *Financial Surety Bond.* Any financial surety bond (the "Surety Bond") must be issued by an insurance or surety company rated "AA" by Standard & Poor's Ratings Services, a division of McGraw Hill Financial Inc., or "Aa" by Moody's Investors Service and licensed to issue such a Surety Bond in the State of Kansas, and shall identify each bidder whose Deposit is guaranteed by such Surety Bond. Notice of the issuance of such Surety Bond shall be given by the issuer thereof via email transmission to the Director of Finance at the address set forth on the last page of this Notice. If the sale of the Bonds is awarded to a bidder utilizing a Surety Bond, the Successful Bidder is required to submit to the City a cashier's or certified check or wire transfer of immediately available federal funds to such financial institution requested by the City, not later than 2:00 p.m., Central Daylight Time on the next business day following the Sale Date. If such funds are not received by such time, the Surety Bond may be drawn on by the City to satisfy the Deposit requirement.

(c) *Wire Transfer*. Any wire transfer shall be submitted to a financial institution designated by the City, and wire transfer instructions may be obtained from the Debt Coordinator at the address set forth on the last page of this Notice. ***Each wire transfer Deposit must reference "City of Wichita, Kansas, Good Faith Deposit, Series 2014."*** Contemporaneously with the submission of a wire transfer Deposit, such bidder shall send an email to the Director of Finance or Debt Coordinator at the email address set forth on the last page of this Notice, including the following information: (i) notification that a wire transfer has been made; (ii) the amount of the wire transfer; (iii) the wire transfer federal reference number; (iv) the name of the bidder for which the wire transfer is to be credited as a Deposit, (v) if the name of the bidder as shown on *PARITY* does not match the name shown as the beneficiary on the wire instructions, the email will also state that the bidder is identified by the beneficiary's name on the wire instructions; and (vi) return wire transfer instructions in the event such bid is unsuccessful.

***Deposit Return Details***. Good Faith checks submitted by unsuccessful bidders will be returned promptly via United States first class mail; wire transfer Deposits submitted by unsuccessful bidders will not be accepted or shall be returned in the same manner received not later than the next business day following the Sale Date, and the City reserves the right to withhold reasonable charges for any fees or expenses incurred in returning a wire transfer Deposit.

**Basis of Award**

***General.*** The City reserves the right to reject any and/or all bids and to waive any irregularities in a submitted bid. Any disputes arising hereunder shall be governed by the laws of the State of Kansas, and any party submitting a bid agrees to be subject to jurisdiction and venue of the federal and state courts within Kansas with regard to such dispute. Any bid received after the Submittal Hour on the Sale Date will be rejected or returned to the bidder.

***Award***. The award of the Bonds will be made on the basis of the lowest true interest cost ("TIC"), which will be determined as follows: the TIC is the discount rate (expressed as a per annum percentage rate) which, when used in computing the present value of all payments of principal and interest to be paid on the Bonds, from the payment dates to the Dated Date, produces an amount equal to the price bid, including any adjustments for premium or discount, if any. Present value will be computed on the basis of semiannual compounding and a 360-day year of twelve 30-day months. Bidders are

requested to provide a calculation of the TIC for the Bonds on the bid form, computed as specified herein on the basis of their respective bids, which shall be considered as informative only and not binding on either the City or the bidder. The City will verify the TIC based on such bids. If there is any discrepancy between the TIC specified and the bid price and interest rates specified, the specified bid price and interest rates shall govern and the TIC specified in the bid shall be adjusted accordingly. If two or more proper bids providing for identical amounts for the lowest TIC are received, the Governing Body will determine which bid, if any, will be accepted, and its determination is final.

**Ratings**

The City's outstanding general obligation bonds are rated "Aa1" by Moody's Investors Service, Inc. ("Moody's") and "AA+" by Standard & Poor's, a division of McGraw Hill Financial Inc ("S&P"). The City has applied to the same rating agencies that currently rate the Bonds for ratings on the Bonds. Additional information regarding such application and ratings are further described in the Preliminary Official Statement, as hereinafter described. Any explanations of the significance of such ratings (as well as any positive or negative outlooks thereon or potential changes to any rating in the near future) should be obtained from Moody's and S&P.

**Bond Insurance**

The City has **not** applied for any policy of municipal bond insurance with respect to the Bonds, and will not pay the premium in connection with any policy of municipal bond insurance desired by any Successful Bidder. In the event a bidder desires to purchase and pay all costs associated with the issuance of a policy of municipal bond insurance in connection with the Bonds, such indication and the name of the desired insurer must be set forth on the bidder's bid form and the bid must be accompanied by a commitment from the selected insurer and shall specify all terms and conditions to which the City will be required to agree in connection with the issuance of such insurance policy. The City specifically reserves the right to reject any bid specifying municipal bond insurance, even though such bid may result in the lowest net interest cost to the City.

**CUSIP Numbers**

The CUSIP Service Bureau will be requested to assign CUSIP identification numbers to the Bonds, and such numbers shall be printed on the Bonds; however, neither the failure to assign any such number to or print any such number on any Bond, nor any error with respect thereto, shall constitute cause for the failure or refusal by the Successful Bidder to accept delivery of and to make payment for the Bonds in accordance with the terms of this Notice and of its bid. All expenses in relation to the printing of the CUSIP numbers and the expenses of the CUSIP Service Bureau for the assignment thereof shall be the responsibility of and shall be paid for by the City.

**Delivery and Payment**

The City will pay for printing the Bonds and will deliver the Bonds properly prepared, executed and registered without cost on or about **SEPTEMBER 11, 2014** (the "Closing Date"), at DTC for the account of the Successful Bidder. Each Successful Bidder will be furnished with a certified transcript of the proceedings in CD-ROM format evidencing the authorization and issuance of the Bonds and the usual closing documents, including a certificate that there is no litigation pending or threatened at the time of delivery of the Bonds affecting their validity and a certificate regarding the completeness and accuracy of the Official Statement. Payment for the Bonds shall be received by 12:00 noon, Central Daylight Time, on the Closing Date, in Federal Reserve funds immediately available for use by the City. The City will deliver a single Bond for each maturity of Bonds registered in the nominee name of DTC.

**Reoffering Prices**

The Successful Bidder will be required to complete, execute and deliver to the City prior to the delivery of the Bonds, a written certification (the "Issue Price Certificate") containing the following: (a) the initial offering price and interest rate for each maturity of the Bonds; (b) that all of the Bonds were offered to the public in a bona fide public offering at the initial offering prices on the Sale Date; and (c) on the Sale Date the Successful Bidder reasonably expected that at least 10% of each maturity of the Bonds would be sold to the "public" at prices not higher than the initial offering prices. For purposes of the preceding sentence "public" means persons other than bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. However, such Issue Price Certificate may indicate that the Successful Bidder has purchased the Bonds for its own account in a capacity other than as an underwriter or wholesaler, and currently has no intent to reoffer the Bonds for sale the public. ***Subsequent to the Submittal Hour, such initial offering prices to the public shall be provided to the City not more than 20 minutes after requested by the City.***

At the request of the City, the Successful Bidder will provide information explaining the factual basis for the Successful Bidder's Issue Price Certificate. This agreement by the Successful Bidder to provide such information will continue to apply after the Closing Time if: (a) the City requests the information in connection with an audit or inquiry by the Internal Revenue Service (the "IRS") or the Securities and Exchange Commission (the "SEC") or (b) the information is required to be retained by the City pursuant to future regulation or similar guidance from the IRS, the SEC or other federal or state regulatory authority.

**Preliminary Official Statement and Official Statement**

The Governing Body has authorized and directed the preparation of a Preliminary Official Statement dated July 15, 2014, "deemed final" by the City except for the omission of certain information as provided in Securities and Exchange Commission Rule 15c2-12, copies of which may be obtained by contacting the Department of Finance at the address set forth on the last page of this Notice or by visiting www.onlinemuni.com. Authorization is hereby given to redistribute this Notice and the Preliminary Official Statement, but this entire Notice and the entire Preliminary Official Statement, and not portions thereof, must be redistributed. Upon the sale of the Bonds, the City will prepare the final Official Statement and will furnish the Successful Bidder, without cost, within seven business days of the acceptance of the Successful Bidder's proposal, with a sufficient number of copies thereof, which may be in electronic format, in order to comply with the requirements of Rule 15c2-12(3) and (4) of the Securities and Exchange Commission and Rule G-32 of the Municipal Securities Rulemaking Board (collectively the "Rules"). The City's acceptance, including electronic acceptance through PARITY®, of the Successful Bidder's proposal for the purchase of the Bonds in accordance with this Notice shall constitute a contract between the City and the Successful Bidder for purposes of the Rules. The City designates the senior managing underwriter of any syndicate of the Successful Bidder as agent for purposes of distributing copies of the final Official Statement to each participating underwriter. Any bidder submitting a bid for the purchase of the Bonds agrees thereby that if such bid is accepted: (a) it shall accept such designation, and (b) it shall enter into a contractual relationship with all participating underwriters of the Bonds for purposes of assuring the receipt by each such participating underwriter of the final Official Statement. Additional copies may be ordered by the Successful Bidder at its expense.

**Continuing Disclosure**

The Securities and Exchange Commission (the "SEC") has promulgated amendments to its Rule 15c2-12 (the "Rule") requiring continuous secondary market disclosure for certain issues. In the resolutions authorizing the Bonds, the City has covenanted to enter into an undertaking (the "Undertaking") for the benefit of the holders of the Bonds to send to the Municipal Securities Rulemaking Board (the "MSRB") through the Electronic Municipal Market Access facility, or other applicable entity as required or permitted under the Rule, certain financial information and operating data annually and to provide notice to the MSRB of certain events, pursuant to the requirements of the Rule. For further information regarding the Undertaking, reference is made to the caption "CONTINUING DISCLOSURE" in the Preliminary Official Statement.

**Assessed Valuation and Bonded Indebtedness**

***Assessed Valuation***. The City's equalized assessed tangible valuation for computation of bonded debt limitations for the year 2013 is $3,520,765,043.

***Bonded Indebtedness***. The total general obligation indebtedness of the City as of the Dated Date, including the Bonds being sold, is $443,275,000.

**Legal Opinion**

The Bonds will be sold subject to the approving legal opinion of GILMORE & BELL, P.C., WICHITA, KANSAS, Bond Counsel, which opinion will be furnished and paid for by the City, will be printed on the Bonds, if the Bonds are printed, and will be delivered to the Successful Bidder when the Bonds are delivered. Said opinion will also include the opinion of Bond Counsel relating to the interest on the Bonds being excludable from gross income for federal income tax purposes and exempt from income taxation by the State of Kansas. Reference is made to the Preliminary Official Statement for further discussion of federal and Kansas income tax matters relating to the interest on the Bonds.

**Additional Information**

Additional information regarding the Bonds, the delivery of the Deposit and notification regarding the same may be obtained from the Department of Finance, 12th Floor, City Hall, 455 North Main, Wichita, Kansas 67202-1679, or by contacting:

| | |
|---|---|
| Ms. Shawn Henning | Ms. Catherine Gilley |
| Director of Finance | Debt Coordinator |
| Phone: (316) 268-4300 | Phone: (316) 268-4143 |
| Fax: (316) 858-7520 | Fax: (316) 858-7520 |
| Email: shenning@wichita.gov | cgilley@wichita.gov. |

**BY ORDER OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, ON JULY 15, 2014.**

By: /s/ Carl Brewer
Carl Brewer, Mayor

(Seal)

ATTEST:

By: /s/ Karen Sublett, City Clerk
Karen Sublett, City Clerk

JLN\600809.121\LST SALEDOCS (07-02-14)

# GENERAL OBLIGATION LOCAL SALES TAX BONDS FINANCIAL FEASIBILITY STUDY

## EXECUTIVE SUMMARY

The City previously issued General Obligation Local Sales Tax bonds -- $50 million in 1992, which matured in 2002; $25 million in 1996, with a $7.5 million remaining balance refunded in 2003; $46 million in 2002 with a $28.5 million remaining balance refunded in 2009; $49 million in 2003, with a remaining balance of $17.2 million refunded by Series 2011B; $36 million in 2004, with a $23.9 million balance refunded by Series 2010B; $40.5 million in 2007, with a $22.9 million balance refunded by Series 2012E; $28.4 million in 2009; and $17.7 million in 2012. During the planning stage of the freeway construction program, it was projected that additional bond issues would be necessary to complete the program. A new Series 2014 bond issue in the estimated principal amount of $72,635,000 is required to fund existing projects.

The City continues to issue general obligation bonds for project funding, with dedicated sales taxes as a pledged revenue source. In the event sales tax revenues are insufficient to pay debt service on a timely basis, the City is required to levy property taxes to ensure payment. The City has prepared this feasibility study to estimate the ongoing funding capacity of sales tax revenues to meet its intended commitments. This financial feasibility study is an update and revision of the previous studies which have been completed with each issuance since 2002. The updated financial feasibility review demonstrates the following:

- The $589.2 million schedule of freeway, railroad corridor, bridge and arterial projects can be financed from the projected Federal, State, City (local sales tax) and other resources.
- Coverage of annual sales tax revenues to annual bond debt service payments will remain at 110% or higher during the period.

## BACKGROUND

The 1¢ County-wide Local Sales Tax was approved by voter referendum in 1985. The first full year of tax collections was 1986. Through 2013, the City has received approximately $1,072.8 million from the local sales tax. By ordinance, the City Council pledged to use one-half of the City's sales tax proceeds, which amounts to $536.4 million through 2013, for property tax relief. By the same ordinance, the remaining one-half of sales tax proceeds, plus interest income, was pledged for road, highway and bridge improvements and has been applied in the following manner:

| Uses of Local Sales Tax Proceeds Pledged to Roadways |
|---|
| • Freeway design, right-of-way, and construction (Kellogg/US-54, Floodway Bridge and Northeast Expressway/K-96) |
| • Arterial/bridge projects |
| • Debt service and cash reserves for future project costs |

To finance the freeway construction program, the City uses a combination of local sales tax cash, debt financing through bonds to be repaid from future local sales tax receipts and Federal highway funding. In addition to Federal support, the State of Kansas' TWORKS program is an important component of efforts to upgrade major traffic roadways through the City. The City of Wichita has spent over $600 million since 1986 to create 13 miles of six-lane freeway through Wichita.

