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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. May 4, 2010

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

-- Call to Order

-- Invocation

-- Pledge of Allegiance

-- Approve the minutes of the regular meeting on April 27, 2010

AWARDS AND PROCLAMATIONS

-- Proclamations:

Bike Month
Riverfest Week
National Exercise is Medicine Month
National AmeriCorps Week
Law Day

-- Awards:

Service Award - Warren Dalrymple
Mini MPA Awards
SBA Awards

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. Kenneth M. Piper - Damages to his home during 2006 bridge construction.

2. Mark S. Gietzen - Damages to his home.

COUNCIL BUSINESS

II. UNFINISHED COUNCIL BUSINESS

1. Delay-Request for Waiver of Regulations for Special Assessment Deferral Program for Agricultural Uses. (Districts III and V)

   RECOMMENDED ACTION: Defer the waiver of regulations for special assessment serving Edgewater and Meadlowlake Beech Additions until June 8 and defer the second reading of Charter Ordinance 212.

III. NEW COUNCIL BUSINESS

1. Appeal of Denial of a Community Event License for a Carnival at 2515 South Seneca. (District IV)

   RECOMMENDED ACTION: Based on evidence presented, reverse, affirm (wholly or partly) or modify the decision of City of Wichita staff to deny a community event permit for a carnival at 2515 South Seneca based on the provisions of Chapter 3.11.090(g) and (e) of the Code of the City of Wichita.

2. Extension of IRB Letter of Intent, Spirit AeroSystems, Inc. (District III)

   RECOMMENDED ACTION: Close the public hearing and approve a five-year extension of the letter of intent to Spirit Aerosystems for Industrial Revenue Bonds in an amount not-to-exceed $620.5 million, approve a ten-year 100% tax exemption on all bond-financed property, authorize staff to apply to the Kansas Department of Revenue for a sales tax exemption on all bond-financed purchases, and authorize the necessary signatures.

3. Resolution Considering the Establishment of the Bowllagio STAR Bond District. (District V)

   RECOMMENDED ACTION: Adopt the resolution which provides notice of consideration for the establishment of the Bowllagio STAR bond district and sets a public hearing for June 15, 2010.

4. Quarterly Financial Report for the quarter ending March 31, 2010.

   RECOMMENDED ACTION: Receive and file the Quarterly Financial Report for the quarter ended March 31, 2010.

5. False Alarm Ordinance Revisions.

   RECOMMENDED ACTION: Approve the revisions to the False Alarm Ordinance and place the ordinance on first reading.

6. Bicycle Ordinances.

RECOMMENDED ACTION: Approve the proposed amendments and place the ordinances on first reading.

7. Second Program Year Action Plan -- 2009-2013 Consolidated Plan Final Recommendations.

RECOMMENDED ACTION: Approve the recommendations for 2010-2011 expenditures for Community Development Block Grant, and HOME Investment Partnerships and Emergency Shelter Grant programs, and authorize the required 30 day public comment period.

8. 119th Street West Improvement, between Pawnee and Kellogg. (District IV)

RECOMMENDED ACTION: Approve the design concept, approve the budget for right-of-way, place the amending ordinance on first reading and authorize the necessary signatures.

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

9. Repair or Removal of Dangerous and Unsafe Structures. (Districts I, III and VI)

Property Address	Council District
a) 1619 North Fairmount	I
b) 2127 South Washington	III
c) 6024 South Minneapolis	III
d) 1559 North Emporia	VI
e) 1611 North Topeka	VI
f) 1258 North Fairview	VI

RECOMMENDED ACTION: Close the public hearing, adopt the resolutions declaring the buildings to be dangerous and unsafe structures, and accept the BCSA recommended actions to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structures. Any extensions of time granted to repair any structures would be contingent on the following: (1) All taxes have been paid to date as of May 4, 2010; (2) the structures have been secured as of May 4, 2010, and will continue to be kept secured; and (3) the premises are mowed and free of debris as of May 4, 2010, and will be so maintained during renovation.

10. DER2010-00004 Request to Amend Disposition Supplement No. 4 for the Administration Center Project Area for the Wichita Neighborhood Development Program Urban Renewal Area. RE: Four parcels located west of Wichita Street, south of 2nd Street North and north and south of 1st Street North. (District VI)

RECOMMENDED ACTION: Close the public hearing, adopt the findings of the MAPC and adopt the resolution amending Disposition Supplement No. 4 for the Administration Center Project Area.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

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

IV. NON-CONSENT PLANNING AGENDA (ITEMS 1 AND 2)

1. ZON2010-00004-City zone change from SF-5 Single-family Residential ("SF-5") to NO Neighborhood Office ("NO") with a Protective Overlay; generally located ¼ mile south of 21st Street North and west of Ridge Road. (District V)

   RECOMMENDED ACTION: 1) Concur with the findings of the MAPC, and deny the requested zone change; OR

   2) Approve the requested zone change by making alternative findings, and override the MAPC's recommendation and the valid protest (requires 2/3 majority vote to override the MAPC's recommendation and a 3/4 majority to override the valid protest); OR

   3) Return the case to the MAPC for further consideration with a statement specifying the basis for the Council's failure to approve or deny the application (simple majority vote required).

2. ZON2010-00010-City zone change from LC Limited Commercial ("LC") to GC General Commercial ("GC") with Protective Overlay; generally located on the east side of Market Street and north of Harry Street. (District I)

   RECOMMENDED ACTION: 1) Concur with the findings of the MAPC, and approve the requested zone change, subject to the additional recommended provisions of a Protective Overlay District; place the ordinance establishing the zone change on first reading (simple majority); OR

   2) Approve the requested zone change and modify provision 'F' of the Protective Overlay District, to prohibit 'payday/paycheck loans companies' (requires 2/3 majority vote to override or modify the MAPC's recommendation); OR

   3) Return the application to the MAPC for reconsideration.

V. CONSENT PLANNING AGENDA (ITEMS 1 AND 2)

1. *VAC2006-00007 - Request to vacate a portion of a platted alley; generally located between Market Avenue and Broadway Avenue, north of Douglas Avenue. (District VI)

   RECOMMENDED ACTION: Approve the Vacation Order, approve the drainage petition, adopt the resolution, approve the hold harmless agreement and authorize the necessary signatures.

2. *SUB2010-00014 - Plat of Woods North 2nd Addition located south of 29th Street North and west of 127th Street East. (District II)

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

HOUSING AGENDA

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

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

VI. NON-CONSENT HOUSING AGENDA

None

VII. CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

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

VIII. NON-CONSENT AIRPORT AGENDA

None

IX. CONSENT AIRPORT AGENDA (ITEMS 1 THROUGH 4)

1. *Pratt and Whitney Engine Services, Inc. - Supplemental Agreement No. 3.

   RECOMMENDED ACTION: Approve Supplemental Agreement No. 3 and authorize the necessary signatures.

2. *Taxiway A1 Extension and Apron - Colonel James Jabara Airport.

   RECOMMENDED ACTION: Approve the budget adjustment.

3. *Airfield Pavement Rehabilitation - Colonel James Jabara Airport.

   RECOMMENDED ACTION: Approve the budget, design contract, the grant agreement and authorize necessary signatures (grant signatures by the Director of Airports).

4. *Frontier Airlines – Supplemental Agreement No. 4.

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

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUGH 18A)

1. Report of Board of Bids and Contracts dated May 3, 2010.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2010	(Consumption on Premises)
Mui Fon Yu (Tam)	Tom's Lotus Garden*	822 South Broadway
Tammy Phan	Da Nang Restaurant Corporation*	1556 North Broadway, Suite 600

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

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

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

   RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:
   a. Petition for street paving in B.G.'s 1st Addition, south of MacArthur, west of Hoover. (District IV)

   RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Consideration of Street Closures/Uses.
   a. Community Events – Intrust Bank Arena Pro Bull Riding. (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 Event Coordinator.

6. Agreements/Contracts:
   a. Encroachment Agreement with Southern Star Central Gas Pipeline Inc. for the Greenwich Road, Harry to Kellogg Improvements. (District II)
   b. Agreement with the Kansas Department of Transportation for improvements of K-96 from I-135 to Rock Road. (Districts I and VI)

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

7. Minutes of Advisory Boards/Commissions

Board of Park Commissioners, April 19, 2010

RECOMMENDED ACTION: Receive and file.

8. Settlement of Claim.

RECOMMENDED ACTION: Authorize the payment of $10,396.96 as a full settlement of all possible claims which were made or could have been made in the claim.

9. Notice of Intent to Use Debt Financing Amendment - Taxiway A1 Extension and Apron - Jabara Airport.

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

10. Notice of Intent to Use Debt Financing - Airfield Pavement Rehabilitation - Colonel James Jabara Airport.

RECOMMENDED ACTION: Adopt the Resolution and authorize the necessary signatures.

11. Approval of Sublease, H2 Corporate Office, LLC. (District II)

RECOMMENDED ACTION: Approve the sublease between Hartman Oil and ATLASMD, LLC.

12. 2010 CSBG Discretionary Fund Application.

RECOMMENDED ACTION: Approve submission of the 2010 CSBG Discretionary Fund Application and authorize the necessary signatures.

13. Termination of Restrictive Covenant. (District IV)

RECOMMENDED ACTION: Approve the Termination of Restrictive Covenant and authorize the necessary signatures.

14. 2010 Senior Wednesdays Program at WATER Center. (District III)

RECOMMENDED ACTION: Approve receipt of the grant award.

15. Registration of Johns Sludge Pond into KDHE's EUC Program. (District I)

RECOMMENDED ACTION: Authorize staff to complete the enrollment process, obtain the necessary signatures, and to pay the required fees.

16. Home Improvement Loan Program. (Districts I, III, IV, V, and VI)

    RECOMMENDED ACTION: Approve a budget transfer from the Rental Housing Loan Program to the Home Improvement Loan Program.

17. HPC2009-00476: Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita. (Districts I and VI)

    RECOMMENDED ACTION: Adopt the resolution endorsing Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita, April 2010.

18. Second Reading Ordinances: (First Read April 27, 2010)
    a. List of second reading ordinances. (See Attached)

    RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Agenda Item No. II-1

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Delay - Request for Waiver of Regulations for Special Assessment Deferral Program for Agricultural Uses (Districts III and V)

INITIATED BY: Department of Public Works

AGENDA: Unfinished Business

Recommendation: Defer item until June 8.

Background: Charter Ordinance 212 was passed on first reading on April 20. Charter Ordinance 212 was revised to allow the City Council to waive elements of the ordinance and allow for a deferral when the City Council concludes such is in the best public interest.

A request has been submitted to the City Council by Jay Russell for projects serving Edgewater and Meadowlake Beach Addition.

Analysis: A review by staff and legal counsel is in process to ensure the City Council can waive elements of the charter ordinance and not impact the taxability of the bond issue. Due to the review of specific elements of the charter ordinance, the 2nd reading of Charter Ordinance 212 is delayed until June 8, 2010.

Financial Considerations: There are no financial issues with the delay of this item.

Goal Impact: The Efficient Infrastructure goal is enhanced by providing the ability to permanently finance improvements attributable to the over sizing of infrastructure for the Water Utilities.

Legal Considerations: The deferral will enable the Council to consider whether to direct a further amendment to the text of the proposed charter ordinance prior to second reading.

Recommendation/Action: It is recommended that the City Council defer the waiver of regulations for special assessment serving Edgewater and Meadowlake Beach Addition until June 8 and defer the second reading of Charter Ordinance 212.

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council Members

SUBJECT: Appeal of Denial of a Community Event License for a Carnival at 2515 S. Seneca

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendation: Based on evidence presented, reverse, affirm (wholly or partly) or modify the decision of City staff to deny a community event permit application for a carnival at 2515 South Seneca.

Background: In June 2006, the City Council passed a Community Events Ordinance in Chapter 3.11 of the Code of the City of Wichita. The Ordinance provides a coordinated review and permitting process for managing community events occurring on public and/or private property. When conducted wholly on private property, as proposed for the carnival at 2515 South Seneca, a community event permit is required if there is an expected attendance of 250 or more people during the event period.

On March 30, 2010, the City received a community event permit application from Lewellen Amusements for a carnival located at 2515 South Seneca (Westway Shopping Center), to take place on April 2-3, 2010. On March 31, 2010, the application was denied by the Division of Arts & Cultural Services Community Event Coordinator, Connie Clark, pursuant to Section 3.11.090(g) of the Code of the City of Wichita.

On April 1, 2010, a written appeal of the community event permit application denial was filed with the City Clerk pursuant to Section 3.11.110 of the Code of the City of Wichita. The appeal was filed by attorney Robert W. Kaplan, representing Rex Lewellen (d/b/a Lewellen Amusements). When contacted about a possible City Council appeal hearing date, Mr. Kaplan agreed to May 4, 2010.

Analysis: The March 30, 2010 permit application for an April 2-3, 2010 community event carnival at Westway Shopping Center was denied on March 31, 2010, pursuant to Section 3.11.090(g) of the Code of the City of Wichita. Section 3.11.090(g) states that an application for a community event permit shall be denied if:

> The applicant, in the last five years, has organized a community event which did not conform to the plans and application submitted to the Community Events Coordinator, or which failed to comply with any conditions for such event placed on the event by the Community Event Coordinator.

The March 31, 2010 community event permit application denial letter states that during the weekend of March 26-28, 2010, Lewellen Amusements operated a carnival at Westway Shopping Center without a required community event permit. Lewellen Amusements operated the March 26-28, 2010 carnival at Westway Shopping Center despite being informed by City staff that such carnival would be illegal without an approved community event permit. On March 25, 2010, Office of Central Inspection staff visited the Westway Shopping Center carnival site and spoke with Mr. Rex Lewellen, informing him the carnival could not legally operate without an approved community event permit. On March 25, 2010, Mr. Lewellen also spoke with Assistant City Attorney Beth Harlenske, who informed Mr. Lewellen that a community event permit was required to legally operate the proposed Westway Shopping Center carnival.

The March 31, 2010 denial letter also states that by failing to file a community event permit application for the prior carnival event at Westway Shopping Center, Mr. Lewellen had also violated Section

3.11.090(e) of the Code of the City of Wichita (by failing to remit the fees required for a community event permit and failing to provide proof of liability insurance required for the prior event).

During the weekend of March 26-28, 2010, Wichita Police Department and Office of Central Inspection (OCI) staff visited the site, finding and documenting an operating carnival event on Friday evening, March 26th, Saturday afternoon, March 27th, and Sunday afternoon, March 28th. On both Friday and Saturday, the carnival operator and/or his employee were informed by Wichita Police Department officers that the carnival event could not be legally operated without an approved community event permit; however, the carnival continued to operate. On early Sunday afternoon, OCI staff visited the site, finding the carnival in full operation.

The appellant, per the April 1, 2010 letter from Robert W. Kaplan, contends the community event permit application denial should be overturned because the appellant has not been specifically cited for a violation of the Community Event Ordinance within the past five (5) years, and has not been adjudged guilty of any violation relating to the Westway Shopping Center carnival. However, the Law Department indicates the City simply had to document that a community event occurred without a required community event permit in order to deny a community event permit application pursuant to Section 3.11.090(g).

Financial Considerations: Except for staff costs associated with documentation of the unapproved community event carnival during the weekend or March 26-28, 2010, and for review and denial of the March 30, 2010 community event carnival permit application, there are no City costs associated with this action and appeal.

Goal Impact: On January 24, 2006, the City Council adopted five (5) goals for the City of Wichita. These include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life, and Support a Dynamic Core Area & Vibrant Neighborhoods. Enforcement of the Community Events Ordinance supports the "Provide a Safe and Secure Community" goal by providing a coordinated process for managing community events occurring on public and/or private property to ensure the health and safety of event patrons, residents, workers, and other visitors; to prohibit illegal activities from occurring at the community events; and to protect the rights of community event permit holders.

Legal Considerations: Pursuant to Chapter 3.11.090 of the Code of the City of Wichita, the City Community Events Coordinator has the authority to deny, *and shall deny*, a permit application for a community event if the applicant, in the last five years, has organized a community event which did not conform to the plans and application submitted to the Community Events Coordinator, or which failed to comply with any conditions placed on the event by the Community Event Coordinator. The March 31, 2010 community event permit application denial letter was reviewed by the Law Department prior to its issuance. The appellant's attorney has been properly notified of the date and time of this City Council appeal hearing.

Recommendation/Action: Based on evidence presented, reverse, affirm (wholly or partly) or modify the decision of City of Wichita staff to deny a community event permit for a carnival at 2515 S. Seneca based on the provisions of Chapter 3.11.090(g) and (e) of the Code of the City of Wichita.

Attachments: April 1, 2010 NOTICE OF APPEAL from Robert W. Kaplan; March 31, 2010 Denial Letter from the City Community Event Coordinator; April 20, 2010 Letter to Robert W. Kaplan Confirming May 4, 2010 Council Appeal Hearing Date.

COPY

LAW OFFICES OF
ROBERT W. KAPLAN
430 NORTH MARKET
WICHITA, KANSAS 67202-2074

Telephone (316) 262-5175
Facsimile (316) 262-7226
rkaplan@kmhlaw.net

RECEIVED
APR 01 '10
CITY CLERK OFFICE

April 1, 2010

VIA HAND DELIVERY

City of Wichita
Attn: City Clerk Karen Sublett
455 N. Main Street
Wichita, KS 67202

Re: NOTICE OF APPEAL
Lewellen Special Event Permit Denial (Our File No. 14041-1)

Rex Lewellen, d/b/a Lewellen Amusements, applicant for Community Event Application dated March 30, 2010, appeals the denial of his application pursuant to City of Wichita Code of Ordinances, Section 3.11.110.

The applicant's appeal is founded on the fact that the applicant has not been cited for violation within the last five years as provided by Section 3.11.090(g), has not received a citation in regard to the current request, has not been adjudged guilty of any violation relating to the Westway Carnival, and is entitled to trial on the matter before judgment is rendered finding the applicant in violation.

Further, applicant holds a City of Wichita permit dated March 2, 2010, prior to the event in question, which specifically provides "the person, firm or corporation named below is granted this business certificate pursuant to the provisions of the City Business License Ordinance to engage in, carry on or conduct the business, trade, calling, profession, exhibition or occupation described below." The permit describes the business type as "amusement" and the business subtype as "rides."

Applicant had no reason to believe that a further permit was required and was not so advised. Applicant respectfully requests the City Council overrule the denial pending judicial determination on the alleged violation.

Very truly yours,

Robert W. Kaplan

RWK/atb
Enclosure
Cc: Rex Lewellen

THIS DOCUMENT HAS A TRUE DEFENSIVE WATERMARK AND VISIBLE FIBERS DISCERNIBLE FROM BOTH SIDES

NOT TRANSFERABLE

CITY OF WICHITA

BUS. NUMBER: 21038

DATE PAID: 3/2/2010

BUSINESS TYPE: Amusement

LICENSE NUMBER: 2010 - 21038

BUSINESS SUBTYPE: Rides

NOTES:

BUSINESS LOCATION: 1210 E 13TH ST

CONTACT NAME: REX LEWELLEN

EXPIRATION DATE: 5/1/2010

BUSINESS NAME: LEWELLEN AMUSEMENTS

MAILING ADDRESS: 1210 E 13TH ST

CITY AND STATE: ANDOVER, KS 67002-8405

THIS DOCUMENT IS ALTERATION PROTECTED AND REFLECTS FLUORESCENT FIBERS UNDER UV LIGHT

JC - 2 days per month

CITY OF
WICHITA
www.wichita.gov

Division of Arts & Cultural Services
334 N Mead
Wichita, KS 67202
PHONE 316.462.2787
FAX 316.858.7960

March 31, 2010

Lewellen Amusements
121 E. 13th Street
Andover, KS 67002

Mr. Rex Lewellen,

On Tuesday March 30, 2010 the City of Wichita received a Community Event application dated March 30, 1020 for Westway Carnival requested to take place April 2-3, 2010 at 2515 South Seneca in Wichita, Kansas. The application has been denied on the following basis.

Pursuant to Section 3.11.090(g) of the Code of the City of Wichita The applicant, in the last five years, has organized a community event which did not conform to the plans and application submitted to the Community Events Coordinator or **which failed to comply with any conditions for such event placed on the event by the Community Event Coordinator".** By failing to file an application for your prior carnival, this is also a violation of subsection (e) of this same section by failing to remit the fees required for a community event and failing to provide proof of liability insurance required for the event.

Please be advised that this decision may be appealed pursuant to Section 3.11.110 of the Code of the City of Wichita. The appeal is to the City Council and notice must be filed with the City Clerk within five (5) business days from today's date. The appeal shall be heard at the next regularly scheduled meeting of the Council.

If you have any further questions regarding this matter, please contact me at (316) 462-2787x796.

Sincerely,

Connie Clark
Community Event Coordinator

CITY OF
WICHITA

April 20, 2010

Mr. Robert W. Kaplan
Law Offices of Robert W. Kaplan
430 N. Main Street
Wichita, Kansas 67202

RE: Wichita City Council Appeal Hearing
Lewellen Community Event Permit Denial -- Westway Shopping Center Carnival

Mr. Kaplan:

This is a follow-up to our recent telephone conversation regarding a City Council date for the above City Council appeal hearing. You agreed that the May 4, 2010 City Council meeting would work for you.

The appeal hearing will be scheduled as a "New Business" item during the May 4, 2010 City Council meeting. The City Council meeting will begin at 9:00 a.m., and will be held in the City Council Chambers on the first floor of City Hall, 455 N. Main Street. A final May 4, 2010 City Council Agenda should be available by Friday, April 30th, as should the City Council Agenda Item.

Please contact me at 268-4460 or at kschroeder@wichita.gov should you have any questions.

Sincerely,

Kurt A. Schroeder
Superintendent of Central
Inspection

CC: Karen Sublett

Attachment: Copy of 4/1/10 NOTICE OF APPEAL Letter

Office of Central Inspection

City Hall • 7th Floor • 455 N. Main • Wichita, Kansas 67202-1600

T 316.268.4460 • **F** 316.268.4663

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Extension of IRB Letter of Intent (Spirit AeroSystems, Inc.) (District III)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Approve the Letter of Intent and tax abatements.

Background: On February 22, 2005, the Boeing Company and Onex Corporation announced an agreement in principal for Onex to purchase Boeing's commercial aircraft facilities in Wichita to be operated under Mid-Western Aviation Systems, Inc. Boeing's facilities housed both commercial and military aircraft manufacturing operations. Since 1979, nearly all of the plant and equipment at Boeing's Wichita Plant on South Oliver has been financed with City of Wichita industrial revenue bonds ("IRBs") and granted 10-year property tax abatements.

On May 17, 2005, City Council approved a $1 billion letter of intent for IRBs and a 100% ten year real and personal property tax abatement for Mid-Western, which later became Spirit Aerosystems. The term of the letter of intent was five years, with an expiration of May 17, 2010. Spirit has only issued $379.5 million in IRBs and is requesting extension of the letter of intent at this time.

Analysis: The bond proceeds are being used to finance the ongoing modernization and expansion of the commercial aircraft manufacturing facilities in Wichita. The expansion project and improvements enable Spirit to continue existing commercial aircraft part production programs and services, to take advantage of new technology and to compete for new aircraft part manufacturing business. Employment levels are be determined by production requirements. Average salaries are approximately $50,000 per year.

The original five-year expansion program covered by the proposed IRB letter of intent includes expenditures of approximately $80 million on construction of new facilities or improvements to existing facilities, and approximately $920 million on the acquisition of machinery and equipment. When the letter of intent was issued, the State of Kansas did not yet have the statutory exemption on personal property for business and this change has affected the amount of bonds Spirit has issued to take advantage of the tax abatement. Spirit anticipates that subsequent real property financing will be needed and wishes to have the ability to finance those expansions through the City's IRB program. The request is for a five-year extension of the letter of intent on the remaining $620.5 million under the original letter.

Spirit purchases its own bonds through direct placement and the bonds are not reoffered for sale to the public. Spirit has also used Kutak Rock LLP of Omaha, Nebraska to serve as the company's bond counsel for the proposed bond issues. Established City policy governing the issuance of IRBs requires the use of the City's contract bond counsel on all IRB issues, unless there is a conflict of interest. The City retains the right to appoint its own bond counsel in the future, should the need arise.

Under the City of Wichita/Sedgwick County Economic Development Incentives Policy, Spirit qualifies for a 100% property tax abatement for an initial five year period on all bond-financed real property, plus a second five years subject to Council approval. However, Spirit was awarded a full ten-year abatement for both real and personal property. The personal property is no longer subject to tax. These same terms were afforded to Boeing prior to the acquisition and transition to Spirit. Spirit agrees to comply with all other standard letter of intent conditions.

Wichita State University Center for Economic Development and Business Research performed a cost-benefit analysis using the Derby school district in 2005. An updated analysis considering the remaining balance of the letter of intent and the current version of the economic model was completed. Cost-benefit results for this project are as follows:

City of Wichita	1.98 to one
City General Fund	1.78 to one
City Debt Service Fund	2.34 to one
Sedgwick County	1.54 to one
U.S.D. 266	1.00 to one
State of Kansas	28.23 to one

Financial Considerations: Spirit 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. Spirit qualifies for a 100% property tax exemption on the bond financed property as a manufacturing business, based on its proposed level of capital investment.

Goal Impact: Economic Vitality and Affordable Living. Providing low-cost financing and granting an ad valorem property tax exemption and sales tax exemption will encourage the creation of new job opportunities and enhance the manufacturing sector for the City of Wichita and Sedgwick County.

Legal Considerations: The City Attorney's Office will review all final documents prior to issuance of the bonds.

Recommendations/Actions: It is recommended that City Council close the public hearing and approve a five-year extension of the letter of intent to Spirit Aerosystems for Industrial Revenue Bonds in an amount not-to-exceed $620.5 million, approve a ten-year 100% tax exemption on all bond-financed property, authorize staff to apply to the Kansas Department of Revenue for a sales tax exemption on all bond-financed purchases, and authorize the necessary signatures.

Attachments: None

Revised 05-03-2010

Agenda Item No. III-3.

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Resolution Considering the Establishment of the Bowllagio STAR Bond District (District V)

INITIATED BY: Urban Development Office

AGENDA: New Business

Recommendation: Adopt the resolution setting a public hearing for consideration of the establishment of the Bowllagio STAR Bond District.

Background: Starting with the Kansas Speedway project in Wyandotte County, the State of Kansas has approved several "Sales Tax and Revenue" (STAR) bonds for special economic development projects located throughout the state. In 2007, STAR bonds were approved for the River District Project in downtown Wichita in the amount of $13,000,000 to finance the Keeper of the Plains Plaza and bridges, riverbank improvements on the east bank of the Arkansas River between Douglas and First Street, and the Waltzing Waters fountain in the WaterWalk project.

STAR bond financing allows the Kansas Department of Revenue to measure and capture the incremental increase in state and local sales tax revenue collected within an approved STAR bond district and remit a portion of said revenue to the city or county in which the STAR bond district is located, to pay the principal and interest on STAR bonds issued to finance certain eligible costs associated with an approved STAR bond project.

Wichita developer Jay Maxwell and his development group, Maize 54 LLC, are planning a major entertainment and retail development for the area immediately north of West Kellogg on both sides of Maize Road and has requested the use of STAR bonds to finance eligible costs associated with the project. The first step in the legal process for authorizing STAR bond financing is the adoption of a resolution setting a public hearing to consider the establishment of a STAR bond district.

Analysis: The STAR bond authorization process is divided into two major components: the first is the establishment of the STAR bond district; the second is the approval of the STAR bond project plan. To establish a STAR bond district, the City Council must first adopt a resolution which sets a public hearing on the matter, not less than 30 days or more than 70 days following the adoption of the resolution. The resolution is then mailed to all owners and occupants of property located within the proposed STAR bond district, and to the Board of County Commissioners (BOCC) and the Board of Education (BOE). The resolution is also published in the Wichita Eagle. Prior to the public hearing, the resolution and supporting information is forwarded to the Kansas Secretary of Commerce for the issuance of a "determination letter" which states that the area is qualified for STAR bond financing. Following the public hearing and receipt of the determination letter, the City Council may adopt an ordinance establishing the STAR bond district.

If establishment of the STAR bond district has an adverse impact on property taxes, it can be vetoed by the BOCC or the BOE.

The second step in the overall process is more involved. Working closely with the developer, a detailed STAR bond project plan and feasibility study is prepared and submitted to the MAPC for a finding that the plan is consistent with the Comprehensive Plan. After MAPC approval, the City Council may set a public hearing and adopt the STAR bond project plan by ordinance, following the same process used to establish the STAR bond area. The STAR bond plan and ordinance are then submitted to the Secretary of Commerce for final approval of the STAR bond project. After the Secretary's approval is received, the project may commence and STAR bonds may be issued up to the amount specified by the Secretary of Commerce.

The Bowllagio Project is identified by the developer as a mixed-use entertainment district that will be unique to the Wichita area and will be nationally recognized, based on the family entertainment anchor, the Bowllagio. The Bowllagio will offer a unique blend of location-based entertainment with bowling as the primary attraction, coupled with a restaurant and bar operation and state-of-the-art gaming attractions. A special feature that is proposed for Bowllagio is a world-class training facility which will include instruction for bowlers and that is expected to attract competitive bowlers from around the country.