# FINANCIAL PROJECTIONS

## Projected Future Local Sales Tax Capital Improvement Program Costs

The planned uses for the Local Sales Tax pledged to roadways continues past practice with the largest amount of tax proceeds dedicated to freeway improvements, coordinated with Federal and State funds, and a lesser amount used for local arterial/bridge enhancements. An ambitious capital program is planned for the period from 2014-2023. During this ten-year period, the Local Sales Tax Capital Improvement Program will expend $489.2 million from combined Local Sales Tax (LST), Federal/State grants and other contributions:

| Projected 2014-2023 Local Sales Tax Capital Improvement Program (Millions of Dollars) | |
|---|---|
| East Kellogg/US-54 | |
| LST | $ 148.2 |
| Federal/State/Other | 162.2 |
| West Kellogg/US-54 | |
| LST | 24.9 |
| K-96 | |
| LST | 8.0 |
| Federal/State/Other | 9.9 |
| Bridges | |
| LST | 36.0 |
| Arterials/Bridges | |
| LST | 100.0 |
| Total | $489.2 |

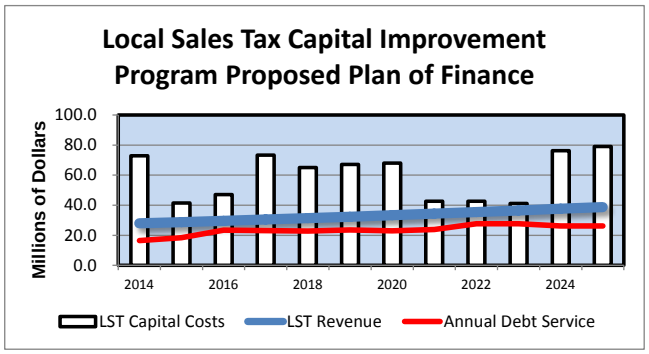
The detailed schedule of freeway project design, right-of-way and construction is shown as Exhibit A (the financial projections in this exhibit actually extend past 2023 and total $589.2 million). The Kellogg/US-54 corridor currently spans Rock Road on the east to Maize Road on the west and complies with limited access freeway standards. The Kellogg project will continue through K-96 on the east and 167th Street on the west, with right-of-way opportunity purchases and construction. A new bridge across the Floodway was initiated in 2013 and will be completed in 2014. Two interchange projects are programmed on the existing K-96 freeway. Additionally, $10 million annually will be expended from the Local Sales Tax for arterial road projects. This construction schedule will require $417.1 million in funding through the City's Local Sales Tax (including $337.1 million during the next 10 years – from 2014 -2023).

## Proposed Local Sales Tax Capital Improvement Program Plan of Finance

An expenditure of $317.1 million over 10 years from the City's LST is not possible on a cash basis only. It will be necessary to use a combination of LST cash and the issuance of General Obligation-Local Sales Tax (GO-LST) bonds, with debt service payable from future year sales tax receipts. The City has used similar cash and bonding strategies in the past, including issuance of GO-LST bonds in 1992 (final pay-out in 2002), 1996 (refunded in 2003), 2002 (refunded in 2009), 2003 (refunded in 2011), 2004 (refunded in 2010), 2007 (refunded in 2012), 2011, 2012 and in 2014.

The proposed plan of financing costs associated with the freeway construction program, net of state, federal and other contributions, is shown in Exhibit C and the chart on the following page. The proposed financial framework envisions a series of debt offerings, as needed, to supplement cash financing.

Since 2002, the structure for GO-LST bond offerings changed to 15-year bonds, level principal and interest payments, as a means to meet liquidity and bond coverage requirements (previous GO-LST bond issues were 10-year, level principal issues). This change in debt financing permits capital projects to proceed as scheduled, including annual cash funding of $10 million for arterials. The Series 2014 GO-LST Bonds maintain the current financing structure with 15-year bonds, level principal and interest payments.




Bond offerings tied to a dedicated revenue source typically include a coverage requirement. In accordance with existing bond covenants, the minimum general obligation coverage of 1.1 provides more than sufficient credit enhancement. Debt service coverage remains favorable throughout the multi-year period.

Fifteen-year bond financing remains a conservative fiscal strategy, while permitting a larger capital program. This financing also introduces greater inter-generational equity. Taxpayers in later years will pay for some of the cost for the freeway construction program from which they will also enjoy some of the benefits.

The proposed plan of finance emphasizes flexibility. Project funding will be structured in a series of debt offerings so that borrowings are done only as needed to meet project costs. There will be a review of the financial feasibility supporting the construction program on an ongoing basis, and certainly in advance of each bond issue. Not all local sales tax resources are committed, allowing a margin in the event of variances in sales tax receipts. No front-end commitment is required for the entire multi-year financing strategy, even if a particular framework is preferred as a starting point.

## CONCLUSION

The primary purpose of this financial feasibility study is to demonstrate that the Local Sales Tax Fund can sustain debt service on the Series 2014 General Obligation Sales Tax Improvement Bonds. The study also confirms that, together with Federal, State and other participation, the City is well positioned to respond to an aggressive freeway construction program and to provide funds to supplement other resources for the local arterial/bridge capital effort.

## Appendices

A – Roadway Construction Schedule, 2014-2025
B – Revenue Collections, Actual and Forecast, 1986-2025
C – Financial Forecast: Local Sales Tax Capital Improvement Program, 2014-2023

EXHIBIT A

LOCAL SALES TAX ROADWAY CONSTRUCTION SCHEDULE, 2014-2025 ($ MILLIONS)

| | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | Total | Source |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **EAST KELLOGG** | | | | | | | | | | | | | | |
| Webb | | | | | | | | | | | | | | |
| LST | | 8.1 | | 24.1 | 24.1 | | | | | | | | 56.3 | LST |
| STATE | | | 46.4 | 46.4 | | | | | | | | | 92.8 | STATE |
| Greenwich | | | | | | | | | | | | | | |
| LST | 8.5 | | | 7.5 | 7.5 | 34.2 | 34.2 | | | | | | 91.9 | LST |
| STATE | | | | | | 34.7 | 34.7 | | | | | | 69.4 | STATE |
| **NON-FREEWAY** | | | | | | | | | | | | | | |
| Floodway Bridge | | | | | | | | | | | | | | |
| LST | 36.0 | | | | | | | | | | | | 36.0 | LST |
| **WEST KELLOGG** | | | | | | | | | | | | | | |
| 111th/143rd | | | | | | | | | | | | | | |
| LST | | | | 8.9 | | | | | | | 40.0 | 40.0 | 88.9 | LST |
| 143rd/167th | | | | | | | | | | | | | | |
| LST | 1.0 | | | | | | | 5.0 | 5.0 | 5.0 | | | 16.0 | LST |
| **ARTERIALS** | | | | | | | | | | | | | | |
| LST | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 120.0 | LST |
| **K-96** | | | | | | | | | | | | | | |
| K-96/Greenwich | | | | | | | | | | | | | | |
| LST | 1.0 | | | | | | | | | | | | 1.0 | LST |
| OTHER | 9.9 | | | | | | | | | | | | 9.9 | OTHER |
| K-96/Hoover | | | | | | | | | | | | | | |
| LST | | | 7.0 | | | | | | | | | | 7.0 | LST |
| GRAND TOTAL - All SOURCES | 66.4 | 18.1 | 63.4 | 96.9 | 41.6 | 78.9 | 78.9 | 15.0 | 15.0 | 15.0 | 50.0 | 50.0 | 589.20 | |

**Exhibit B**
**REVENUE COLLECTIONS, ACTUAL AND FORECAST, 1986-2025**
(50% Allocated for Roadways)

| Year | Actual | % Growth | Projected | % Growth |
|---|---|---|---|---|
| 1986 | $11,355,343 | | | |
| 1987 | 11,842,914 | 4.3% | | |
| 1988 | 12,460,318 | 5.2% | | |
| 1989 | 12,613,517 | 1.2% | | |
| 1990 | 13,152,267 | 4.3% | | |
| 1991 | 13,371,455 | 1.7% | | |
| 1992 | 14,381,675 | 7.6% | | |
| 1993 | 15,813,632 | 10.0% | | |
| 1994 | 16,345,810 | 3.4% | | |
| 1995 | 16,591,794 | 1.5% | | |
| 1996 | 16,746,120 | 0.9% | | |
| 1997 | 17,679,705 | 5.6% | | |
| 1998 | 19,564,907 | 10.7% | | |
| 1999 | 19,118,787 | -2.3% | | |
| 2000 | 18,889,440 | -1.2% | | |
| 2001 | 20,093,593 | 6.4% | | |
| 2002 | 20,476,052 | 1.9% | | |
| 2003 | 19,867,702 | -3.0% | | |
| 2004 | 22,369,484 | 12.6% | | |
| 2005 | 22,590,482 | 1.0% | | |
| 2006 | 23,852,273 | 5.6% | | |
| 2007 | 24,627,843 | 3.3% | | |
| 2008 | 25,648,730 | 4.1% | | |
| 2009 | 24,722,106 | -3.6% | | |
| 2010 | 23,955,968 | -3.1% | | |
| 2011 | 24,987,675 | 4.3% | | |
| 2012 | 26,174,792 | 4.8% | | |
| 2013 | 27,071,126 | 3.4% | | |
| 2014 | | | 27,996,072 | 3.4% |
| 2015 | | | 28,830,534 | 3.0% |
| 2016 | | | 29,685,116 | 3.0% |
| 2017 | | | 30,575,669 | 3.0% |
| 2018 | | | 31,492,940 | 3.0% |
| 2019 | | | 32,437,728 | 3.0% |
| 2020 | | | 33,410,860 | 3.0% |
| 2021 | | | 34,413,185 | 3.0% |
| 2022 | | | 35,445,581 | 3.0% |
| 2023 | | | 36,508,948 | 3.0% |
| 2024 | | | 37,604,217 | 3.0% |
| 2025 | | | 38,732,343 | 3.0% |

NOTE: The average rate of actual growth for the City's local sales tax revenues through 2013 is 3.34% annually. The forecast of 3.0% from 2015 onward is a moderate and prudent estimate.

**Exhibit B (Continued)**

**LOCAL SALES TAX COLLECTIONS**

(By standard industrial classification, NASIC code, for 2013)

| | |
|---|---|
| Agriculture, Forestry, Fishing and Hunting | 0.12% |
| Mining | 0.04% |
| Utilities | 7.59% |
| Construction | 3.11% |
| Manufacturing | 2.04% |
| Wholesale Trade | 4.80% |
| Retail Trade | 57.92% |
| Transportation and Warehousing | 0.48% |
| Information | 5.83% |
| Finance and Insurance | 0.17% |
| Real Estate and Rental and Leasing | 1.69% |
| Professional and Technical Services | 0.84% |
| Management of Companies and Enterprises | 0.22% |
| Administrative and Waste Services | 0.91% |
| Educational Services | 0.16% |
| Health Care and Social Assistance | 0.20% |
| Arts, Entertainment, and Recreation | 0.78% |
| Accommodation and Food Services | 10.22% |
| Other Services (except Public Administration) | 2.74% |
| Public Administration | 0.01% |
| Unclassified Establishments | 0.13% |
| | 100.00% |

[The Remainder of This Page Was Intentionally Left Blank]

## Financial Forecast: Local Sales Tax Capital Improvement Program 2014-2025

Exhibit C

(Millions of Dollars)

| | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Beginning cash | $8.3 | $34.8 | $22.1 | $11.7 | $19.1 | $15.6 | $21.1 | $26.4 | $18.3 | $31.1 | $26.4 | $17.9 |
| Revenues | | | | | | | | | | | | |
| Local Sales Tax | 28.0 | 28.8 | 29.7 | 30.6 | 31.5 | 32.4 | 33.4 | 34.4 | 35.4 | 36.5 | 37.6 | 38.7 |
| New Notes/Bonds | 72.6 | 0.0 | 0.0 | 50.0 | 30.0 | 40.0 | 40.0 | 0.0 | 20.0 | 0.0 | 30.0 | 40.0 |
| Interest | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| *Total* | 100.6 | 28.8 | 29.7 | 80.6 | 61.5 | 72.4 | 73.4 | 34.4 | 55.4 | 36.5 | 67.6 | 78.7 |
| Expenditures | | | | | | | | | | | | |
| Outstanding Notes | | | | | | | | | | | | |
| Debt, 2007 Bonds | 3.7 | | | | | | | | | | | |
| Debt, 2009A Bonds | 4.0 | 4.0 | 3.9 | 3.9 | | | | | | | | |
| Debt, 2010A Bonds | 3.0 | 2.9 | 2.9 | 2.9 | 2.9 | 2.8 | | | | | | |
| Debt, 2011A Bonds | 0.7 | 0.7 | 0.7 | 0.7 | 0.7 | 0.7 | 0.7 | 0.7 | 0.8 | 0.8 | 0.8 | 0.8 |
| Debt, 2011B Bonds | 3.9 | 3.8 | 3.8 | 3.5 | 3.5 | | | | | | | |
| Debt, 2012D Bonds | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.4 | 1.5 | 1.5 |
| Debt, 2012E Bonds | 0.9 | 3.6 | 3.4 | 3.4 | 3.3 | 3.4 | 3.4 | 3.4 | 3.4 | | | |
| Debt, 2014 Bonds | | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 | 6.9 |
| Debt, 2017 Bonds | | | | | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 | 4.7 |
| Debt, 2018 Bonds | | | | | | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 | 2.8 |
| Debt, 2019 Bonds | | | | | | | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 |
| Debt, 2020 Bonds | | | | | | | | 3.8 | 3.8 | 3.8 | 3.8 | 3.8 |
| Debt, 2022 Bonds | | | | | | | | | | 1.9 | 1.9 | 1.9 |
| Debt, 2024 Bonds | | | | | | | | | | | | 2.8 |
| *Subtotal Debt* | 17.6 | 23.3 | 23.1 | 22.7 | 23.5 | 22.7 | 23.8 | 27.5 | 27.6 | 26.2 | 26.2 | 29.0 |
| Coverage Ratio | 1.49 | 1.20 | 1.25 | 1.31 | 1.30 | 1.39 | 1.36 | 1.21 | 1.25 | 1.35 | 1.39 | 1.30 |
| East Kellogg | | | | | | | | | | | | |
| Webb | 0.0 | 8.1 | 0.0 | 24.1 | 24.1 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Greenwich | 8.5 | 0.0 | 0.0 | 7.5 | 7.5 | 34.2 | 34.2 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Floodway Bridge | 36.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| West Kellogg | | | | | | | | | | | | |
| 111th/143rd | 0.0 | 0.0 | 0.0 | 8.9 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 40.0 | 40.0 |
| 143rd/167th | 1.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 5.0 | 5.0 | 5.0 | 0.0 | 0.0 |
| K-96 | | | | | | | | | | | | |
| Greenwich | 1.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Hoover | 0.0 | 0.0 | 7.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Arterials | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| *Subtotal Roads* | 56.5 | 18.1 | 17.0 | 50.5 | 41.6 | 44.2 | 44.2 | 15.0 | 15.0 | 15.0 | 50.0 | 50.0 |
| *Total* | 74.1 | 41.4 | 40.1 | 73.2 | 65.1 | 66.9 | 68.0 | 42.5 | 42.6 | 41.2 | 76.2 | 79.0 |
| Ending cash | $34.8 | $22.1 | $11.7 | $19.1 | $15.6 | $21.1 | $26.4 | $18.3 | $31.1 | $26.4 | $17.9 | $17.5 |

Assumptions

1. Sales Tax revenue projections are based 3.4% growth in 2014, and growth after 2014 of: 3.00%
2. Earnings on average cash balances are based on an investment pool interest rate of: 0.00%
3. Future bond issues are projected to be GO/LST bonds, 15 year level P&I with TIC of: 4.50%
4. Debt financed expenses are noted in the first year (prior to bonding) at note interest of: 1.00%
5. Expenditures are based on bond debt schedules plus capital project estimates from Public Works staff.
6. Proceeds from refunding bonds held in escrow are not included in this forecast.

Differences due to rounding errors.

**Agenda Item No. II-15**

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Network Firewall Replacement

**INITIATED BY**: IT/IS Department

**AGENDA:** Consent

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**Recommendation:** It is recommended that the City Council approve the expenditure and authorize the purchasing manager to issue a purchase order to FishNet Security.

**Background**: The City's network firewall has reached the end of its service life and no longer meets the City's security needs nor can they accommodate the demands of new technologies. IT/IS has developed a five-year security plan with FishNet Security. Replacement of network firewalls is the first task in this plan.

**Analysis**: The existing firewall units provide the first layer of access and protection between the Internet and all of the City's computing devices. The existing firewalls are nine years old and are operating at the maximum of their designed capacity. Planned system enhancements will soon overtax the firewalls, which could result in outages and delays for both City staff and for citizens. The new firewalls will afford basic business functionality without direct IT/IS staff intervention. In addition, the firewalls will be modular, expandable, and will serve as building blocks for a flexible, multi-layered network security model. IT/IS will sole-source the purchase of and training for the firewalls to FishNet Security through a State of Kansas contract. FishNet Security is a leading technology security firm in the country and assisted the City following the October breach. The IT/IS Department intends to sole-source the purchase as a precaution to reduce the number of outside entities with detailed information about the City's network topology and security measures.

**Financial Considerations**: Replacement cost for the firewalls is $245,004 which includes hardware, installation, configuration and one year of technical support. The Equipment Replacement Fund (ERF) will provide 96% of the funding to cover hardware, configuration and installation. The IT Operating Fund will provide 4% of the funding will cover the training portion of this effort. Pricing is from approved State of Kansas vendors on the State of Kansas contract.

**Legal Considerations:** Per Purchasing Ordinance 38-122(j), Intergovernmental Cooperative Contracts and Agreements, this is a State of Kansas Contract 38299.

**Recommendations/Actions:** It is recommended that the City Council approve the expenditures and authorize the purchasing manager to issue a purchase order to FishNet Security.

**Attachments:** Quotations from FishNet Security.

# Sales Quote

**Date:** 6/30/2014
**Quote valid for:** 30 days

**Quote #:** 210131-5
**Payment Term:** 30 days
**Federal ID Number:** 43-1806449

**To:**
Kevin Norman
City of Wichita
455 N Main
Wichita, Kansas 67202
knorman@wichita.gov

**From:**
Doug Hebert
6130 Sprint Parkway, Suite 400
Overland Park, KS 66211

**Direct Phone:** (816) 701-3380
**Mobile Phone:**
**Fax:** (800) 878-6115
**Email:** doug.hebert@fishnetsecurity.com

**Inside Sales:** Aaron Taylor
**E-mail:** aaron.taylor@fishnetsecurity.com
**Phone Number:** (816) 701-2018

| Line # | Product Description | Comments | Qty | Client Price | Client Extended Price |
|---|---|---|---|---|---|
| 1 | F5 Networks BIG-IP 5250v Best Bundle (32 GB Memory, Max SSL, Max Compression, vCMP) | | 2 | $70,556.40 | $141,112.80 |
| 2 | F5 Networks BIG-IP Single AC Power Supply for 5200v/5000s (400 W, Field Upgrade) | | 2 | $1,500.00 | $3,000.00 |
| 3 | F5 Networks Level 1-3 Premium Service for BIG-IP (7x24) | | 2 | $16,659.15 | $33,318.30 |
| 4 | Palo Alto Networks PA-3020 | | 2 | $10,920.00 | $21,840.00 |
| 5 | Palo Alto Threat prevention subscription for devices in HA pair, PA-3020 | | 2 | $1,528.80 | $3,057.60 |
| 6 | Palo Alto PANDB URL filtering subscription for devices in HA pair, PA-3020 | | 2 | $1,528.80 | $3,057.60 |
| 7 | Palo Alto WildFire subscription for devices in HA pair, PA-3020 | | 2 | $1,528.80 | $3,057.60 |
| 8 | Palo Alto Premium support year 1, PA-3020 | | 2 | $2,240.00 | $4,480.00 |
| | | | | **Grand Total:** | **$212,923.90** |

**Client Signature:**_____**PO Date:**_____ **Client PO#:**_____

Conditions of Sale

All original manufacturers' warranties shall remain applicable. FishNet Security, Inc. ("FishNet") does not give or imply that it gives any warranty on any product(s) it distributes. FishNet will provide commercially reasonable assistance to Client needing warranty assistance in dealings with the manufacturer(s) of the product(s) FishNet distributes.

FishNet invoices upon shipment of the product to Client. All invoices are due Net 30 days. Any invoice over thirty (30) days will be subject to a one and a half percent (1.5%) late charge per month. Prices do not include applicable state/local sales tax or shipping & handling. Client is responsible for all taxes and fees relating to the delivery of international shipments. FishNet invoices for FishNet's professional services shall be issued per the terms and conditions of the applicable Statement of Work. FISHNET DOES NOT ACCEPT CREDIT CARD PAYMENTS FOR GOODS AND SERVICES SET FORTH HEREIN.

Requests to return product(s) must be received within (thirty) 30-days of receipt of the product(s). Approval for the return of product(s) is subject to the manufacturer's return policy. All product(s) approved for return must: (i) be in new, unopened condition and complete, including but not limited to all packaging materials, instructions and accessories; (ii) have no permanent software keys issued; (iii) be returned to FishNet with a RMA number issued by FishNet; and (iv) include the number of the FishNet invoice wherein the product(s) was purchased. Returns for credit are subject to a twenty percent (20%) restocking fee.

Client assumes all responsibility for ensuring that purchased product(s) are used in a manner conforming to FCC requirements, in addition to any other applicable Federal, State, or local government requirements. No implied warranty, including merchantability and fitness for a particular purpose applies to this (these) product(s) and no other warranty given by any employee, agent, dealer or other person with respect to the product(s) shall be binding on FishNet.

FishNet shall have no liability or responsibility to Client or any other person for any loss or damage or any special, incidental or consequential damages caused or alleged to be caused directly or indirectly by the product(s), including but not limited to, any interruption of service, loss of customer goodwill, loss of business or anticipatory profits or consequential damages resulting from use of the product(s). In no event shall FishNet be liable for loss of profits or any indirect, special, incidental, or consequential damages arising out of or connected with the sale or anticipated use of the product(s).

With the exception of online payment, invoices for training will be sent upon registration. Payment must be received prior to the start date of the course. If payment is not received, the student will not be allowed to attend the course. FishNet reserves the right to cancel courses for any reason.

NOTICE: Prices are good for thirty (30) days from the date of this Sales Quote. This Sales Quote is the exclusive property of FishNet and is made available for use to the addressee of the Sales Quote and its' immediate employees only. **Any quote on labor is an estimate. The final labor quote will be provided by FishNet when an acceptable Scope of Work and Statement of Work has been agreed upon by FishNet and the Client. Contact your FishNet Account Executive for additional support options from our highly qualified support staff.

No terms and conditions other than the terms and conditions contained herein shall be binding upon FishNet unless accepted by it in a writing signed by an authorized party. Any request by Client for goods from FishNet shall be governed by the terms of this Sales Quote. All terms and conditions contained in any oral or written communication, including, without limitation, a purchase order submitted by Client, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on FishNet, whether or not they would materially alter this Sales Quote, and FishNet hereby objects to any such terms and conditions. All prior proposals, negotiations and representations, if any, are merged herein. Client will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or services described herein are shipped or an invoice is presented in connection with the said goods and/or services.

# Sales Quote

**Date:** 7/2/2014
**Quote valid for:** 30 days

**Quote #:** 233809-1
**Payment Term:** 30 days
**Federal ID Number:** 43-1806449

**To:**
MARK DAWSON
System Analyst
City Of Wichita
455 N Main St Fl 4
Wichita, Kansas 67202-1601
+1.316.303.8126
mdawson@wichita.gov

**From:**
Doug Hebert
6130 Sprint Parkway, Suite 400
Overland Park, KS 66211

**Direct Phone:** (816) 701-3380
**Mobile Phone:**
**Fax:** (800) 878-6115
**Email:** doug.hebert@fishnetsecurity.com

**Inside Sales:** Aaron Taylor
**E-mail:** aaron.taylor@fishnetsecurity.com
**Phone Number:** (816) 701-2018

| Line # | Product Description | Comments | Qty | Client Price | Client Extended Price |
|---|---|---|---|---|---|
| 1 | FishNet Security Palo Alto Networks Firewall; Hourly Estimation Only. Validation of estimate provided in Statement of Work created by FishNet Security Professional Services that must be signed before project can be scheduled *8 hour minimum for on-site, 2 hour minimum for remote assistance* *Travel and Expenses billed separately* | | 56 | $200.00 | $11,200.00 |
| 2 | FishNet Security Palo Alto Networks Firewall; Hourly Estimation Only. Validation of estimate provided in Statement of Work created by FishNet Security Professional Services that must be signed before project can be scheduled *8 hour minimum for on-site, 2 hour minimum for remote assistance* *Travel and Expenses billed separately* | *After Hours | 4 | $225.00 | $900.00 |
| 3 | FishNet Security Palo Alto Networks Firewall; Hourly Estimation Only. Validation of estimate provided in Statement of Work created by FishNet Security Professional Services that must be signed before project can be scheduled *8 hour minimum for on-site, 2 hour minimum for remote assistance* *Travel and Expenses billed separately* | *Optional – Convert ports to applications | 16 | $200.00 | $3,200.00 |
| | | | | **Grand Total:** | **$15,300.00** |

**Client Signature:**_____**PO Date:**_____ **Client PO#:**_____

Conditions of Sale

All original manufacturers' warranties shall remain applicable. FishNet Security, Inc. ("FishNet") does not give or imply that it gives any warranty on any product(s) it distributes. FishNet will provide commercially reasonable assistance to Client needing warranty assistance in dealings with the manufacturer(s) of the product(s) FishNet distributes.

FishNet invoices upon shipment of the product to Client. All invoices are due Net 30 days. Any invoice over thirty (30) days will be subject to a one and a half percent (1.5%) late charge per month. Prices do not include applicable state/local sales tax or shipping & handling. Client is responsible for all taxes and fees relating to the delivery of international shipments. FishNet invoices for FishNet's professional services shall be issued per the terms and conditions of the applicable Statement of Work. FISHNET DOES NOT ACCEPT CREDIT CARD PAYMENTS FOR GOODS AND SERVICES SET FORTH HEREIN.

Requests to return product(s) must be received within (thirty) 30-days of receipt of the product(s). Approval for the return of product(s) is subject to the manufacturer's return policy. All product(s) approved for return must: (i) be in new, unopened condition and complete, including but not limited to all packaging materials, instructions and

accessories; (ii) have no permanent software keys issued; (iii) be returned to FishNet with a RMA number issued by FishNet; and (iv) include the number of the FishNet invoice wherein the product(s) was purchased. Returns for credit are subject to a twenty percent (20%) restocking fee.

Client assumes all responsibility for ensuring that purchased product(s) are used in a manner conforming to FCC requirements, in addition to any other applicable Federal, State, or local government requirements. No implied warranty, including merchantability and fitness for a particular purpose applies to this (these) product(s) and no other warranty given by any employee, agent, dealer or other person with respect to the product(s) shall be binding on FishNet.

FishNet shall have no liability or responsibility to Client or any other person for any loss or damage or any special, incidental or consequential damages caused or alleged to be caused directly or indirectly by the product(s), including but not limited to, any interruption of service, loss of customer goodwill, loss of business or anticipatory profits or consequential damages resulting from use of the product(s). In no event shall FishNet be liable for loss of profits or any indirect, special, incidental, or consequential damages arising out of or connected with the sale or anticipated use of the product(s).

With the exception of online payment, invoices for training will be sent upon registration. Payment must be received prior to the start date of the course. If payment is not received, the student will not be allowed to attend the course. FishNet reserves the right to cancel courses for any reason.

NOTICE: Prices are good for thirty (30) days from the date of this Sales Quote. This Sales Quote is the exclusive property of FishNet and is made available for use to the addressee of the Sales Quote and its' immediate employees only. **Any quote on labor is an estimate. The final labor quote will be provided by FishNet when an acceptable Scope of Work and Statement of Work has been agreed upon by FishNet and the Client. Contact your FishNet Account Executive for additional support options from our highly qualified support staff.

No terms and conditions other than the terms and conditions contained herein shall be binding upon FishNet unless accepted by it in a writing signed by an authorized party. Any request by Client for goods from FishNet shall be governed by the terms of this Sales Quote. All terms and conditions contained in any oral or written communication, including, without limitation, a purchase order submitted by Client, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on FishNet, whether or not they would materially alter this Sales Quote, and FishNet hereby objects to any such terms and conditions. All prior proposals, negotiations and representations, if any, are merged herein. Client will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or services described herein are shipped or an invoice is presented in connection with the said goods and/or services.

# Sales Quote

**Date:** 7/2/2014
**Quote valid for:** 30 days

**Quote #:** 233810-1
**Payment Term:** 30 days
**Federal ID Number:** 43-1806449

**To:**
MARK DAWSON
System Analyst
City Of Wichita
455 N Main St Fl 4
Wichita, Kansas 67202-1601
+1.316.303.8126
mdawson@wichita.gov

**From:**
Doug Hebert
6130 Sprint Parkway, Suite 400
Overland Park, KS 66211

**Direct Phone:** (816) 701-3380
**Mobile Phone:**
**Fax:** (800) 878-6115
**Email:** doug.hebert@fishnetsecurity.com

**Inside Sales:** Aaron Taylor
**E-mail:** aaron.taylor@fishnetsecurity.com
**Phone Number:** (816) 701-2018

| Line # | Product Description | Comments | Qty | Client Price | Client Extended Price |
|---|---|---|---|---|---|
| 1 | FishNet Security F5 Integration; Hourly Estimation Only. Validation of estimate provided in Statement of Work created by FishNet Security Professional Services that must be signed before project can be scheduled *8 hour minimum for on-site, 2 hour minimum for remote assistance* *Travel and Expenses billed separately* | | 32 | $200.00 | $6,400.00 |
| 2 | FishNet Security F5 Integration; Hourly Estimation Only. Validation of estimate provided in Statement of Work created by FishNet Security Professional Services that must be signed before project can be scheduled *8 hour minimum for on-site, 2 hour minimum for remote assistance* *Travel and Expenses billed separately* | *After Hours | 4 | $225.00 | $900.00 |
| | | | | **Grand Total:** | **$7,300.00** |

**Client Signature:**_____**PO Date:**_____ **Client PO#:**_____

Conditions of Sale

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FishNet shall have no liability or responsibility to Client or any other person for any loss or damage or any special, incidental or consequential damages caused or alleged to be caused directly or indirectly by the product(s), including but not limited to, any interruption of service, loss of customer goodwill, loss of business or anticipatory profits or consequential damages resulting from use of the product(s). In no event shall FishNet be liable for loss of profits or any indirect, special, incidental, or consequential damages arising out of or connected with the sale or anticipated use of the product(s).

With the exception of online payment, invoices for training will be sent upon registration. Payment must be received prior to the start date of the course. If payment is not received, the student will not be allowed to attend the course. FishNet reserves the right to cancel courses for any reason.