The attached resolution sets June 15, 2010 as the date for the public hearing on establishing the STAR bond district. The resolution includes as exhibits a map showing the proposed boundaries of the STAR bond area and a "district plan" that legally describes the area, identifies potential STAR bond project areas and provides a general description of the proposed development project(s) in the district.

The proposed Bowllagio STAR bond district includes approximately 32 acres of property on the northeast corner of Kellogg Drive and Maize Road, generally between Maize Road and the Cowskin Creek, from Kellogg north to the alignment with Hidden Valley Street. The proposed district also includes approximately 8 acres of property on the northwest corner of Kellogg Drive and Maize Road.

Conceptually, the Bowllagio Project has been divided into four overlapping phases. The first phase includes construction of the 91,000 square foot Bowllagio family entertainment center and the sale of development pads for a restaurant and a small retail center near the northeast corner of Kellogg Drive and Maize Road. The second phase is planned to include hotel and restaurant pad sites on Kellogg Drive frontage, west of maize Road. The third phase is planned to include a 4-story hotel and a large retail development immediately north of the Bowllagio entertainment center on Maize Road. The final phase is the farthest north on Maize Road and is planned to include additional retail sites and two lakeside restaurants. These plans are conceptual and preliminary.

Financial Considerations: The costs associated with establishing the STAR bond district will be paid from the Economic Development Fund and later will be transferred to the STAR bond project account if the STAR bond project is approved. Any STAR bonds issued for this project will be special obligation bonds of the City, payable solely from the incremental sales tax revenue remitted by the Kansas Department of Revenue for payment of the bonds. All eligible costs of the City relating to the project will be reimbursed with STAR bond proceeds.

Goal Impact: The City Council's goals for Economic Vitality and Affordable Living and Quality of Life are advanced through the use of STAR bonds to partner with developers to create a major commercial, entertainment and tourism site that will bring significant economic value to the City, enhance the satisfaction of residents and improve Wichita's competitive position as a desirable place to live and work.

Legal Considerations: To be determined to be an eligible area for STAR bond financing, under state law, the area must either contain an historic theater, an auto race track facility, a major motorsports complex, a river walk canal facility, a major multi-sport athletic complex or be a major commercial entertainment and tourism area. All but the first and last designations apply to specific projects whose eligibility was determined statutorily. The major commercial entertainment and tourism area designation is the general, non-specific eligibility category prescribed by law. Guidance from the Kansas Department of Commerce states that a major commercial entertainment and tourism area must be capable of being characterized as a statewide and regional attraction, containing unique features which will increase tourism, generate significant positive and diverse economic and fiscal impacts and be capable of sustainable development over time. The guidelines call for 20% of visitors from out of state and 30% from a distance greater than 100 miles. The ordinance to be adopted by the City Council establishing the Bowllagio STAR Bond District would have to make a finding that the district is a major commercial entertainment and tourism area.

Recommendations/Actions: It is recommended that the City Council adopt the resolution which provides notice of consideration for the establishment of the Bowllagio STAR bond district and sets a public hearing for June 15, 2010.

Attachments: Resolution with Exhibits

First published in the Wichita Eagle on May 28, 2010

Resolution No. 10-132

A RESOLUTION STATING THE CITY OF WICHITA IS CONSIDERING THE ESTABLISHMENT OF A STAR BOND PROJECT DISTRICT FOR THE BOWLLAGIO STAR BOND PROJECT DISTRICT UNDER AUTHORITY OF K.S.A. 12-17, 160 ET SEQ.

WHEREAS, the provisions of K.S.A. 12-17, 165, as amended, set forth the procedure for the establishment of a STAR bond project district for certain purposes in eligible areas; and

WHEREAS, the City of Wichita (the "City") is considering the establishment of a STAR bond project district to be known as the "Bowllagio Star Bond Project District" to promote the general and economic welfare of the City as a major commercial entertainment and tourism area;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS;

Section 1. That the City is considering the establishment of a STAR bond project district to be known as the Bowllagio STAR Bond Project District.

Section 2. That the City will hold a public hearing to consider the establishment of such STAR bond project district on June 8, 2010, at 9:30 a.m., or as soon thereafter as possible, in the City Council Chambers, City Hall, 455 North Main Street, Wichita, Kansas.

Section 3. That the boundaries and legal description of the proposed STAR bond project district and the boundaries and legal description of the area proposed to be included in the STAR bond project area are set forth in Exhibit "A" attached hereto.

Section 4. That the STAR bond project district plan identifying proposed project areas along with a general description of the buildings, facilities, and improvements that are proposed to be constructed or improved in the STAR bond project district is attached hereto as Exhibit "B".

Section 5. That a description and map of the proposed STAR bond project district shall be available for inspection by the public in the City Clerk's Office, City Hall, 13th Floor, 455 North Main Street, Wichita, Kansas, from 8:00 a.m. until 5:00 p.m., Monday through Friday, from the 4th of May, 2010, until June 8, 2010.

Section 6. That the Governing Body will consider making findings necessary for the establishment of a STAR bond project district following the public hearing set to be heard herein.

Section 7. That a copy of this resolution shall be sent by certified mail, return receipt requested to the Sedgwick County Board of County Commissioners, and to the Board of Education of Unified School District No. 265. Copies of this resolution shall also be mailed by certified mail, return receipt requested, to each owner and occupant of land within the proposed STAR bond project district not more than ten (10) days following the date of the adoption of this resolution.

Section 8. That the proposed Bowllagio STAR Bond Project District shall be submitted to the Secretary of Commerce of the State of Kansas for a determination that the proposed Bowllagio STAR Bond Project District is an "eligible area" as defined by K.S.A. 12-17,162(f).

Section 9. That this resolution shall be published once in the official City newspaper not less than one week or more than two weeks preceding the date fixed for the public hearing. A sketch clearly delineating the proposed STAR bond project district in sufficient detail to advise the reader of the particular land proposed to be included within the STAR bond project district shall be published with the resolution.

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas, this 4th day of May, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, City Attorney

EXHIBIT "A"

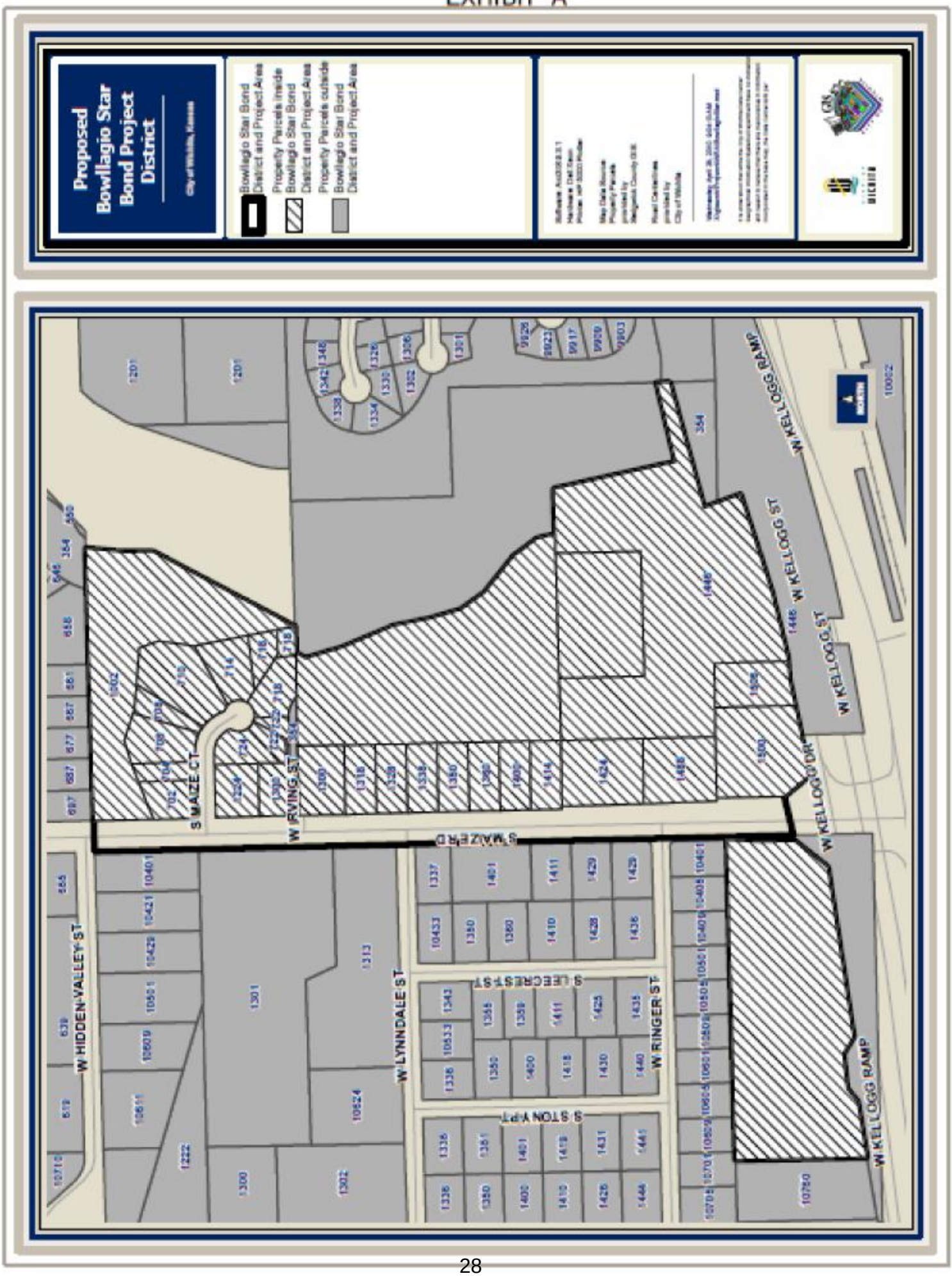
Proposed Bowllagio Star Bond Project District
City of Wichita, Kansas
Bowllagio Star Bond District and Project Area
Property Parcels inside Bowllagio Star Bond District and Project Area
Property Parcels outside Bowllagio Star Bond District and Project Area
W HIDDEN VALLEY ST
S MAZE CT
W IRVING ST
S MAZE RD
W LYNNDALE ST
S LEECREST ST
S STONY PT
W RINGER ST
W KELLOGG DR
W KELLOGG ST
W KELLOGG RAMP

EXHIBIT "A"

STAR BOND DISTRICT
LEGAL DESCRIPTION

A tract of land located in Wichita, Sedgwick County, Kansas described as follows:
Beginning at the southeast corner of Autocraft Addition, Wichita, Sedgwick County, Kansas, said southeast corner also lying on the north right of way line of Harry Drive (now Kellogg Drive);
Thence north along the east line of said Autocraft Addition to the northeast corner of said Autocraft Addition, said northeast corner lying on the south line of Cedar Lane 5th Addition, Sedgwick County, Kansas;
Thence east along said south line of said Cedar Lane 5th Addition to the southeast corner of said Cedar Lane 5th Addition, said southeast corner lying on the west line of Maize Road right of way;
Thence north along the west line of Maize Road right of way to the northeast corner of Aldon Addition, Wichita, Sedgwick County, Kansas, said northeast corner lying on the north line of the SE/4, Section 30, Township 27 South, Range 1 West of the 6th P.M.;
Thence east along the said north line of the SE/4, Section 30 to the northeast corner of said SE/4, said northeast corner also being the northwest corner of the SW/4, Section 29, Township 27 South, Range 1 W of the 6th P.M.;
Thence east along said north line of the SW/4, Section 29 to the northwest corner of Marshall Addition, Sedgwick County, Kansas;
Thence continuing east along said north line of the SW/4, Section 29 to the northeast corner of said Marshall Addition;
Thence southerly along the east line of said Marshall Addition to the southerly most southeast corner of said Marshall Addition;
Thence west along the south line of said Marshall Addition to a point of intersection with the west line of a Ponding & Overland Flowage Easement as described in DOC#/FLM-PG: 28652651 as recorded with the Sedgwick County Register of Deeds;
Thence south along the west line of said Ponding & Overland Flowage Easement to a point of intersection with the north line extended of Kansas State Bank Addition, Wichita, Sedgwick County, Kansas, said point of intersection also lying on the north line of Maize 54 Addition, Wichita, Sedgwick County, Kansas;
Thence east along the north line of said Maize 54 Addition to the northerly most northeast corner of said Maize 54 Addition;
Thence south along an east line of said Maize 54 Addition for a distance of 402.26 feet to a corner in said Maize 54 Addition; thence northeasterly along a north line of said Maize 54 Addition for a distance of 258.58 feet to the easterly most northeast corner of said Maize 54 Addition;
Thence south along an east line of said Maize 54 Addition to a point of intersection with the north right of way line of Kellogg Drive;
Thence west along said north right of way line of said Kellogg Drive to the southerly most southwest corner of said Maize 54 Addition, said southwest corner also being the southeast corner of Quiktrip 10th Addition, Wichita, Sedgwick County, Kansas;
Thence continuing west along said north right of way line of said Kellogg Drive to the southwest corner of said Quiktrip 10th Addition, said southwest corner also being the southeast corner of Quiktrip 8th Addition, Wichita, Sedgwick County, Kansas;
Thence continuing west along said north right of way line of said Kellogg Drive to the southerly most corner of said Quiktrip 8th Addition, said southerly corner also being a point of intersection with the south line of Lot 16, Verda Vista, Sedgwick County, Kansas;
Thence northwesterly to a corner of said Quiktrip 8th Addition, said corner lying on the east right of way line of Maize Road;

Thence west on a line perpendicular to the west line of the SW/4, Section 29, Township 27 South, Range 1 West of the 6th P.M. to a point of intersection with said west line, said point of intersection also lying on the east line of the SE/4, Section 30, Township 27 South, Range 1 West of the 6th P.M.;
Thence west on a line perpendicular to the east line of said SE/4, Section 30 to a point of intersection with the west right of way line of Maize Road;
Thence south along said west right of way line of Maize Road to a point of intersection with the north right of way line of Kellogg Drive;
Thence west along said north right of way line of Kellogg Drive to the Point of Beginning.

EXHIBIT "B"

STAR BOND PROJECT DISTRICT PLAN
FOR THE DEVELOPMENT OF THE
BOWLLAGIO STAR BOND DISTRICT

May 11, 2010

SECTION 1: PURPOSE

A STAR bond project district plan is required for inclusion in the establishment of a STAR bond district under K.S.A. 12-17,165. The district plan is a preliminary plan that identifies proposed STAR bond project areas within the district, and describes in a general manner the buildings, facilities and improvements to be constructed or improved.

SECTION 2: DESCRIPTION OF SALES TAX AND REVENUE BOND INCOME

STAR bond financing allows the Kansas Department of Revenue to measure and capture the incremental increase in state and local sales tax revenue collected within an approved STAR bond district and remit a portion of said revenue to the city or county in which the STAR bond district is located, to pay the principal and interest on STAR bonds issued to finance certain eligible costs associated with an approved STAR bond project. Projects financed through STAR bond financing include major commercial entertainment and tourism developments that create a significant "increment" in state and local sales tax income. The increment is determined by subtracting the total amount of sales tax revenue collected within the boundaries of a STAR bond project district during the 12 months preceding the establishment of the STAR bond project district from the total sales tax revenue collected in the district in each 12 month period following the approval of the STAR bond project during the term of the STAR bond project. The portion of the sales tax increment paid to the City is net of a small administrative fee assessed by the Department of Revenue.

In Wichita, the one-cent local option sales tax is assessed by Sedgwick County and a major portion of the revenue is distributed by the County to the City of Wichita, based on population and other fiscal considerations. By City ordinance, 50% the local sales tax revenue received by the City is dedicated to paying for streets, roads and bridges and is pledged to the repayment of City bonds issued for that purpose. The other 50% is dedicated to property tax abatement, and only that portion of the local sales tax increment collected in the STAR bond project district can be used to pay the principal and interest on STAR bonds.

SECTION 3: BUILDINGS AND FACILITIES

The proposed STAR bond project district, whose boundaries are set forth in Exhibit "A" attached hereto, is an area that meets the criteria for designation as a "major commercial entertainment and tourism area" as defined by state law governing the establishment and financing of STAR bond project districts. Property located within a major commercial entertainment and tourism area is legally eligible for establishment of a STAR bond project district.

The general plan for the Bowllagio STAR Bond Project calls for development of a mixed-use entertainment district that will be anchored by the Bowllagio, a family entertainment center with bowling as the primary attraction, coupled with a restaurant and bar operation, state-of-the-art gaming attractions and a bowling training facility intended to attract competitive bowlers from far away. In addition to the Bowllagio, the development is anticipated to include hotels, restaurants and retail shops located on 35 acres of landscaped property, including streets, parking lots, sidewalks, fountains, drainage improvements and utility extensions.

SECTION 4: PROJECT AREAS AND ELIGIBLE PROJECT COSTS

It is anticipated that all property within district will be designated as the "project area" under the STAR Bond project plan, which must be adopted by the City Council by a 2/3 majority vote before the expenditure of any funds to be financed with STAR bonds.

STAR bond financing may be used to pay for the purchase of real estate and site preparation including the demolition of structures and utility relocations, as well as on public infrastructure improvements, such as streetscape, public parking, utility extensions, landscaping, and public plazas.

SECTION 5: CONCLUSION

After the establishment of the STAR bond project district, any projects to be funded with STAR bond financing will be presented to the City Council for approval through the adoption of a STAR Bond Project Plan. The Project Plan will identify the specific project area located within the established STAR bond project district and will include detailed descriptions of the projects as well as a financial feasibility study showing that the economic benefits out-weigh the costs. The Project Plan must be reviewed by the Metropolitan Planning Commission and submitted to a public hearing following further notification of property owners and occupants, before it can be adopted by a two-thirds majority vote of the City Council. Following approval by the City Council, the Project Plan must be approved by the Kansas Secretary of Commerce. Only then can STAR bond proceeds be spent on the approved projects.

STAR bond financing does not impose any additional taxes on sales or on property located within the STAR bond project district.

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Quarterly Financial Report for the quarter ending March 31, 2010

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendation: Receive and file the quarterly financial report.

Background: The Finance Department prepares quarterly unaudited financial reports to monitor and review the financial activities of the operating and capital funds. The report is presented to provide the City Council and citizens with information that will assist in making informed decisions. The report is available on the City's web-site. Citizens may obtain a printed copy by contacting the Department of Finance at 268-4651.

Analysis: Comparisons of budgeted amounts to actual revenue and expenditures are provided for each operating fund. In addition, financial statements prepared on an accrual basis are presented for enterprise funds, consistent with requirements of revenue bond covenants. The quarterly financial report does not contain all the entries and adjustments that will be reflected in the Comprehensive Annual Financial Report for fiscal 2010.

Financial highlights are summarized beginning on page iii, with financial statements beginning on page 1. Information supplementary to the financial statements begins on page 63, including information on the performance of invested funds, the City's bonded indebtedness relative to the legal debt limitations, capital projects currently underway, tax abatements, the status of the Debt Service fund relative to any debt service payments due from the tax increment financing districts, and a quarterly summary of disadvantaged and emerging business activity.

Financial Considerations: The Director of Finance will provide a financial overview and stand for questions.

Goal Impact: The Internal Perspective is advanced with the Quarterly Financial Report providing information on the financial condition of City to the City Council, to the Citizens of Wichita and to investors. In addition, the report demonstrates budgetary compliance with applicable laws and ordinances for the reporting year.

Legal Considerations: No consideration necessary.

Recommendations/Actions: It is recommended that the City Council receive and file the Quarterly Financial Report for the quarter ended March 31, 2010.

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: False Alarm Ordinance Revisions

INITIATED BY: Finance Department / Police Department / Fire Department

AGENDA: New Business

Recommendation: Approve the revisions to the False Alarm Ordinance and place the ordinance on first reading.

Background: For years, the City of Wichita has required alarm companies to be licensed by the City, required new alarms to be registered initially, and implemented a response fee for false alarms. Each year the City of Wichita responds to nearly 25,000 false alarms. These responses create a financial burden for the City, and also divert public safety resources from actual emergencies.

In 2004, the City increased the false alarm fees in an effort to curb the incidences of false alarms. Each year, the first false alarm response to an address is provided without a fee. Subsequent false alarm responses are $40 each. False alarm responses to panic buttons are $50 each, with commercial panic button false alarms billed at $70 each.

Analysis: The false alarm fees have remained constant since 2004. Although the number varies monthly, there has not been a noticeable downturn in false alarms in recent years. In 2008, the Police and Fire Departments responded to nearly 25,000 calls generated from alarm systems, of these, 98 percent were false.

There are significant costs to the City associated with false alarms. The cost for Police to respond to an alarm is estimated at $45 for two officers and one vehicle in half-hour increments. The cost for Fire to respond to an alarm is estimated at $538 per unit/per occurrence. Cost for fire responses can rise exponentially, since systems alarms on buildings would typically require multiple units to respond. In addition to the financial costs of false alarms, these alarms result in the utilization of emergency response equipment, reducing the capacity and availability of emergency responders for actual alarms and calls.

During the budget development process, Fire staff proposed eliminating the initial registration fee for alarm systems, and implementing an alarm registration fee of $3 per month for residential users and $9 per month for commercial users. This was projected to generate $1.75 million annually. With public input during the budget process, the proposal was restructured to reduce the fee to a $1 per month residential fee and a $3 per month commercial fee, while retaining the current one-time $10 registration fee. In addition, modifications to the false alarm fee were incorporated, aimed primarily at reducing system alarms for the Fire Department and to reduce repeated false alarms at the same address. The 2010 Adopted Budget included the assumption of additional revenue to the General Fund based on this revised fee schedule.

Subsequent to the implementation of the plan, staff presented the changes to a group of alarm representatives. The representatives provided additional input into the ordinance changes. The City Manager authorized a committee comprised of City staff and five representatives of the alarm business.

City staff from the Finance Department, Law Department, Police Department and Fire Department and alarm companies met multiple times in an effort to craft appropriate changes to the alarm ordinance. The meetings led to the proposed ordinance revisions. These revisions include:

False Alarm Fee: The amended ordinance changes the structure from a single matrix structure to a dual matrix structure. The first matrix will charge for security type alarms (requiring police response) and the second matrix will charge for fire alarms. Each matrix or type will continue to provide the alarm customer with one free false alarm each calendar year. The ordinance removes the distinction between an audible, panic/duress and hold-up alarm, all of which have different fee schedules currently. As proposed, all false alarm calls will be billed as follows effective July 1, 2010:

Number of Alarms annually	False Alarm Fee Security Alarms	False Alarm Fee Fire Alarms
1	$0	$0
2	$40	$100
3	$40	$100
4	$60	$150
5	$60	$150
6	$120	$300
7 - 9	$200	$500
10 or more	$350	$750

Currently, hospitals are not mentioned in the ordinance as being exempted, but based on previous practice, hospitals have not been billed for charges relating to fire alarms. Effective July 1, 2010 hospitals will be billed in accordance with the proposed rate table for Fire and billed for security alarms.

Licensing: The licensing fee for alarm companies will remain at an annual fee of $100, not refundable. In addition to the licensing fee (at the time of renewal), the proposed ordinance would require an alarm business to submit their customer lists of registered residential alarm users and commercial alarm users.

Registration: Each alarm user is required to be registered with the City of Wichita prior to commencement of monitoring. Each alarm user will pay an initial registration fee of $25 through their installer and $25 annually on their anniversary date billed by the City of Wichita.

Financial Considerations: The 2010 Adopted General Fund Budget, from which Police and Fire response services are funded, is based on additional false alarm revenue of $767,205. This proposed ordinance change is anticipated to generate approximately $500,000 on an annualized basis. Effective July 1, 2010 alarm users will be billed $25 annual registration fee (based on their anniversary date).

Goal Impact: Maintaining and financing public safety response services helps maintain a Safe and Secure community.

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

Recommendations/Actions: It is recommended that the City Council approve the revisions to the False Alarm Ordinance and place the ordinance on first reading.

Attachment: False Alarm Ordinance

First Published in The Wichita Eagle on May 14, 2010

04/15/2010

ORDINANCE NO. 48-732

AN ORDINANCE AMENDING SECTIONS 3.40.020, 3.40.030, 3.40.035, 3.40.040, 3.40.050, 3.40.060, 3.40.070, 3.40.090, 3.40.100 AND 3.40.135, CREATING SECTIONS 3.40.015, 3.40.065, 3.40.115, 3.40.118 AND 3.40.145 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ALARM SYSTEMS, AMENDING SECTION 19.08.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ELECTRICIANS' CERTIFICATES, PERMITS AND LICENSES AND REPEALING THE ORIGINALS OF SECTIONS 3.40.020, 3.40.030, 3.40.035, 3.40.040, 3.40.050, 3.40.060, 3.40.070, 3.40.090, 3.40.100, 3.40.105, 3.40.135 AND 19.08.050 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 3.40.015 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Enforcement of Provisions of Code.** The Wichita Police Department, the Wichita Fire Department and the Office of Central Inspection and the authorized representatives of such departments shall be responsible for the enforcement of all provisions of this Code."

SECTION 2. Section 3.40.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

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

(a) ‘Alarm Administrator’ means the person 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.

(b) ‘Alarm Business’ means any individual, partnership, corporation or other entity which engages in the activity of 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 servicing companies who engage in the activity of monitoring or responding to alarm systems.

(c) ‘Alarm Servicing 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.

(d) ‘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. This term shall include externally audible and/or visual on-premises alarm systems. The following devices shall not constitute an alarm system: 1. smoke detectors; 2. other alarms designated to merely give internal on-premises notification of an alarm condition; 3. alarm devices affixed to motor vehicles; and 4. hand-held personal safety devices not connected to a central monitoring system or station.

(e) ‘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.

(f) ‘Central Station’ means an office to which alarm system signals are transmitted for an operator to monitor and notify the communications center of the need for an emergency response by law enforcement, fire or emergency medical personnel.

(g) ‘Chief of Police’ means the Chief of Police of the city or a designated representative.

(h) ‘City’ means the City of Wichita, Kansas.

(i) ‘City Manager’ means the City Manager of the city or a designated representative.

(j) ‘City Treasurer’ means the City Treasurer of the city or a designated representative.

(k) ‘Communications Center’ means the Sedgwick County Department of Emergency Communications.

(l) ‘Direct Connect’ means an alarm system which has the capability of transmission and reception of alarm system signals directly to the communications center.

(m) ‘Director of Emergency Communications’ means the Director of the Sedgwick County Department of Emergency Communications or a designated representative.

(n) ‘Emergency Medical Personnel’ means employees of the Sedgwick County Emergency Medical Service.

(o) ‘External Audible and/or Visual On-premises Alarm System’ means an alarm system designed to emit audible and/or visual signals at or on the premises upon which the alarm system is installed and which causes notification of such alarm system activation to be made to the communications center.

(p) ‘False Alarm’ means: 1) the activation of an alarm system in the City resulting in an urgent response by law enforcement, fire or emergency medical personnel when a situation requiring an urgent response does not, in fact, exist; 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.

An alarm signal caused by violent conditions of nature or other circumstances not reasonably subject to control by the alarm user or alarm business~~,~~ shall not be deemed a false alarm for the purposes of this chapter.

(q) ‘Fire Alarm’ means an alarm to which fire personnel have been dispatched to respond.

(r) ‘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.

(s) ‘Fire Personnel’ means employees of the Wichita Fire Department.

(t) ‘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.

(u) ‘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.

(v) ‘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.

(w) ‘Monitor’ 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.

(x) ‘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 business monitoring alarms within the structure.

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

(z) 'Security Alarm' means an alarm to which law enforcement personnel have been dispatched to respond.

(aa) '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.

(bb) 'Alarm User' means any person who has a functioning alarm system on premises under the person's control.

(cc) 'Fire Chief' means the Chief of the Wichita Fire Department or a designated representative.

(dd) '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.

(ee) 'ANSI/SIA Control Panel Standard CP-1' means the ANSI – American National Standard Institute approved security industry association – SIA CP-1 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-1 Control Panel Standard Features for False Alarm Reduction."

SECTION 3. Section 3.40.030 of the Code of the City of Wichita, Kansas, is hereby amended 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) It is unlawful for any person to engage in altering, installing, maintaining, repairing or servicing 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.

(c) It is unlawful for any alarm business to allow or permit an individual who is not certified, as required by Section 3.40.035, to engage in the altering, installing, maintaining, repairing or servicing an alarm system within the city limits.

(d) 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 five hundred dollars ($500.00) or imprisonment of a term not to exceed six months or by both such fine and imprisonment."

SECTION 4. Section 3.40.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Certifications--Persons engaged in installation or repair of alarm systems.** (a) Applications for certification as required by subsection (b) of Section 3.04.030 shall be made to the Office of Central Inspection which shall be responsible for conducting an examination of the applicant pursuant to the standards and classifications set forth by the National Burglar and Fire Alarm Association. In addition to the certification requirements set forth in this chapter, individuals altering, installing, maintaining, repairing or replacing fire alarm systems must be certified by the National Institute for Certification in Engineering Technologies (NICET II, III or IV) or the International Municipal Signal Association (IMSAI or II) certified for fire alarm systems. The Office of Central Inspection may waive examination of an applicant who holds a current certificate from the National Burglar and Fire Alarm Association of National Electronic Security Alliance (NESA) for security alarm systems or is certified by the National Institute for Certification in Engineering Technologies (NICET II, III or IV) or the International Municipal Signal Association (IMSAI or II) for fire alarm systems.

(b) The fee for examination and certification shall be established by the Superintendent of Central Inspection to cover the administrative costs of issuing such certificate. This fee shall be paid to the Office of Central Inspection when application for certification is made.