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**FishNet Security – Corporate Headquarters**
**6130 Sprint Parkway, Ste. 400 | Overland Park, KS 66211**
**T: 888.732.9406| P: 816.421.6611| F: 800.878.6115**
**www.fishnetsecurity.com**

# Sales Quote

**Date:** 7/2/2014
**Quote valid for:** 30 days

**Quote #:** 233811-1
**Payment Term:** 30 days
**Federal ID Number:** 43-1806449

**To:**
MARK DAWSON
System Analyst
City Of Wichita
455 N Main St Fl 4
Wichita, Kansas 67202-1601
+1.316.303.8126
mdawson@wichita.gov

**From:**
Doug Hebert
6130 Sprint Parkway, Suite 400
Overland Park, KS 66211

**Direct Phone:** (816) 701-3380
**Mobile Phone:**
**Fax:** (800) 878-6115
**Email:** doug.hebert@fishnetsecurity.com

**Inside Sales:** Aaron Taylor
**E-mail:** aaron.taylor@fishnetsecurity.com
**Phone Number:** (816) 701-2018

| Line # | Product Description | Comments | Qty | Client Price | Client Extended Price |
|---|---|---|---|---|---|
| 1 | FishNet Security Classroom Training, F5 - Administering BIG-IP v11 | | 1 | $1,495.00 | $1,495.00 |
| 2 | FishNet Security Live Classroom Training, 3-Day Configuring BIG-IP Local Traffic Manager (LTM) v11 | | 1 | $2,995.00 | $2,995.00 |
| 3 | FishNet Security Classroom Training, Palo Alto Networks Essentials 1: Firewall Installation, Configuration, & Management | | 1 | $2,995.00 | $2,995.00 |
| 4 | FishNet Security Classroom Training, Palo Alto Networks Essentials 2: Extended Firewall Management | | 1 | $1,995.00 | $1,995.00 |
| | | | | **Grand Total:** | **$9,480.00** |

***If you would like to attend the class quoted, please go on-line to register**
http://www.proteus.net/network-training/course-catalog

**Client Signature:**_____**PO Date:**_____ **Client PO#:**_____

**Conditions of Sale**

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FishNet shall have no liability or responsibility to Client or any other person for any loss or damage or any special, incidental or consequential damages caused or alleged to be caused directly or indirectly by the product(s), including but not limited to, any interruption of service, loss of customer goodwill, loss of business or anticipatory profits or consequential damages resulting from use of the product(s). In no event shall FishNet be liable for loss of profits or any indirect, special, incidental, or consequential damages arising out of or connected with the sale or anticipated use of the product(s).

With the exception of online payment, invoices for training will be sent upon registration. Payment must be received prior to the start date of the course. If payment is not received, the student will not be allowed to attend the course. FishNet reserves the right to cancel courses for any reason.

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No terms and conditions other than the terms and conditions contained herein shall be binding upon FishNet unless accepted by it in a writing signed by an authorized party. Any request by Client for goods from FishNet shall be governed by the terms of this Sales Quote. All terms and conditions contained in any oral or written communication, including, without limitation, a purchase order submitted by Client, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on FishNet, whether or not they would materially alter this Sales Quote, and FishNet hereby objects to any such terms and conditions. All prior proposals, negotiations and representations, if any, are merged herein. Client will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or services described herein are shipped or an invoice is presented in connection with the said goods and/or services.

**Agenda Item No. II-16**

**City of Wichita**
**City Council Meeting**
**July 15, 2014**

**TO:** Mayor and City Council

**SUBJECT:** Telephone System Upgrade

**INITIATED BY:** IT/IS Department

**AGENDA:** Consent

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**Recommendation**: It is recommended that the City Council approve the attached contract and authorize the Purchasing Manager to sign

**Background:** The City of Wichita currently has two large telephone systems that provide private branch exchange (PBX) for most of the City's telecommunications needs. An older PBX was installed in 1999 and a newer PBX, a Voice over IP system, was installed in 2008. The IT/IS Department is in the process of converting most City locations to the newer PBX for improved reliability and advanced operations.

**Analysis:** The older PBX cannot be expanded or upgraded due to its age. To take advantage of technology advancements, like unified communications, an in-place upgrade of the newer system is needed. This is a sole-source upgrade to an existing system that was purchased 6 years ago, with the long range plan of expansion. The contract is sole-sourced because it is an existing system upgrade with only one Vendor. The upgraded system will provide improved reliability and improved call handling for internal and external callers. With over 350,000 external calls per month, improved reliability and ease of use is critical in providing quality customer support.

**Financial Considerations:** The purchase and installation price of the equipment and software is $353,491.59, as shown in the attached contract, and was planned and budgeted in the Telecommunications Replacement Fund.

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

**Recommendations/Actions:** It is recommended that the City Council approve the attached contract and authorize the Purchasing Manager to sign.

**Attachment:** 15199_61614_Offer_System_View Wichita 140616

Unify Inc.
5500 Broken Sound Blvd
Boca Raton, Florida 33487

Customer Address:

**CITY OF WICHITA**

455 N MAIN ST
WICHITA, Kansas, 67202-1600

Invoice Address:

**CITY OF WICHITA**

455 N MAIN
WICHITA, Kansas, 67202-1600

| | |
|---|---|
| **Name** | Ray Saturnino |
| **Phone** | +1 (408) 492-2348 |
| **E-mail** | ray.saturnino@unify.com |
| **Reference Agreement Number** | 00005634 |
| **Reference SOW Number** | 15199LGH05132014 |
| **Quote Number** | 15199 |
| **Intended Implementation** | August 15, 2014 |
| **Reference Exhibits/Supplements** | SOPST, SPEULA |
| **Quote Expiration Date** | August 15, 2014 |
| **Date** | June 16, 2014 |

## Schedule A - Ordering Document

Dear Sir or Madame,

Unify Inc. would like to thank you for the opportunity to provide an offer for a solution for

CITY OF WICHITA

The enclosed offer includes the solution requested for your organization. If you have any questions, please contact me.

### Price

| | |
|---|---|
| Initial Product & Services Purchase Price | **$353,491.59** |
| *Thereof:* Main | **$325,446.43** |
| *Thereof:* IPDA Expansion (CS) (1) | **$7,011.29** |
| *Thereof:* IPDA Expansion (CS) (2) | **$7,011.29** |
| *Thereof:* IPDA Expansion (CS) (3) | **$7,011.29** |
| *Thereof:* IPDA Expansion (CS) (4) | **$7,011.29** |
| *Thereof:* IPDA Expansion (CS) (17) | **$0.00** |
| *Thereof:* IPDA Expansion (CS) (18) | **$0.00** |
| *Thereof:* IPDA Expansion (CS) (19) | **$0.00** |
| *Thereof:* East Waterman (20) | **$0.00** |
| Annual Services Purchase Price | **$76,259.64** |

Unify Inc. will provide the Products and/or Services, as applicable, as further set forth herein, if this offer is accepted by signature below and returned to Unify Inc., along with any referenced Exhibits/Supplements requiring signature as indicated by a signature block on the Exhibits/Supplements, in a form acceptable to Supplier, on or before the Quote Expiration Date.

By signing this Ordering Document (Schedule A), Unify Inc. (Supplier) and your organization referenced above (Customer) agree that the terms of the above referenced Agreement, referenced by Reference Agreement Number, and the above referenced Exhibit(s) and/or Supplement(s), designated by their Exhibit/Supplement designation, and, if applicable, the above referenced Statement(s) of Work, referenced by Reference SOW Number, apply to the Products and Services listed in this Schedule A. You further agree to the site-specific terms set forth in this Schedule A.

Accepted By:
**CITY OF WICHITA**

By:_____

Authorized Signature

_____

Name (Type or Print) / Date

Accepted By:
**Unify Inc.**

By:_____

Authorized Signature

_____

Name (Type or Print) / Date

# Schedule A - Binding Price Detail

The price for the offered solution is composed as follows:

**Site Name:** Main **No. Sites:** 1

**Site Address:** 455 N MAIN ST, , WICHITA, Kansas 67202-1600 United States

| | Single Site | Total All Sites in Group |
|---|---|---|
| **Initial Products & Services Purchase Price** | **$325,446.43** | **$325,446.43** |
| **Annual Services Purchase Price** | **$76,184.76** | **$76,184.76** |

## Initial Products & Services

**Products**

| Description | Selected Quantity | List Price Unit | Net Price Unit | Total Net Price |
|---|---|---|---|---|
| **HiPath 4xxx** | | | | **$284,156.50** |
| SWA Promo Upgrade for the upgrade of the ComScendo/ComScendo Plus Licenses of HiPath 4000 V5 to OpenScape 4000 V7 | 1444 | $52.26 | $10.45 | $15,092.69 |
| Analog Trunk Module (TMANI) with Metering (GEE) | 1 | $1,474.00 | $958.10 | $958.10 |
| Subscriber Line Module UP0/E x 24 (SLMO24) | 20 | $1,125.60 | $731.64 | $14,632.80 |
| Subscriber Line Module Analog with MWI (SLMAV, 24 Ports) | 4 | $1,688.40 | $1,097.46 | $4,389.84 |
| HG 3500 V4 (120 Channels) | 3 | $12,730.00 | $8,274.50 | $24,823.50 |
| DSCXL2 Dynamic Package for CSPCI OpenScape/HiPath 4000 Communication Server Upgrades | 2 | $9,380.00 | $6,097.00 | $12,194.00 |
| Installation Kit XL (for OpenScape 4000/HiPath 4000 Expansion Order) | 1 | $15,410.00 | $10,016.50 | $10,016.50 |
| Integrated 19" Patch Panel | 35 | $253.26 | $164.62 | $5,761.67 |
| Cable Kit, Champ Connector | 35 | $211.05 | $137.18 | $4,801.39 |
| Digital User Connections (SLMO24), Slot For | 10 | $294.06 | $191.14 | $1,911.39 |
| OpenScape 4000 V7 Basic Software for CSPCI System | 1 | $3,685.00 | $2,948.00 | $2,948.00 |
| OpenScape 4000 V7 Flex License | 1226 | $190.28 | $152.22 | $186,626.62 |
| **OpenScape Personal Edition** | | | | **$1,650.88** |
| OpenScape Personal Edition V7 HFA User License | 20 | $103.18 | $82.54 | $1,650.88 |
| **Products Purchase Price** | | | | **$285,807.38** |

**Implementation & Professional Services**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Labor | $39,639.05 | $39,639.05 |
| **Implementation & Professional Services Purchase Price** | | **$39,639.05** |

| | |
|---|---|
| **Initial Products & Services Purchase Price- Main** | **$325,446.43** |



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## Annual Services

**Software Assurance(Contract Duration:  years)**

| Description | Selected Quantity | Total List Price | Total Net Price |
|---|---|---|---|
| **HiPath 4xxx** | | **$41,575.20** | **$27,023.88** |
| OSC SWA 3y for HiPath 4000 Base-SW cPCI | 1 | $294.72 | $191.52 |
| OSC SWA 3y for HiPath 4000 Duplex Control | 1 | $589.68 | $383.28 |
| OSC SWA 3y for HiPath ComScendo/Flex Licenses (per License) | 2670 | $40,690.80 | $26,449.08 |
| **Software Assurance Purchase Price** | | **$27,023.88** | **$27,023.88** |

**Maintenance Services(Contract Duration: 5 years)**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Service Package - Total Care | $61,451.04 | $49,160.88 |
| **Maintenance Services Purchase Price** | | **$49,160.88** |

| | |
|---|---|
| **Annual Services Purchase Price- Main** | **$76,184.76** |



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**Site Name:** IPDA Expansion (CS) (1) **No. Sites:** 1

**Site Address:** 733 N MAIN ST, , WICHITA, Kansas 67218-1600 United States

| | Single Site | Total All Sites in Group |
|---|---|---|
| **Initial Products & Services Purchase Price** | **$7,011.29** | **$7,011.29** |
| **Annual Services Purchase Price** | **$9.36** | **$9.36** |

## Initial Products & Services

**Products**

| Description | Selected Quantity | List Price Unit | Net Price Unit | Total Net Price |
|---|---|---|---|---|
| **HiPath 4xxx** | | | | **$6,532.50** |
| CSAPE Box Kit for OpenScape 4000/HiPath 4000 from V6 Upgrades | 1 | $10,050.00 | $6,532.50 | $6,532.50 |
| **Products Purchase Price** | | | | **$6,532.50** |

**Implementation & Professional Services**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Labor | $478.79 | $478.79 |
| **Implementation & Professional Services Purchase Price** | | **$478.79** |

| | |
|---|---|
| **Initial Products & Services Purchase Price- IPDA Expansion (CS) (1)** | **$7,011.29** |

## Annual Services

**Maintenance Services(Contract Duration: 5 years)**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Service Package - Total Care | $11.64 | $9.36 |
| **Maintenance Services Purchase Price** | | **$9.36** |

| | |
|---|---|
| **Annual Services Purchase Price- IPDA Expansion (CS) (1)** | **$9.36** |



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**Site Name:** IPDA Expansion (CS) (2) **No. Sites:** 1

**Site Address:** 3015 E 21ST ST N, , WICHITA, Kansas 67214-2326 United States

| | Single Site | Total All Sites in Group |
|---|---|---|
| **Initial Products & Services Purchase Price** | **$7,011.29** | **$7,011.29** |
| **Annual Services Purchase Price** | **$9.36** | **$9.36** |

## Initial Products & Services

**Products**

| Description | Selected Quantity | List Price Unit | Net Price Unit | Total Net Price |
|---|---|---|---|---|
| **HiPath 4xxx** | | | | **$6,532.50** |
| CSAPE Box Kit for OpenScape 4000/HiPath 4000 from V6 Upgrades | 1 | $10,050.00 | $6,532.50 | $6,532.50 |
| **Products Purchase Price** | | | | **$6,532.50** |

**Implementation & Professional Services**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Labor | $478.79 | $478.79 |
| **Implementation & Professional Services Purchase Price** | | **$478.79** |

| | |
|---|---|
| **Initial Products & Services Purchase Price- IPDA Expansion (CS) (2)** | **$7,011.29** |

## Annual Services

**Maintenance Services(Contract Duration: 5 years)**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Service Package - Total Care | $11.64 | $9.36 |
| **Maintenance Services Purchase Price** | | **$9.36** |

| | |
|---|---|
| **Annual Services Purchase Price- IPDA Expansion (CS) (2)** | **$9.36** |



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**Site Name:** IPDA Expansion (CS) (3) **No. Sites:** 1

**Site Address:** 2405 E 57TH ST S, , WICHITA, Kansas 67211-4844 United States

| | Single Site | Total All Sites in Group |
|---|---|---|
| **Initial Products & Services Purchase Price** | **$7,011.29** | **$7,011.29** |
| **Annual Services Purchase Price** | **$9.36** | **$9.36** |

## Initial Products & Services

**Products**

| Description | Selected Quantity | List Price Unit | Net Price Unit | Total Net Price |
|---|---|---|---|---|
| **HiPath 4xxx** | | | | **$6,532.50** |
| CSAPE Box Kit for OpenScape 4000/HiPath 4000 from V6 Upgrades | 1 | $10,050.00 | $6,532.50 | $6,532.50 |
| **Products Purchase Price** | | | | **$6,532.50** |

**Implementation & Professional Services**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Labor | $478.79 | $478.79 |
| **Implementation & Professional Services Purchase Price** | | **$478.79** |

| | |
|---|---|
| **Initial Products & Services Purchase Price- IPDA Expansion (CS) (3)** | **$7,011.29** |

## Annual Services

**Maintenance Services(Contract Duration: 5 years)**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Service Package - Total Care | $11.64 | $9.36 |
| **Maintenance Services Purchase Price** | | **$9.36** |

| | |
|---|---|
| **Annual Services Purchase Price- IPDA Expansion (CS) (3)** | **$9.36** |



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**Site Name:** IPDA Expansion (CS) (4) **No. Sites:** 1

**Site Address:** 1801 S MCLEAN BLVD, , WICHITA, Kansas 67213-4105 United States

| | Single Site | Total All Sites in Group |
|---|---|---|
| **Initial Products & Services Purchase Price** | **$7,011.29** | **$7,011.29** |
| **Annual Services Purchase Price** | **$9.36** | **$9.36** |

## Initial Products & Services

**Products**

| Description | Selected Quantity | List Price Unit | Net Price Unit | Total Net Price |
|---|---|---|---|---|
| **HiPath 4xxx** | | | | **$6,532.50** |
| CSAPE Box Kit for OpenScape 4000/HiPath 4000 from V6 Upgrades | 1 | $10,050.00 | $6,532.50 | $6,532.50 |
| **Products Purchase Price** | | | | **$6,532.50** |

**Implementation & Professional Services**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Labor | $478.79 | $478.79 |
| **Implementation & Professional Services Purchase Price** | | **$478.79** |

| | |
|---|---|
| **Initial Products & Services Purchase Price- IPDA Expansion (CS) (4)** | **$7,011.29** |

## Annual Services

**Maintenance Services(Contract Duration: 5 years)**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Service Package - Total Care | $11.64 | $9.36 |
| **Maintenance Services Purchase Price** | | **$9.36** |

| | |
|---|---|
| **Annual Services Purchase Price- IPDA Expansion (CS) (4)** | **$9.36** |



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**Site Name:** IPDA Expansion (CS) (17) **No. Sites:** 1

**Site Address:** 225 W DOUGLAS AVE, , WICHITA, Kansas 67202-3134 United States

| | Single Site | Total All Sites in Group |
|---|---|---|
| **Initial Products & Services Purchase Price** | **$0.00** | **$0.00** |
| **Annual Services Purchase Price** | **$9.36** | **$9.36** |

## Annual Services

**Maintenance Services(Contract Duration: 5 years)**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Service Package - Total Care | $11.64 | $9.36 |
| **Maintenance Services Purchase Price** | | **$9.36** |
| **Annual Services Purchase Price- IPDA Expansion (CS) (17)** | | **$9.36** |



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**Site Name:** IPDA Expansion (CS) (18) **No. Sites:** 1

**Site Address:** 225 W DOUGLAS AVE, , WICHITA, Kansas 67202-3134 United States

| | Single Site | Total All Sites in Group |
|---|---|---|
| **Initial Products & Services Purchase Price** | **$0.00** | **$0.00** |
| **Annual Services Purchase Price** | **$9.36** | **$9.36** |

## Annual Services

**Maintenance Services(Contract Duration: 5 years)**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Service Package - Total Care | $11.64 | $9.36 |
| **Maintenance Services Purchase Price** | | **$9.36** |
| **Annual Services Purchase Price- IPDA Expansion (CS) (18)** | | **$9.36** |



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**Site Name:** IPDA Expansion (CS) (19) **No. Sites:** 1

**Site Address:** 225 W DOUGLAS AVE, , WICHITA, Kansas 67202-3134 United States

| | Single Site | Total All Sites in Group |
|---|---|---|
| **Initial Products & Services Purchase Price** | **$0.00** | **$0.00** |
| **Annual Services Purchase Price** | **$9.36** | **$9.36** |

## Annual Services

**Maintenance Services(Contract Duration: 5 years)**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Service Package - Total Care | $11.64 | $9.36 |
| **Maintenance Services Purchase Price** | | **$9.36** |

| | |
|---|---|
| **Annual Services Purchase Price- IPDA Expansion (CS) (19)** | **$9.36** |



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**Site Name:** East Waterman (20) **No. Sites:** 1

**Site Address:** 777 E WATERMAN ST, , WICHITA, Kansas 67202-4615 United States

| | Single Site | Total All Sites in Group |
|---|---|---|
| **Initial Products & Services Purchase Price** | **$0.00** | **$0.00** |
| **Annual Services Purchase Price** | **$9.36** | **$9.36** |

## Annual Services

**Maintenance Services(Contract Duration: 5 years)**

| Description | Total List Price | Total Net Price |
|---|---|---|
| Service Package - Total Care | $11.64 | $9.36 |
| **Maintenance Services Purchase Price** | | **$9.36** |

| | |
|---|---|
| **Annual Services Purchase Price- East Waterman (20)** | **$9.36** |



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## Schedule A - Terms and Conditions

This Schedule A contains proprietary Product, Software and/or Services (as defined in the Agreement) and pricing information. Except as otherwise required by law, it may not be reproduced, used by or disclosed to persons not employed or retained by Customer for the evaluation and implementation of this Schedule A without Supplier's prior written consent.

Any performance by Supplier against this Schedule A is subject to and contingent upon credit approval of Customer, at Supplier's sole discretion. Supplier reserves the right to modify or withdraw credit terms at any time without notice, and to require guarantees, security or payment in advance of delivery of the Products, Software and/or Services, as applicable.

All invoices are due and payable within thirty (30) days from Customer's receipt of Supplier's invoice for each applicable milestone below.

- MAC Product Drop Ship. Where the Customer did not order implementation Services, Supplier will invoice 30% of the charges for all Products, Software and Services listed on this Schedule A promptly after execution of this Schedule A; and 70% of the charges will be invoiced upon the initial delivery of the Products to Customer's Premises (as defined in the Agreement). All transportation charges and applicable taxes and governmental fees for which Customer is liable will be invoiced to Customer as separate line items on the second invoice.

- MAC Product Implementation. Where Customer orders implementation Services, Supplier will invoice as follows:

  (a) For MAC order volume greater than or equal to $25,000, Supplier will invoice 30% of the charges for all Products, Software and Services listed on this Schedule A promptly after execution of this Schedule A; 60% of the charges for all Products, Software and Services listed on this Schedule A upon the initial delivery of the Products to Customer's premises; and the remaining 10% of the charges upon the Cutover Date (as defined in the Agreement). Supplier will invoice 90% of the transportation charges and applicable taxes and governmental fees for which Customer is liable to Customer as separate line items on the second invoice and 10% of the transportation charges and applicable taxes and governmental fees for which Customer is liable will be invoiced to Customer as separate line items on the third invoice.

  (b) For MAC order volume less than $25,000, Supplier will invoice 90% of the charges for all Products, Software and Services listed on this Schedule A upon the initial delivery of the Products to Customer's premises and the remaining 10% of the charges upon the Cutover Date. Supplier will invoice 100% of the transportation charges and applicable taxes and governmental fees for which Customer is liable to Customer as separate line items on the second invoice.

Managed Services, Maintenance and Software Assurance. Charges will be invoiced as set forth in the OpenScale Plan or applicable Exhibit/Supplement
This Schedule A and any subsequent Installation Change Order (ICO) does not include any estimated taxes. Taxes will be verified against local sales tax regulations and other applicable laws or regulations and reflected in Supplier invoices to Customer.

Notwithstanding anything to the contrary in the Agreement, Customer is responsible for the Products' transportation charges to the Premises. These charges will be based on the pre-tax net purchase price of the equipment portion of the Products specified in this Schedule A and ICO and will be included on an invoice to Customer.

In the event Customer fails to make any payments when due, Supplier may, in addition to and without waiver of any rights or remedies under the Agreement, at law or in equity, immediately suspend performance until payment is received. In addition, if any amount due is not paid when due, Customer agrees to pay Supplier, on demand, a late charge in an amount equal to the lesser of 1.5% per month or the maximum rate permitted by law, on such overdue amount. The late charge will accrue from the due date until such amount is paid in full.

Should Customer intend to lease-finance the Products set forth on this Schedule A, Customer must provide to Supplier notification of such intent and the following completed documents properly signed prior to the execution of this Schedule A: (1) a purchase order or similar document and a valid, properly executed Resale Exemption Certificate from the lessor, and (2) a fully executed Supplier Assignment of On-Order Products. If Supplier does not receive the required documentation by the time this Schedule A is signed, the order will be deemed a completed purchase transaction, the lease/sales designation is void and of no effect, and Customer will be liable to pay Supplier the Purchase Price on this Schedule A, pursuant to Supplier's payment terms specified above.

If Supplier is providing implementation Services, and Supplier determines that a site survey is required, the prices in this Schedule A are preliminary prices pending a full site survey of the Premises. Final prices will be provided only after completion of such a survey.

Any Supplier provided education and training on this Schedule A must be completed in total within six (6) months after the date that Customer signs this Schedule A. In the event any ordered Supplier provided education and/or training is not completed in such period, Customer shall be deemed to have cancelled such training and/or education without refund or credit.


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# Unify Support Plan

The Covered Products, Sites and Services detailed below are hereby added to the Unify Support Plan between the parties ("Plan"). The tables below identify only the incremental Covered Products, Sites and Services added to your Plan ("Expansion") and the Purchase Price set forth above represents only the incremental additional annual Purchase Price associated with the Expansion, which shall be added to the Purchase Price of your Plan.

Service coverage for the Expansion begins on the initial Installation Date of any Covered Product or Service associated with the Expansion. The first invoice for the Expansion will be prorated to the end of the current annual billing cycle for the Plan; the full amount of the annual Purchase Price for the Expansion will be included in the invoice for the next annual billing cycle of the Plan.

Except as revised and restated herein, the terms and conditions of your Plan remain unchanged and in full force and effect.

**1. Total Care Service Selections**

As part of Total Care Services, you will receive the following Services during the following Service Hours:

| Self Services | | | |
|---|---|---|---|
| Web Portal | Web Support | Software Center | Support Knowledge Database |
| Service Hours | Service Hours | Service Hours | Service Hours |
| 24/7 | 24/7 | 24/7 | 24/7 |

In addition to the Services above, you will receive the following Services selected by you as indicated in the table below for the following Sites in accordance with the corresponding Service Hours and Service Levels (SLAs):

| Site | SLA ID | Remote Service | | | | | On-site Service | | Spare Parts Replacement | Remote SW MAC |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Call Desk | 1st Level Support | | 2nd Level Support | 3rd Level Support | On-site Repair | | Spare Parts Replacement | Remote MAC Voice |
| | | Service Hours | Service Hours | Response Time for priority 1 incidents 1)2) | Service Hours | Service Hours | Service Hours | Response Time for priority 1 incidents 1)3) | Spare Parts Delivery Time 4) | Quantity of purchased Remote MAC(s) per year 5)6)7)8) |
| Main | TC-SLA 1 | 24/7 | 24/7 | 2 h | 8/5 | 8/5 | 24/7 | 4 h | NBD | n/a |
| Main | TC-SLA 2 | 24/7 | 24/7 | 2 h | 8/5 | 8/5 | n/a | n/a | NBD | n/a |
| IPDA Expansion (CS) (1) | TC-SLA 1 | 24/7 | 24/7 | 2 h | 8/5 | 8/5 | 24/7 | 4 h | NBD | n/a |
| IPDA Expansion (CS) (2) | TC-SLA 1 | 24/7 | 24/7 | 2 h | 8/5 | 8/5 | 24/7 | 4 h | NBD | n/a |
| IPDA Expansion (CS) (3) | TC-SLA 1 | 24/7 | 24/7 | 2 h | 8/5 | 8/5 | 24/7 | 4 h | NBD | n/a |
| IPDA Expansion (CS) (4) | TC-SLA 1 | 24/7 | 24/7 | 2 h | 8/5 | 8/5 | 24/7 | 4 h | NBD | n/a |
| IPDA Expansion (CS) (17) | TC-SLA 1 | 24/7 | 24/7 | 2 h | 8/5 | 8/5 | 24/7 | 4 h | NBD | n/a |
| IPDA Expansion (CS) (18) | TC-SLA 1 | 24/7 | 24/7 | 2 h | 8/5 | 8/5 | 24/7 | 4 h | NBD | n/a |
| IPDA Expansion (CS) (19) | TC-SLA 1 | 24/7 | 24/7 | 2 h | 8/5 | 8/5 | 24/7 | 4 h | NBD | n/a |
| East Waterman (20) | TC-SLA 1 | 24/7 | 24/7 | 2 h | 8/5 | 8/5 | 24/7 | 4 h | NBD | n/a |

1) Measurement of Response Time for remote Services begins after report of Incident and measurement of Response Time for on-site Services begins after Supplier determines that an on-site Response is required
2) Response time for Priority 2 incidents is 4 Service Hours and for Priority 3 incidents is 8 Service Hours. Priority 2 and Priority 3 Incident Reports are addressed only during Service Hours 8/5
3) Response time for Priority 2 incidents is the next Business Day (NBD) and for Priority 3 incidents is 5 Business Days
4) NBD = next Business Day, where identification of the requirement and arrangement of the delivery location is by 2 p.m., otherwise within 2 Business Days of such event
5) MAC(s) excluded from the Service definition are charged separately.
6) Displayed quantity is the maximum number of Remote MAC(s) that can be retrieved per year
7) Remote MAC voice Services are performed during Service Hours 8/5
8) Remote MAC voice Services targeted completion time is 5 Business Days from receipt of the request.

**2. Covered Products, Sites & Service Levels**

I.The Plan includes the following Sites, Covered Products and associated Service Level/SLAs:


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| Site* | Service Level / SLA | Covered Products** |
|---|---|---|
| Main | TC-SLA 1 | HiPath 4xxx |
| | TC-SLA 2 | |
| | | |
| IPDA Expansion (CS) (1) | TC-SLA 1 | HiPath 4xxx |
| | | |
| IPDA Expansion (CS) (2) | TC-SLA 1 | HiPath 4xxx |
| | | |
| IPDA Expansion (CS) (3) | TC-SLA 1 | HiPath 4xxx |
| | | |
| IPDA Expansion (CS) (4) | TC-SLA 1 | HiPath 4xxx |
| | | |
| IPDA Expansion (CS) (17) | TC-SLA 1 | HiPath 4xxx |
| | | |
| IPDA Expansion (CS) (18) | TC-SLA 1 | HiPath 4xxx |
| | | |
| IPDA Expansion (CS) (19) | TC-SLA 1 | HiPath 4xxx |
| | | |
| East Waterman (20) | TC-SLA 1 | HiPath 4xxx |
| | | |

* As the Site is defined in Section 3. II of this Plan below.
** The listing of the individual Covered Products is included on the Quote referenced above. If any third party products, included but not limited to server products, are included on your Quote, they are not Covered Products and are not included in the Plan.