(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) The Board of Electrical Appeals is authorized to cancel, suspend and/or revoke the certificate of any alarm installer issued by the Office of Central Inspection pursuant to the provisions of Section 19.08.050 of the Code of the City of Wichita."

SECTION 5. Section 3.40.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License application--Form and content.** Any person wanting to obtain a license to operate an alarm business in the City shall make application on a form provided therefor 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 or corporation). If an individual, the name, date of birth, race, sex, address and telephone number; if a partnership, the names, dates of birth, race, sex, addresses and telephone numbers of all partners; if a corporation, the names, dates of birth, race, sex, addresses and telephone numbers of the officers and the state of incorporation;

(3) Name, address and telephone number of the person certified, as required by Section 3.40.035, who is responsible for repair and maintenance of the alarm systems;

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

(5) A statement that service for the alarm systems leased or installed by the alarm business will be offered on a twenty-four hour, seven-day-a-week basis;

(6) 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;

(7) A copy of such person's certification as required by subsection (b) of Section 3.40.030 if such person is also engaged in the business of altering, installing, maintaining, repairing or servicing alarm or fire 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;

(8) 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;

(9) 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 three hundred thousand dollars ($300,000.00) per occurrence. ”

SECTION 6. Section 3.40.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**License fee.** a. Each application for an alarm business license, whether new application, renewal, or as a result of revocation shall be accompanied by an annual fee of one hundred dollars. Such fee shall not be refundable.

b. Each applicant providing monitoring services shall, in addition to the payment of the above fees, submit payment of all outstanding administrative penalties which may be due under the terms of this chapter at the same time as the license application as a requirement of completing the application process.”

SECTION 7. Section 3.40.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Investigation of application--Issuance of license--Posting license--License nontransferable--Term--Renewal.**

(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, Fire Chief and Office of Central Inspection for investigation and recommendation regarding issuance of the license. Approval shall be recommended so long as the application is satisfactorily completed and no owner, manager, partner, director or officer of the business has ever been convicted of a felony.

(b) No license shall be issued if the alarm business owes licensing fees or administrative penalties to the City of Wichita.

(c) Upon favorable recommendation of the Chief of Police, Fire Chief and Office of Central Inspection, the City Treasurer shall issue the applicant an alarm business license. The issued license shall be displayed and available for inspection on the business premises of the licensee.

(d) No license issued under this chapter shall be transferable, and any such licenses shall be issued for a period of one year from date of issuance. Renewal of such license shall be accomplished in the same manner as issuance of the initial license.

(e) No license shall be issued unless the alarm business has provided to the alarm administrator, at the time of the license application, a complete and current customer list in a format acceptable to the Alarm Administrator or a designated representative."

SECTION 8. Section 3.40.065 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 incurred

for one false alarm per registration year. The class must be completed by the alarm user within thirty (30) days of receiving notification or assessment of a false alarm fee."

SECTION 9. Section 3.40.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Required operational practices.** Each alarm business licensed under this chapter will conduct its operations in compliance with the following standards and practices:

(1) If an alarm system or any of its component parts operates at fifty or more volts, the installation must be in accordance with Title 19 of this Code.

(2) Fire alarm systems must be installed in accordance with the provisions of Titles 15, 18 and 19 of this Code.

(3) When an alarm business leases or installs an alarm system, it shall offer service either directly or through an agent for that alarm system on a twenty-four 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 3.40.030, who is responsible for repair and maintenance of the alarm system.

(4) When an alarm business leases or installs an alarm system, the alarm user shall be provided 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.

(5) When an alarm business leases or installs an alarm system for which the alarm user elects to have law enforcement personnel respond, it shall be the responsibility of the alarm business to:

(a) Provide the alarm user, at the time of lease or installation of the alarm system, a written copy of the City of Wichita's false alarm penalties and procedures.

(b) Register each alarm system monitored by the business, prior to commencement of monitoring, with the Alarm Administrator or a designated representative.

(c) Registration shall be made by use of a form provided by the Alarm Administrator. A twenty-five dollar ($25.00) fee shall be assessed for each registration form.

(d) The registration must be complete and shall include the following information:

(1) The name, complete address and telephone number of the person who will be responsible for the proper maintenance and operation of the alarm system;

(2) The classification of the Alarm Site as either residential or commercial;

(3) The date of installation and the name and certificate number issued by the Office of Central Inspection of the individual installing the system;

(4) For existing alarm systems, the date of conversion or takeover of the alarm system, whichever is applicable and the name and certificate number issued by the Office of Central Inspection for the individual or company performing the alarm takeover or conversion;

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

(e) The registration shall be kept current by notifying the Alarm Administrator or a designated representative of the termination of monitoring and changes in ownership of property. If an alarm user changes service companies, the new provider shall re-register the user with the Alarm Administrator or a designated representative. Such registration shall be effective for a period of twelve months from the date of issuance. The Alarm Administrator or a designated representative shall have the right to audit the information provided to verify its accuracy;

(f) An alarm service company, at the time of a security alarm, shall attempt to contact the alarm user by telephone or other electronic means to verify that the alarm is valid;

(g) An alarm service company, when contacting the communication center regarding an alarm, shall provide the alarm user's name, address and permit number.

(6) At the time of licensing or renewal of a license issued pursuant to this chapter, the 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 10. Section 3.40.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Response fee. (a) Except as otherwise provided in this chapter, an alarm user to which law enforcement personnel or fire personnel are requested to respond when a situation requiring an urgent response does not, in fact, exist, 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	$0
2	$40	$100
3	$40	$100
4	$60	$150
5	$60	$150
6	$120	$300
7 – 9	$200	$500
10th or more	$350	$750

Graduated false alarm fees will be based only on the same type of previous false alarm.

No response fee shall be charged:

(1) For the first false alarm, regardless of type, each registration year, provided that the alarm user, at the time of the false alarm, does not owe outstanding response or administrative fees;

(2) 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;

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

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

(5) 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

(6) For those alarms received by a medical alarm system.

(7) For alarms from governmental building alarm systems.

(b) If an alarm is received by the communications center from an alarm system which is not currently registered with the City, or the registration

has expired, as required in Section 3.40.070, and 3.40.115, an administrative penalty of one hundred fifty dollars shall be assessed against the alarm business or alarm user for having failed to register or renew the registration of the system. Such penalty shall be in addition to the alarm charges assessed to the alarm user. Both the alarm user and alarm business shall be notified in writing that the alarm business is not in compliance with the city's ordinances.

(c) Should a disagreement arise over whether any particular response fee or administrative penalty should be assessed, the facts surrounding the circumstances of the alarm activation shall, within thirty days of the date of the first invoice for the alarm, be presented in writing by the alarm user or alarm business along with a ten-dollar administrative fee 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 response fee should be assessed. In the event of determination that no response fee should be assessed, the ten-dollar administrative fee shall be refunded to the alarm user or alarm business.

(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 response fee should be assessed. All such disagreements must be presented in writing by the alarm user or alarm business to

the City Manager within thirty days after the date of notification of the Chief of Police's or Fire Chief's determination that a response 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 (c) and (d) 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 3.40.010 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 thirty days after receipt of notification that such fee is due. Further, if the fee is not paid within sixty days of such notification, a late fee in the amount of ten dollars per alarm call shall be added to the amount due. An additional late fee of ten dollars will be assessed on each response fee or administrative penalty which remains unpaid ninety days following notification. After ninety 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.

The alarm user and any alarm servicing company will be notified by certified mail that the communication center will not respond to further alarms from the system unless the delinquent fee and late charges are paid."

SECTION 11. Section 3.40.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Direct connection prohibited--Exceptions--Annual fee--Response fee.

All direct connections of alarm systems to the communications center shall be prohibited except governmental building alarm systems and those contemplated by Parts 21, 216, 326 and 563a of Title 12 of the Code of Federal Regulations. For each such direct connection permitted by this section, except governmental building alarm systems, a nonrefundable fee of five hundred dollars for each main location of the facilities covered above, two hundred fifty dollars

for each branch location, and two hundred dollars for each automatic teller machine (ATM) each twelve months shall be due and payable by the alarm system user to the Alarm Administrator, or a designated representative, prior to the start of the twelve-month period in which the direct connection is to be maintained. Failure to pay the required annual fee shall be reason for termination of the direct connection."

SECTION 12. Section 3.40.115 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Annual Registration Renewal by Alarm User.** (a) Following the initial twelve-month period of the alarm registration by the alarm company, it shall be the responsibility of the alarm user to annually register the alarm with the Alarm Administrator.

(b) The Alarm Administrator shall notify the alarm user of the necessity to renew the alarm registration.

(c) Alarm registrations shall expire one year after the date of issuance.

(d) A twenty-five dollar fee shall be assessed for each registration. No fee, however, shall be required for registration of medical alarm systems.

(e) On the renewal form provided by the Alarm Administrator, the alarm user shall verify that all contact and monitoring information on file with the Alarm Administrator is correct. The alarm user shall update all contact and monitoring information as is necessary.

(f) 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 3.40.090(b), an administrative penalty of one hundred fifty dollars ($150.00) shall be assessed against the alarm user for failure to renew the registration of the system after being notified by the Alarm Administrator of the need to re-register the alarm."

SECTION 13. Section 3.40.118 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) Annually register their alarm system with the Alarm Administrator;

(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 thirty (30) minutes upon notification of the need to deactivate a malfunctioning alarm system, to provide the right of entry to the premises 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 or if there is updated information."

SECTION 14. Section 3.40.135 of the Code of the City of Wichita, Kansas, is hereby amended 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 five hundred dollars. Each day any violation of this chapter continues shall constitute a separate offense."

SECTION 15. Section 3.40.145 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 16. Section 19.08.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Electricians' certificates--Contractor's license--Revocation.**

(a) The Board of Electrical Appeals is authorized to cancel, suspend and revoke the certificate of any master electrician, journeyman electrician, certified fire or security alarm installer, or residential wireman electrician for any or all of the following reasons:

(1) Committing of any act in violation of any provisions of this code or any other ordinance of the city, or the refusal or failure to comply with any lawful and reasonable order of the code official or inspector;

(2) Misrepresentation of a material fact by the applicant in obtaining a certificate;

(3) Carelessness or negligence in providing reasonable safety measures for the protection of the public.

(b) The Board of Electrical Appeals is authorized to cancel and recall the license of any electrical contractor for any or all of the following reasons:

(1) Abandonment of any contract without legal cause;

(2) Diversion of funds or property received for performance or completion of a specific contract for a specified purpose, in the performance or completion of any contract, and application or use for any other contract, obligation or purpose, or the failure, negligence or refusal to use such finds or property for the performance or completion of said contract;

(3) Committing of any act in violation of any provisions of this code or any other ordinance of the city, or the refusal or failure to comply with any lawful and reasonable order of the code official or inspector;

(4) Misrepresentation of a material fact by the applicant in obtaining a license;

(5) Failure of any contractor to fully certify all claims for labor and material used in the performance of any work for which he has been engaged or for which he has been paid;

(6) Use of any license to obtain a permit for another as set forth in Section 19.08.120 of this code;

(7) Carelessness or negligence in providing reasonable safety measures for the protection of workmen and the public;

(8) Failure to obtain permits as required in Section 19.08.150 of this title;

(9) Unreasonable delay in the performance and carrying out of any contract;

(10) Failure by the licensee, if a firm, co partnership or corporation, to have at least one active member or officer who has qualified as and has a master's certificate as provided in Section 19.08.070 of this code.

(11) Failure to have the required supervision for apprentice electrician or helper as set forth in Section 19.08.015 of this code;

(12) That the license holder is in arrears on payment of electrical permit and/or re-inspection fees.

(13) Misrepresentation of a material fact by a certificate holder on an alarm registration as required by Chapter 3.40 of the Code of the City of Wichita;

(14) Allowing a non-certified individual to utilize certification or certification number for the purposes of completing an alarm registration as required by Chapter 3.40 of the Code of the City of Wichita.

(c) Upon presentation by the code official to the Board of Electrical Appeals of charges against any holder of any certificate, as set forth in this section, the Board of Electrical Appeals shall fix a time and place for a meeting to consider such charges and shall notify the holder of such certificate to be present at such meeting. Such notification shall be in writing and shall be presented to the holder at least five days in advance of the meeting. If upon full hearing of all evidence by the Board of Electrical Appeals it shall be decided that such holder of a certificate has been guilty of any of the actions as hereinbefore set forth in this section, then the board shall have the power to place on probation for a specified time period, temporarily suspend or permanently revoke the license or certificate of the holder thereof.

(d) When a certificate of a person has been revoked, a new certificate shall not be granted until he shall have corrected the violation in accordance with

this code or any ordinance of the city and shall have made application and have passed an examination as required for the original certificate."

SECTION 17. The originals of Sections 3.40.020, 3.40.030, 3.40.035, 3.40.040, 3.40.050, 3.40.060, 3.40.070, 3.40.090, 3.40.100, 3.40.105, 3.40.135 and 19.08.050 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 18. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effectiveJuly 1, 2010.

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of May, 2010.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

Approved as to Form:

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Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED 04/15/2010

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 3.40.020, 3.40.030, 3.40.035, 3.40.040, 3.40.050, 3.40.060, 3.40.070, 3.40.090, 3.40.100 AND 3.40.135, CREATING SECTIONS 3.40.015, 3.40.065, 3.40.115, 3.40.118 AND 3.40.145 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ALARM SYSTEMS, AMENDING SECTION 19.08.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ELECTRICIANS' CERTIFICATES, PERMITS AND LICENSES AND REPEALING THE ORIGINALS OF SECTIONS 3.40.020, 3.40.030, 3.40.035, 3.40.040, 3.40.050, 3.40.060, 3.40.070, 3.40.090, 3.40.100, 3.40.105, 3.40.135 AND 19.08.050 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 3.40.015 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Enforcement of Provisions of Code.** The Wichita Police Department, the Wichita Fire Department and the Office of Central Inspection and the authorized representatives of such departments shall be responsible for the enforcement of all provisions of this Code."

SECTION 2. Section 3.40.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

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

(a) 'Alarm ~~a~~Administrator' means the person designated by the ~~c~~Chief of ~~p~~Police to ~~monitor~~ administer the provisions of this chapter, and monitor, control and review alarm response procedures and alarm business activities ~~as provided in this chapter~~.

(b) 'Alarm ~~b~~Business' means any ~~business operated by a person who~~ individual, partnership, corporation or other entity which engages in the activity of 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 servicing companies who engage in the activity of monitoring or responding to alarm systems.

(c) 'Alarm ~~service~~ Servicing ~~c~~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.

(d) 'Alarm ~~s~~System' means an assembly of equipment, ~~or~~ 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~~;~~. ~~provided, however, that t~~This term shall include~~s~~ externally audible and/or visual on-premises alarm systems. ~~but does not include~~ The

following devices shall not constitute an alarm system: 1. smoke detectors; ~~and~~ 2. other alarms designated to merely give internal on-premises notification of an alarm condition; 3. alarm devices affixed to motor vehicles; and 4. hand-held personal safety devices not connected to a central monitoring system or station.

(e) 'Automatic ~~d~~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.

(f) 'Central ~~s~~Station' means an office to which alarm system signals are transmitted for an operator to monitor and notify the communications center of the need for an emergency response by law enforcement, fire or emergency medical personnel.

(g) 'Chief of ~~p~~Police' means the ~~c~~Chief of ~~p~~Police of the city or a designated representative.

(h) 'City' means the City of Wichita, Kansas.

(i) 'City ~~m~~Manager' means the ~~c~~City ~~m~~Manager of the city or a designated representative.

(j) 'City ~~t~~Treasurer' means the ~~c~~City ~~t~~Treasurer of the city or a designated representative.

(k) 'Communications ~~c~~Center' means the Sedgwick County ~~d~~Department of ~~e~~Emergency ~~c~~Communications.

(l) 'Direct ~~c~~Connect' means an alarm system which has the capability of transmission and reception of alarm system signals directly to the communications center.

(m) 'Director of ~~e~~Emergency ~~c~~Communications' means the ~~d~~Director of the Sedgwick County ~~d~~Department of ~~e~~Emergency ~~c~~Communications or a designated representative.

~~(n) 'Duress or holdup alarm' means an alarm activated by the intentional act of a person in order to summon law enforcement personnel.~~

~~(o)~~ (n) 'Emergency ~~m~~Medical ~~p~~Personnel' means employees of the Sedgwick County ~~e~~Emergency ~~m~~Medical ~~s~~Service.

~~(p)~~ (o) 'External ~~a~~Audible and/or ~~v~~Visual ~~o~~On-premises ~~a~~Alarm ~~s~~System' means an alarm system designed to emit audible and/or visual signals at or on the premises upon which the alarm system is installed and which causes notification of such alarm system activation to be made to the communications center.

~~(q)~~ (p) 'False ~~a~~Alarm' means: 1) the activation of an alarm system in the ~~c~~City resulting in an urgent response by law enforcement, fire or emergency medical personnel when a situation requiring an urgent response does not, in fact, exist; 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.

~~a.~~ ~~Provided, however, if~~ ~~a~~An alarm signal ~~is~~ caused by violent conditions of nature or other circumstances not reasonably subject to control by the alarm user or alarm business~~,~~ shall not be deemed a false alarm for the purposes of this chapter. ~~it shall not be deemed a false alarm for purposes of this chapter;~~

~~b.~~ ~~Provided, further, that a system designed to be used to report a robbery or holdup when used for any other purpose shall be considered a false alarm under this chapter.~~

(q) 'Fire Alarm' means an alarm to which fire personnel have been dispatched to respond.

(r) 'Fire ~~a~~Alarm ~~s~~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.

(s) 'Fire ~~p~~Personnel' means employees of the Wichita ~~f~~Fire ~~d~~Department.

(t) 'Governmental ~~b~~Building ~~a~~Alarm ~~s~~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.

~~(v)~~ (u) 'Law ~~e~~Enforcement ~~p~~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 ~~p~~Police ~~d~~Department.

~~(w)~~ (v) 'Medical ~~a~~Alarm ~~s~~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.

~~(x)~~ (w) 'Monitor' 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.

~~(y)~~ (x) 'Multiple ~~a~~Alarm ~~s~~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 business monitoring alarms within the structure.

~~(z)~~ (y) 'Person' means any person, firm, partnership, association, corporation, company or organization of any kind.

(z) 'Security Alarm' means an alarm to which law enforcement personnel have been dispatched to respond.

~~(u)~~ (aa) ‘~~Law enforcement~~ Security ~~a~~Alarm ~~s~~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.

~~(aa)~~ (bb) ‘Alarm User’ means any person who has a functioning alarm system on premises under the person's control.

~~(bb)~~ (cc) ‘Fire Chief’ means the Chief of the Wichita Fire Department or a designated representative.

(dd) ‘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.

(ee) ‘ANSI/SIA Control Panel Standard CP-1’ means the ANSI – American National Standard Institute approved security industry association – SIA CP-1 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-1 Control Panel Standard Features for False Alarm Reduction.”

SECTION 3. Section 3.40.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

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

(b) It is unlawful for any person to engage in altering, installing, maintaining, repairing or servicing 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.

(c) It is unlawful for any alarm business to allow or permit an individual who is not certified, as required by Section 3.40.035, to engage in the altering, installing, maintaining, repairing or servicing an alarm system within the city limits.

(d) 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 five hundred dollars ($500.00) or imprisonment of a term not to exceed six months or by both such fine and imprisonment."

SECTION 4. Section 3.40.035 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Certifications--Persons engaged in installation or repair of alarm systems.** (a) Applications for certification as required by subsection (b) of Section 3.04.030 shall be made to the Office of ~~c~~Central ~~i~~Inspection ~~division~~ which shall be responsible for conducting an examination of the applicant

pursuant to the standards and classifications set forth by the National Burglar and Fire Alarm Association. In addition to the certification requirements set forth in this chapter, individuals altering, installing, maintaining, repairing or replacing fire alarm systems must be certified by the National Institute for Certification in Engineering Technologies (NICET II, ~~NICET~~ III or ~~NICET~~ IV) or the International Municipal Signal Association (IMSAI or II) certified for fire alarm systems. The Office of ~~c~~Central ~~i~~Inspection ~~division~~ may waive examination of an applicant who ~~has been examined by and~~ holds a current certificate from the National Burglar and Fire Alarm Association or National Electronic Security Alliance (NESA) for security alarm systems or is ~~NICET III or NICET IV~~ certified by the National Institute for Certification in Engineering Technologies (NICET II, ~~NICET~~ III or ~~NICET~~ IV) or the International Municipal Signal Association (IMSAI or II) for fire alarm systems.

(b) The fee for examination and certification shall be established by the ~~s~~Superintendent of ~~c~~Central ~~i~~Inspection to cover the administrative costs of issuing such certificate. This fee shall be paid to the Office of ~~c~~Central ~~i~~Inspection ~~division~~ when application for certification is made.

(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 syatems.

(d) The Board of Electrical Appeals is authorized to cancel, suspend and/or revoke the certificate of any alarm installer issued by the Office of Central

Inspection pursuant to the provisions of Section 19.08.050 of the Code of the City of Wichita."

SECTION 5. Section 3.40.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License application--Form and content.** Any person wanting to obtain a license to operate an alarm business in the ~~c~~City shall make application on a form provided therefor to the ~~c~~City ~~t~~Treasurer. Said application shall be verified, accompanied by the required application fee and contain ~~as~~ 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 or corporation). If an individual, the name, date of birth, race, sex, address and telephone number; if a partnership, the names, dates of birth, race, sex, addresses and telephone numbers of all partners; if a corporation, the names, dates of birth, race, sex, addresses and telephone numbers of the officers and the state of incorporation;

(3) ~~If the business is located outside Sedgwick County, the n~~Name, address and telephone number of the person ~~located within Sedgwick County~~ certified, as required by Section 3.40.035, who is responsible for repair and maintenance of the alarm systems;

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

(5) A statement that service for the alarm systems leased or installed by the alarm business will be offered on a twenty-four hour, seven-day-a-week basis;

(6) 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;

(7) A copy of such person's certification as required by subsection (b) of Section 3.40.030 if such person is also engaged in the business of altering, installing, maintaining, repairing or servicing alarm or fire 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.;

(8) 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;

(9) 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 three hundred thousand dollars ($300,000.00) per occurrence. ”

SECTION 6. Section 3.40.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**License fee.** a. Each application for an alarm business license, whether new application, renewal, or as a result of revocation shall be accompanied by an annual fee of one hundred dollars. ~~which~~ Such fee shall not be refundable.

b. ~~Further,~~ ~~e~~Each applicant providing monitoring services shall, in addition to the payment of the above fees, submit payment of all outstanding administrative penalties which may be due under the terms of this chapter at the same time as the license application as a requirement of completing the application process.”

SECTION 7. Section 3.40.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Investigation of application--Issuance of license--Posting license--License nontransferable--Term--Renewal.**

(a) Upon receipt of an application for an alarm business license and payment of the required fees, the ~~c~~City ~~t~~Treasurer shall refer the application to the ~~c~~Chief of ~~p~~Police, Fire Chief and Office of Central Inspection for investigation and recommendation regarding issuance of the license. Approval shall be

recommended so long as the application is satisfactorily completed and no owner, manager, partner, director or officer of the business has ever been convicted of a felony.

(b) No license shall be issued if the alarm business owes licensing fees or administrative penalties to the City of Wichita.

~~(b)~~ (c) Upon favorable recommendation of the ~~c~~Chief of ~~p~~Police, Fire Chief and Office of Central Inspection, the ~~c~~City ~~t~~Treasurer shall issue the applicant an alarm business license ~~on such form as the cCity tTreasurer shall determine~~. The issued license shall be displayed and available for inspection on the business premises of the licensee.

~~(c)~~ (d) No license issued under this chapter shall be transferable, and any such licenses shall be issued for a period of one year from date of issuance. Renewal of such license shall be accomplished in the same manner as issuance of the initial license.

(e) No license shall be issued unless the alarm business has provided to the alarm administrator, at the time of the license application, a complete and current customer list in a format acceptable to the Alarm Administrator or a designated representative."

SECTION 8. Section 3.40.065 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 incurred for one false alarm per registration year. The class must be completed by

the alarm user within thirty (30) days of receiving notification or assessment of a false alarm fee."

SECTION 9. Section 3.40.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Required operational practices.** Each alarm business licensed under this chapter will conduct its operations in compliance with the following standards and practices:

(1) If an alarm system or any of its component parts operates at fifty or more volts, the installation must be in accordance with Title 19 of this Code.

(2) Fire alarm systems must be installed in accordance with the provisions of Titles 15, 18 and 19 of this Code.

(3) When an alarm business leases or installs an alarm system, it shall offer service either directly or through an agent for that alarm system on a twenty-four 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 ~~located within Sedgwick County~~ certified, pursuant to Section 3.40.030, who is responsible for repair and maintenance of the alarm system.

(4) When an alarm business leases or installs an alarm system, the alarm user shall be provided 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.

(5) When an alarm business leases or installs an alarm system for which the alarm user elects to have law enforcement personnel respond, it shall be the responsibility of the alarm business to:

(a) Provide the alarm user, at the time of lease or installation of the alarm system, a written copy of the City of Wichita's false alarm penalties and procedures. ~~The alarm user shall acknowledge the penalty procedures. The alarm business shall forward to the city treasurer a copy of these procedures signed by the alarm user acknowledging that such user understands how to operate the alarm system and the billing system for false alarms as set forth in Section 3.40.090 of the code to the City of Wichita and any amendments thereto;~~

(b) Register each alarm system monitored by the business, prior to commencement of monitoring, with the ~~city~~ ~~treasurer~~ Alarm Administrator or a designated representative.

(c) Registration shall be made by use of a form provided by the Alarm Administrator. A twenty-five dollar ($25.00) fee shall be assessed for each registration form.

(d) The registration must be complete and shall include the following information:

(1) The name, complete address and telephone number of the person who will be responsible for the proper maintenance and operation of the alarm system;

(2) The classification of the Alarm Site as either residential or commercial;

(3) The date of installation and the name and certificate number issued by the Office of Central Inspection of the individual installing the system;

(4) For existing alarm systems, the date of conversion or takeover of the alarm system, whichever is applicable and the name and certificate number issued by the Office of Central Inspection for the individual or company performing the alarm takeover or conversion;

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

(e) ~~Such business shall keep this~~ The registration shall be kept current by notifying the ~~city treasurer~~ Alarm Administrator or a designated representative of the termination of monitoring and changes in ownership of property. If an alarm user changes service companies, the new provider shall re-register the user with the ~~city treasurer's office~~ Alarm

Administrator or a designated representative. ~~Registration shall be accomplished by use of a form provided by the city treasurer. A ten dollar fee shall be assessed for each registration form.~~ Such registration shall be effective for a period of twelve months from the date of issuance. The ~~city treasurer~~ Alarm Administrator or a designated representative shall have the right to audit the information provided to verify its accuracy;

~~(e)~~ (f) An alarm service company, at the time of a~~n~~ security alarm, shall attempt to contact the alarm user by telephone or other electronic means to verify that the alarm is valid;

~~(d)~~ (g) An alarm service company, when contacting the communication center regarding an alarm, shall provide the alarm user's name, address and permit number.

(6) At the time of licensing or renewal of a license issued pursuant to this chapter, the 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 10. Section 3.40.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Response fee. (a) Except as otherwise provided in this chapter, ~~the~~ an alarm user ~~of an alarm system~~ to which law enforcement personnel or fire personnel are requested to respond when a situation requiring an urgent response

does not, in fact, exist, shall be charged a ~~response~~ false alarm fee. ~~of forty dollars per alarm. If such alarm is a duress or holdup alarm, such fee shall be fifty dollars for each residential alarm and seventy dollars for each business alarm; provided, however,~~ 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	$0
2	$40	$100
3	~~$80~~ 40	$100
4	~~$160~~ 60	$150
5	~~$320~~ 60	$150
6	~~$600~~ 120	$300
7 – 9	~~$750~~ 200	$500
10th or more	$350	$750

Graduated false alarm fees will be based only on the same type of previous false alarm.

~~n~~No response fee shall be charged:

(1) For the first false alarm, regardless of type, each ~~calendar~~ registration year, provided that the alarm user, at the time of the false alarm, does not owe outstanding response or administrative fees;

(2) 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;

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

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

(5) 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

(6) For those alarms received by a medical alarm system.

(7) For alarms from governmental building alarm systems.

(b) If an alarm is received by the communications center from an alarm system which ~~has~~ is not ~~been~~ currently registered with the ~~c~~City, or the registration has expired, as required in Section 3.40.070, and 3.40.115, an administrative penalty of one hundred fifty dollars shall be assessed against the alarm business or alarm user for having failed to register or renew the registration of the system. Such penalty shall be in addition to the alarm charges assessed to the alarm user. Both the alarm user and alarm business shall be notified in writing that the alarm business is not in compliance with the city's ordinances.

(c) Should a disagreement arise over whether any particular response fee or administrative penalty should be assessed, the facts surrounding the circumstances of the alarm activation shall, within thirty days of the date of the first invoice for the alarm, be presented in writing by the alarm user or alarm business along with a ten-dollar administrative fee to the ~~a~~Alarm ~~a~~Administrator. The ~~a~~Alarm ~~a~~Administrator shall promptly forward the written fee dispute to the

~~c~~Chief of ~~p~~Police or for fire alarms, the Chief of the Wichita Fire Department. The ~~c~~Chief of ~~p~~Police or the Fire Chief shall, after consideration of all the information presented, determine whether a response fee should be assessed. In the event of determination that no response fee should be assessed, the ten-dollar administrative fee shall be refunded to the alarm user or alarm business.

(d) If disagreement still exists after consideration by the ~~c~~Chief of ~~p~~Police or the Fire Chief, the facts surrounding the alarm activation shall be presented to the ~~c~~City ~~m~~Manager who shall, after consideration of all the information presented, determine whether a response fee should be assessed. All such disagreements must be presented in writing by the alarm user or alarm business to the ~~c~~City ~~m~~Manager within thirty days after the date of notification of the ~~c~~Chief of ~~p~~Police's or Fire Chief's determination ~~under subsection (b) of this section~~ that a response fee is due as a result of the particular alarm being questioned; otherwise the determination ~~by the alarm administrator~~ that the fee is due shall be deemed correct.

(e) In making the determinations required by subsections (c) and (d) of this section, the ~~c~~Chief of ~~p~~Police, Fire Chief ~~and~~ or the ~~c~~City ~~m~~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 3.40.010 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 ~~response~~ false alarm fee or administrative penalty under this section shall be due and payable ~~in the office of the city treasurer~~ to the Alarm Administrator or a designated representative within thirty days after receipt of notification that such fee is due. Further, ~~in the event~~ if the fee is not paid within sixty days of such notification, a late fee in the amount of ten dollars per alarm call shall be added to the amount due. An additional late fee of ten dollars will be assessed on each response fee or administrative penalty which remains unpaid ninety days following notification. After ninety 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.

The alarm user and any alarm servicing company will be notified by certified mail that the communication center will not respond to further alarms from the system unless the delinquent fee and late charges are paid."

SECTION 11. Section 3.40.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Direct connection prohibited--Exceptions--Annual fee--Response fee.

~~(a)~~ All direct connections of alarm systems to the communications center shall be prohibited except governmental building alarm systems and those contemplated by Parts 21, 216, 326 and 563a of Title 12 of the Code of Federal Regulations. For each such direct connection permitted by this section, except governmental building alarm systems, a nonrefundable fee of five hundred dollars for each main location of the facilities covered above, two hundred fifty dollars for each branch location, and two hundred dollars for each automatic teller machine (ATM) each twelve months shall be due and payable by the alarm system user to the ~~city treasurer~~ Alarm Administrator, or a designated representative, prior to the start of the twelve-month period in which the direct connection is to be maintained. Failure to pay the required annual fee shall be reason for termination of the direct connection.

~~(b) Except as otherwise provided in this chapter, the user of an alarm system that transmits an alarm to which emergency medical, law enforcement or~~

~~fire personnel are requested to respond shall be charged a response fee of forty dollars per alarm; provided, however, no such response fee shall be made:~~

~~(1) For alarms from governmental building alarm systems;~~

~~(2) 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;~~

~~(3) Cable, line or power failure which has been specifically verified by the appropriate utility company serving an alarm location;~~

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

~~(5) 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.~~

~~(c) Should a disagreement arise over whether any particular response fee should be assessed, the disagreement shall be resolved by the procedure provided in subsections (b), (c) and (d) of Section 3.40.090.~~

~~The response fee under this section shall be due and payable in the office of the city treasurer within thirty days after receipt of notification that such fee is due. Further, in the event the fee is not paid within sixty days of such notification, a late fee in the amount of ten dollars shall be added to the amount due. An additional late fee of ten dollars will be assessed on each response fee which~~

~~remains unpaid ninety days following notification. After ninety days, following notice to the alarm user, the account may be turned over for collection.~~

~~The alarm user and any monitoring alarm company will be notified by certified mail that the communications center will not respond to further alarms from the system until the delinquent fee and late charge are paid.~~"

SECTION 12. Section 3.40.115 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Annual Registration Renewal by Alarm User.** (a) Following the initial twelve-month period of the alarm registration by the alarm company, it shall be the responsibility of the alarm user to annually register the alarm with the Alarm Administrator.

(b) The Alarm Administrator shall notify the alarm user of the necessity to renew the alarm registration.

(c) Alarm registrations shall expire one year after the date of issuance.

(d) A twenty-five dollar fee shall be assessed for each registration. No fee, however, shall be required for registration of medical alarm systems.

(e) On the renewal form provided by the Alarm Administrator, the alarm user shall verify that all contact and monitoring information on file with the Alarm Administrator is correct. The alarm user shall update all contact and monitoring information as is necessary.

(f) 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 3.40.090(b), an administrative penalty of one hundred fifty dollars ($150.00) shall be assessed against the alarm user for failure to renew the registration of the system after being notified by the Alarm Administrator of the need to re-register the alarm."

SECTION 13. Section 3.40.118 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) Annually register their alarm system with the Alarm Administrator;

(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 thirty (30) minutes upon notification of the need to deactivate a malfunctioning alarm system, to provide the right of entry to the premises 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 or if there is updated information."

SECTION 14. Section 3.40.135 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Penalty. Except as otherwise provided for by this chapter, ~~E~~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 five hundred dollars. Each day any violation of this chapter continues shall constitute a separate offense."

SECTION 15. Section 3.40.145 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 16. Section 19.08.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Electricians' certificates--Contractor's license--Revocation.**

(a) The ~~b~~Board of ~~e~~Electrical ~~a~~Appeals is authorized to cancel, suspend and ~~recall~~ revoke the certificate of any master electrician, journeyman

electrician, certified fire or security alarm installer, or residential wireman electrician for any or all of the following reasons:

(1) Committing of any act in violation of any provisions of this code or any other ordinance of the city, or the refusal or failure to comply with any lawful and reasonable order of the code official or inspector;

(2) Misrepresentation of a material fact by the applicant in obtaining a certificate;

(3) Carelessness or negligence in providing reasonable safety measures for the protection of the public.

(b) The ~~b~~Board of ~~e~~Electrical ~~a~~Appeals is authorized to cancel and recall the license of any electrical contractor for any or all of the following reasons:

(1) Abandonment of any contract without legal cause;

(2) Diversion of funds or property received for performance or completion of a specific contract for a specified purpose, in the performance or completion of any contract, and application or use for any other contract, obligation or purpose, or the failure, negligence or refusal to use such finds or property for the performance or completion of said contract;

(3) Committing of any act in violation of any provisions of this code or any other ordinance of the city, or the refusal or failure to comply with any lawful and reasonable order of the code official or inspector;

(4) Misrepresentation of a material fact by the applicant in obtaining a license;

(5) Failure of any contractor to fully certify all claims for labor and material used in the performance of any work for which he has been engaged or for which he has been paid;

(6) Use of any license to obtain a permit for another as set forth in Section 19.08.120 of this code;

(7) Carelessness or negligence in providing reasonable safety measures for the protection of workmen and the public;

(8) Failure to obtain permits as required in Section 19.08.150 of this title;

(9) Unreasonable delay in the performance and carrying out of any contract;

(10) Failure by the licensee, if a firm, co partnership or corporation, to have at least one active member or officer who has qualified as and has a master's certificate as provided in Section 19.08.070 of this code.

(11) Failure to have the required supervision for apprentice electrician or helper as set forth in Section 19.08.015 of this code;

(12) That the license holder is in arrears on payment of electrical permit and/or re-inspection fees.

(13) Misrepresentation of a material fact by a certificate holder on an alarm registration as required by Chapter 3.40 of the Code of the City of Wichita;

(14) Allowing a non-certified individual to utilize certification or certification number for the purposes of completing an alarm registration as required by Chapter 3.40 of the Code of the City of Wichita.

(c) Upon presentation by the code official to the ~~b~~Board of ~~e~~Electrical ~~a~~Appeals of charges against any holder of any certificate, as set forth in this section, the ~~b~~Board of ~~e~~Electrical ~~a~~Appeals shall fix a time and place for a meeting to consider such charges and shall notify the holder of such certificate to be present at such meeting. Such notification shall be in writing and shall be presented to the holder at least five days in advance of the meeting. If upon full hearing of all evidence by the ~~b~~Board of ~~e~~Electrical ~~a~~Appeals it shall be decided that such holder of a certificate has been guilty of any of the actions as hereinbefore set forth in this section, then the board shall have the power to place on probation for a specified time period, temporarily suspend or permanently revoke the license or certificate of the holder thereof.

(d) When a certificate of a person has been revoked, a new certificate shall not be granted until he shall have corrected the violation in accordance with this code or any ordinance of the city and shall have made application and have passed an examination as required for the original certificate."

SECTION 17. The originals of Sections 3.40.020, 3.40.030, 3.40.035, 3.40.040, 3.40.050, 3.40.060, 3.40.070, 3.40.090, 3.40.100, 3.40.105, 3.40.135 and 19.08.050 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 18. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effectiveJuly 1, 2010.

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

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Bicycle Ordinances

INITIATED BY: Wichita Police Department

AGENDA: New Business

Recommendation: Recommend that bicycle ordinances be amended or repealed as delineated.

Background: A committee consisting of staff from the Police, Parks, Public Works, Planning and Law Departments examined the existing City Code and provided input resulting in the proposed ordinance amendments.

Analysis: Recommended for elimination are the following provisions of City Code:

- All sections pertaining to bicycle licensing.
- Requiring the use of a bike rack if parking within a city block of a rack in core area.
- Requiring that police impound unsafe bicycles.
- The $2 impound fee.
- Allowing infants to be carried in backpack or sling.
- Duplicate requirements that are covered in City Code regarding traffic.
- Requiring bicyclists to operate within five feet of the right hand of the curb or edge of the street.

To conform to state statute, an amendment is proposed requiring that bicyclists "ride as near to the right side of the street…as practicable."

Financial Considerations: None.

Legal Considerations: The ordinances have been drafted by the Law Department and are approved as to form.

Goal Impact: Provide safe and secure neighborhoods and enhance quality of life by eliminating and amending existing ordinances to enhance the enjoyment of bicycling within the City.

Recommendations/Actions: It is recommended that the City Council approve the proposed amendments and place the ordinances on first reading.

Attachments: Clean and delineated copies of ordinances.

First Published in The Wichita Eagle on May 14, 2010

3/29/10

ORDINANCE NO. 48-733

AN ORDINANCE AMENDING SECTIONS 11.48.010, 11.48.100, 11.48.120, 11.48.130, 11.48.170, 11.48.175, AND 11.48.180, AND REPEALING SECTIONS 11.48.020. 11.48.030, 11.48.040, 11.48.050, 11.48.060, 11.48.070, 11.48.080, 11.48.110 AND 11.48.190 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO LICENSING OF AND TRAFFIC RULES GOVERNING BICYCLES.

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

SECTION 1. Section 11.48.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** (a) Bicycle. "Bicycle" means every vehicle propelled by human power upon which any person may ride having two or more tandem wheels, any of which is more than fourteen inches in diameter, but does not include any mobility device as defined by the Americans with Disabilities Act.

(b) Bike path. "Bike path" or "bicycle path" means a paved route separated from car traffic and designated for bicycle use.

(c) Bike lane. "Bike lane" or "bicycle lane" means a portion of the roadway designated for bicycle use separated from autos by a paint stripe, raised divider, or marked by signs and/or paint on the roadway.

(d) Bike route. "Bike route" means a route designated on streets having low traffic volume, marked by signs and/or paint on the street.

(e) Nighttime. "Nighttime" as used in this chapter means any time from a half hour after sunset to a half hour before sunrise, or at any other time when, due to insufficient

light or unfavorable atmospheric conditions, persons and vehicles on the streets, highways or roadways are not clearly discernable at a distance of one thousand feet ahead.

The regulations of this chapter applicable to bicycles shall apply whenever a bicycle is operated upon any sidewalk, street, roadway, highway, or public path set aside for the exclusive use of pedestrian and bicycle traffic, and shall also include all public parks and playgrounds or other property under the ownership, jurisdiction or control of the city, the board of park commissioners or any other agency created to provide a public service in or adjacent to the city."

SECTION 2. Section 11.48.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Subject to traffic-control devices and traffic regulations. Every person riding a bicycle upon a street, highway or roadway shall be granted all of the rights and shall obey all traffic ordinances and be subject to all of the duties applicable to the driver of any other vehicle except as to special ordinances so designated and except to those provisions which by their nature can have no application."

SECTION 3. Section 11.48.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Riding on roadways and bicycle paths. (a) Every person operating a bicycle upon a street, highway or roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as near to the right side of the street, highway, or roadway as practicable, except under any of the following situations when:

(1) overtaking and passing another bicycle or vehicle proceeding in the same direction;

(2) preparing for a left turn at an intersection or into a private road or driveway; or

(3) reasonably necessary to avoid conditions including, but not limited to, fixed or moving objects, vehicles, parked or moving bicycles, pedestrians, animals, surface hazards, right-turn or left-turn lanes or narrow width lanes that make it unsafe to continue along the right-hand edge of the street, highway or roadway.

(b) Any person operating a bicycle upon a one-way street, highway or roadway with two or more marked traffic lanes may ride as near to the left side of the roadway as practicable.

(c) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles

(d) Whenever a bicycle path or a bicycle lane has been provided adjacent to a street, highway or roadway, bicycle riders shall use such bicycle path or bicycle lane and shall not use the street, highway or roadway.

(e) For purposes of this section, "narrow width lane" means a lane that is too narrow for a bicycle and a vehicle to travel safely side-by-side within the lane."

SECTION 4. Section 11.48.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Carrying passengers.** It shall be unlawful for any person riding a bicycle upon a street, highway, roadway, alley, bike path, bike lane or sidewalk of the city, to carry another person on the same bicycle; provided, however, that this restriction shall not apply to bicycles with dual-operation construction; and provided that a child who is less than five years of age may be carried on a bicycle by a person operating said bicycle if the following conditions are met:

(1) The person operating the bicycle must either be the parent or legal guardian of the child or have the consent of the parent or legal guardian;

(2) The child must be carried on a seat constructed on the rear of said bicycle, which seat must be a manufactured type that complies with the current Consumer Product Safety Commission Standards;

(3) An adult rider may carry a child in a wheeled child carrier designed for attachment to a bicycle."

SECTION 5. Section 11.48.170 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

"Parking of bicycles. It is unlawful for any person to park or leave a bicycle on public property where such bicycle blocks pedestrian travel or presents a traffic hazard.

SECTION 6. Section 11.48.175 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Impounding bicycles.** Bicycles shall be impounded to the police department or to any other place of safety:

(a) When such bicycle is abandoned;

(b) When such bicycle is reported or determined to be stolen and is recovered; or

(c) When such bicycle is left parked on public property where that bicycle blocks pedestrian travel or presents a traffic hazard.

A bicycle impounded by the police department shall not be released until the bicycle has been investigated and the rightful owner is found and shows proof of ownership.

SECTION 7. Section 11.48.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Sale of unclaimed or impounded bicycles**. Whenever a bicycle has been impounded for a period of 30 days and no claim of ownership or the right to possession thereof has been

made and established to the satisfaction of the police department, such bicycles shall be sold at public auction, after legal publication of the time, date and location of such sale.

SECTION 8. The originals of Sections 11.48.010, 11.48.020, 11.48.030, 11.48.040, 11.48.050, 11.48.060, 11.48.070, 11.48.080, 11.48.100, 11.48.110, 11.48.120. 11.48.130, 11.48.170, 11.48.175, 11.48.180 and 11.48.190 of the Code of the City of Wichita , Kansas, are hereby repealed.

SECTION 9. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of May, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED 3/29/10

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 11.48.010, 11.48.100, 11.48.120, 11.48.130, 11.48.170, 11.48.175, AND 11.48.180, AND REPEALING SECTIONS 11.48.020. 11.48.030, 11.48.040, 11.48.050, 11.48.060, 11.48.070, 11.48.080, 11.48.110 AND 11.48.190 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO LICENSING OF AND TRAFFIC RULES GOVERNING BICYCLES.

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

SECTION 1. Section 11.48.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** (a) Bicycle. "Bicycle" means every vehicle propelled by human power upon which any person may ride having two or more tandem wheels, any of which is more than ~~twenty~~ fourteen inches in diameter, but does not include any mobility device as defined by the Americans with Disabilities Act.

(b) Bike path. "Bike path" or "bicycle path" means a paved route ~~path or road especially for bikes physically~~ separated from car traffic and designated for bicycle use.

(c) Bike lane. "Bike lane" or "bicycle lane" means a ~~clearly marked lane on the side of a street or road~~, portion of the roadway designated for bicycle use separated from autos by a paint stripe, ~~or~~ raised divider, or marked by signs and/or paint on the roadway.

(d) Bike route. "Bike route" means a route designated on streets having low traffic volume, marked by signs and/or paint on the street.

(e) Nighttime. "Nighttime" as used in this chapter means any time from a half hour after sunset to a half hour before sunrise, or at any other time when, due to insufficient

light or unfavorable atmospheric conditions, persons and vehicles on the streets, highways or roadways are not clearly discernable at a distance of one thousand feet ahead.

The regulations of this chapter applicable to bicycles shall apply whenever a bicycle is operated upon any sidewalk, street, roadway, highway, or ~~upon any~~ public path set aside for the exclusive use of pedestrian and bicycle traffic, and shall also include all public parks and playgrounds or other property under the ownership, jurisdiction or control of the city, the board of park commissioners or any other agency created to provide a public service in or adjacent to the city."

SECTION 2. Section 11.48.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Subject to traffic-control devices and traffic regulations. Every person riding a bicycle upon a street, highway or roadway shall be granted all of the rights and shall obey all traffic ordinances and be subject to all of the duties applicable to the driver of any other vehicle except as to special ordinances so designated and except to those provisions which by their nature can have no application."

SECTION 3. Section 11.48.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Riding on roadways and bicycle paths~~—Turns and stop signals~~. (a) ~~Any~~ Every person ~~riding~~ operating a bicycle ~~in traffic moving in the same direction at such time shall ride within five feet of the right-hand curb or edge of the~~ upon a street, highway or roadway ~~or alley, except under any of the following conditions:~~ at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as near to the

~~(1) Persons fourteen years of age or older may ride as close as reasonably possible to the~~ right ~~-hand curb or edge~~ side of the street, highway, or roadway ~~or alley~~ ~~when riding two abreast;~~ as practicable, except under any of the following situations when:

~~(2)~~ (1) ~~When~~ overtaking and passing another bicycle or vehicle proceeding in the same direction;

~~(3)~~ (2) ~~When~~ preparing for a left turn at an intersection or into a private road or driveway; or

~~(4)~~ (3) ~~When~~ reasonably necessary to avoid conditions including, but not limited to, fixed or moving objects, vehicles, parked or moving bicycles, pedestrians, animals, surface hazards, right-turn or left-turn lanes or narrow width lanes that make it unsafe to continue along the right-hand ~~or left-hand curb or~~ edge of the street, highway or roadway.

~~(5) When operating a bicycle upon a street, highway, roadway or alley of the city which carries traffic in one direction only, the bicyclist shall ride within five feet of the left-hand curb or edge of roadway, except under any of the situations as detailed in subdivisions (1), (2), (3) or (4) of this subsection.~~

(b) Any person operating a bicycle upon a one-way street, highway or roadway with two or more marked traffic lanes may ride as near to the left side of the roadway as practicable.

(c) ~~Left Turns.~~

~~(1) The driver of a bicycle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel as such bicycle and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered; or~~

~~(2) Approach the intersection beside the curb, proceed through the intersection in the same direction, yield right-of-way to all vehicles proceeding through the intersection, and then make the left turn so as to leave the intersection in the proper position upon the roadway being entered;~~

~~(3) Notwithstanding the foregoing provisions, the state highway commission and local authorities in their respective jurisdictions may cause official traffic-control devices to be placed and thereby require and direct that a specific course be traveled by turning bicycles, and when such devices are so placed, no person shall turn a bicycle other than as directed and required by such devices~~.

~~(b)~~ Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. ~~Persons riding two abreast shall not impede the normal and reasonable movement of traffic, and, on a laned roadway, shall ride within a single lane.~~

(d) ~~Turning Movements and Required Signals.~~

~~(1) No person shall turn a bicycle at an intersection unless the bicycle is in proper position upon the roadway as required in this subsection or turn a bicycle to enter a private road or driveway, or otherwise turn a bicycle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any bicycle without giving an appropriate signal;~~

~~(2) A signal of intention to turn right or left shall be given before turning and/or shall be given while the bicycle is stopped waiting to turn;~~

~~(3) No person shall stop or decrease the speed of a bicycle without first giving the appropriate signal.~~

Whenever a bicycle path or a bicycle lane has been provided adjacent to a street, highway or roadway, bicycle riders shall use such bicycle path or bicycle lane and shall not use the street, highway or roadway.

(e) For purposes of this section, "narrow width lane" means a lane that is too narrow for a bicycle and a vehicle to travel safely side-by-side within the lane."

SECTION 4. Section 11.48.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Carrying passengers.** It shall be unlawful for any person riding a bicycle upon a street, highway, roadway, alley, bike path, bike lane or sidewalk of the city, to carry another person on the same bicycle; provided, however, that this restriction shall not apply to bicycles with dual-operation construction; and provided that a child who is less than five years of age may be carried on a bicycle by a person operating said bicycle if the following conditions are met:

(1) The person operating the bicycle must either be the parent or legal guardian of the child or have the consent of the parent or legal guardian;

(2) The child must be carried on a seat constructed on the rear of said bicycle, which seat must ~~either~~ be a manufactured type ~~or homemade,~~ that complies with the current Consumer Product Safety Commission Standards;

(3) ~~An authorized adult rider may carry an infant securely attached to his person in a backpack or sling~~. An adult rider may carry a child in a wheeled child carrier designed for attachment to a bicycle."

SECTION 5. Section 11.48.170 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

"Parking of bicycles. ~~(a)~~ It is unlawful for any person to park or leave a bicycle on ~~any street, alley, highway, sidewalk or sidewalk area, bike path or other~~ public property ~~place or way in the city when such place is within one city block of a bicycle rack or area designated for parking bicycles~~ where such bicycle blocks pedestrian travel or presents a traffic hazard.

~~(b) Bicycle racks and areas designated for parking bicycles in the city shall not be located on any street, sidewalk or other public property without prior approval of the traffic engineer.~~

~~(c) The police department shall be authorized to remove any bicycles that are unlawfully parked or left within the city and shall further be authorized to remove any bicycle left or parked on public property where that bicycle blocks pedestrian travel or presents a traffic hazard.~~

SECTION 6. Section 11.48.175 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Impounding bicycles. ~~leaving unattended and revocation of license~~.** Bicycles shall be impounded to the police department or to any other place of safety ~~under any of the circumstances hereinafter enumerated~~:

(a) ~~When such bicycle is not licensed according to the provisions of this chapter;~~

~~(b) When such bicycle is not in a safe mechanical condition.~~ When such bicycle is abandoned;

(b) When such bicycle is reported or determined to be stolen and is recovered; or

(c) When such bicycle is left parked on public property where that bicycle blocks pedestrian travel or presents a traffic hazard.

A bicycle impounded by the police department shall not be released until the bicycle has

been investigated and the rightful owner is found and shows proof of ownership. ~~Then an impound fee of two dollars shall be assessed to the owner before release of the bicycle.~~

SECTION 7. Section 11.48.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Sale of unclaimed or impounded bicycles**. Whenever a bicycle has been impounded for a period of ~~four months~~ 30 days and no claim of ownership or the right to possession thereof has been made and established to the satisfaction of the police department, such bicycles shall be sold at public auction, after legal publication of the time, date and location of such sale.

SECTION 8. The originals of Sections 11.48.010, 11.48.020, 11.48.030, 11.48.040, 11.48.050, 11.48.060, 11.48.070, 11.48.080, 11.48.100, 11.48.110, 11.48.120. 11.48.130, 11.48.170, 11.48.175, 11.48.180 and 11.48.190 of the Code of the City of Wichita , Kansas, are hereby repealed.

SECTION 9. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

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

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Second Program Year Action Plan – 2009-2013 Consolidated Plan Final Recommendations

INITIATED BY: Housing and Community Services

AGENDA: New Business

Recommendation: Approve the recommendations for 2010-2011 expenditures for Community Development Block Grant, and HOME Investment Partnerships and Emergency Shelter Grant programs.

Background: On January 12, 2010, the City Council approved allocations for Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME) and Emergency Shelter Grant (ESG) programs. CDBG allocations for Women's Services, Youth Recreation and Enrichment and Summer Youth Employment and all ESG program allocations required the issuance of RFPs to identify service providers. In addition, Community Housing Development Organizations (CHDOs) were invited to apply for HOME funds designated for CHDO development projects.

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

On March 9, 2010 the City Council approved funding categories and agencies for FY 2010-2011 and authorized a 30-day public comment period. The comment period ended on April 13, 2010. The only public comments received were in support of full funding for the Saint Mark Summer Youth Employment program from the CDBG allocation.

Analysis: On April 1, 2010, the U.S. Department of Housing and Urban Development (HUD) announced final allocations. The final allocations increased staff projections for CDBG by $236,519 and decreased staff projections for HOME by $6,747 and by $133 for ESG. See below for a funding summary.

	2008	2009	Change	2010	Change
CDBG	$2,813,499	$2,848,360	+ $34,861	$3,084,879	+ $236,519
HOME	$1,650,170	$1,833,537	+ $183,367	$1,826,790	– $6,747
ESG	$125,779	$125,266	- $513	$125,133	– $133

Following and attached are revised allocations which take into account the actual funding levels. Adjustments to Council allocations approved on March 9, 2010 are noted. The following also indicates where no changes were made to the March 9 allocations.

Community Development Block Grant

Women's Shelter Services: $269,033 – No Change from the March 9 Council action.
Purpose: to provide temporary shelter, counseling and other support services for an average of 350 women and children who are victims of domestic violence.

Proposers	**2009-2010 Funding**	**2010-2011 Request**	**2010-2011 Recommendation**
Catholic Charities	$118,375	$123,321	$123,321
YWCA	$150,658	$157,870	$145,712

Summer Youth Employment: $163,186 – Increase the March 9 allocations by $50,000 for a total of $213,186. Both agency allocations will increase. Increasing Summer Youth Enrichment funding was recommended by the GRC during their deliberations.

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

Proposers	**2009-2010 Funding**	**2010-2011 Request**	**2010-2011 Original Recommendation**	**2010-2011 New Recommendation**
YMCA	$94,217	$163,186	$100,000	$109,186*
Saint Mark United Methodist Church	NA	$162,781.34	$63,186	$104,000

*This amount reflects funding from the 2010-2011 CDBG allocation only. The YMCA will also receive $54,000 from prior year unexpended summer youth employment funds. Their total allocation will be $163,186 (109,186 from 2010-2011 funding and $54,000 from prior year funding).

Youth Recreation and Enrichment: $100,000 – No Change from the March 9 Council action.
Purpose: to provide constructive and developmentally appropriate enrichment and recreational activities for middle school students in grades six through eight in a safe and supervised setting during non-school hours.

Proposers	**2009-2010 Funding**	**2010-2011 Request**	**2010-2011 Recommendation**
Calvary Hill Pentecostal Church	NA	$12,600	0
Big Brothers, Big Sisters (LAW Camp)	$8,000	$8,000	$8,000
Inter-Faith Ministries Go-Zones	$18,000	$25,000	0
YMCA	$74,000	$100,000	$92,000

The Calvary Hill program was not recommended for funding primarily due to lack of experience reflected in the program design and lack of preparation in the presentation of the proposal. The program was to involve middle school youth in neighborhood clean-up and home repair. The Go-Zones program was not recommended for funding primarily due to questions regarding the program design and the cost per client ($399.74), compared to $53.33 and $70.55 for Big Brothers and the YMCA. The program was to start in July with youth working in community gardens.

In addition to the increases in Public Services/Summer Youth Employment, staff recommends allocating the balance of the 2010-2011 CDBG allocation to sidewalk improvements. This will make $186,519 available for repairing sidewalks in target areas. When staff met with District Advisory Boards to discuss priority funding areas, increasing funding for sidewalks received the strongest citizen support. This recommendation follows the feedback received during those meetings. The attached spreadsheet reflects this recommendation in the Capital Projects category.

HOME Investment Partnerships Program

Amount projected for CHDO allocations: $275,031. No Change to CHDO allocations.

Applicant	2009-2010 Funding	Prior Year(s) Funds Uncommitted	2010-2011 Request	2010-2011 Recommendation
Mennonite Housing	$118,105	0	$175,000 (5 houses)	$146,889.50 (4 houses)
Community Housing Services	$53,914	$92,963.22	$171,180 (6 houses)	0
Power CDC	$103,012	0	$152,215	$128,141.50 (4 houses)

Community Housing Services was not recommended for funding due to the amount of prior year funds uncommitted.

Staff recommend reducing the Boarded Up Home program funds from $300,000 to $293,926, and the Administrative allocation from $183,353 to $182,679, to make up for the $6,474 decrease in the HOME allocation from HUD. This recommendation should not have a noticeable impact on services and is reflected on the attached spreadsheet.

Emergency Shelter Grant (ESG) Funds

Emergency Shelter Grant: $125,266 (Amount Projected); $125,133 (Actual Amount)
Purpose: ESG funds may be used for essential services, maintenance and operations and homeless prevention.