II. Site Information
The following Sites are included in the Plan:

| Site | Site Address | Site Id |
|---|---|---|
| Main | 455 N MAIN ST, , WICHITA, Kansas 67202-1600 United States | 40307 |
| IPDA Expansion (CS) (1) | 733 N MAIN ST, , WICHITA, Kansas 67218-1600 United States | 40308 |
| IPDA Expansion (CS) (2) | 3015 E 21ST ST N, , WICHITA, Kansas 67214-2326 United States | 40309 |
| IPDA Expansion (CS) (3) | 2405 E 57TH ST S, , WICHITA, Kansas 67211-4844 United States | 40310 |
| IPDA Expansion (CS) (4) | 1801 S MCLEAN BLVD, , WICHITA, Kansas 67213-4105 United States | 40311 |
| IPDA Expansion (CS) (17) | 225 W DOUGLAS AVE, , WICHITA, Kansas 67202-3134 United States | 40312 |
| IPDA Expansion (CS) (18) | 225 W DOUGLAS AVE, , WICHITA, Kansas 67202-3134 United States | 40313 |
| IPDA Expansion (CS) (19) | 225 W DOUGLAS AVE, , WICHITA, Kansas 67202-3134 United States | 40314 |
| East Waterman (20) | 777 E WATERMAN ST, , WICHITA, Kansas 67202-4615 United States | 40315 |


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**Second Reading Ordinances for July 15, 2014 (first read on July 8, 2014)**

**A. <u>Public Hearing and Tax Exemption Request, C.E. Machine Co., Inc</u>. (District IV)**

ORDINANCE NO. 49-776

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

**B. <u>Public Hearing and Tax Exemption Request, Walton's Inc</u>. ( District II)**

ORDINANCE NO. 49-777

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

**C. <u>Nuisance Abatement Assessments, Cutting Weeds.</u> (Districts I and II)**

ORDINANCE NO. 49-779

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

**D. <u>Nuisance Abatement Assessments, Lot Clean Up.</u> (Districts III, IV, and VI)**

ORDINANCE NO. 49-780.

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.

**E. ZON2014-00007 Zone Change request from SF-5 Single-family Residential (SF-5) to LC Limited Commercial (LC), generally located west of Seneca Street on the north side of 43rd Street South, 1116 W 43 Street South. (District IV)**

ORDINANCE NO. 49-781

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.

**F. PUD2014-00001 Zone Change From SF-5 Single-Family Residential to the Planned Unit Development (PUD#42 District on Property Located on the East Side of South Meridian Avenue, 1,700 Feet South of West MacArthur Road, 4200 South Meridian. (District IV)**

ORDINANCE NO. 49-782

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.

**City of Wichita**
**City Council Meeting**
July 15, 2014

**TO:** Mayor and City Council

**SUBJECT:** SUB2013-00046 -- Plat of West High School 2nd Addition located East of Seneca, on the South Side of Lincoln (District IV)

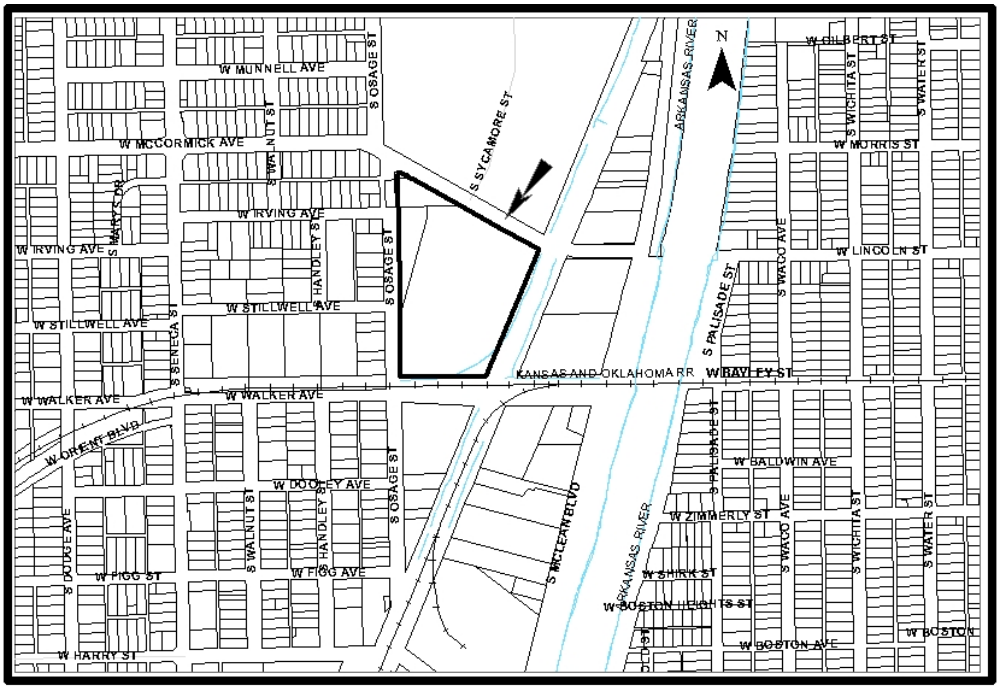
**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

---

**Staff Recommendation:** Approve the plat.

**MAPC Recommendation:** Approve the plat. (8-0)




**Background:** The site consists of one lot on 13.41 acres and is zoned MF-29 Multi-family Residential.

**Analysis:** Water services are available to serve the site. The applicant has submitted a 100 percent Petition and a Certificate of Petition for sewer improvements. The applicant has submitted a Temporary Drainage Easement.

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, Temporary Drainage Easement and Resolution as to form and the documents will be recorded with the Register of Deeds.

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

**Attachments:** Certificate of Petition.
Temporary Drainage Easement.
Resolution.

**132019**

**First Published in the Wichita Eagle July 18, 2014**

**RESOLUTION NO. 14-199**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 01, MAIN 1, SANITARY SEWER NO. 21 (EAST OF SENECA, NORTH OF HARRY) 468-84975** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF **LATERAL 01, MAIN 1, SANITARY SEWER NO. 21 (EAST OF SENECA, NORTH OF HARRY) 468-84975** 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 01, Main 1, Sanitary Sewer No. 21 (east of Seneca, north of Harry) 468-84975.**

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 **Eight Thousand Dollars ($8,000)** exclusive of interest on financing and administrative and financing costs, 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 **July 1, 2014** exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

**WEST HIGH SCHOOL 2ND ADDITION**
Lot 1, Block A

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

> The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lot 1, Block A, WEST HIGH SCHOOL 2ND ADDITION shall pay 100 percent of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 15th day of July, 2014.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF, DIRECTOR OF LAW

COPY

**CERTIFICATE OF PETITION**

STATE OF KANSAS )
COUNTY OF SEDGWICK ) SS:

We, Unified School District No. 259, Sedgwick County, Kansas, owner of West High School 2nd Addition, Wichita, Sedgwick County, Kansas, 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 Improvements

As a result of the above-mentioned petition(s) for improvements, all lots or portions thereof within West High School 2nd Addition, may be subject to special assessments assessed thereto for the cost of constructing the above-described improvements.

Signed this 23rd day of June, 2014.

SEAL OF USD 259 WICHITA PUBLIC SCHOOLS Sedgwick County KS USA

Unified School District No. 259,
Sedgwick County, Kansas

By: _____
Jeff Davis, President

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 23rd day of June, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Jeff Davis, as President of Unified School District No. 259, Sedgwick County, Kansas, who is 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, for and on behalf of the school district.

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

Mike Willome
Notary Public

(My Commission Expires: 6-9-15)

MIKE WILLOME
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 6-9-15

Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

**TEMPORARY DRAINAGE EASEMENT**

THIS EASEMENT made this 23rd day of June, 2014, by and between Unified School District No. 259, Sedgwick County, Kansas, of the first part and the City of Wichita of the second part.

WITNESSETH: That the said first party, in consideration of the sum of One Dollar ($1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the said second party a temporary right-of-way and easement for the purpose of constructing, maintaining, and repairing a storm sewer system over, along, and under the following described real estate situated in Sedgwick County, Kansas; to wit:

(SEE ATTACHED EXHIBIT 'A')

Said easement shall expire upon the approval, construction, and acceptance by the City of Wichita of a Private Drainage Project for this property.

IN WITNESS WHEREOF:

The said first party has signed these presents the day and year first written.

SEAL OF USD 259 WICHITA PUBLIC SCHOOLS Sedgwick County KS USA

Unified School District No. 259,
Sedgwick County, Kansas

By: _____
Jeff Davis, President

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 23rd day of June, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Jeff Davis, as President of Unified School District No. 259, Sedgwick County, Kansas, who is 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, for and on behalf of the school district.

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

MIKE WILLOME
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 6-9-15

Mike Willome
Notary Public

(My Commission Expires: 6-9-15)

Approved as to form:

Gary E. Rebenstorf, Director of Law

**EXHIBIT 'A'**

That part of Lot 1, Block A, West High School 2nd Addition, Wichita, Sedgwick County, Kansas described as follows: Commencing at the southwest corner of said Lot 1; thence S89°26'15"E along the south line of said Lot 1, 247.61 feet; thence N00°33'45"E, 57.09 feet to a point on a line of a drainage easement as granted in said West High School 2nd Addition; thence N24°04'28"E along a line of said drainage easement, 16.35 feet to a deflection corner in said line; thence N00°26'20"E along a line of said drainage easement, 151.74 feet for a point of beginning; thence continuing N00°26'20"E, 71.27 feet; thence N87°18'25"E, 22.00 feet; thence S05°49'30"E, 72.64 feet; thence S89°55'10"W, 29.89 feet to the point of beginning.

AND

Beginning at the most northerly northwest corner of Lot 1, Block A, West High School 2nd Addition, Wichita, Sedgwick County, Kansas; thence S59°44'09"E along the northeast line of said Lot 1, 63.30 feet to a deflection corner in said northeast line; thence S59°47'19"E along the northeast line of said Lot 1, 218.83 feet for a point of beginning; thence continuing S59°47'19"E along the northeast line of said Lot 1, 70.17 feet to the most northerly corner of a drainage easement as granted in said West High School 2nd Addition; thence S56°14'48"W along a line of said drainage easement 87.77 feet to a deflection corner in said line, said deflection corner also being a point on a non-tangent curve to the left; thence northwesterly and westerly along said curve, through a central angle of 29°09'28" and having a radius of 20.00 feet, an arc distance of 10.18 feet, (having a chord length of 10.07 feet bearing N67°42'47"W), to the point of tangency of said curve; thence N82°17'31"W, 63.52 feet to the point of curvature of a tangent curve to the right; thence westerly, northwesterly, northerly, northeasterly, and easterly along said curve, having a central angle of 153°23'56" and a radius of 33.00 feet, an arc distance of 88.35 feet, (having a chord length of 64.23 feet bearing N05°35'33"W), to the point of compound curvature of a tangent curve to the right; thence easterly along said curve, having a central angle of 18°53'35" and a radius of 145.00 feet, an arc distance of 47.81 feet, (having a chord length of 47.60 feet bearing N80°33'12"E), to the point of tangency of said curve; thence N90°00'00"E, 43.91 feet to the point of beginning.

**City of Wichita**
**City Council Meeting**
July 15, 2014

**TO:** Mayor and City Council

**SUBJECT:** SUB2014-00001 -- Plat of Scholfield Honda Commercial Addition located on the South Side of Kellogg, East of Woodlawn (District II)

**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

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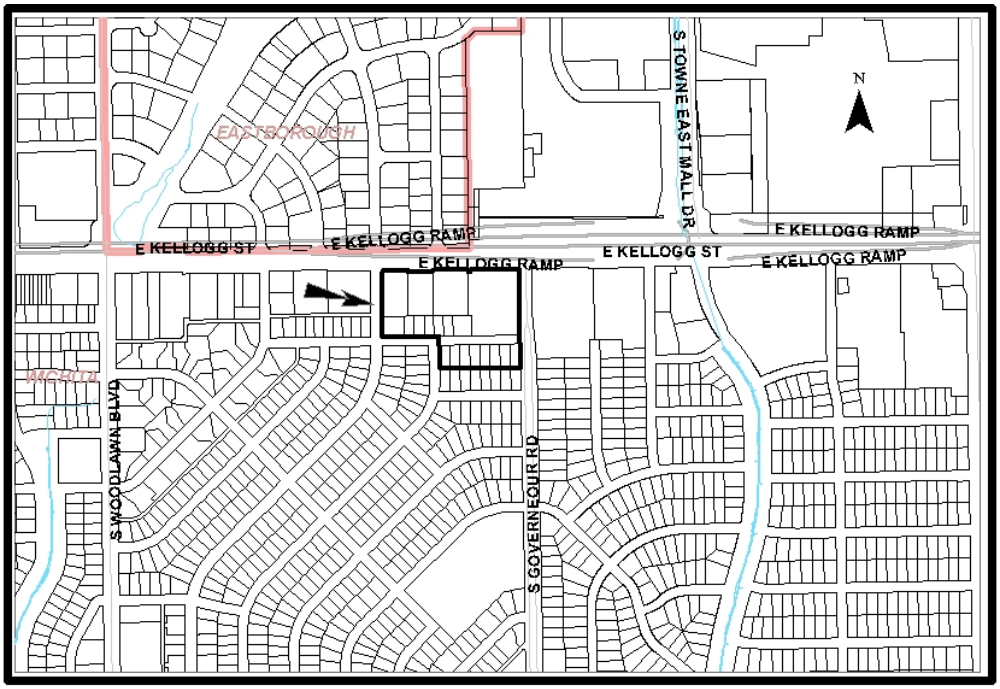
**Staff Recommendation:** Approve the plat.

**MAPC Recommendation:** Approve the plat. (10-0)




**Background:** The site consists of one lot on 9.26 acres. A portion of the site has been approved for a zone change (ZON2013-00023) from SF-5 Single-family Residential (SF-5) and TF-3 Two-family Residential (TF-3) to LC Limited Commercial (LC). The site is subject to the Scholfield Honda Commercial Community Unit Plan (CUP2013-00031, DP-305).

**Analysis:** Water and sewer services are available to serve the site. The applicant has submitted a Water Main Removal Certificate for abandonment of a water line. The applicant has submitted a Drive Approach Closure Certificate regarding the driveways required to be closed by access controls, which are being dedicated by the plat. The applicant has submitted a Sidewalk Certificate for construction of sidewalks along the street frontages. The site is within the noise impact area of McConnell Air Force Base; therefore the applicant has submitted an Avigational Easement and Restrictive Covenant to assure that adequate construction methods will be used to minimize the effects of noise pollution. The applicant has submitted a Notice of Community Unit Plan (CUP) identifying the approved CUP and special conditions for development.

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

Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

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

**Legal Considerations:** The Law Department has reviewed and approved the Water Main Removal Certificate, Drive Approach Closure Certificate, Sidewalk Certificate, Avigational Easement, Restrictive Covenant, Notice of Community Unit Plan as to form and the documents will be recorded with the Register of Deeds.

The Law Department has reviewed and approved the Ordinance as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the documents and plat, authorize the necessary signatures and place the Ordinance on first reading. Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

**Attachments:** Water Main Removal Certificate.
Drive Approach Closure Certificate.
Sidewalk Certificate.
Avigational Easement.
Restrictive Covenant.
Notice of Community Unit Plan.
Ordinance.

**(OCA150004)**

**Published in The Wichita Eagle on July 25, 2014**

**ORDINANCE NO. 49-796**

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. ZON2013-00023**

Zone change request from SF-5 Single-family Residential and TF-3 Two-family Residential to LC Limited Commercial on property described as:

Scholfield Honda Commercial Addition, Wichita, Sedgwick County, Kansas.

Generally located on the South Side of Kellogg, East of Woodlawn.

**SECTION 2.** That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

**SECTION 3.** That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

**ADOPTED this 22 day of July, 2014.**

**ATTEST:**

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

COPY

# WATER MAIN REMOVAL CERTIFICATE

Sedgwick County )
) SS
State of Kansas )

V & B Scholfield, L.P., a Kansas limited partnership, and RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, owner(s) of that certain real property to be known as **Scholfield Honda Commercial Addition, Wichita, Sedgwick County, Kansas**, is in the process of platting said property, and does hereby acknowledge that in accordance with the requirements of the platting process as set forth by the City of Wichita, any existing water mains per said platting requirements shall be removed.