Agency	Essential Services	Operations	Administration	Total
Anthony Family Shelter	$6,277	$23,491		$29,191
Harbor House		$10,678		$10,678
Inter-Faith Inn		$23,410		$23,410
Ti'Wiconi Safe Haven	$1,046			$1,046
Salvation Army		$19,552		$19,552
United Methodist Open Door	$30,256			$30,256
YWCA		$4,293		$4,293
City of Wichita			$6,263	$6,130
Maximum/Category	$37,579 (30%)		$6,263 (5%)	$125,133

No proposals were received for homeless prevention. Therefore after reaching the maximum for Essential Services (30%) and Administration (5%), all other funds were allocated to Operations, which has no cap.

Staff recommends reducing the City of Wichita Administration amount by $133, to $6,130, since it such a small amount and can be more easily absorbed within the Department's administrative allocations, than to allocate the reductions across seven agencies.

Financial Considerations: City staff has projected the following allocations for 2010-2011, which are the same as 2009-2010: CDBG - $2,848,360; HOME - $1,833,537 and ESG - $125,266. Staff recommends that with the exception of summer youth employment funds as noted above, allocation of program income and other unallocated prior year funds be deferred until a later date. This will provide time for District projects from prior year allocations, to be identified and completed.

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

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

Recommendations/Actions: It is recommended that the City Council approve the recommendations for 2010-2011 expenditures for Community Development Block Grant, HOME Investment Partnerships and Emergency Shelter Grant programs, and authorize the required 30 day public comment period.

Attachments: Updated spreadsheet for 2010-2011 recommended allocations.

Agenda Item No. III-8

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: 119th Street West Improvement, between Pawnee and Kellogg (District IV)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the design concept and budget for right-of-way.

Background: The Capital Improvement Program (CIP) adopted by the City Council includes funding to improve 119th Street West, between Pawnee and Kellogg. The District IV Advisory Board held a neighborhood hearing for the project on April 7, 2010. The Board voted 6-1 to recommend approval of the project.

Analysis: The project will provide four through lanes on 119th Street West and a center two-way left turn lane with landscaped medians. Left turn lanes will be provided at all four approaches to the intersection at Pawnee and traffic signals will be installed if warranted at the time of construction. Drainage improvements within street right-of-way will be included with the project. A six foot wide sidewalk will be constructed on both sides of 119th Street West, and the available right-of-way and medians will be landscaped. Construction is planned to begin in the spring of 2011, pending right-of-way acquisition and utility relocation work, and be completed in late fall, 2011. Traffic will be carried one-way north bound during the first phase of construction.

Financial Consideration: On August 19, 2008, the City Council approved $177,000 for the design of this project. Staff is requesting that Council authorize a $100,000 budget for right-of-way, resulting in an approved budget of $277,000. The finding source is General Obligation bonds. The additional cost is included in the Adopted CIP. The project will be returned to the City Council at a future date for approval of construction funding.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through an important transportation corridor.

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

Recommendation/Action: It is recommended that the City Council approve the design concept, approve the budget for right-of-way, place the amending ordinance on first reading and authorize the necessary signatures.

Attachments: Map, CIP sheet and amending ordinance.

132019

First Published in the Wichita Eagle on May 14, 2010

ORDINANCE NO. 48-734

AN ORDINANCE DECLARING **119TH ST. WEST, BETWEEN PAWNEE AND KELLOGG (472-84694)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA, KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 12-685 provides that the governing body of any city shall have the power to designate and establish by ordinance any existing or proposed street, boulevard, avenue, or part thereof to be a main trafficway, the main function of which is the movement of through traffic between areas of concentrated activity within the city, and

WHEREAS, K.S.A. l2-687 provides that the governing body of any city shall have the power to improve or reimprove or cause to be improved or reimproved, any main trafficway or trafficway connection designated and established under the provisions of K.S.A. l2-685 et seq., and

WHEREAS, K.S.A. l2-689 provides that all costs of improvements or reimprovements authorized under the provisions of K.S.A. l2-687, including acquisition of right-of-way, engineering costs, and all other costs properly attributable to such projects, shall be paid by the city at large from the general improvement fund, general revenue fund, internal improvement fund, or any other fund or funds available for such purpose or by the issuance of general improvement bonds.

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

SECTION l. That **119TH ST. WEST, BETWEEN PAWNEE AND KELLOGG (472-84694)** in the City of Wichita, Kansas is hereby designated and established as a main trafficway, the primary function of which is the movement of through traffic between areas of concentrated activity within the City, said designation made under the authority of K.S.A. l2-685.

SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to **119th St. West, between Pawnee and Kellogg (472-84694)** as a main trafficway in the following particulars:

The design of a roadway as necessary for a major traffic facility.

SECTION 3. The costs of the construction of the above described improvement is estimated to be **One Hundred Seventy-Seven Thousand Dollars ($177,000)** exclusive of the cost of interest on borrowed money, with the total paid by the City of Wichita.

Said cost, when ascertained, shall be borne by the City of Wichita at large by the issuance of General Obligation Bonds under the authority of K.S.A. l2-689.

SECTION 4. The above described main trafficway improvement shall be made in accordance with Plans and Specifications prepared under the direction of the City Engineer of the City of Wichita and approved by the governing body of the City of Wichita, Kansas. Said plans and specifications are to be placed on file in the office of the City Engineer.

SECTION 5. Be it further ordained that the improvement described herein is hereby authorized under the provisions of K.S.A. l2-685 et seq.

SECTION 6. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of May, 2010.

_____
CARL BREWER, MAYOR

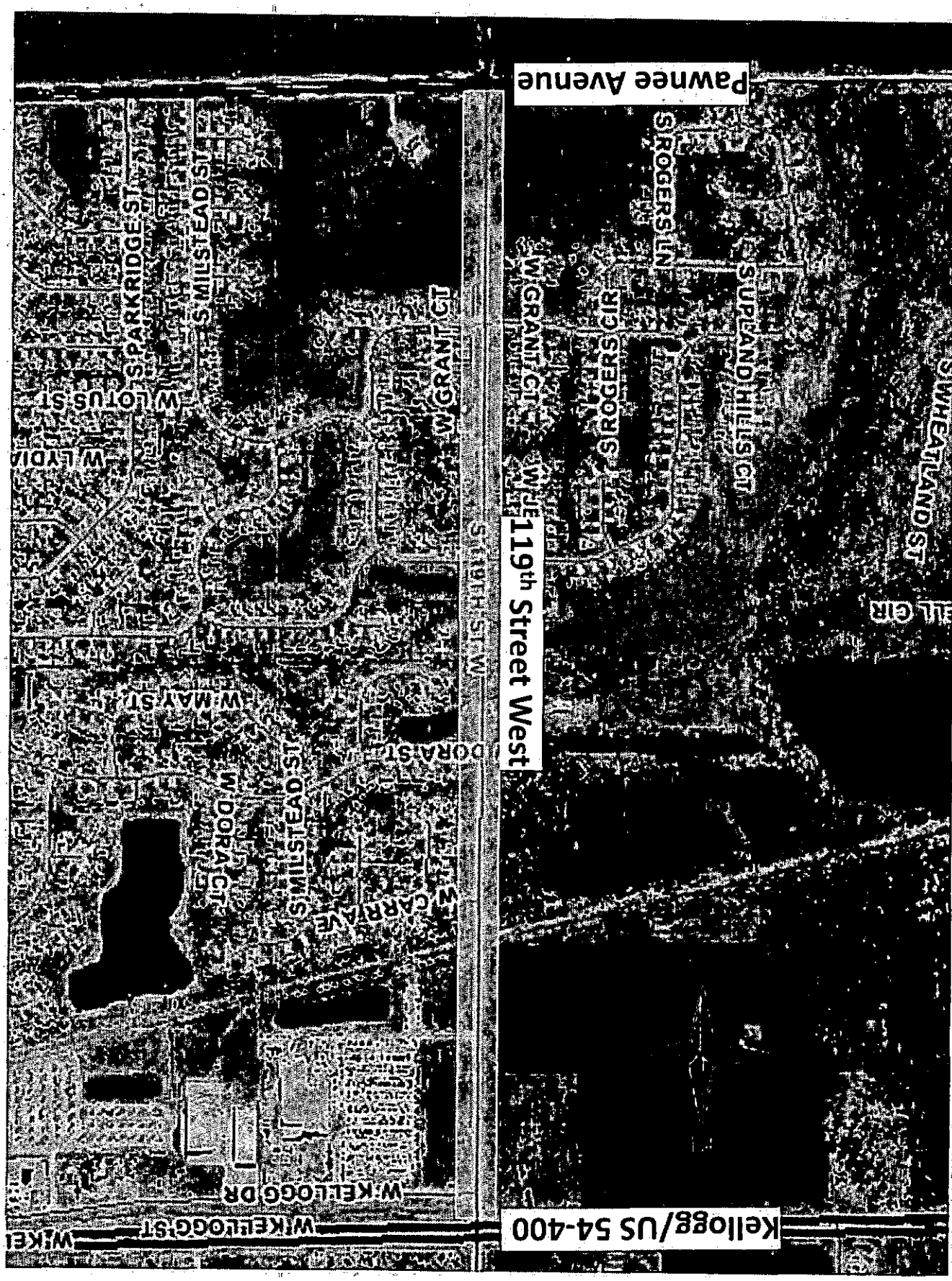
ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW


Pawnee Avenue
S ROGERS LN
S UPLAND HILLS CT
S ROGERS CIR
W GRANT CT
S WHEATLAND ST
119th Street West
S 119TH ST W
W GRANT CT
S PARKRIDGE ST
S MILSTEAD ST
W LOTUS ST
W MAY ST
W DORA ST
W DORA CT
S MILSTEAD ST
W CARR AVE
W KELLOGG DR
W KELLOGG ST
Kellogg/US 54-400

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE:

To Initiate Project	
To Revise Project	X

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

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location
Public Works	Eng	4/9/2010	119th St West, Pawnee - Kellogg

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
MS-		2010	

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

12. Project Cost Estimate

ITEM	GO	SA	KDOT	TOTAL
Right of Way				
Paving, grading & const.	$277,000			$277,000
Bridge & Culverts				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
Freeway				
Totals	$277,000			$277,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

Design & ROW Only

472-84694

13. Recommendation: Approve the design concept, budget revision and amending ordinance

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

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

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendations: Adopt the resolution.

Background: On March 23, 2010, a report was submitted with respect to the dangerous and unsafe conditions on the properties listed below. The Council adopted a resolution providing for a public hearing to be held on the condemnation actions at 9:30 a.m. or soon thereafter, on May 4, 2010.

Analysis: On March 1, 2010, the Board of Code Standards and Appeals (BCSA) held hearings on the properties listed below

Property Address	Council District
a. 1619 N. Fairmount	I
b. 2127 S. Washington	III
c. 6024 S. Minneapolis	III
d. 1559 N. Emporia	VI
e. 1611 N. Topeka	VI
f. 1258 N. Fairview	VI

Detailed information/analysis concerning these properties are included in the attachments.

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

Goal Impact: On January 24, 2006 the City Council adopted five (5) goals for the City of Wichita. These include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life, and Support a Dynamic Core Area & Vibrant Neighborhoods. This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods: Dangerous building condemnation actions, including demolitions, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: Pursuant to State Statute, the Resolutions were duly published twice on March 26, 2010 and April 2, 2010. A copy of each resolution was sent by certified mail or given personal service delivery to the owners and lien holders of record of the described property.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the resolutions declaring the buildings to be dangerous and unsafe structures, and accept the BCSA recommended actions to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structures. Any extensions of time granted to repair any structures would be contingent on the following: (1) All taxes have been paid to date as of May 4, 2010; (2) the structures have been secured as of May 4, 2010, and will continue to be kept secured; and (3) the premises are mowed and free of debris as of May 4, 2010, and will be so maintained during renovation.

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

Attachments: Case summary, summary and follow-up history.

DATE: April 19, 2010

CDM SUMMARY

COUNCIL DISTRICT # I

ADDRESS: 1619 N. FAIRMOUNT

LEGAL DESCRIPTION: LOTS 77, 79 AND 81, ON FAIRMOUNT AVENUE, FAIRMOUNT, AN ADDITION TO THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A two-story frame dwelling about 54 x 45 feet in size. Vacant for at least a year, this structure has cracking and shifting concrete basement walls and foundation; rotted and missing stucco siding; deteriorated front porch; rotted wood trim and framing members; and the 21 x 35 foot accessory structure is in fair condition.

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: April 19, 2010

BCSA GROUP # 1

ADDRESS: 1619 N. FAIRMOUNT

ACTIVE FIELD FILE STARTED: February 28, 2002

NOTICE(S) ISSUED: Since February 28, 2002, two notice of improvements and numerous violation notices have been issued. In January 2008, repairs progressed on the interior resulting in some violations being cleared. All exterior violations remain unmet. It should be noted this property has been the subject of Neighborhood Court.

PRE-CONDEMNATION LETTER: April 22, 2009

TAX INFORMATION: The 2007, 2008 and 2009 taxes are delinquent in the amount of $1,989.44, which includes interest.

COST ASSESSMENTS/DATES: None

PREMISE CONDITIONS: Clean

VACANT NEGLECTED BUILDING REPORT: None

NUISANCE ABATEMENT REPORT: None

POLICE REPORT: From August 1990 through September 2007 there have been fourteen reported police incidents police incidents at this location including auto theft recovered damaged, battery, other traffic violations impounded auto, (2) destruction to auto, (3) lost miscellaneous property, miscellaneous report, (2) larceny b auto accessories, larceny b from auto and (2) larceny a all other $1000+.

FORMAL CONDEMNATION ACTION INITIATED: December 18, 2009

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

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the March 1, 2010, BCSA hearing no one was present at the hearing as a representative of this property.

Board Member Harder made a motion to refer the property to the City Council with a recommendation of condemnation, with ten days to begin razing the structure, and ten days to finish removal of the structure. Board Member Youle seconded the motion. The motion was approved.

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

DATE: April 19, 2010

CDM SUMMARY

COUNCIL DISTRICT # III

ADDRESS: 2127 S. WASHINGTON

LEGAL DESCRIPTION: THE SOUTH 50 FEET OF LOT 2, BLOCK 8, KINKAID'S 2ND ADDITION, WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 42 x 53 feet in size. Vacant and open, this structure has been badly damaged by fire. It has fire damaged wood lap siding; fire damaged composition roof, with holes and missing shingles; and the 10 x 12 foot accessory structure is fire damaged and deteriorated.

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

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: April 19, 2010

BCSA GROUP # 1

ADDRESS: 2127 S. WASHINGTON

ACTIVE FIELD FILE STARTED: July 6, 2007

NOTICE(S) ISSUED: Since July 6, 2007, there have been notice of improvements and violation notices issued. This property has been badly damaged by fire. On July 27, 2007, OCI staff completed an emergency board-up on this property at a cost of $231.85. On May 26, 2009 and August 12, 2009, Tall Grass and Weeds cases were initiated against this property resulting in COW contractor abatement.

PRE-CONDEMNATION LETTER: April 7, 2009

TAX INFORMATION: The 2008 and 2009 taxes are delinquent in the amount of $1,026.70, which includes specials and interest.

COST ASSESSMENTS/DATES: There is a 2010 special assessment for weed cutting in the amount of $248.46.

PREMISE CONDITIONS: Bulky waste, miscellaneous debris and bags of trash.

VACANT NEGLECTED BUILDING REPORT: Pending case

NUISANCE ABATEMENT REPORT: Weed cutting on June 25, 2009, in the amount of $120.24 and August 20, 2009, in the amount of $120.24.

POLICE REPORT: From October 1996 through February 2006 there have been four reported police incidents at this location including disturb the peace fighting, lost miscellaneous property, miscellaneous report and miscellaneous officers.

FORMAL CONDEMNATION ACTION INITIATED: December 18, 2009

RECENT DEVELOPMENTS: No repairs have been made and the structure is unsecure due to fire damage.

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the March 1, 2010, BCSA hearing there was no representative present for this property.

Board Member Murabito made a motion to submit the property to the City Council for condemnation, with ten days to begin demolition, and ten days to finish removal of the structure. Board Member Harder seconded the motion. The motion carried.

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

DATE: April 19, 2010

CDM SUMMARY

COUNCIL DISTRICT # III

ADDRESS: 6024 S. MINNEAPOLIS

LEGAL DESCRIPTION: LOT 3, BLOCK 3, SOUTH HYDRAULIC GARDENS, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 38 x 26 feet in size. Vacant and open, this structure has rotted masonite siding, sagging and badly worn composition roof, with holes and missing shingles; deteriorated front porch; deteriorated soffits and fascia; and the 16 x 24 foot accessory structure is in fair condition.

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

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: April 19, 2010

BCSA GROUP # 1

ADDRESS: 6024 S. MINNEAPOLIS

ACTIVE FIELD FILE STARTED: October 23, 2006

NOTICE(S) ISSUED: Since October 23, 2006, a notice of improvement and numerous violation notices have been issued. In April 2008, an environmental case was initiated on this property, resulting in owner compliance. On June 30, 2009, staff was informed this property would be demolished by the owner. As of this date permits have not been issued. On March 16, 2010, OCI staff completed and emergency board-up on this property.

PRE-CONDEMNATION LETTER: November 23, 2009

TAX INFORMATION: The 2006, 2007, 2008 and 2009 taxes are delinquent in the amount of $2,070.07, which includes interest.

COST ASSESSMENTS/DATES: There is a pending special for board-up in the amount of $184.12.

PREMISE CONDITIONS: Clean

VACANT NEGLECTED BUILDING REPORT: None

NUISANCE ABATEMENT REPORT: None

POLICE REPORT: From June 2003 through May 2008 there have been two reported police incidents at this location including dead bodies found no witness and larceny b auto accessories.

FORMAL CONDEMNATION ACTION INITIATED: December 18, 2009

RECENT DEVELOPMENTS: No repairs have been made and the structure is unsecure with an open front door.

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the March 1, 2010 BCSA hearing, no agent represented this property.

Board Member Banuelos made a motion to send the property to the City Council for formal condemnation action, with ten days to initiate wrecking, and ten days to finish demolition. Board Member Youle seconded the motion. The motion was approved.

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

DATE: April 19, 2010

CDM SUMMARY

COUNCIL DISTRICT # VI

ADDRESS: 1559 N. EMPORIA

LEGAL DESCRIPTION: LOTS 98, 100 AND 102, EXCEPT THE NORTH 10 FEET OF LOT 102, ON EMPORIA AVENUE, PARMENTER'S ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A two story frame dwelling about 40 x 62 feet in size. Vacant for at least 4 months, this structure has a sagging and badly worn composition roof with holes and missing shingles; dilapidated front porch; and the 8 x 8 foot accessory structure is in fair condition.

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: April 19, 2010

BCSA GROUP # 1

ADDRESS: 1559 N. EMPORIA

ACTIVE FIELD FILE STARTED: June 3, 1997

NOTICE(S) ISSUED: Since June 3, 1997, a notice of improvement and numerous violation notices have been issued. In 2000, 2001, 2002, 2004 and 2009 Uniform Criminal Complaints were issued regarding this property and it has been the subject of Neighborhood Court. In 2000, 2007 and 2009, repairs progressed resulting in some violations being cleared.

PRE-CONDEMNATION LETTER: July 15, 2009

TAX INFORMATION: The 2006, 2007, 2008 and 2009 taxes are delinquent in the amount of $3,085.32, which includes specials and interest.

COST ASSESSMENTS/DATES: There is a 2010 special assessment for graffiti removal in the amount of $236.30.

PREMISE CONDITIONS: Clean

VACANT NEGLECTED BUILDING REPORT: None

NUISANCE ABATEMENT REPORT: None

POLICE REPORT: From July 1993 through March 2002 there have been twelve reported police incidents at this location including disorderly conduct other, (3) disturb the peace excessive noise, (2) other destruct of property, lost miscellaneous report, miscellaneous report, non injury accident under $1000, larceny b from auto, larceny a all other $1000+ and sudden death witnessed.

FORMAL CONDEMNATION ACTION INITIATED: December 18, 2009

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

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the March 1, 2010, BCSA hearing no party attended on behalf of this property.

Board Member Harder made a motion to refer the property to the City Council with a recommendation of condemnation, with ten days to begin wrecking the building, and ten days to complete removal. Board Member Coonrod seconded the motion. The motion carried.

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

DATE: April 19, 2010

CDM SUMMARY

COUNCIL DISTRICT # VI

ADDRESS: 1611 N. TOPEKA

LEGAL DESCRIPTION: LOTS 10 AND 12, ON TOPEKA AVENUE, FORD'S ADDITION TO THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A 1 ½ story frame dwelling about 27 x 49 feet in size. Vacant for at least 2 years, this structure has a cracking concrete foundation; badly worn composition roof, dilapidated front porch; and the wood trim is rotted.

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: April 19, 2010

BCSA GROUP # 1

ADDRESS: 1611 N. TOPEKA

ACTIVE FIELD FILE STARTED: February 14, 2004

NOTICE(S) ISSUED: Since February 14, 2004, a notice of improvement and numerous violation notices have been issued. This property was before the BCSA on an Unfit for Habitation case in June 2007. The BCSA found structure unfit for habitation and issued an order that it be vacated, and demolished. In May 2009, a Tall Grass and Weeds case was initiated on this property, resulting in COW contractor abatement. In September 2009, a Neighborhood Nuisance case was initiated on this property resulting in COW contractor abatement. It should be noted this property has been the subject of Neighborhood Court.

PRE-CONDEMNATION LETTER: September 18, 2009

TAX INFORMATION: The 2004, 2005, 2006, 2007, 2008 and 2009 taxes are delinquent in the amount of $3,698.35, which includes interest.

COST ASSESSMENTS/DATES: There is 2010 special assessment for weed cutting in the amount of $124.23 and a pending special for lot cleanup in the amount of $1045.40.

PREMISE CONDITIONS: Clean

VACANT NEGLECTED BUILDING REPORT: None

NUISANCE ABATEMENT REPORT: Weed cutting on May 29, 2009 in the amount of $120.24 and lot cleanup on October 22, 2009 in the amount of $1045.40.

POLICE REPORT: From May 1990 through April 2007 there have been forty-two reported police incidents at this location including aggravated robbery residence, burglary residence no force night, auto theft not recovered, (5) battery, draw deadly weapon, simple assault other, (5) other traffic violations impounded auto, auto license violation, runaway, (3) lost miscellaneous property, (9) miscellaneous report, miscellaneous officers, (3) mental cases, larceny b all other, (3) motor vehicle parked, burglary residence, unlawful inhalation, trespass, private property non-injury accident and non injury accident hit and run under $1000.

FORMAL CONDEMNATION ACTION INITIATED: December 18, 2009

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

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the March 1, 2010, BCSA hearing there was no representative in attendance for this property.

Board Member Harder made a motion to send the property before the City Council with a recommendation of condemnation, with ten days to begin demolition and ten days to complete demolition. Board Member Coonrod seconded the motion. The motion was approved.

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

DATE: April 19, 2010

CDM SUMMARY

COUNCIL DISTRICT # VI

ADDRESS: 1258 N. FAIRVIEW

LEGAL DESCRIPTION: LOTS 1197 AND 1199, EXCEPT THE EAST 54, 65 FEET, ON WICHITA STREET, LEWELLEN'S 2ND ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 24 x 41 feet in size. Vacant for at least 8 months, this structure has been damaged by fire. It has a shifting concrete block foundation; deteriorated wood panel siding; and the 20 x 18 foot accessory structure is deteriorated.

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

DATE: April 19, 2010

BCSA GROUP # 1

ADDRESS: 1258 N. FAIRVIEW

ACTIVE FIELD FILE STARTED: July 8, 2009

NOTICE(S) ISSUED: Since July 8, 2009, a notice of improvement and violation notice have been issued. This property has been damaged by a fire. In July 2009, a Neighborhood Nuisance case was initiated on this property resulting in City of Wichita contractor abatement.

PRE-CONDEMNATION LETTER: September 21, 2009

TAX INFORMATION: Current

COST ASSESSMENTS/DATES: There is a 2010 special assessment for lot cleanup in the amount of $772.65, which includes interest.

PREMISE CONDITIONS: Some trash otherwise clean.

VACANT NEGLECTED BUILDING REPORT: None

NUISANCE ABATEMENT REPORT: Lot cleanup on October 7, 2009 in the amount of $673.50.

POLICE REPORT: From August 1991 through January 2008 there have been twenty-three reported police incidents at this location including aggravated robbery from person, (4) battery, (2) battery domestic violence, disturb the peace fighting, (2) disorderly conduct other, destruction to auto, other destruction to property, (5) miscellaneous reports, mental cases, larceny b from auto, aggravated assault clubbing, burglary non residence no force night and (2) disturb the peace phone call.

FORMAL CONDEMNATION ACTION INITIATED: December 18, 2009

RECENT DEVELOPMENTS: No repairs have been made and the fencing has been damaged. The structure is unsecure with an open rear door and open garage door.

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the March 1, 2010, BCSA hearing no one attended the hearing on behalf of this property.

Board Member Youle made a motion to submit the property to the City Council with a recommendation of condemnation, with ten days to initiate razing the structure, and ten days to finish the wrecking. Board Member Harder seconded the motion. The motion passed.

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

Agenda Item No. III-10

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: DER 2010-00004 Request to Amend Disposition Supplement No. 4 for the Administration Center Project Area for the Wichita Neighborhood Development Program Urban Renewal Area. RE: Four parcels located west of Wichita Street, south of 2nd Street N. and north and south of 1st Street N. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: New Business

Staff Recommendation: Adopt the resolution.

MAPC Recommendation: Approve (14-0). The proposed amendment is in conformance with the Wichita-Sedgwick County Metropolitan Area Comprehensive Plan.

Background: A request has been received from Builders Inc. to amend Disposition Supplement No. 4 for the Administration Center Project Area for the Wichita Neighborhood Development Program Urban Renewal Area, as it pertains to four parcels of land owned by Builders Inc. and located adjacent to N. Wichita Street and W. 1st Street (see Map 1). These four parcels were recently rezoned to CBD Central Business District in order to allow for mixed-use commercial development without prescribed building setback requirements and off-street parking requirements. Disposition Supplement No. 4 for the Administration Center Project Area is applicable to these parcels and contains various land use, building, signage and off-street parking provisions / standards that are contrary to the current zoning requirements for these properties. The applicant has indicated that Wichita's Urban Renewal Plan (URP) requirements are inflexible and problematic for the finalization of a future development plan concept for these parcels. A URP amendment is requested that would allow the current CBD Central Business District zoning requirements of the City of Wichita Unified Zoning Code, and guidance from the Wichita-Sedgwick County Comprehensive Plan to prevail.

Wichita's URP contains a Land Use Plan map, a description of land use categories, planning standards, and a description of techniques to achieve the objectives of the Plan. Generally speaking, the URP objectives are to create a "physical character and environment meeting desirable planning standards, the provision of needed public services and amenities, and the improvement of social and economic conditions."

The standards in the URP apply to any property that has been owned (past or present) by either the City or the former Urban Renewal Authority. Over the years, several amendments have been made to the URP in order to accommodate various redevelopment projects in downtown Wichita that were not consistent with the land use, building, signage and off-street parking requirements stipulated in the URP.

Analysis: The properties subject of this URP amendment request fall within Disposition Supplement No. 4 for the Administration Center Project Area. The properties are currently designated as "Mixed Use" on the Administration Center Project Area Land Use Plan map. Land uses are limited to government/public, office, commercial/retail, multi-family housing and transient housing. Problematic building, off-street parking, signage and landscaping/site design requirements include: 20% of the lot area to be dedicated for pedestrian

and vehicular circulation; minimum off-street parking requirements of 4 spaces per 1000 gross square feet of floor area; commercial signage restrictions that differ from the current city sign code provisions; and, unspecified landscaping requirements.

The proposed URP amendment (see Resolution and Exhibit "A") would create a new category of use in the Administration Center Project Area Land Use Plan called "Deferred Use". The "Deferred Use" designation will apply to the requested properties, thereby exempting them from the URP requirements (all land use provisions, building requirements, rehabilitation of existing structures, circulation requirements, redeveloper's obligations, design objectives, and procedures) and making them subject only to the Unified Zoning Code, the Subdivision Regulations and the Wichita-Sedgwick County Comprehensive Plan.

The Wichita-Sedgwick County Comprehensive Plan has designated the functional land use category for downtown Wichita as "Downtown Regional Center". The proposed URP amendment is consistent with the residential, employment, entertainment, cultural and government center uses associated with the "Downtown Regional Center" functional land use classification. Accordingly, the URP amendment is deemed by staff to be appropriate and consistent with the Comprehensive Plan.

According to K.S.A. 17-4747, any amendment to the urban renewal plan must be submitted to the planning commission for review and recommendation to the city council as to the amendment's conformity with the city's comprehensive plan. At its meeting of April 1, 2010, the Wichita-Sedgwick County Metropolitan Area Planning Commission reviewed this proposed URP amendment, and unanimously passed a motion finding the proposed URP amendment to be in conformity with the Wichita-Sedgwick County Comprehensive Plan.

Notice of the City Council public hearing for this proposed URP amendment was published in the Wichita Eagle on April 15th and April 22nd.

Financial Considerations: None

Goal Impact: The proposed URP amendment impacts two goal areas. It supports the goal to Promote Economic Vitality, and the goal to Support a Dynamic Core Area and Vibrant Neighborhoods.

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

Recommendation/Actions: Close the public hearing, adopt the findings of the MAPC and adopt the resolution amending Disposition Supplement No. 4 for the Administration Center Project Area.

Attachments: Map 1, Resolution and Exhibit "A".

RESOLUTION NO. 10-125

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AMENDING DISPOSITION SUPPLEMENT NO. 4 FOR THE ADMINSTRATION CENTER PROJECT AREA TO THE GENERAL URBAN RENEWAL PLAN OF NOVEMBER 27, 1972, FOR THE WICHITA NDP URBAN RENEWAL AREA OF WICHITA, KANSAS

WHEREAS, The City of Wichita has a General Urban Renewal Plan for Wichita NDP Urban Renewal Area of Wichita, Kansas, which was adopted on November 27, 1972, and filed of record with the Register of Deeds of Sedgwick County, Kansas, at Film 558, Pages 448-495, on December 14, 1982; and

WHEREAS, the City of Wichita has adopted Disposition Supplement No. 4 to the Urban Renewal Plan for the Administration Center Project Area, which Plan has been amended from time to time, and is filed of record with the Register of Deeds of Sedgwick County, Kansas, at Film 482, Pages 1296-1301, on June 23, 1981; and

WHEREAS, the City of Wichita wishes to amend the "Land Use Map" map for the Administration Center Project Area and various provisions, restrictions and requirements contained in the General Urban Renewal Plan and Disposition Supplement No. 4 for the Administration Center Project Area Plan; and

WHEREAS, the Wichita-Sedgwick County Metropolitan Area Planning Commission, which is the duly designated and acting official planning body for the locality, has submitted to the governing body its report and recommendations respecting the proposed amendment, which report finds that such amendment is in conformance with the comprehensive plan, and the governing body has duly considered the report of the Planning Commission; and

WHEREAS, the findings and provisions of the General Urban Renewal Plan and Administration Center Project Area Plan not modified by this amendment shall remain in full force and effect,

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

1. It is hereby found and determined that an amendment to Disposition Supplement No. 4 of the General Urban Renewal Plan for Wichita NDP Urban Renewal Area and Administration Center Project Area Plan is necessary to allow the appropriate land use and development of certain land within the Area. The Amendment is attached hereto as Exhibit "A" and incorporated herein by reference.

2. It is hereby found and determined that the proposed amendment conforms to the comprehensive plan of the City of Wichita as a whole.

3. It is hereby found and determined that no individuals or families will be relocated as a result of the amendment.

4. It is hereby found and determined that the proposed amendment will afford maximum opportunity, consistent with the sound needs of the City of Wichita as a whole, for the redevelopment of the Area by private enterprise.

5. It is hereby found and determined that the Amendment to Disposition No. 4 for the Administration Center Project Area, including the Land Use Plan, as attached hereto in Exhibit "A" amends and supplements Disposition Supplement No. 4 and the applicable provisions of the General Urban Renewal Plan as to land use provisions, building requirements, rehabilitation of existing structures, circulation requirements, redeveloper's obligations, design objectives, and procedures which are inconsistent with the amendment attached hereto.

6. The City Clerk is hereby directed to file a record of the amendment approved above with minutes of this meeting and to file the same of record with the Register of Deeds of Sedgwick County, Kansas.

ADOPTED at Wichita, Kansas, this 4th day of May, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, City Attorney

URBAN RENEWAL PLAN GENERAL LAND USE PLAN AMENDMENT FOR ADMINISTRATION CENTER URBAN RENEWAL PROJECT AREA

Exhibit "A"- page 3

ADMINISTRATION CENTER (A-5-3)

LAND USE PLAN

Jan. 1972
Jul. 1972
Nov. 1972
revised — Feb. 1977
Feb. 1978
Apr. 2010

LEGEND

- Deferred Use
- Mixed Use
- Residential
- Trade Service

N

URBAN RENEWAL AGENCY of the
WICHITA, KANSAS METROPOLITAN AREA

AMENDMENT

TO

GENERAL URBAN RENEWAL PLAN

OF NOVEMBER 27, 1972

DISPOSITION SUPPLEMENT NO. 4

FOR THE

ADMINISTRATION CENTER

FOR

WICHITA NDP URBAN RENEWAL AREA

WICHITA, KANSAS

AMENDED APRIL, 2010

General Urban Renewal Plan was originally recorded on film 558, Pages 448-495, on the 14th day of December, 1982

Disposition Supplement No. 4 for the Administration Center, amended on May 19, 1981, was originally recorded on film 482, pages 1296-1301, on June 23, 1981

Exhibit "A" – page 1

Amendment to Land Disposition Supplement No. 4
Administration Center

Amend Sec. 1, Land Use Provisions by the addition of subsection d, as follows:

d. Deferred Use – this category permits all land uses allowed on such property by the Wichita-Sedgwick County Unified Zoning Code, as may be amended from time to time.

Add New Sec. 9, Exemption from Plan, as follows:

9. Exemption from Plan

Notwithstanding the Planning Criteria and Standards in the General Urban Renewal Plan and the Minimum Land Disposition Controls for this Administrative Center NDP Area, the restrictions and controls applicable to the land use category of "Deferred Use" shall be those set forth in the Wichita-Sedgwick County Unified Zoning Code and the Wichita-Sedgwick County Subdivision Regulations, as such may be amended from time to time, and shall be consistent with the Wichita-Sedgwick County Comprehensive Plan.

Exhibit "A" – page 2

MAP 1

URBAN RENEWAL PLAN GENERAL LAND USE PLAN FOR ADMINISTRATION CENTER URBAN RENEWAL PROJECT AREA

ADMINISTRATION CENTER (A-5-3)

LAND USE PLAN

Jan. 1972
Jul. 1972
Nov. 1972
revised — Feb. 1977
Feb. 1978

LEGEND

- Mixed Use
- Residential
- Trade Service
- Parcels Subject of DER 2010-00004 Urban Renewal Plan Amendment Request

N

URBAN RENEWAL AGENCY of the
WICHITA, KANSAS METROPOLITAN AREA

Agenda Item No. IV-1

City of Wichita
City Council Meeting
May 4, 2010

To: Mayor and City Council

Subject: ZON2010-00004 - City zone change from SF-5 Single-family Residential ("SF-5") to NO Neighborhood Office ("NO") with a Protective Overlay; generally located ¼ mile south of 21st Street North and west of Ridge Road. (District V)

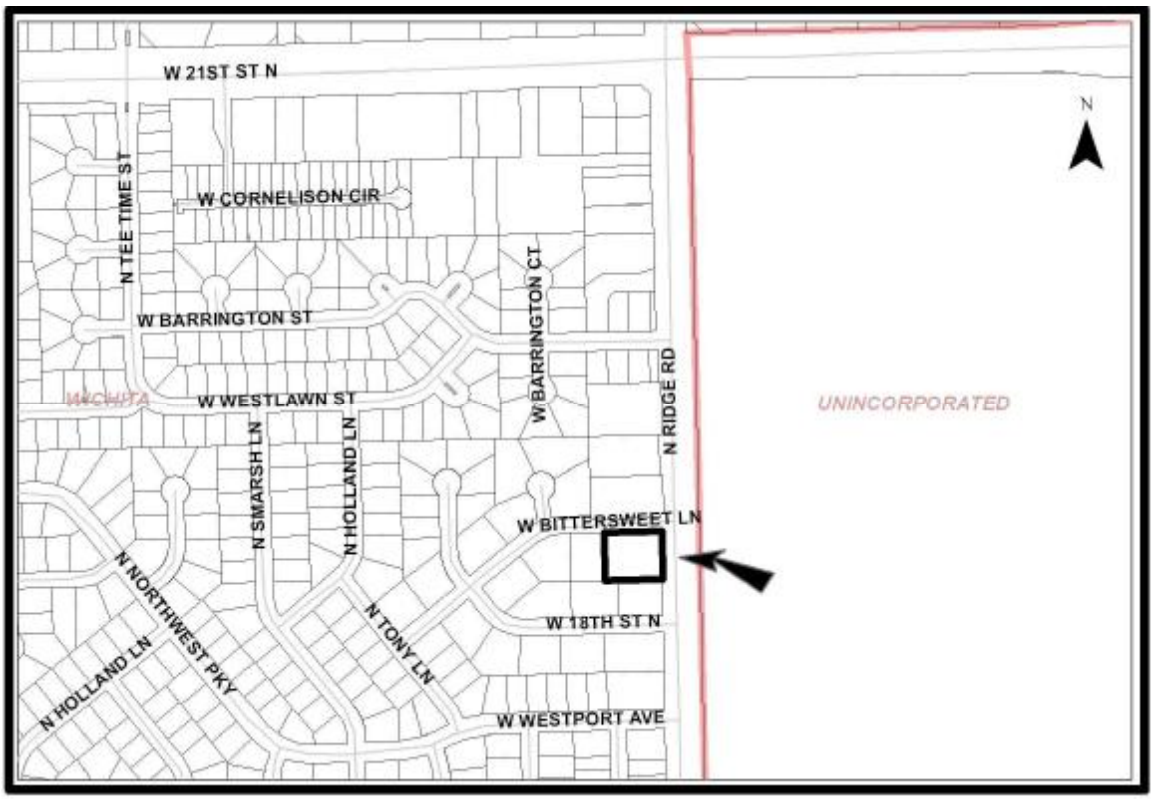
Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Non-Consent)

MAPC Recommendations: Deny (8-3).

MAPD Staff Recommendations: Deny.

DAB VI Recommendations: Approve unanimously (7-0), subject to the provisions of a Protective Overlay.



Background: The applicant requests NO Neighborhood Office ("NO"), with a Protective Overlay (PO), zoning on the 0.78 acre, SF-5 Single-family Residential ("SF-5") zoned site. The property is platted as Lot 1, Block B, Westwood Heights 1st Addition. Per the applicant's attached letter, he proposes to build a detached office/studio and hire more than two employees for an expansion of his current home-based internet graphic art business. Home occupation regulations can be found in Unified Zoning Code (UZC) Art IV, Sec IV-E, 5a. The SF-5 zoning district allows a home occupation for a graphic art business, but does not allow a home occupation to be conducted outside of the main dwelling unit, nor does it allow persons not living in the main dwelling unit to be engaged in the home occupation; UZC, Art IV, Sec IV-E, 4a and c. The applicant's letter also proposes: hours and days of operation, parking, no signage, building the office/studio to be residential in character similar to the existing detached garage, and he will not permit any clients, customers or the general public on the premises. The corner lot's single-family residence (built in 1955) has access onto Ridge Road (east side) and Bittersweet Lane (north side).

The zoning of the area is mostly SF-5 zoning, with some TF-3 Two-family Residential ("TF-3") zoning located on the west side of Ridge Road and SF-20 Single-family Residential ("SF-20") zoning located along the east side of Ridge Road. Single-family residential neighborhoods occupy the area along the west side of Ridge Road. The site is one of a cluster of seven (including the property located north of the site and a vacant lot located further south) large SF-5 zoned lots located between 13th and 21st Streets North that have their single-family residences facing Ridge Road, with direct access/drives onto Ridge Road. These residences also appear to be some of the older residences (built 1950s) in the area. The subject site's residence appears to have been built before it was included in the Westwood Heights 1st Addition. All other SF-5 and TF-3 zoned lots located along the west side of Ridge Road are developed with their side or back yards facing Ridge Road, and they have no drives onto Ridge Road. Located on the east side of Ridge Road, is the large, SF-20 zoned Sedgwick County owned park, which includes the Sedgwick County Zoo, open space, multiple playing fields, fishing ponds and slough and a bike/pedestrian path. The nearest non-residential zoning from the site is the LC Limited Commercial ("LC") retail uses located approximately ¼ mile north at the 21st Street and Ridge Road intersection, which includes the Sedgwick County Extension Office.

Analysis: At the DAB V meeting held on March 1, 2010, the DAB considered the requested NO zoning and the proposed PO:

(1) Prohibited uses shall include: assisted living, correctional placement residence limited, day care general, hospital, recycling collection station private, animal care limited, automated teller machine, bank or financial institution, bed and breakfast inn, broadcast/recording studio, funeral home, hotel or motel, ancillary parking, wireless communication facility and asphalt or concrete plant limited.

(2) The property shall be developed and/or redeveloped with a building that has a residential character, and that includes brick, masonry, wood, Hardie board, composite or a similar type of siding; a double-pitched or hip roof, with a maximum height of 25 feet.

(3) Signage shall be that permitted by the home occupation regulations.

(4) The property shall be restricted to one point of access onto Ridge Road. The property owner shall dedicate complete access control to Bittersweet Lane. The property owner of the subject site shall provide a joint access and cross lot circulation agreement to be provided prior to the case going to City Council, to be in effect when/if the abutting lot to the south also converts to a non-residential use.

(5) Lighting shall conform to lighting standards in Sec. IV-B.4 of the Unified Zoning Code and be limited to no more than 14 feet in height, including the base. No light poles shall be located within the compatibility setbacks, where the site abuts and is adjacent to residential zoning.

(6) Landscaping shall be provided that is equivalent to a landscaped street yard, parking lot landscaping and screening along Ridge Road, and a landscape buffer along the property lines adjoining a residential district, as required in the City of Wichita Landscape Ordinance. A Landscape Plan shall be submitted to the Director of Planning for approval prior to the issuance of a building permit.

The DAB recommended APPROVAL (7-0) of the requested NO zoning subject to the provisions of the proposed PO. There were no members of the public that spoke for or against the requested zoning at the DAB meeting.

At the MAPC meeting held on March 18, 2010, the MAPC voted to DENY (8-3) the requested NO zoning and the proposed PO, noting that the request was spot zoning. There were members of the public that spoke in opposition to the request at the MAPC meeting. At the end of the two-week protest period, 35.85 percent of the total land area within the protest area submitted valid protests against the requested zoning. It takes a 3/4 majority vote of the Council to overturn the protest and a 2/3 majority vote to overturn the MAPC's recommendation to deny the requested zoning.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality

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

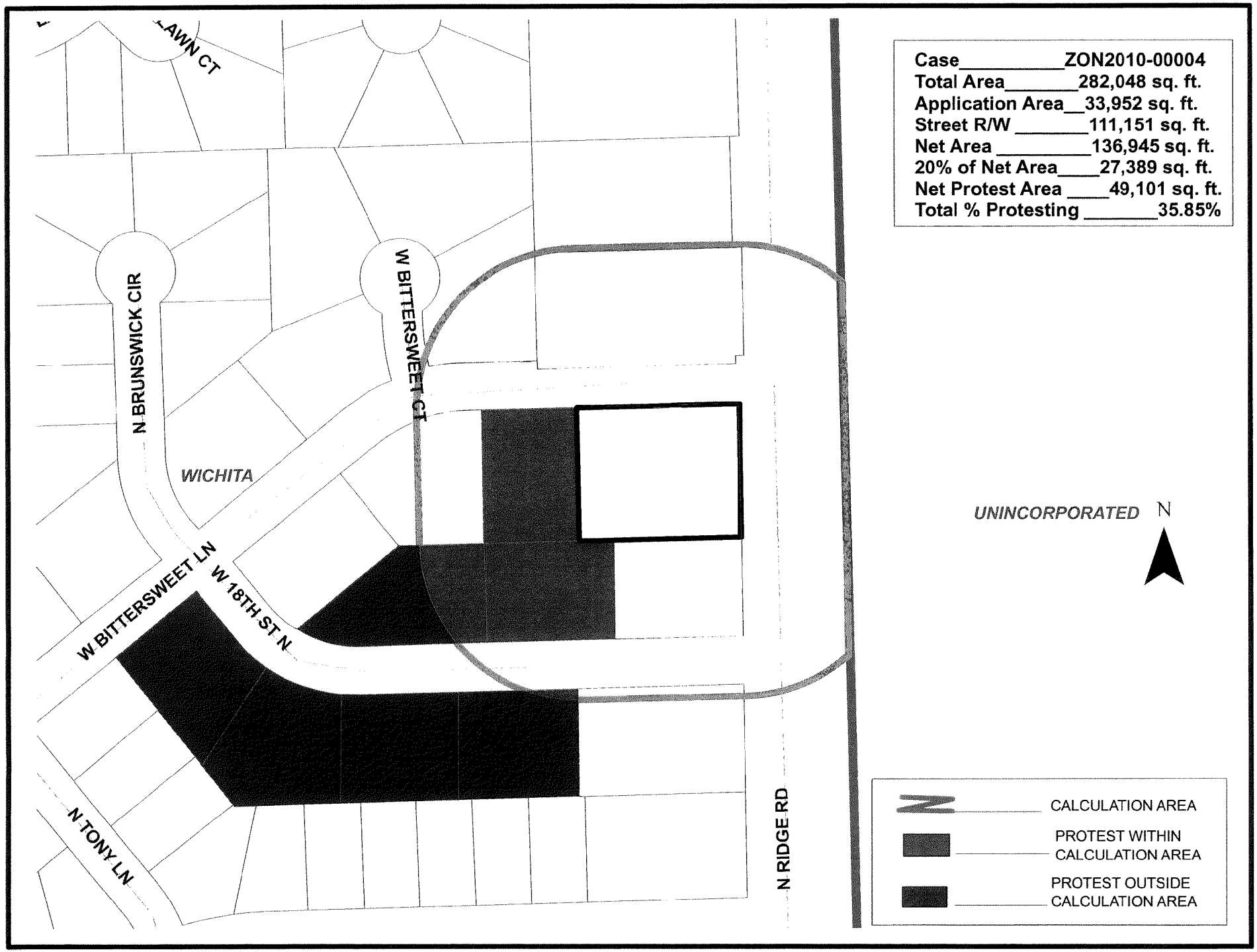
Recommendation/Actions:

1. Concur with the findings of the MAPC, and deny the requested zone change; or

2. Approve the requested zone change by making alternative findings, and override the MAPC's recommendation and the valid protest (requires 2/3 majority vote to override the MAPC's recommendation and a 3/4 majority to override the valid protest); or

3. Return the case to the MAPC for further consideration with a statement specifying the basis for the Council's failure to approve or deny the application (simple majority vote required).

Attachment: MAPC minutes, DAB minutes, applicant's letter and protest map.


Case ZON2010-00004
Total Area 282,048 sq. ft.
Application Area 33,952 sq. ft.
Street R/W 111,151 sq. ft.
Net Area 136,945 sq. ft.
20% of Net Area 27,389 sq. ft.
Net Protest Area 49,101 sq. ft.
Total % Protesting 35.85%
N
UNINCORPORATED
WICHITA
N BRUNSWICK CIR
W BITTERSWEET CT
W BITTERSWEET LN
W 18TH ST N
N TONY LN
N RIDGE RD
CALCULATION AREA
PROTEST WITHIN CALCULATION AREA
PROTEST OUTSIDE CALCULATION AREA

EXCERPT OF THE MARCH 18, 2010 MAPC HEARING

Case No.: ZON2010-04 - Jerry C. Diekmann (applicant/owner) requests a City zone change from SF-5 Single-Family Residential to NO Neighborhood Office on property described as:

Lot 1, Block B, Westwood Heights 1st Addition to Wichita, Sedgwick County, Kansas, generally located ¼ mile south of 21st Street North, on the southwest corner of Ridge Road and Bittersweet Lane (1935 North Ridge Road).

BACKGROUND: The applicant requests NO Neighborhood Office ("NO"), with a Protective Overlay (PO) zoning on the 0.78-acre, SF-5 Single-family Residential ("SF-5") zoned site; Lot 1, Block B, Westwood Heights 1st Addition. Per the applicant's attached letter, he proposes to build a detached office/studio and hire more than two employees for an expansion of his current home based internet graphic art business. Home occupation regulations can be found in Unified Zoning Code (UZC) Art IV, Sec IV-E, 5a. The SF-5 zoning district allows a home occupation for a graphic art business, but does not allow a home occupation to be conducted outside of the main dwelling unit, nor does it allow persons not living in the main dwelling unit to be engaged in the home occupation; UZC, Art IV, Sec IV-E, 4a & c. The applicant's letter also proposes hours and days of operation, parking, no signage, building the office/studio to be residential in character, similar to existing detached garage, and not permitting any clients, customers or the general public on the premises. The corner lot's single-family residence (built 1955) has access onto Ridge Road (east side) and Bittersweet Lane (north side).

The zoning of the area is mostly SF-5 zoning, with some TF-3 Two-family Residential ("TF-3") zoning located on the west side of Ridge Road and SF-20 Single-family Residential ("SF-20") zoning along the east side of Ridge. Single-family residential neighborhoods occupy the area along the west side of Ridge. The site is one of a cluster of seven (including the property north of the site and a vacant lot located further south) large SF-5 zoned lots located between 13th and 21st Streets North that have their single-family residences facing Ridge, with direct access/drives onto Ridge. These residences also appear to be some of the older residences (built 1950s) in the area; the subject site's residence appears to have been built before it was included in the Westwood Heights 1st Addition. All other SF-5 and TF-3 zoned lots located along the west side of Ridge are developed with their side or back yards facing Ridge and have no drives onto Ridge. Located on the east side of Ridge, is the large, SF-20 zoned Sedgwick County owned parkland, which includes the Sedgwick County Zoo, open space, multiple playing fields, fishing ponds and slough and a bike/pedestrian path. The nearest non-residential zoning from the site, is the LC Limited Commercial ("LC") zoned retail located approximately ¼-mile north at the 21st and Ridge intersection, which includes the LC zoned Sedgwick County Extension Office.

CASE HISTORY: The site is platted as Lot 1, Block B, Westwood Heights 1st Addition, recorded with the Register of Deeds July 12, 1960. In 1990, the site requested a zone change from R-1 Suburban Residential ("R-1") to BB Office District ("BB"); the MAPC recommended denial and the Board of County Commissioners denied the request. The site/area was annexed into the City in between 1991 – 2000. In 2001, the site requested NO zoning, ZON2001-00039. Staff recommended denial, but also offered an alternate recommendation of approval with a PO, if the MAPD considered the request appropriate. The MAPC approved the NO zoning with a PO at their July 19, 2001, meeting. The Wichita City Council (WCC) denied the requested NO zoning with the PO at their August 14, 2001, meeting. At the DAB V's March 1, 2010, meeting, the DAB recommended approval of the requested NO zoning with the proposed PO; see provisions of the PO in the "Recommendation" portion of this report.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single–family residential
SOUTH:	SF-5	Single–family residential

EAST:	SF-20	Sedgwick County Parkland
WEST:	SF-5	Single–family residential

PUBLIC SERVICES: The site/corner lot is located along Bittersweet Lane and Ridge Road. Ridge is a four-lane arterial street, with a center turn lane. The traffic count for this portion of Ridge, between 13th and 21st Streets North, is approximately 13,611 – 15,388 cars per day (ADTs). The projected traffic volume for 2030 is 16,790 ADTs. There are no street projects included in the C.I.P. The property has one drive entrance onto Ridge Road and one onto Bittersweet Lane. Bittersweet is a paved residential street, with bar ditches. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide" of the Wichita-Sedgwick County Comprehensive Plan identifies the application area as "Urban Residential." The Urban Residential category reflects the full diversity of residential development densities found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may be found in this category. The site's current use as a single-family residence and its SF-5 zoning comply with the Urban Residential category.

The Office Locational Guidelines of the Comprehensive Plan recommend that office sites be generally located adjacent to arterial streets. The site's location along Ridge, a four-lane arterial street, with a center turn lane, meets that guideline. The site's residence faces the arterial road, Ridge, which is a less desirable orientation for a single-family residence. Local, service oriented offices should be incorporated within or adjacent to neighborhood and community scale commercial development, and low-density office use can serve as a transitional land use between residential uses and higher intensity uses. The proposed NO zoning does not serve as a transitional zoning/land use between residential uses and higher intensity non-residential uses. The proposed zoning would create an isolated non-residential zoned site, surrounded by SF-5 zoning and single-family residences and the adjacent SF-20 zoned County Parkland. The site's orientation towards Ridge somewhat isolates the site from its residential neighbors, which have no direct access to Ridge and are buffered from Ridge by this large lot.

The UZC would require compatibility setbacks and compatibility height standards between non-residential and residential development, as well as a screening requirement from residential zoning and uses. Conformance with the Landscape Ordinance would also be required for this proposal. The applicant would also need to provide an improved parking area.

RECOMMENDATION: The Comprehensive Plan "2030 Wichita Functional Land Use Guide" designates this property as Urban Residential. Single-family residential uses border this site to the north, south and west, and park land is to the east. Introduction of the NO zoning district at this location would permit a wider range of uses that are not in character with adjacent zoning districts and uses. A change in zoning could have a detrimental effect on adjacent residential properties and a change in zoning could trigger requests for more zoning changes along this stretch of Ridge Road, in particular for those six other large residential lots whose residences face the arterial road, Ridge, and have direct access/drives onto Ridge. Therefore, it is recommended that this zone change request be DENIED. But, if in the opinion of the MAPC this zone change request is appropriate for this location, staff recommends approval subject to the following provisions of a Protective Overlay (PO) which would restrict signage, and address landscaping, screening, parking, vehicular access, and require residential character for any building development/redevelopment:

1. Prohibited uses shall include: assisted living, correctional placement residence limited, day care

general, hospital, recycling collection station private, animal care limited, automated teller machine, bank or financial institution, bed and breakfast inn, broadcast/recording studio, funeral home, hotel or motel, ancillary parking, wireless communication facility and asphalt or concrete plant limited.

2. The property shall be developed and/or redeveloped with a building that has a residential character, and that includes brick, masonry, wood, Hardie board, composite or a similar type of siding; a double-pitched or hip roof, with a maximum height of 25 feet.

3. Signage shall be that permitted by the home occupation regulations.

4. The property shall be restricted to one point of access onto Ridge Road. The property owner shall dedicate complete access control to Bittersweet Lane. The property owner of the subject site shall provide a joint access and cross lot circulation agreement to be provided prior to the case going to City Council, to be in effect when/if the abutting lot to the south also converts to a non-residential use.

5. Lighting shall conform to lighting standards in Sec. IV-B.4 of the Unified Zoning Code and be limited to no more than 14 feet in height, including the base. No light poles shall be located within the compatibility setbacks, where the site abuts and is adjacent to residential zoning.

6. Landscaping shall be provided that is equivalent to a landscaped street yard, parking lot landscaping and screening along Ridge Road, and a landscape buffer along the property lines adjoining a residential district, as required in the City of Wichita Landscape Ordinance. A Landscape Plan shall be submitted to the Director of Planning for approval prior to the issuance of a building permit.

This recommendation is based on the following findings:

(1) The zoning, uses and character of the neighborhood: All property adjoining or adjacent to the application area is zoned SF-5 or SF-20, each of these properties is used as single family residences or as Sedgwick County parkland with open space, multiple playing fields, fishing ponds and slough and a bike/pedestrian path. The application area is part of a larger area that is entirely residential in character. The site is also one of a cluster of seven (including the property north of the site and a vacant lot located further south) large SF-5 zoned lots located between 13th and 21st Streets North that have their single-family residences facing Ridge, with direct access/drives onto Ridge. All other SF-5 and TF-3 zoned lots located along the west side of Ridge are developed with their side or back yards facing Ridge, with no direct access/drives onto Ridge

(2) The suitability of the subject property for the uses to which it has been restricted: The property could continue to be used for a single-family residence. Other nearby properties in a similar situation continue to be used for residential purposes. Also, the 0.78-acre lot could potentially be subdivided into more lots through lot splits or a replat. The site's development orientation (residence facing Ridge and having direct access) towards Ridge, a four lane arterial with a turn lane, probably makes it less desirable for single-family residential use.

(3) Extent to which removal of the restrictions will detrimentally affect nearby property: No similar zoning changes have been approved on this section of Ridge Road, although this is the subject site's third application for an office type of zoning. A change to NO zoning could impact the surrounding residences with a probable increase in traffic and a change in neighborhood

character. Approval of this request for NO zoning could encourage the adjacent six, large SF-5 zoned lots/residences to seek a similar approval, as they all have direct access/drives onto Ridge and have their residences facing Ridge.

(4) Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Functional Land Use Guide" of the *Wichita-Sedgwick County Comprehensive Plan* identifies this site as appropriate for Urban Residential development, which is not in conformance with the application for NO zoning. The proposed rezoning is not in conformance with the Office Locational Guidelines of the plan, in that the site would not serve as a transitional land use from more intense development. The proposed zoning would create an isolated non-residential zoned site, surrounded by SF-5 zoning and single-family residences and the adjacent SF-20 zoned County Parkland. The Guidelines also recommend that office sites be generally located adjacent to arterial streets. The site's location along Ridge, a four-lane arterial street, with a center turn lane, meets that guideline. The site's residence faces the arterial road, Ridge, which is a less desirable orientation for a single-family residence. The site's orientation towards Ridge somewhat isolates the site from its residential neighbors, which have no direct access to Ridge and are buffered from Ridge by this large lot.

(5) Impact of the proposed development on community facilities: Drainage considerations brought about by redevelopment of the site and a probable increase in traffic onto Ridge.

BILL LONGNECKER, Planning Staff presented the Staff Report. He reported that DAB V recommended approval with the Protective Overlay recommended by staff. He commented that although it was not mentioned in the Staff Report, this proposal is considered "spot zoning."

MILLER STEVENS asked for clarification as to where the new structure will be located on the property.

LONGNECKER referred to the site plan and indicated an area behind the garage on the west side of the property. He mentioned that the applicant will have to meet screening requirements, if the proposed zone change is approved.