This is to place on notice the owner(s) of the above-described property and subsequent owners thereof that, as a result of the above-cited platting requirements, said owner and subsequent owners thereof are responsible for seeing that such water mains and apparatuses are removed and services are killed at the main per City of Wichita specifications for such work, and that sufficient guaranty of such closure(s), in a form acceptable to the City of Wichita (e.g. – bond, cash, letter of credit, etc.) and/or acknowledgement that the City of Wichita may withhold the issuance of an occupancy permit for any future building construction, will be a pre-condition of the issuance of any future building permit for all development on the above-described property.

Signed this 24 day of June, 2014.

V & B Scholfield, L.P.

By: _____
Victor H. Scholfield, Partner

RJ Realty, LLC a/k/a R.J. Realty, LLC

By: _____
Roger Scholfield, President

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 24 day of June, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Victor H. Scholfield as Partner of V & B Scholfield, L.P., a Kansas limited partnership, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said partnership.

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

_____
Notary Public

(My Appointment Expires: March 1, 2015

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 24 day of June, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Roger Scholfield as President of RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

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

_____
Notary Public

(My Appointment Expires: March 1, 2015)

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

COPY

**DRIVE APPROACH CLOSURE CERTIFICATE**

Sedgwick County )
) SS
State of Kansas )

V & B Scholfield, L.P., a Kansas limited partnership, and RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, owners of that certain real property to be known as SCHOLFIELD HONDA COMMERCIAL ADDITION, are in the process of platting said property, and do hereby acknowledge that in accordance with the requirements of the platting process as set forth by the City of Wichita, any existing drive approaches on Kellogg Drive in excess of the 3 allowed per said platting requirements shall be closed, any existing drive approaches on Governeour Rd. in excess of the 2 allowed per said platting requirements shall be closed, and any existing drive approaches on Mission in excess of the 2 allowed per said platting requirements shall be closed.

This is to place on notice the owner(s) of the above-described property and subsequent owners thereof that, as a result of the above-cited platting requirements, said owner and subsequent owners thereof are responsible for seeing that such drive approach or approaches are removed and closed per City of Wichita specifications for such work, and that sufficient guaranty of such closure(s), in a form acceptable to the City of Wichita (e.g. – bond, cash, letter of credit, etc.) and/or acknowledgement that the City of Wichita may withhold the issuance of an occupancy permit for any future building construction, will be a pre-condition of the issuance of any future building permit for all development on the above-described property.

Signed this 20 day of JUNE, 2014.

V & B Scholfield, L.P.

By: _____
Victor H. Scholfield, Partner

RJ Realty, LLC a/k/a R.J. Realty, LLC

By: _____
Roger Scholfield, President

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 20 day of JUNE, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Victor H. Scholfield as Partner of V & B Scholfield, L.P., a Kansas limited partnership, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said partnership.

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

Lorina Silva
Notary Public

(My Appointment Expires: March 1, 2015)

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 20 day of JUNE, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Roger Scholfield as President of RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

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

Lorina Silva
Notary Public

(My Appointment Expires: March 1, 2015)

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

**SIDEWALK CERTIFICATE**

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

We, V & B Scholfield, L.P., a Kansas limited partnership, and RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, owners of Scholfield Honda Commercial Addition, do hereby acknowledge that in accordance with the requirements of the W-SCMAPD Subdivision Regulations and the Sidewalk Ordinance of the City of Wichita, construction of sidewalk is required at the following locations:

1. On the east side of Drury from the south line of the plat to the north line of Orme.

This is to place on notice all owners of the above-described property and subsequent owners thereof that, as a result of the above-cited regulations and ordinances, said owners and subsequent owners thereof are responsible for seeing that sidewalks are installed or guaranteed by cash or other acceptable financial means as a precondition of the issuance of a building permit for all development occurring on the above-described property.

Signed this 20 day of JUNE, 2014.

V & B Scholfield, L.P.

By: _____
Victor H. Scholfield, Partner

RJ Realty, LLC, a/k/a R.J. Realty, LLC

By: _____
Roger Scholfield, President

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 20 day of JUNE, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Victor H. Scholfield as Partner of V & B Scholfield, L.P., a Kansas limited partnership, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said partnership.

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

Lorina Silva
Notary Public

(My Appointment Expires: March 1, 2015)

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 20 day of JUNE, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Roger Scholfield as President of RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

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

Lorina Silva
Notary Public

(My Appointment Expires: March 1, 2015)

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

**AVIGATIONAL EASEMENT**

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, this 20 day of JUNE, 2014, by V & B Scholfield, L.P., a Kansas limited partnership, and RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, GRANTORS hereof, do hereby grant a permanent Avigational Easement to the public authority authorized by Law to own and operate public-owned airports in Sedgwick County, Kansas, for the use of "Navigable Airspace" as defined by the Federal Aviation Act of 1958, over all the following-described real estate, to-wit:

**SCHOLFIELD HONDA COMMERCIAL ADDITION**
Lot 1, Block A

By virtue of this easement, the grantors, for and on behalf of themselves and all successors in interest to any and all of the real property above-described, waive as to the public authority only any and all claims for damage of any kind whatsoever incurred as a result of aircraft using the "Navigable Airspace" granted herein. This easement does not grant or convey any surface use rights nor is it to be construed to grant any right to private persons or corporations.

"Navigable Airspace" means air space above the minimum altitudes of flight prescribed by regulations issued under the Federal Aviation Act of 1958, Section 101 (24) 49 U.S. Code Sect. 40102, and shall include air space needed to insure aircraft safety during take-off and landing.

To have and to hold said easement forever.

V & B Scholfield, L.P.

By: _____
Victor H. Scholfield, Partner

RJ Realty, LLC a/k/a R.J. Realty, LLC

By: _____
Roger Scholfield, President

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 20 day of JUNE, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Victor H. Scholfield as Partner of V & B Scholfield, L.P., a Kansas limited partnership, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said partnership.

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

Lorina Silva
Notary Public

(My Appointment Expires March 1, 2015)

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 20 day of JUNE, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Roger Scholfield as President of RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

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

Lorina Silva
Notary Public

(My Appointment Expires: March 1, 2015)

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

**RESTRICTIVE COVENANT**

THIS DECLARATION made this 20 day of JUNE, 2014, by V & B Scholfield, L.P., a Kansas limited partnership, and RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, the "Declarants",

WITNESSETH

WHEREAS, Declarants are the owners of the following described property:

**SCHOLFIELD HONDA COMMERCIAL ADDITION**
Lot 1, Block A

WHEREAS, the Declarant's property is located near McConnell Air Force Base and is accordingly subject to considerable noise from the operation of aircraft which may infringe upon the enjoyment of said property and may affect the health and/or well being of the property's users, and

WHEREAS, the City of Wichita, in connection with approval of the plat of said addition, shall require that proper consideration be given to abate outside noise pollution within buildings constructed on said property.

NOW, THEREFORE, Declarants hereby declare that SCHOLFIELD HONDA COMMERCIAL ADDITION, Wichita, Sedgwick County, Kansas, shall be and the same is subjected to the following restrictive covenant, to wit:

That any structure constructed on the premises shall be so designed and constructed as to minimize outside noise pollution in compliance with applicable City of Wichita and/or Sedgwick County codes and with due consideration given to the intended use of the structure. This covenant is for the benefit of said property and shall run with the land and shall inure to the benefit of and pass with said property and shall be binding upon the successors and assigns, jointly and severally, by these presents.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification

shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas

Executed the date and year first above written.

V & B Scholfield, L.P.

By: _____
Victor H. Scholfield, Partner

RJ Realty, LLC, a/k/a R.J. Realty, LLC

By: _____
Roger Scholfield, President

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 20 day of JUNE, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Victor H. Scholfield as Partner of V & B Scholfield, L.P., a Kansas limited partnership, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said partnership.

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

Lorina Silva
Notary Public

(My Appointment Expires: March 1, 2015)

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 20 day of JUNE, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Roger Scholfield as President of RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

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

Lorina Silva
Notary Public

(My Appointment Expires: March 1, 2015)

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

COPY

**NOTICE OF COMMUNITY UNIT PLAN**

THIS NOTICE made this 20 day of JUNE, 2014, by V & B Scholfield, L.P., a Kansas limited partnership, and RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, hereinafter called Declarants,

WITNESSETH

WHEREAS, Declarants are the owners of the following described property:

**SCHOLFIELD HONDA COMMERCIAL ADDITION**
Lot 1, Block A

and

WHEREAS, Declarants are desirous to file notice that a community unit plan approved by the Wichita City Council is on file with the Metropolitan Area Planning Department, known as Scholfield Honda Commercial Community Unit Plan (DP-305).

NOW, THEREFORE, the Declarants want to make notice that the approved community unit plan has placed restrictions on the use and requirements on the development of the above described real property.

The Metropolitan Area Planning Department is located on the 10th Floor, City Hall, Wichita, Kansas, (316) 268-4421.

The community unit plan shall be binding on the owners, their heirs, or successors or assigns and is a document running with the land and is binding on all successors in title to said Scholfield Honda Commercial Addition.

EXECUTED the day and year first written above.

V & B Scholfield, L.P.

By: _____
Victor H. Scholfield, Partner

RJ Realty, LLC, a/k/a R.J. Realty, LLC

By: _____
Roger Scholfield, President

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 20 day of JUNE, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Victor H. Scholfield as Partner of V & B Scholfield, L.P., a Kansas limited partnership, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said partnership.

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

Lorina Silva
Notary Public

(My Appointment Expires: March 1, 2015)

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

STATE OF KANSAS )
SEDGWICK COUNTY ) SS:

BE IT REMEMBERED, that on this 20 day of JUNE, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Roger Scholfield as President of RJ Realty, LLC, a/k/a R.J. Realty, LLC, a Kansas limited liability company, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

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

Lorina Silva
Notary Public

(My Appointment Expires: March 1, 2015)

LORINA SILVA
Notary Public - State of Kansas
My Appt. Expires March 1, 2015

Approved as to form:

Gary E. Rebenstorf, Director of Law

**City of Wichita**
**City Council Meeting**
July 15 , 2014

**TO:** Mayor and City Council

**SUBJECT:** SUB2014-00013 -- Plat of Ridge 400 3rd Addition located South of Maple, East of Ridge Road (District IV)

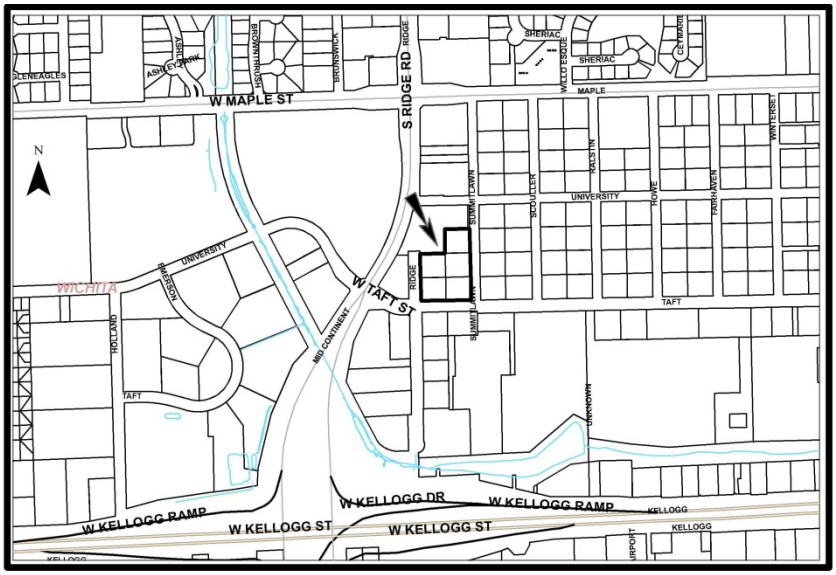
**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

---

**Staff Recommendation:** Approve the plat.

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




**Background:** The site consists of one lot on 2.68 acres. A zone change (ZON2011-00027) has been approved from SF-5 Single-family Residential (SF-5) to LC Limited Commercial (LC) for a portion of the site in addition to Protective Overlay #258. The property is subject to Protective Overlays #249, #251 and #258 addressing signage, lighting, noise, building height, screening and permitted uses.

**Analysis:** Water services are available to serve the site. The applicant has submitted 100% Petitions and a Certificate of Petitions for sewer and sidewalk improvements. The applicant has submitted a Drive Approach Closure Certificate regarding the driveways required to be closed by access controls, which are being dedicated by the plat. The applicant has submitted a Restrictive Covenant to provide for the ownership and maintenance responsibilities of the reserves being platted. The applicant has submitted a Notice of Protective Overlay identifying the approved Protective Overlay and special conditions for development on the property. The applicant has submitted a Temporary Utility Easement. The applicant has submitted a Water Meter Removal Certificate for the removal of water meters.

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

Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

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

**Legal Considerations:** The Law Department has reviewed and approved the Certificate of Petition, Drive Approach Closure Certificate, Restrictive Covenant, Notice of Protective Overlay, Temporary Utility Easement, Water Meter Removal Certificate and Resolution as to form and the documents will be recorded with the Register of Deeds.

The Law Department has reviewed and approved the Ordinance as to form.

**Recommendations/Actions:** It is recommended that the City Council approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and place the Ordinance on first reading. Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

**Attachments:** Certificate of Petition.
Drive Approach Closure Certificate.
Restrictive Covenant.
Notice of Protective Overlay.
Temporary Utility Easement.
Water Meter Removal Certificate.
Ordinance.
Resolution.

COPY

**CERTIFICATE OF PETITION**

STATE OF KANSAS )
COUNTY OF SEDGWICK ) SS:

We, Freddy's Land, LLC, a Kansas limited liability company, owner of Ridge 400 3rd Addition, Wichita, Sedgwick County, Kansas, 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 Improvements
2. Sidewalk Improvements

As a result of the above-mentioned petition(s) for improvements, all lots or portions thereof within Ridge 400 3rd Addition, may be subject to special assessments assessed thereto for the cost of constructing the above-described improvements.

Signed this 19th day of June, 2014.

Freddy's Land, LLC

By: Scott Redler
Scott Redler, Member

STATE OF KANSAS )
COUNTY OF SEDGWICK ) SS:

BE IT REMEMBERED, that on this 19th day of June, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Scott Redler as Member of Freddy's Land, LLC, a Kansas limited liability company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

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

Kelly A. Thomas
Notary Public

KELLY A. THOMAS
Notary Public - State of Kansas
My Appt. Expires 4-16-16

(My Appointment Expires: 4-16-16)

Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

# DRIVE APPROACH CLOSURE CERTIFICATE

Sedgwick County )
) SS
State of Kansas )

Freddy's Land, LLC, a Kansas limited liability company, owner(s) of that certain real property to be known as **Ridge 400 3rd Addition, Wichita, Sedgwick County, Kansas**, is in the process of platting said property, and does hereby acknowledge that in accordance with the requirements of the platting process as set forth by the City of Wichita, any existing drive approaches on Taft Ave. in excess of the one allowed per said platting requirements shall be closed and all existing drive approaches on Summitlawn Drive shall be closed.