JERRY DIEKMANN, APPLICANT, 1935 NORTH RIDGE ROAD said he has been a graphic artist for twenty-six years and that he purchased the property in April, 2009, so the previous requests Mr. Longnecker referred to in his presentation were not made by him. He mentioned that the property was in really bad shape when they bought it. He said four dumpsters of trash have been hauled off the property; and they have completely redone the interior of the residence. He said they are not done making improvements to the property. He said his only goal was to have a home occupation. He said he is a graphic artist that works "on line." He said he contracts with a number of companies and develops "point-of-purchase" signs. He said he designs the signs, but does not manufacture them. He said he understood that part-time employees were not allowed under the home occupation zoning so that is why he is requesting a zone change. He said he would like to build a studio out back to do his graphic art work. He commented that both of his neighbors already have buildings in back of their homes. He said one of the first things he did was talk to all his neighbors and explained to them what he was proposing. He said he had no strong objections and referred to two letters of support provided as a handout. He commented that he doesn't want to put up business signs or have customers come to the house, that he does all his business "on line." He said he didn't have any problems with the restrictions of the protective overlay with the exception of item #4, concerning dedicating complete access control to Bittersweet Lane and only having access to Ridge Road. He said he likes to enter his property from Bittersweet Lane, because it is a very sharp turn from Ridge into his garage. He said he is also concerned about the

additional parking design for employees, because the design he came up with was so that employees could back out and then exit onto Bittersweet Lane.

HILLMAN asked why staff was recommending that Bittersweet Lane be closed.

LONGNECKER explained that staff was recommending complete access control to Bittersweet Lane to keep whatever traffic that may come to the site on Ridge Road, which was the arterial. He said although the applicant says no one will come to the studio, there are no restrictions on that. He added that a "home occupation" is limited to only the people that live at the residence and; therefore, this needed to be rezoned from SF-5 Single-Family Residential to NO Neighborhood Office. He said if NO is approved, all restrictions under that zoning will apply, in addition to whatever other restrictions this body wants to impose.

HILLMAN asked the applicant if he had any plans in the future to set up a paint shop or production facility for the graphics.

DIEKMANN said no interest at all. He referenced item #4 and mentioned the cross lot circulation requirement "when/if the abutting lot to the south also converts to a non-residential use."

LONGNECKER said staff is of the opinion that this zone change, if approved, will trigger similar zoning requests to the south and possibly north of this location.

DEIKMANN mentioned that the property to the north of him also has access onto Bittersweet Lane.

CHAIRMAN VAN FLEET asked the applicant is he had any problems with the rest of the conditions.

DIEKMANN said he had no problem with the rest of the conditions.

FOSTER asked the applicant to describe in more detail where the structure (graphic studio) would go, and how off street parking would be handled.

DEIKMANN said they don't have a plan for off street parking. He said they were going to put a couple of spots by the northwest corner as you pull into the driveway but with the requirement of closing Bittersweet Lane, the turn around to get back out is going to be difficult. He said the building will be located in back of the detached garage. He said he currently has a six-foot fence with brick pillars every 20 feet with lights on top of them around the property that attaches to the side of a detached building. He said the studio will be behind that.

ERIN SPELTS, 7228 WEST 18th STREET NORTH said they have lived in the neighborhood since 1982. She said they don't have a problem with Mr. Deikmann having a studio, but she said look at the neighborhood. She said people come into the neighborhood on 18th Street and go out on Bittersweet Lane. She said their yard backs up to Mr. Deikmann's chain link fence so they can see his swimming pool, garage and his potential office from their backroom. She said she has a 2½ old grandson that can scale that fence and she is concerned about that. She commented that NO Neighborhood Office zoning allows just about everything except for dental and doctor's offices and insurance companies. She asked what happens if Mr. Deikmann sells the property? She said this is a nice, quiet neighborhood and she would like to keep it that way. She asked several questions concerning the application, including, can Mr. Deikmann hire more than two people and how many cars can be parked in the driveway? She also commented that Bittersweet Lane is very narrow and if people are allowed to park on that Lane there could be safety issues. She mentioned coming home one day and that several cars were parked along the Lane. She mentioned that the neighbor to the south has a lawn mower repair business. She said he has

made the comment that if Mr. Deikmann gets okayed, he will pay his $225.00 and get his permit also. She added that she is also concerned about property values going down. She concluded by asking what restrictions are going to be placed on this proposal and how is it going to be monitored?

FOSTER asked about the height of the chain link fence.

SPELTS replied that the fence was about four-feet high.

HILLMAN commented that if this process is approved, the applicant will provide a solid cedar type fence all around the property.

SPELTS said her grandson getting into the pool is her biggest fear, but that she was also concerned about what can potentially happen if the rezoning request is granted.

MICHAEL SPELTS, 7228 WEST 18th STREET NORTH commented that once this is rezoned, the neighbor to the north has mentioned possible rezoning. He said this may turn into commercial properties all the way up to 21st Street. He said he does not care about the lawn mower shop or if Mr. Deikmann has a studio, they just don't want this area commercialized.

GREG FERRIS, AGENT FOR THE APPLICANT said a solid screening fence around the site is required by Code and will be provided. He said the letter the applicant has offered actually has more restrictions than those recommended in the Staff Report. He said they have no problem with not allowing patients or customers to come to the property if that will make the neighbors feel comfortable. He said in regard to the potential domino effect; this would be a very restricted office use where nothing else can happen. He said those lots will never become commercial properties or offices if the Commission applies the same standards as they are applied to this property. He commented that the cross lot circulation will destroy the residential character and the whole goal was to leave it the way it is.

CHAIRMAN VAN FLEET commented that the staff recommendation was to deny the application.

MOTION: To deny subject to staff recommendation.

MITCHELL moved, **DOWNING** seconded the motion.

MARNELL asked how restrictive can the Commission be with a protective overlay on a zoning case like this?

JOE LANG, CHIEF DEPUTY CITY ATTORNEY said some of the conditions the applicant has offered would be more appropriate for a conditional use. He said the Commission may require any restriction that is considered reasonable and that has been imposed on other properties.

MARNELL said it appeared to him that the neighbors didn't have a problem with what the applicant wanted to do per se, but they did not want it to be classified just NO because of possible higher uses in the future. He said he didn't know how to make the restrictions tight enough to satisfy the neighbors yet still allow the applicant to do what he wanted to do, which he thought seemed reasonable.

LANG commented that the code referenced "any other specific development standards." He said as long as the restriction pertained to the use of the property that would be appropriate to the protective overlay.

MARNELL asked if the Commission could restrict the use to that particular type of business (graphic design) and require that no customers be at the site?

LANG said the "no customers" requirement was a gray area.

HILLMAN asked about off street parking on Bittersweet Lane. He asked if the business could be asked to provide additional parking?

LANG said yes additional parking could be required as part of the protective overlay.

SHERMAN asked if this is approved, what about the lawn mower guy to the south. Would he have to pick up and deliver the lawn mowers if no customers were allowed at the site.

LONGNECKER explained that a lawn mower repair service was not allowed in NO zoning. He said that type of business required LC Limited Commercial zoning which staff would not support at that location which was further away from the corner of 21st Street.

HENTZEN asked if it was proper to use a conditional use without changing the zoning.

LANG responded that conditional uses are not options for changing SF-5 Single-Family Residential zoning.

FOSTER asked if this were a home occupation, if there was a structure connecting the principle structure with the studio structure, would that have to be an enclosed structure?

LONGNECKER responded yes and it would also have to meet occupancy standards.

FOSTER asked if there was any flexibility under the home occupation for two employees?

MILLER said the only other option was the applicant could have applied for TF-3 Two-Family Residential zoning which allows outside employees, but he would still have the home occupation restrictions with regard to parking and changes to the façade of the home. He said that is why staff directed the applicant to apply for a zone change. He said five questions need to be answered for a variance and one of them is proving that the issue is due to a hardship not of your own making and staff had a hard time proving that this was not a self-imposed hardship

MARNELL said this seems like "no harm, no fowl" if it is done properly. He said the neighbors are not opposed to what the applicant is proposing, only what can happen in the future. He said he believes the Commission can zone this NO and make the protective overlay tight enough to accommodate what the applicant is doing only with a bigger facility with appropriate screening, a parking and landscape plan that is acceptable to the Planning Department, and solid fencing.

> **SUBSTITUE MOTION:** To approve NO zoning with a PO to include appropriate screen, a parking and landscape plan and limit the number of employees to four.
>
> **MARNELL** moved, **HILLMAN** seconded the motion.

CHAIRMAN VAN FLEET clarified that the motion included the additional offers contained in the applicant's letter.

MARNELL said as long as it is not in conflict with Staff's recommendation.

LONGNECKER said staff recommended signage and the applicant offered no signage.

MARNELL said no signage.

MILLER commented that NO does not require solid fencing; however, there is an option for landscaping.

MARNELL specifically requested solid fencing.

FARNEY asked about access to Bittersweet Lane?

MARNELL said to leave it as staff recommended. He said as a side comment, personally he would rather have access onto Bittersweet Lane than Ridge Road because he thinks the problem with arterials is there is way too much access onto them.

MILLER STEVENS said she would be in opposition to the substitute motion. She said once the zoning is changed, folks come and go but the zoning stays with the land and once zoning is changed it is difficult to go back. She said this is an established neighborhood and although the neighbors don't mind the home occupation, they don't want any kind of commercial development and she feels approving this would be stepping down the road in that direction.

FOSTER commented that because of the swimming pool, the minimum fence height is five feet and the motion maker might want to mention that. He asked what was Staff's opinion was about access onto Bittersweet Lane.

LONGNECKER said they prefer the recommendation in the PO which was to limit access to Ridge Road.

MITCHELL said with all due respect, staff did not include in the Staff Report that this was considered spot zoning and said that this is a classical example of what can happen with spot zoning. He said the property has gone before several hearings and been denied for the very reasons that have been discussed today. He said if this is approved, he guarantees within two to three years there will be half a dozen more zone changes in the area. He said he would not support the substitute motion.

SUBSTITUTE MOTION FAILED (3-8).
DOWNING, FARNEY, FOSTER, HENTZEN, KLAUSMEYER, MILLER STEVENS, MITCHELL, SHERMAN - No.

ORIGINAL MOTION CARRIED (8-3).
HILLMAN, MARNELL, VAN FLEET - No

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: Metropolitan Area Planning Commission Members

Mayor and Wichita City Council Members

FROM: Megan Buckmaster, Neighborhood Assistant District V

SUBJECT: **ZON2010-0004**

DATE: April 06,, 2010

On Monday, March 01, 2010, the District Advisory Board (DAB) for Council District V considered a City zone change request from "SF-5", Single Family Residential, to" NO", Neighborhood Office with a Protective Overlay "PO" located at 1935 North Ridge Road (approximately ¼ mile south of 21st Street North, on the southwest corner of Ridge Road and Bittersweet Lane).

The only concern raised by the board was regarding landscaping requirements to which Mr. Longnecker responded.

A motion was made to approve the recommendation move forward to Council for vote, subject to the provisions of a Protective Overlay (PO) which would restrict signage, and address landscaping, screening, parking, vehicular access, and require residential character for any building development/redevelopment as listed in the staff report.

The motion passed 7-0

Action: DAB V recommends this request move forward to City Council for vote.

Jerry Diekman

1935 N. Ridge Rd. WICHITA, KS 67205
PHONE 316-729-9169

February 8, 2010

John Schlegel, Director
Metropolitan Area Planning Department
City Hall, 10th Floor
455 N. Main
Wichita, KS 67202

RE: Zone Change from SF-5 to NO with a Protective Overlay on property located at 1935 N. Ridge Rd.

Dear Mr. Schlegel:

I am the owner of the property located at 1935 N. Ridge Road. This property has been in disrepair for many years. I have invested over $50,000 improving the property so I can live in it. I did this with the intent of operating a home based business out of the property and investing an additional $50,000 or more. This investment to date includes cleaning up the property, hauling away over 21 tons of waste, remodeling the interior, landscaping and constructing a new fence. This has been a great improvement to the neighborhood.

I have a home based internet graphics art business. All of my business is conducted online or via phone. I would like to operate my graphics art business out of this property. To do so I need to construct an art studio behind the existing detached garage. I have sufficient room to construct this studio and meet all setbacks. There is nothing in the code that would prohibit the construction of this building. However, in order to conduct business from the detached building and have employees the property must be zoned Neighborhood Office. NO is the first zoning class that allows me these capabilities.

It is my desire to preserve the residential character of this area. In order to do so I propose the following restrictions that would be placed on the property in the form of a Protective Overlay:

1. Hours of operation would be from 8:00AM till 6:00PM Monday thru Friday. Employees would only be allowed on the premises during these times.
2. No on street parking of employee vehicles would be allowed. All business parking must take place on the existing paved surface and be limited to four vehicles.
3. No pole, monument or building signage allowed.
4. The building would be designed to be residential in character, similar to the existing detached garage.
5. No clients, patients, customers, or the general public allowed on the premises.

If there are other reasonable requests I am open to them as well. These conditions should keep the property residential in character and allow me to conduct the business I intend to have on the property.

I believe this request is in conformance to the rules regarding the rezoning of property as follows:

- **The zoning uses and character of the neighborhood;** While the property on either side is large lot residential with large detached buildings, the property across Ridge Rd. has institutional uses. Just north of the property there is significant commercial development. The restrictions proposed in the PO make this property character remain residential. Therefore the request conforms to the zoning, uses and character of the neighborhood.
- **The suitability of the subject property for the uses to which it has been restricted;** The property faces a major arterial; Ridge Road. The house was rental property that was not well maintained and caused many problems for the area. Its location on Ridge Road, and the proximity to commercial development, severely impacted its suitability as a residential property.
- **The extent to which removal of the restrictions will detrimentally affect nearby property;** The detached structure could be constructed under the current zoning. The Protective Overlay limits the use of the property to that of a home based business, except allows more than one employee. Therefore there will be no detrimental affect on nearby property.
- **The relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant;** If this request is denied, at least a portion the business will be moved out of town. This will result in the loss of jobs. These jobs, in the current economic times, are a gain to the welfare of the community. The new structure will increase the property value and translate into additional income for the public sector. The restrictions of the Protective Overlay assure there is no loss to the public health, safety and welfare. Denial of this application will result in significant loss and hardship to the applicant. Moving parts of the business out of town will impact the applicant and create unnecessary hardship.
- **Impact of the proposed development on community facilities;** There is adequate existing sewer and water in the area to serve the new building. There will be less than twenty additional trips per day generated by the business. Ridge Road is a major five lane arterial and can handle twenty additional trips.
- **Opposition or support of neighborhood residents;** I have personally met with all of the immediate neighbors and none of them oppose the request if there are adequate protections to preserve the character of the residential area. Many of them support the request.

Thank you for your consideration of this request. I believe this request conforms to the elements necessary for approval of a zone change to Neighborhood Office with a Protective Overlay. Please let me know if you have any questions.

Sincerely,

Jerry Diekmann

Agenda Item No. IV-2

City of Wichita
City Council Meeting
May 4, 2010

To: Mayor and City Council

Subject: ZON2010-00010 - City zone change from LC Limited Commercial ("LC") to GC General Commercial ("GC") with Protective Overlay; generally located on the east side of Market Street and north of Harry Street. (District I)

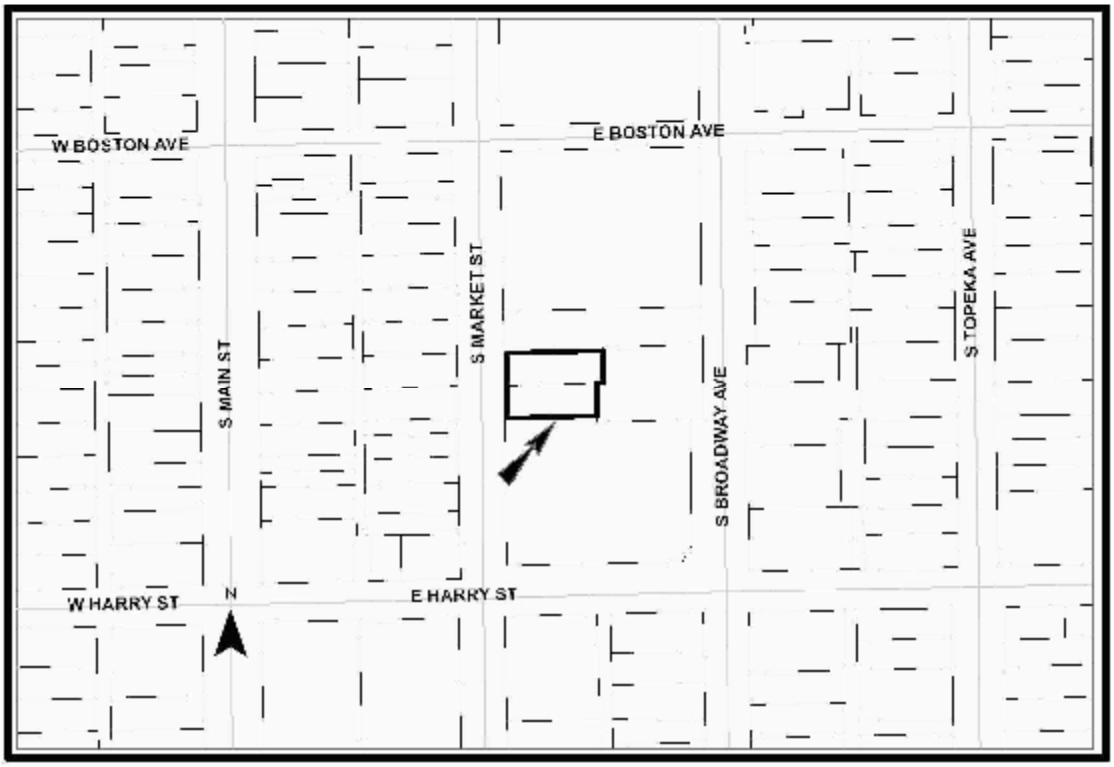
Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Non-consent)

MAPC Recommendations: Approve unanimously (14-0), subject to the provisions of Protective Overlay #241.

MAPD Staff Recommendations: Approve, subject to the provisions of Protective Overlay #241.

DAB I Recommendations: Approve unanimously, subject to the amended provisions of Protective Overlay #241.



Background: The applicant is requesting GC General Commercial ("GC") zoning on the platted approximately 0.33 acre LC Limited Commercial ("LC") zoned site. The applicant is a manufacturing representative for a heating and air company which provides wholesale and business services to other companies/contractors. The proposed GC zoning would allow the applicant to build additional office and storage to expand their current business on this site. The Unified Zoning Code (UZC), Art II, Sec II.B., 3.n. and 14.o. and Art III, Sec III.D.bb., defines the proposed use as "Construction Sales and Service," wholesales and business services which is a permitted use in GC zoning.

The site is located in an area that has a mix of LC and GC zoning located on all four sides of the Harry and Market Street intersection. Property abutting the south side of the site is zoned LC (ZON2001-84) and is developed as a Walgreen's pharmacy (built 2003). Property abutting the north side of the site is zoned LC and GC and is developed as a pawn shop (1955), with a small, screened GC zoned outdoor storage area and B Multi-family Residential ("B") paved parking facing Market Street. This parking extends north to Boston Avenue and, past the pawn shop, from Market Street east to Broadway Avenue. Property abutting the east side of the site is a pest control business/office/warehouse (2002) zoned GC (ZON2001-84). West of the site, across Market Street, are single-family residences (1882 to 1920) zoned SF-5 Single-Family Residential ("SF-5") and TF-3 Two-Family/Duplex Residential ("TF-5"). The subject site has access onto Market Street, a one-way (north), two-lane urban collector. It has no direct access onto either Broadway Avenue, a minor arterial, or Harry, a principal arterial.

Analysis: At the Metropolitan Area Planning Commission ("MAPC") meeting held on April 1, 2010, the MAPC voted to APPROVE unanimously (14-0) the requested GC zoning and the following provisions of the proposed PO #241:

A. No off-site or portable signs shall be permitted on the subject property. Signs shall be in accordance with the City of Wichita sign code for LC Limited Commercial ("LC") zoning, with the exception that signs shall be monument-style and limited to 20 feet in height. No LED shall be permitted signs.
B. Any new light poles or lighting fixtures on the buildings shall be of the same color and design and shall have cut-off fixtures which direct light away from the adjacent, eastern residential zoned residences and the northern residential zoned properties. Light poles shall be limited to a maximum height, including the base of the light pole of 15 feet. Light poles shall not be located within the western platted 35-foot setback.
C. Outdoor speakers and sound amplification systems shall not be permitted.
D. No buildings shall exceed one story in height with a maximum building height of 35 feet.
E. Landscaping shall be installed that meets the Landscape Ordinance. A landscape plan shall prepared by a licensed landscape architect, to be reviewed and approved by the Planning Department.
F. The following uses shall not be permitted: hotel or motel; pawn shop; rodeo; riding academy or stable; tattooing or body piercing facility; vehicle and equipment sales; asphalt or concrete plant; outdoor storage; vehicle storage yard; adult entertainment establishment; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; kennel; night club; indoor and outdoor recreation and entertainment; restaurant with drive-in or drive-thru facilities; service station; tavern and drinking establishment.

There were no members of the public that spoke in opposition to the request at the MAPC meeting.

At the District Advisory Board ("DAB") I meeting held on April 5, 2010, the DAB considered the requested GC zoning and the proposed PO #241. The DAB recommended APPROVAL unanimously, but amended provision "F" by adding 'payday/paycheck loans companies' as a use that is not to be permitted. This change to provision 'F' is not what the MAPC recommended, thus it will require a two-thirds majority vote of the Council to modify the MAPC's recommendation. There was not any opposition expressed at the DAB meeting and the applicant agreed to the DAB's recommended change. At the end of the two-week protest period no valid protests against the requested zoning were submitted.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality

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

Recommendation/Actions:

1. Concur with the findings of the MAPC, and approve the requested zone change, subject to the additional recommended provisions of a Protective Overlay District; place the ordinance establishing the zone change on first reading (simple majority); or

2. Approve the requested zone change and modify provision 'F' of the Protective Overlay District, to prohibit 'payday/paycheck loans companies' (requires 2/3 majority vote to override or modify the MAPC's recommendation).

3. Return the application to the MAPC for reconsideration.

Attachment: Ordinance and the MAPC and DAB I minutes.

OCA 150004

ORDINANCE NO. 48-735

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. ZON2010-00010

Zone change from Limited Commercial ("LC") to General Commercial ("GC") subject to the provisions of Protective Overlay #241 on property described as:

The north 50 feet of Lot 1, Ledford Addition & the south 50 feet of the north 100 feet of Lot 1, Ledford Addition, Wichita, Sedgwick County, Kansas; generally located on the east side of Market Street and north of Harry Street.

SUBJECT TO APPROVAL BY THE GOVERNING BODY AND THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #241:

A. No off-site or portable signs shall be permitted on the subject property. Signs shall be in accordance with the City of Wichita sign code for LC Limited Commercial ("LC") zoning, with the exception that signs shall be monument-style and limited to 20 feet in height. No LED shall be permitted signs.

B. Any new light poles or lighting fixtures on the buildings shall be of the same color and design and shall have cut-off fixtures which direct light away from the adjacent, eastern residential zoned residences and the northern residential zoned properties. Light poles shall be limited to a maximum height, including the base of the light pole of 15 feet. Light poles shall not be located within the western platted 35-foot setback.

C. Outdoor speakers and sound amplification systems shall not be permitted.

D. No buildings shall exceed one story in height with a maximum building height of 35 feet.

E. Landscaping shall be installed that meets the Landscape Ordinance. A landscape plan shall prepared by a licensed landscape architect, to be reviewed and approved by the Planning Department.

F. The following uses shall not be permitted: hotel or motel; pawn shop; rodeo; riding academy or stable; tattooing or body piercing facility; vehicle and equipment sales; asphalt or concrete plant; outdoor storage; vehicle storage yard; adult entertainment establishment; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; kennel; night club; indoor and outdoor recreation and entertainment; restaurant with drive-in or drive-thru facilities; service station; tavern and drinking establishment.

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 AT WICHITA, KANSAS, May 11, 2010.

_____
Carl Brewer - Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney

OCA 150004

ORDINANCE NO. 48-735

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. ZON2010-00010

Zone change from Limited Commercial ("LC") to General Commercial ("GC") subject to the provisions of Protective Overlay #241 on property described as:

The north 50 feet of Lot 1, Ledford Addition & the south 50 feet of the north 100 feet of Lot 1, Ledford Addition, Wichita, Sedgwick County, Kansas; generally located on the east side of Market Street and north of Harry Street.

SUBJECT TO APPROVAL BY THE GOVERNING BODY AND THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #241:

A. No off-site or portable signs shall be permitted on the subject property. Signs shall be in accordance with the City of Wichita sign code for LC Limited Commercial ("LC") zoning, with the exception that signs shall be monument-style and limited to 20 feet in height. No LED shall be permitted signs.

B. Any new light poles or lighting fixtures on the buildings shall be of the same color and design and shall have cut-off fixtures which direct light away from the adjacent, eastern residential zoned residences and the northern residential zoned properties. Light poles shall be limited to a maximum height, including the base of the light pole of 15 feet. Light poles shall not be located within the western platted 35-foot setback.

C. Outdoor speakers and sound amplification systems shall not be permitted.

D. No buildings shall exceed one story in height with a maximum building height of 35 feet.

E. Landscaping shall be installed that meets the Landscape Ordinance. A landscape plan shall prepared by a licensed landscape architect, to be reviewed and approved by the Planning Department.

F. The following uses shall not be permitted: hotel or motel; pawn shop; rodeo; riding academy or stable; tattooing or body piercing facility; vehicle and equipment sales; asphalt or concrete plant; outdoor storage; vehicle storage yard; adult entertainment establishment; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; kennel; night club; indoor and outdoor recreation and entertainment; restaurant with drive-in or drive-thru facilities; service station; tavern and drinking establishment; payday/paycheck loans companies.

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 AT WICHITA, KANSAS, May 11, 2010.

_____
Carl Brewer - Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney

EXCERPT OF THE APRIL 1, 2010 MAPC HEARING

Case No.: ZON2010-10 - HE Real Estate, LLC (owner) Mark O'Donnell (agent/applicant) Request City zone change request from LC Limited Commercial to GC General Commercial on property described as;

The North 50 feet of Lot 1, Ledford Addition to Wichita, Sedgwick County, Kansas.
AND
The South 50 feet of the North 100 feet of Lot 1, Ledford Addition to Wichita, Sedgwick County, Kansas. Generally located east of Market Street and north of Harry Street (1542 and 1546 S. Market St.).

BACKGROUND: The applicant is requesting GC General Commercial ("GC") zoning on the platted approximately 0.33-acre LC Limited Commercial ("LC") zoned site. The applicant is a manufacturing representative for a heating and air company which provides wholesale and business services to other companies/contractors. The proposed GC zoning would allow the applicant to build additional office and storage to expand their current business on this site. The Unified Zoning Code (UZC), Art II, Sec II-B, 3n & 14o, & Art III, Sec III-D-bb, defines the proposed use as "Construction Sales and Service," wholesales and business services which is a permitted use in GC zoning.

The site is located in an area that has a mix of LC and GC zoning located on all four sides of the Harry & Market Streets' intersection. Property abutting the south side of the site is zoned LC (ZON2001-84) and is developed as a Walgreen's pharmacy (built 2003). Property abutting the north side of the site is zoned LC and GC and is developed as a Pawn Shop (1955), with a small, screened GC zoned outdoor storage area and B Multi-family Residential ("B") paved parking facing Market. This parking extends north to Boston Avenue and, past the pawn shop, from Market east to Broadway Avenue. Property abutting the east side of the site is a pest control business/office/warehouse (2002) zoned GC (ZON2001-64). West of the site, across Market, are single-family residences (1882 – 1920) zoned SF-5 Single-Family Residential ("SF-5") and TF-3 Two-Family/Duplex Residential ("TF-5"). The subject site has access onto Market, a one-way (north), two-lane urban collector. It has no direct access onto either Broadway Avenue, a minor arterial, or Harry, a principal arterial.

CASE HISTORY: The site is Lot 1, the Ledford Addition, which was recorded with the Register of Deeds May 22, 1967.

ADJACENT ZONING AND LAND USE:

NORTH:	LC, GC, B	Pawn Shop with small, screened outdoor storage area, parking
SOUTH:	LC	Walgreens pharmacy
EAST:	GC	Pest control business/office/ warehouse
WEST:	SF-5, TF-3	Single-Family Residences

PUBLIC SERVICES: The subject site has access onto Market, a one-way (north), two-lane urban collector, with a 75-foot right-of-way (ROW). Traffic to the site has to come from Harry Street, a four-lane major arterial, located approximately 250 feet south of the site. Traffic from

the site has to proceed north on Market to Boston Avenue, a two-lane local street, to get to Broadway Avenue, a four-lane minor arterial or Main Street, a one-way (south) two-lane urban collector. All streets are paved and curbed. All utilities are available to this site. There are no Capital Improvement Projects scheduled for this area.