This is to place on notice the owner(s) of the above-described property and subsequent owners thereof that, as a result of the above-cited platting requirements, said owner and subsequent owners thereof are responsible for seeing that such drive approach or approaches are removed and closed per City of Wichita specifications for such work, and that sufficient guaranty of such closure(s), in a form acceptable to the City of Wichita (e.g. – bond, cash, letter of credit, etc.) and/or acknowledgement that the City of Wichita may withhold the issuance of an occupancy permit for any future building construction, will be a pre-condition of the issuance of any future building permit for all development on the above-described property.

Signed this 19th day of June, 2014.

Freddy's Land, LLC

By: Scott Redler
Scott Redler, Member

STATE OF KANSAS )
COUNTY OF SEDGWICK ) SS:

BE IT REMEMBERED, that on this 19th day of June, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Scott Redler as Member of Freddy's Land, LLC, a Kansas limited liability company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

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

Kelly A. Thomas
Notary Public

(My Appointment Expires: 4-16-16)

KELLY A. THOMAS
Notary Public - State of Kansas
My Appt. Expires 4-16-16

Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

**RESTRICTIVE COVENANT**

THIS DECLARATION made this 19th day of June, 2014, by Freddy's Land, LLC, a Kansas Limited Liability Company, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

**RIDGE 400 3RD ADDITION**
Lot 1, Block A

WHEREAS, Declarant is desirous in connection therewith that various provisions for the maintenance and responsibility for the maintenance be placed of record for Reserve "A", Ridge 400 3rd Addition, Wichita, Sedgwick County, Kansas.

NOW, THEREFORE, Declarant hereby declares and covenants:

1. That Reserve "A" is hereby reserved for open space, screening walls/fences, landscaping, a landscape buffer, berms, utilities, and drainage purposes.

Reserve "A" shall be owned and maintained by the owner of Lot 1, Block A.

2. That the owners hereby grant an irrevocable easement to whichever appropriate governing body or authority has jurisdiction, to enter upon the Reserve, as defined, for the purposes of maintaining such Reserve. This easement is conditioned upon the following event or events happening:

A. That the Declarant or the Lot Owner, as may be appropriate, has failed to maintain the reserve in a reasonable and prudent manner.

and,

B. That the appropriate governing body has given written notice to the Declarant or the Lot Owner and neither entity has responded in initiating corrective action within thirty (30) days of such notice. If the governing body has taken action to maintain the reserve under this covenant, the Declarant or Lot Owner shall pay

promptly the costs expended. If the costs are not paid within thirty (30) days of the rendering of an account, the costs shall be considered an assessment against Lot 1, Block A, in Ridge 400 3rd Addition, and shall be considered a lien thereon and be treated in the same manner as a special assessment.

This covenant shall be binding on the owner, their heirs, or successors or assigns and is a covenant running with the land and is binding on all successors in Lots in RIDGE 400 3RD ADDITION, Wichita, Sedgwick County, Kansas.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

EXECUTED the day and year first written.

Freddy's Land, LLC

By: _____
Scott Redler, Member

STATE OF KANSAS )

COUNTY OF SEDGWICK ) SS:

BE IT REMEMBERED, that on this 19th day of June, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Scott Redler as Member of Freddy's Land, LLC, a Kansas limited liability company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

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

_____
Notary Public

(My Appointment Expires: 4-16-16 )

KELLY A. THOMAS
Notary Public - State of Kansas
My Appt. Expires 4-16-16

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

COPY

**NOTICE OF PROTECTIVE OVERLAY**

THIS NOTICE made this 19th day of June, 2014, by Freddy's Land, LLC, a Kansas Limited Liability Company, hereinafter called "Declarant,"

WITNESSETH

WHEREAS, Declarant is the owner of the following-described property:

**RIDGE 400 3RD ADDITION**
Lot 1, Block A

and

WHEREAS, Declarant is desirous to file notice that zoning protective overlays approved by the Wichita City Council is on file with the Wichita-Sedgwick County Metropolitan Area Planning Department, located on the 10th Floor, City Hall, Wichita, Kansas, (316) 268-4421.

NOW, THEREFORE, the Declarant gives notice that the approved protective overlays P-O #249 per zone change case ZON2010-43, P-O #251 per zone change case ZON2011-4, and P-O #258 per zone change case ZON2011-27 have placed restrictions on the use and requirements of the development of the above-described real property. These protective overlays shall be binding on the owners, their heirs, or successors or assigns and are documents running with the land and are binding on all successors in title to Ridge 400 3rd Addition.

EXECUTED the day and year first written above.

Freddy's Land, LLC

By: _____
Scott Redler, Member

STATE OF KANSAS )
COUNTY OF SEDGWICK ) SS:

BE IT REMEMBERED, that on this 19th day of June, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Scott Redler as Member of Freddy's Land, LLC, a Kansas limited liability company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

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

Kelly A Thomas
Notary Public

(My Appointment Expires: 4-16-16)

KELLY A. THOMAS
Notary Public - State of Kansas
My Appt. Expires 4-16-16

Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

**TEMPORARY UTILITY EASEMENT**

THIS EASEMENT made this 19th day of June, 2014, by and between Freddy's Land, LLC, a Kansas limited liability company, party of the first part, and the City of Wichita, party of the second part.

WITNESSETH: That the said first party, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the said second party, for the benefit of the public, a temporary right-of-way and easement for the purpose of constructing, maintaining, and repairing a sewer line and all public utilities, over, along, and under the following-described real estate situated in Sedgwick County, Kansas, to-wit:

That part of Lot 1, Block A, Ridge 400 3rd Addition, Wichita, Sedgwick County, Kansas described as follows: Commencing at the southeast corner of said Lot 1; thence S89°26'09"W along the south line of said Lot 1, 137.00 feet for a point of beginning; thence continuing S89°26'09"W along the south line of said Lot 1, 20.00 feet; thence N00°46'14"W, 291.33 feet to a point 5.00 feet normally distant south of the most westerly segment of the north line of said Lot 1; thence N89°18'48"E parallel with the most westerly segment of the north line of said Lot 1, and as extended easterly, 20.00 feet; thence S00°46'14"E, 291.38 feet to the point of beginning.

Said easement shall expire upon the removal and/or the relocation of the existing utilities presently located within said easement.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first above written.

Freddy's Land, LLC

By: Scott Redler

Scott Redler, Member

STATE OF KANSAS )
COUNTY OF SEDGWICK ) SS:

BE IT REMEMBERED, that on this 19th day of June, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Scott Redler as Member of Freddy's Land, LLC, a Kansas limited liability company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited liability company.

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

Kelly A. Thomas
Notary Public

(My Appointment Expires: 4-16-16 )

KELLY A. THOMAS
Notary Public - State of Kansas
My Appt. Expires 4-16-16

Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

# WATER METER REMOVAL CERTIFICATE

Sedgwick County )
) SS
State of Kansas )

Freddy's Land, LLC, a Kansas limited liability company, owner(s) of that certain real property to be known as **Ridge 400 3rd Addition, Wichita, Sedgwick County, Kansas**, is in the process of platting said property, and does hereby acknowledge that in accordance with the requirements of the platting process as set forth by the City of Wichita, any existing water services per said platting requirements shall be removed.

This is to place on notice the owner(s) of the above-described property and subsequent owners thereof that, as a result of the above-cited platting requirements, said owner and subsequent owners thereof are responsible for seeing that such water meters are removed and services are killed at the main per City of Wichita specifications for such work, and that sufficient guaranty of such closure(s), in a form acceptable to the City of Wichita (e.g. – bond, cash, letter of credit, etc.) and/or acknowledgement that the City of Wichita may withhold the issuance of an occupancy permit for any future building construction, will be a pre-condition of the issuance of any future building permit for all development on the above-described property.

Signed this 19th day of June, 2014.

Freddy's Land, LLC

By: _____
Scott Redler, Member

STATE OF KANSAS )
COUNTY OF SEDGWICK ) SS:

BE IT REMEMBERED, that on this 19th day of June, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Scott Redler as Member of Freddy's Land, LLC, a Kansas limited liability company, personally known to me to be the same person who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed on behalf of said limited liability company.

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

Kelley A Thomas
Notary Public

KELLY A. THOMAS
Notary Public - State of Kansas
My Appt. Expires 4-16-16

(My Appointment Expires: 4-16-16)

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney

**(OCA150004)**

**Published in The Wichita Eagle on July 25, 2014**

**ORDINANCE NO. 49-797**

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. ZON2011-00027**

Zone change request from SF-5 Single-family Residential to LC Limited Commercial on property described as:

Ridge 400 3rd Addition, Wichita, Sedgwick County, Kansas.

Generally located South of Maple, East of Ridge Road.

SUBJECT TO THE FOLLOWING PROVISIONS OF PO #258:

A. Replat the site within a year of approval by the governing body.
B. No off-site or portable signs shall be permitted on the subject property. No signs shall be permitted along the face of any building or along any street frontage that faces or is across the street from any property that is in a residential zoning district. Signs will be a monument type of sign, as permitted by the sign code in the LC zoning district.
C. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from any abutting or adjacent properties that are in a residential zoning district. Light poles shall be limited to a maximum height, including the base of the light pole, of 25-feet. Light poles shall not be located within any setbacks. Lighting on buildings must be directed down, away from abutting and adjacent residential zoned properties.
D. All utilities will be located underground.
E. Outdoor speakers and sound amplification systems shall not be permitted, with the exception of restaurant order boards. No order boards are permitted in setbacks.
F. No buildings shall exceed one story in height with a maximum building height of 35 feet.
G. A 6-8 foot tall masonry wall shall be constructed parallel to the east property line of the subject site, where it abuts existing single-family residences and SF-5 Single-family Residential zoning. The masonry wall shall be constructed at the same grade of the site's parking lot surface. A 6-8 foot tall, solid wooden fence (minimum screening material) will be constructed parallel to the south property line of the subject site, where it is adjacent to existing single-family residences and SF-5 Single-family Residential zoning. The solid wooden fence shall be constructed at the same grade as the site's parking lot surface.
H. A 15-foot wide landscape buffer will be provided along the south and east sides of the subject site and shall be constructed at the same grade of the site's parking lot surface, unless approved drainage plans (per the replat) dictate otherwise.
I. Deliveries and trash service shall be between the hours of 6:00 a.m. and 10:00 p.m.

J. The subject site shall comply with the compatibility setback standards. No access onto Summit Lawn Drive shall be shown on the replat.

K. The following uses shall not be permitted: adult entertainment establishment; group residence; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; night club; recreation and entertainment; outdoor vehicle sales; service station; tavern and drinking establishment and vehicle repair.

**SECTION 2.** That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

**SECTION 3.** That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

**ADOPTED this 22 day of July, 2014.**

**ATTEST:**

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf, Director of Law

**132019**

**First Published in the Wichita Eagle on July 18, 2014**

**RESOLUTION NO. 14-200**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 70, MAIN 4, SOUTHWEST INTERCEPTOR SEWER (SOUTH OF MAPLE, EAST OF RIDGE) 468-84972** 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 70, MAIN 4, SOUTHWEST INTERCEPTOR SEWER (SOUTH OF MAPLE, EAST OF RIDGE) 468-84972** 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 70, Main 4, Southwest Interceptor Sewer (south of Maple, east of Ridge) 468-84972.**

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 **Forty-Nine Thousand Dollars ($49,000)** exclusive of interest on financing and administrative and financing costs, 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 **July 1, 2014**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

**RIDGE 400 3RD ADDITION**
Lot 1, Block A

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

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lot 1, Block A, RIDGE 400 3RD ADDITION shall pay 100 percent of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6 That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 15 day of July, 2014.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

**132019**

**First Published in the Wichita Eagle on July 18, 2014**

**RESOLUTION NO. 14-202**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING A SIDEWALK ON THE **NORTH SIDE OF TAFT FROM THE EAST LINE OF RIDGE ROAD TO WEST LINE OF SUMMITLAWN DRIVE (SOUTH OF MAPLE, EAST OF RIDGE) 472-85179** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING A SIDEWALK ON THE **NORTH SIDE OF TAFT FROM THE EAST LINE OF RIDGE ROAD TO WEST LINE OF SUMMITLAWN DRIVE (SOUTH OF MAPLE, EAST OF RIDGE) 472-85179** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct a sidewalk on the **north side of Taft from the east line of Ridge Road to west line of Summitlawn Drive (south of Maple, east of Ridge) 472-85179.**

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Seven Thousand Five Hundred Dollars ($7,500)** exclusive of interest on financing and administrative and financing costs, 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 **July 1, 2014**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

**RIDGE 400 3RD ADDITION**
Lot 1, Block A

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

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lot 1, Block A, RIDGE 400 3RD ADDITION shall pay 100 percent of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each

ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 1980 Supp. 12-6a01 et seq (the "Act").

SECTION 8. The Act provides for the Improvements to be paid by the issuance of general obligation bonds or special obligation bonds of the City (the "Bonds"). 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 9. 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 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

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

July, 2014.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

Wichita, Kansas
July 14, 2014
10:00 a.m., Monday
Conference Room, 12th Floor

MINUTES - BOARD OF BIDS AND CONTRACTS*

The Board of Bids and Contracts met with Marty Strayer, Administrative Assistant, Public Works Engineering in the Chair; Fanny Chan, Senior Accountant, Finance, representing the Director of Finance, Elizabeth Goltry-Wadle, Senior Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, and Zack Daniel, Management Fellow, representing the City Manager's Office.

Minutes of the regular meeting dated July 7, 2014, were read and on motion approved.

Bids were opened July 11, 2014, pursuant to advertisements published on:

**WICHITA AIRPORT AUTHORITY/ENGINEERING DIVISION: Jabara Road Reconstruction-T- Hanger-Rebid.**

Defer one week

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

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

On motion the Board of Bids adjourned.

Marty Strayer, Administrative Assistant
Department of Public Works

Janis Edwards, CMC
Deputy City Clerk

**EXHIBIT A**

# FORMAL BID REPORT

**TO:** Robert Layton, City Manager
**DATE:** July 14, 2014

**WICHITA AIRPORT AUTHORITY BIDS – VICTOR WHITE, DIRECTOR OF AIRPORTS**
**July 11, 2014**
Jabara Road Reconstruction & T-Hangar Expansion (Rebid) – Wichita Airport Authority/Engineering Division
**(Defer to July 21, 2014)**

**ITEMS TO BE PURCHASED AS ADVERTISED IN THE OFFICIAL CITY NEWSPAPER.**

Melinda A. Walker

**Melinda A. Walker**
**Purchasing Manager**

City of Wichita, Kansas

# BID RESULTS

Registration Solicitations Document Inquiry Login Help

This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

*Vendor* *Group* *Line*

**Solicitation:** FB440107

**Jabara Rd Reconstruction-T-Hanger-Rebid**

**Close Date/Time:** 7/11/2014 10:00 AM CST

**Solicitation Type:** Formal Bid

**Award Method:** Aggregate Cost

**Department:** Airport Engineering

**Return to the Bid List**

**Responses:** 2

| Vendors | Complete | Bid Total | City Comments |
|---|---|---|---|
| SHERWOOD CONSTRUCTION CO INC | Complete | $2,851,658.35 | Defer to 7-21-14 Wichita Airport Authority/Engineering Division |
| CORNEJO & SONS LLC | Complete | $2,876,825.00 | |

BIDS ARE WITHIN ENGINEERS ESTIMATE

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