CONFORMANCE TO PLANS/POLICIES: The 2030 Functional Land Use Guide classifies the site as "Local Commercial." The current LC zoning is in conformance with this classification. The requested GC zoning allows a broader range of uses by-right than the LC district (major auto dealerships, car wash, outside storage), some which may be less closely aligned with the intended designation of "local commercial." However, the GC zoning district also permits less intense uses, such as the applicant's wholesale heating and air company or business services or pest control businesses/offices/ warehouses, such as the one located to the east. Such GC uses may be no more intense than an LC permitted convenience store or drive-in restaurant, especially if built on the scale of the applicant's site and the abutting pest business site; less than ½-acre. The commercial location guidelines of the Comprehensive Plan state that commercial uses should be located near arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion. The site has direct access onto Market Street an urban collector with close proximity to arterials (Harry Street and Broadway Avenue) and other urban collectors (Main Street). However Market is a one-way street, which does restrict traffic to and from the site, unlike a full movement arterial or urban collector. The Plan states that commercial development should have required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses. A Protective Overlay could address some of these development considerations as well as prohibiting some of the GC zoning district's more intense uses. Unlike the eastern abutting GC zoned pest control business/office/warehouse, the subject site is located east of (across Market) SF-5 and TF-3 zoned single-family residences.

The site is located in the adopted "South Central Neighborhood Plan." The Plan was approved by the MAPC April 20, 2006, by the Board of County Commissioner on May 10, 2006, as Resolution #72-06, and by the Wichita City Council on May 16, 2006, as Ordinance #47-033. The Plan covers approximately 1.8-square miles, with its boundaries being located between Kellogg Avenue on the north, the Arkansas River on the south and west, and Washington Avenue, a railroad ROW, and the Arkansas River on the east. The Plan noted that there is a lack of diversity in business development along Broadway, with car lots, bars and motels being common. The Plan states that these businesses do not provide direct goods and services to the neighborhood; in some cases they have had a significant and detrimental impact on Broadway and a negative impact on the residential areas. A stated goal of the Plan is to bring more variety of business to the area, including the development of vacant lots for something other than car sales lots, motels and bars. The applicant's business and expansion as a manufacturing representative for a heating and air company that provides wholesale and business services to other companies/contractors at this site meets the Plan's goal.

RECOMMENDATION: Based upon these factors and the information available prior to the public hearings, planning staff recommends that the requested GC General Commercial ("GC") be APPROVED subject to the following provisions of a Protective Overlay:

A. No off-site or portable signs shall be permitted on the subject property. Signs shall be in accordance with the City of Wichita sign code for LC Limited Commercial ("LC") zoning, with the exception that signs shall be monument-style and limited to 20 feet in height. No LED shall be permitted signs.

B. Any new light poles or lighting fixtures on the buildings shall be of the same color and design and shall have cut-off fixtures which direct light away from the adjacent, eastern residential zoned residences and the northern residential zoned properties. Light poles shall be limited to a maximum height, including the base of the light pole of 15 feet. Light poles shall not be located within the western platted 35-foot setback.

C. Outdoor speakers and sound amplification systems shall not be permitted.

D. No buildings shall exceed one story in height with a maximum building height of 35 feet.

E. Landscaping shall be installed that meets the Landscape Ordinance. A landscape plan shall prepared by a licensed landscape architect, to be reviewed and approved by the Planning Department.

F. The following uses shall not be permitted: hotel or motel; pawn shop; rodeo; riding academy or stable; tattooing or body piercing facility; vehicle and equipment sales; asphalt or concrete plant; outdoor storage; vehicle storage yard; adult entertainment establishment; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; , kennel, night club; indoor and outdoor recreation and entertainment; restaurant with drive-in or drive-thru facilities; service station; tavern and drinking establishment.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is located in an area that has a mix of LC and GC zoning located on all four sides of the Harry & Market Streets' intersection. Property abutting the south side of the site is zoned LC and is developed as a Walgreen's pharmacy (built 2003). Property abutting the north side of the site is zoned LC and GC and is developed as a Pawn Shop (1955), with a small, screened GC zoned outdoor storage area and B Multi-family Residential ("B") paved parking facing Market. This parking extends north to Boston Avenue and, past the pawn shop, from Market east to Broadway Avenue. Property abutting the east side of the site is a pest control business/office/ warehouse (built in 2002) zoned GC (ZON2001-64). West of the site, across Market are single-family residences (1882 – 1920) zoned SF-5 Single-Family Residential ("SF-5") and TF-3 Two-Family/Duplex Residential ("TF-5"). The subject site has access onto Market, a one-way (north), two-lane urban collector. The site does not have direct access onto either Broadway Avenue, a minor arterial, or Harry, a principal arterial.

2. The suitability of the subject property for the uses to which it has been restricted: The 2030 Functional Land Use Guide classifies the site as "Local Commercial." The current LC zoning is in conformance with this classification. The site has direct access onto Market Street an urban collector with close proximity to arterials (Harry Street and Broadway Avenue) and other urban collectors (Main Street). However Market is a one-way street, which does restrict traffic to and from the site, unlike full movement arterials or urban collectors.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed GC zoning will not introduce a new zoning into the area, as established GC zoned sites are located on all four corners of the Harry Street and Broadway Avenue intersection, although none of this existing GC zoning extends to the next blocks/streets located east (Topeka Avenue) and west (Market Street) of Broadway. This section of Harry Street is pretty much stripped out with mostly small LC zoned properties, with the subject site being one of the deeper penetrations of LC zoning off of Harry. The proposed Protective Overlay attempts to limit noise, lighting and other aspects of commercial activity that may adversely impact the adjacent, eastern single-family residences as well as prohibiting some of the GC zoning district's more intense uses.

4. Conformance of the requested change to the adopted or recognized Plans: The 2030 Functional Land Use Guide classifies the site as "Local Commercial." The current LC zoning is in conformance with this classification. The requested GC zoning allows a broader range of uses by-right (auto dealerships, car wash, outside storage), some which may be less closely aligned with the intended function of the "local commercial" designation. However, the GC zoning district also permits uses, such as the applicant's wholesale heating and air conditioning company, business services and the eastern abutting pest control business/office/warehouse. Those uses may be no more intense than an LC permitted convenience store or a restaurant, especially if built on the scale of the applicant's site and the abutting pest business site; less than ½-acre. The commercial location guidelines of the Comprehensive Plan state that commercial uses should be located near arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion. The site has direct access onto Market Street an urban collector with close proximity to arterials (Harry Street and Broadway Avenue) and other urban collectors (Main Street). However Market is a one-way street, which does restrict traffic to and from the site, unlike a full movement arterial or urban collector. The Plan states that commercial development should have required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses. A Protective Overlay could address some of these development considerations as well as prohibiting some of the GC zoning districts more intense uses. Unlike the eastern abutting GC zoned pest control business/office/ warehouse, the subject site is located east of (across Market) from SF-5 and TF-3 zoned single-family residences.

   The site is located in the adopted "South Central Neighborhood Plan." The Plan was approved by the MAPC April 20, 2006, by the Board of County Commissioners, May 10, 2006, as Resolution #72-06, and by the Wichita City Council, May 16, 2006, as Ordinance #47-033. The Plan covers approximately 1.8-square miles, with its boundaries being located between Kellogg Avenue on the north, the Arkansas River on the south and west, and Washington Avenue, a railroad ROW, and the Arkansas River on the east. The Plan has noted that there is a lack of diversity in business development along Broadway, with car lots, bars and motels being common. The Plan states these businesses do not provide direct goods and services to the neighborhood, and, in some cases, have had a significant and detrimental impact on Broadway and a negative impact on the residential

areas. A stated goal of the Plan is to bring more variety of business to the area, including the development of vacant lots for something other than car sales lots, motels and bars. The applicant's business and expansion as a manufacturing representative for a heating and air company which provides wholesale and business services to other companies/contractors at this site meets the Plan's goal.

5. Impact of the proposed development on community facilities: As proposed impact on community facilities should be no more than what an LC zoned site would have on them.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

JOHNSON moved, **KLAUSMEYER** seconded the motion, and it carried (14-0).

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: Wichita City Council

MAPC Members

FROM: LaShonda Porter, Neighborhood Assistant District 1

SUBJECT: ZON2010-00010

DATE: April 5, 2010

On Monday, April 5, 2010, the District Advisory Board (DAB) for Council District 1 heard the request for the property generally located on the east side of Market Street and north of Harry Street. The request was submitted for a change in zoning from Limited Commercial to General Commercial to allow for the business expansion.

Longnecker advised that the site is located in an area that has a mix of Limited Commercial and General Commercial zoning located on all four sides of Harry & Market Streets intersection. He noted that property abutting the south side of the site is zoned Limited Commercial and is developed as a Walgreen's pharmacy. Property abutting the north side of the site is zoned Limited Commercial and General Commercial and is developed as a Pawn Shop, with a small, screened General Commercial zoned outdoor storage area and Multi-family residential paved parking facing Market. The parking extends north to Boston Avenue and, past the pawn shop, from Market east to Broadway Avenue. Property abutting the east side of the site is a pest control business/office/warehouse zoned General Commercial.

No citizens were in attendance to speak for or against the request.

Board Members had questions regarding the facility being able to have outdoor storage usage and what uses would be prohibited should the business closed. Specifically concerned with whether check-n-2-cash businesses would be prohibited.

DAB members voted 9-0 to recommend approval of this request. Recommend approval per the staff report with the addition of the use prohibiting pay-check-loans as an allowable use for the property.

Please review this information when this request is considered.

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: VAC2006-00007 - Request to vacate a portion of a platted alley; generally located between Market Avenue and Broadway Avenue, north of Douglas Avenue. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve (unanimously).

Background: The applicant is requesting vacation of the approximately 130-foot long by 20-foot wide portion of the platted 20-foot wide alley right-of-way located between Lots 120 and 122, all dedicated in Greiffenstein's Original Town Addition. This portion of the alley is the southern most portion of a platted alley that runs from 1st Street to Douglas Avenue, north to south. This portion of the platted alley also lies below an east to west alley that provides access to Market Avenue and Broadway Avenue, thus vacating this described portion of the platted north to south alley will not result in a dead end alley. The Fire Department is requiring signs be posted identifying fire lanes, per City standards and at the applicant's expense. Fire is also requiring a minimum turning radius on the southeast corner of the intersection of the north to south alley (subject alley) and the east to west alley, all abutting an existing parking lot, located on Lots 122, 124, 126 and a west portion of 128, Greiffenstein's Original Town Addition. There are no utilities, manholes, sewer or water lines in this portion of the alley. There is underground storm water drainage in the alley; a dedication for a drainage easement, a hold harmless agreement and a drainage petition and resolution are required. Greiffenstein's Original Old Town Addition was recorded with the Register of Deeds on October 1, 1870.

Analysis: The MAPC voted (12-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

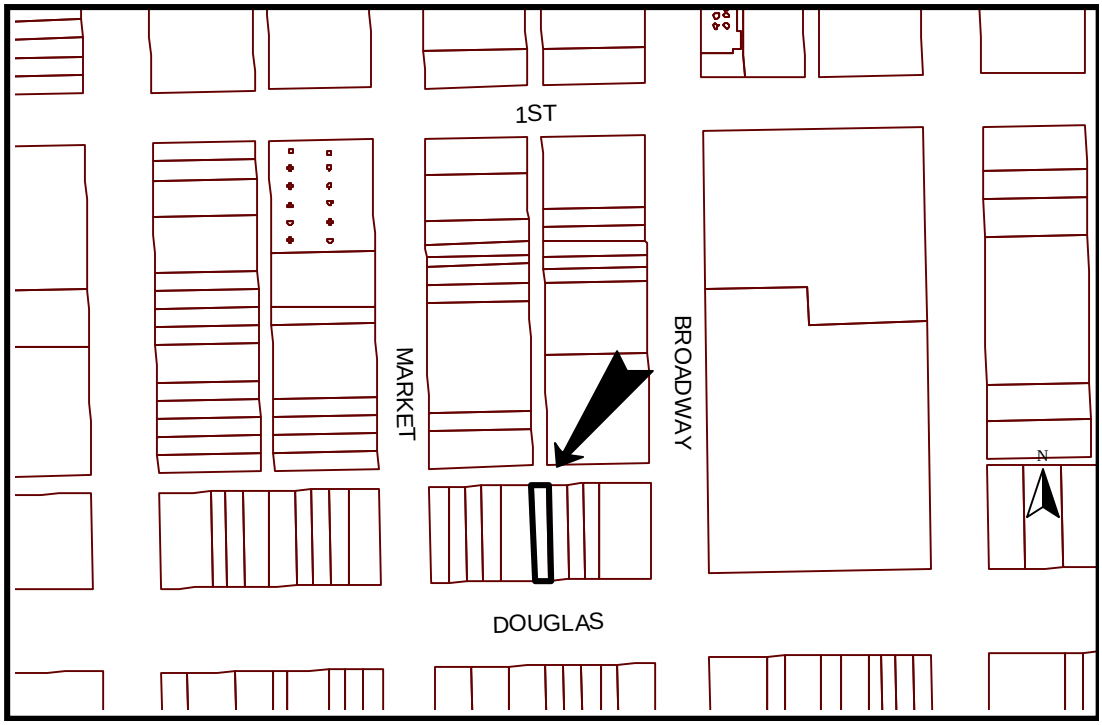
Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: A certified copy of the Vacation Order, dedication of a drainage easement and a hold harmless agreement will be recorded with the Register of Deeds.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, approve the drainage petition, adopt the resolution, approve the hold harmless agreement and authorize the necessary signatures.

Attachments: Vacation Order, dedication of a drainage easement, a hold harmless agreement, a drainage petition and resolution, and the MAPC minutes.


1ST
MARKET
BROADWAY
DOUGLAS
N

132019

First Published in the Wichita Eagle on April 30, 2010

RESOLUTION NO. 10-0128

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER SEWER NO. 657 (EAST OF MARKET, NORTH OF DOUGLAS) 468-84679 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER SEWER NO. 657 (EAST OF MARKET, NORTH OF DOUGLAS) 468-84679 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve Storm Water Sewer No. 657 (east of Market, north of Douglas) 468-84679.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Twenty-Seven Thousand Dollars ($27,000) 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 May 1, 2009, 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:

GRIFFENSTEIN'S ORIGINAL TOWN ADDITION
Lot 120 and Lot 122, Douglas Street

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

> That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lot 120, Douglas Street, GRIFFENSTEIN'S ORIGINAL TOWN ADDITION, shall pay 50/100 of the improvement cost and Lot 121, Douglas Street, GRIFFENSTEIN'S ORIGINAL TOWN ADDITION shall pay 50/100 of the improvement cost.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 27th day of April, 2010.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

VAC 2006-07: Request to Vacate a Portion of a Platted Right-of-way, generally located north of Douglas Avenue and between Market and Broadway Avenue.

APPLICANTS/AGENT:	DGL Investments Poe & Associates
LEGAL DESCRIPTION:	Generally described as the platted 20-foot wide alley ROW located between Lots 120 & 122, all dedicated in the Greiffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas
LOCATION:	Generally located north of Douglas Avenue, between Market and Broadway Avenues (WCC #VI)
REASON FOR REQUEST:	Build a parking garage
CURRENT ZONING:	The site is a platted, developed alley, all abutting and adjacent properties are zoned "CBD" Central Business District

The applicant is requesting vacation of the approximately 130-foot long (x) 20-foot wide portion of the platted alley as described. This portion of the alley is the south most portion of a platted alley that runs from 1st Street to Douglas Avenue, north to south. This portion of the platted alley also lies below an east –west alley that provides access to Market and Broadway Avenues, thus vacating this described portion of the platted north-south alley will not result in a dead end alley. There are no utilities, manholes, sewer or water lines in this portion of the alley. There is underground storm water drainage in the alley. The Greiffenstein's Original Old Town Addition was recorded with the Register of Deeds October 1, 1870.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted alley ROW, as described with conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time February 23, 2006 which was at least 20 days prior to this public hearing.

2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted alley ROW and the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. <u>Therefore, the vacation of the portion of the platted alley ROW described in the petition should be approved with conditions;</u>

(1) It appears that the applicant has failed to secure the abutting eastern property owner's signature on the application form and the petition. Prior to the case going to MAPC, these original signatures must be provided. Upon receiving these signatures Planning will forward this to the MAPC for the public hearing.

(2) Retain the alley as an easement until Storm Water and all other utilities have provided comments on the proposed vacation. Provide all necessary plans for review and approval and any additional easements.

(3) The bricks in the alley will be returned to the city.

(4) City Fire will determine the minimum turning radius. That minimum turning radius will be applied to the southeast corner of the intersection of the north – south alley and the east – west alley, which abuts the existing parking lot owned by the Kress Energy Center LLC. This corner represents the only opportunity to expand the existing turning radius, if needed, for emergency and commercial vehicles.

(5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants, including any needed storm water relocation.

(6) All improvements shall be according to City Standards. If the drive onto Douglas Avenue is to close, provide staff with a guarantee for the closure of the alley return on to Douglas Avenue and for continuation of the curb and reconstruction of the sidewalk. If the drive is to remain open, as a private drive, it must be constructed to City Standards and at the applicant's expense. Provided staff with a guarantee for construction of the drive as a private drive and the continuation of the sidewalk.

(7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

(1) It appears that the applicant has failed to secure the abutting eastern property owner's signature on the application form and the petition. Prior to the case going to MAPC, these original signatures must be provided. Upon receiving these signatures Planning will forward this to the MAPC for the public hearing.

(2) Retain the alley as an easement until Storm Water and all other utilities have provided comments on the proposed vacation. Provide all necessary plans for review and approval and any additional easements.

(3) The bricks in the alley will be returned to the city.

(4) City Fire will determine the minimum turning radius. That minimum turning radius will be applied to the southeast corner of the intersection of the north – south alley and the east – west alley, which abuts the existing parking lot owned by the Kress Energy Center LLC. This corner represents the only opportunity to expand the existing turning radius, if needed, for emergency and commercial vehicles.

(5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants, including any needed storm water relocation.

(6) All improvements shall be according to City Standards and at the applicant's expense. If the drive onto Douglas Avenue is to close, provide staff with a guarantee for the closure of the alley return on to Douglas Avenue and for continuation of the curb and reconstruction of the sidewalk. If the drive is to remain open, as a private drive, it must be constructed to City Standards and at the applicant's expense. Provided staff with a guarantee for construction of the drive as a private drive and the continuation of the sidewalk.

(7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: Defer until the next meeting.

MARNELL moved, **MCKAY** seconded the motion, and it carried (12-0).

HOLD HARMLESS AGREEMENT

THIS AGREEMENT made this_____day of October 2009, BY AND BETWEEN THE CITY OF WICHITA, KANSAS, hereinafter called "CITY" AND DGL INVESTMENTS, LLC and KRESS BUILDING, LLC , hereinafter called "OWNER'S"

WITNESSETH:

Whereas, the public has been granted a drainage easement 20 feet in width,

_____

_____

and

Whereas, Owner's desires to occupy and construct improvements over the following described section of said easement, to wit; Adjacent and between Lots 120 and 122, Douglas Street, Griffensteinn's Original Town Addition, Wichita, Sedgwick County, Kansas,

hereinafter referred to as **Tract "A"** (see attached Survey).

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

(1) The City hereby agrees to permit the Owner's to occupy and construct improvements on, over and across the aforesaid drainage easement, and specifically waives any and all rights of action in law or equity against Owner's, arising out of the Owner's's occupancy and encroachment on and over said easement.

(2) The Owner's agrees that it will not begin construction of improvements, on, over and across the said easement without first obtaining the City's approval of any and all plans and specifications for such improvements.

(3) In the event that a drainage or storm sewer line or other structure within the above described utility easement is planned or requires repair and/or maintenance and the same construction or repair is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A", the Owner's shall be obligated to either (a) pay the costs to replace that portion of the structure within such encroachment; (b) remove the said encroachment and clear the said easement; or (c) pay the costs of tunneling under the encroachment to permit repair and/or maintenance of the structure.

(4) The Owner's agrees to protect and indemnify the City and adjacent property Owner's against any increased cost that may accrue to them due to the necessity of construction of greater distance to avoid connecting beneath any improvements that may be built on, over and across said easement. In

the event the Owner's fails to provide such indemnification, the Owner's agrees that the City may assess any cost incurred by it against the property of the Owner's to Lot 120 and 122 Griffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas. Such assessment shall be in the manner described in K.S.A. 12-6a 17, as amended from time to time.

(5) The Owner's agrees to indemnify and hold harmless the City from any and all claims for personal injury and/or property damage resulting from the leaking, cave-in or failure of that portion of said structure within Tract "A" and which injury and/or damage is caused by the presence of the encroachment into Tract "A". The Owner's hereby releases the City from any and all claims that it might have for property damage caused by work performed by the City, or its employees, agents and contractors, in connection with the inspection, repair and/or maintenance of the structure within the above described easement.

(6) This agreement may be terminated by the City upon failure of the Owner's to comply with all of the terms of this agreement.

(7) The provisions contained herein are to be construed as covenants running with the land and may be enforced against any titleholder of the within described premises, so long as the structure contemplated by this agreement is in existence.

(8) This document creates a temporary, non-exclusive interest in real property and is not a construction contract governed by K.S.A. 16-121 as amended.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names the day and year first above written.

DGL Investments, LLC

Owner – Lot 120 Steven J. Cheney

Kress Building, LLC

Owner – Lot 122 Steven J. Cheney

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this 15th day of October, 2009, before me, a Notary Public, in and fore said county and state, came Steven Cheney, owner Lot 120 and Lot 122 to me personally known to be the same person(s) who executed the within and foregoing instrument and duly acknowledged the execution of the same as the authorized act and deed of the Corporation.

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

Notary Public
My Commission Expires: 1/31/10

JOHN E. WALL JR.
Notary Public
Minnesota
My Commission Expires January 31, 2010

CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor
City

ATTEST:

_____
City Clerk

STATE OF KANSAS, SEDGWICK COUNTY, ss:

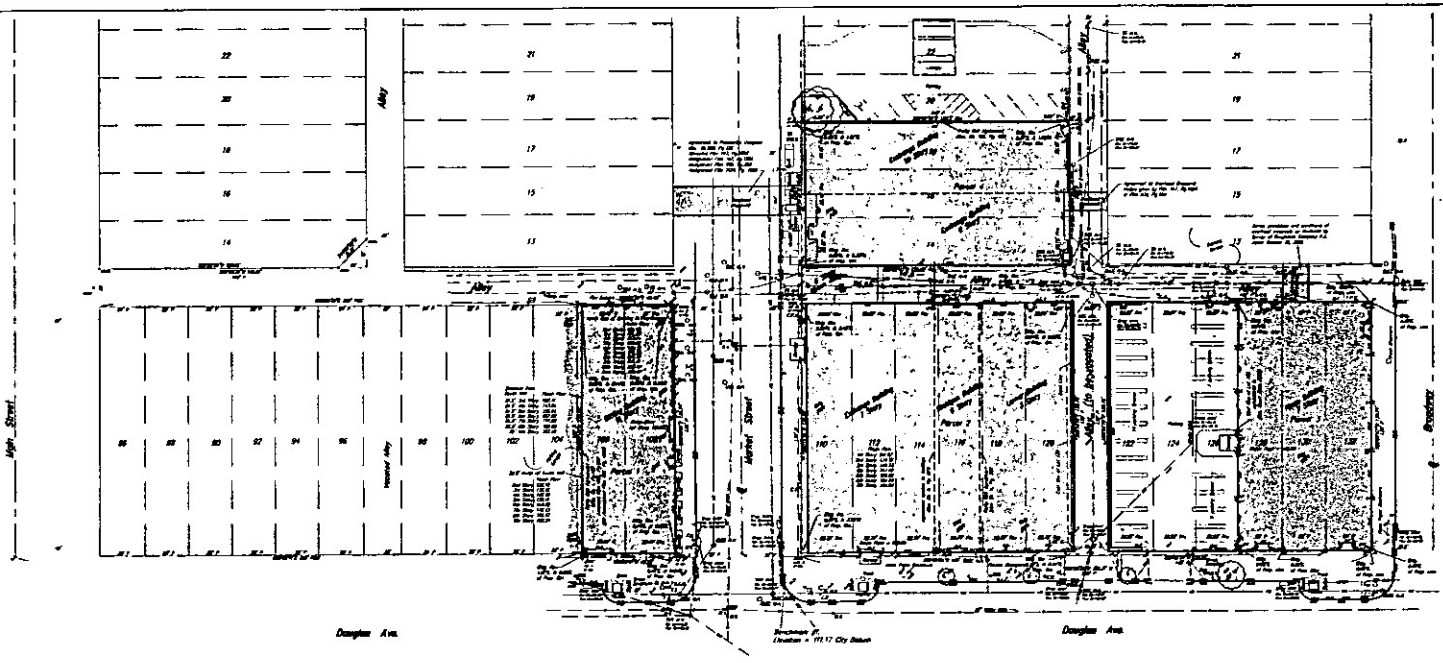
BE IT REMEMBERED, that on this_____day of October, 2009, before me, a Notary Public, in and fore said county and state, came, Carl Brewer, Mayor of the City of Wichita, Kansas, to me personally known to be the same person who executed the within and foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said City.

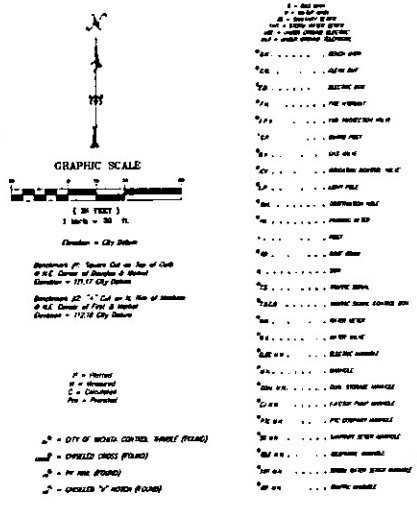
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

_____
Notary Public
My Commission Expires: _____

Approved as to Form

Gary E Rebenstorf JTH
Director of Law





NOTE:

The building outline shown on this Survey is the building footprint at ground surface. No investigation of subsurface building encroachment into public space was made as part of this survey. Further, no attempt was made to survey or note on this survey any buildings encroachments above ground surface.

Legal Description:

Parcel 1:
Lot 106, except the west 2 1/2 feet and all of Lot 108, on Douglas Avenue, Greiffenstein's Original Town Addition, now City of Wichita, Sedgwick County, Kansas.

Parcel 2:
Lots 110, 112, 114, 116, 118, 120, on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas. AND a tract described as follows: Beginning 175 feet east from the Monument on Market Street on the north side of Douglas Avenue, said point being on the west side of alley; thence west 3 feet 1 1/2 inches; thence north 130 feet to the alley; thence east 3 feet 1 1/2 inches to alley; thence south 130 feet to the place of beginning, together with the vacated airspace above a height of 13 1/2 feet over the west 70 1/10 feet of the south Half of the east and west alley adjoining said Lots 110, 112, 114, on the north.

Parcel 3:
Lots 122, 124, 126, 128, 130 and 132, on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas.

Parcel 4:
Lots 14, 16, 18, and the South 0.2 feet of Lot 20, on Market Street, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas. together with the vacated airspace above a height of 13 1/2 feet over the west 70 1/10 feet of the north Half of the east and west alley adjoining said Lot 14 on the south.

TO ALL PARTIES INTERESTED IN TITLE TO THE PREMISES SURVEYED:

DGL Investments, LLC, a Minnesota corporation
Sunflower Bank, N.A., its successors and/or assigns
First American Title Insurance Company of Kansas

State of Kansas)
) SS
Sedgwick County)

This is to certify that this map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and NSPS in 2005, and includes Items 1, 2, 3, 4, 5, 7a, 8, 9, 10 and 11b of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of Kansas, the Relative Positional Accuracy of this survey does not exceed that which is specified therein.

Date: _____ Surveyor
Mark A. Savoy RLS #788

MARK A. SAVOY
LS-788
KANSAS
LAND SURVEYOR

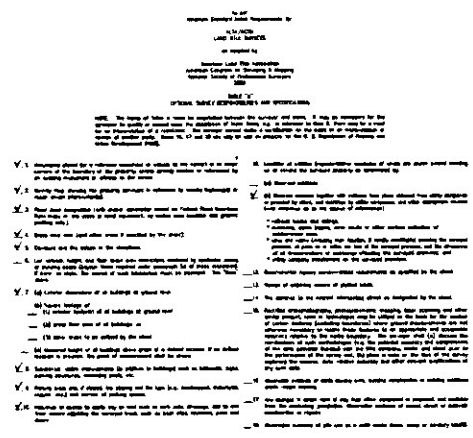
NOTES:

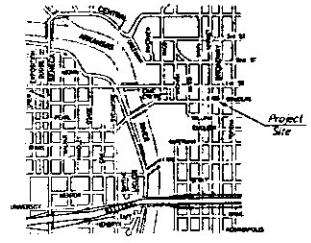
1) SURVEY DATE: March 6, 2009.

2) RECORD INFORMATION: Title Commitment #1021950,
Title Commitment #1062692,
Title Commitment #660927,
Title Commitment #635691, provided by First American Title Insurance Company of Kansas

3) FLOOD ZONE DESIGNATION: According to the National Flood Insurance Rate Map Community Panel No. 20173C 0365E, effective February 2, 2007, the property shown hereon is located in Zone X (Shaded) (Protected by levee)

4) AREA:
(GROSS); Parcel 1: 6,388.4 Sq. Ft. or 0.147 Acres
Parcel 2: 18,307.6 Sq. Ft. or 0.420 Acres
Parcel 3: 18,146.7 Sq. Ft. or 0.417 Acres
Parcel 4: 10,528.3 Sq. Ft. or 0.242 Acres
Total: 53,371.0 Sq. Ft. or 1.226 Acres





Vicinity Map

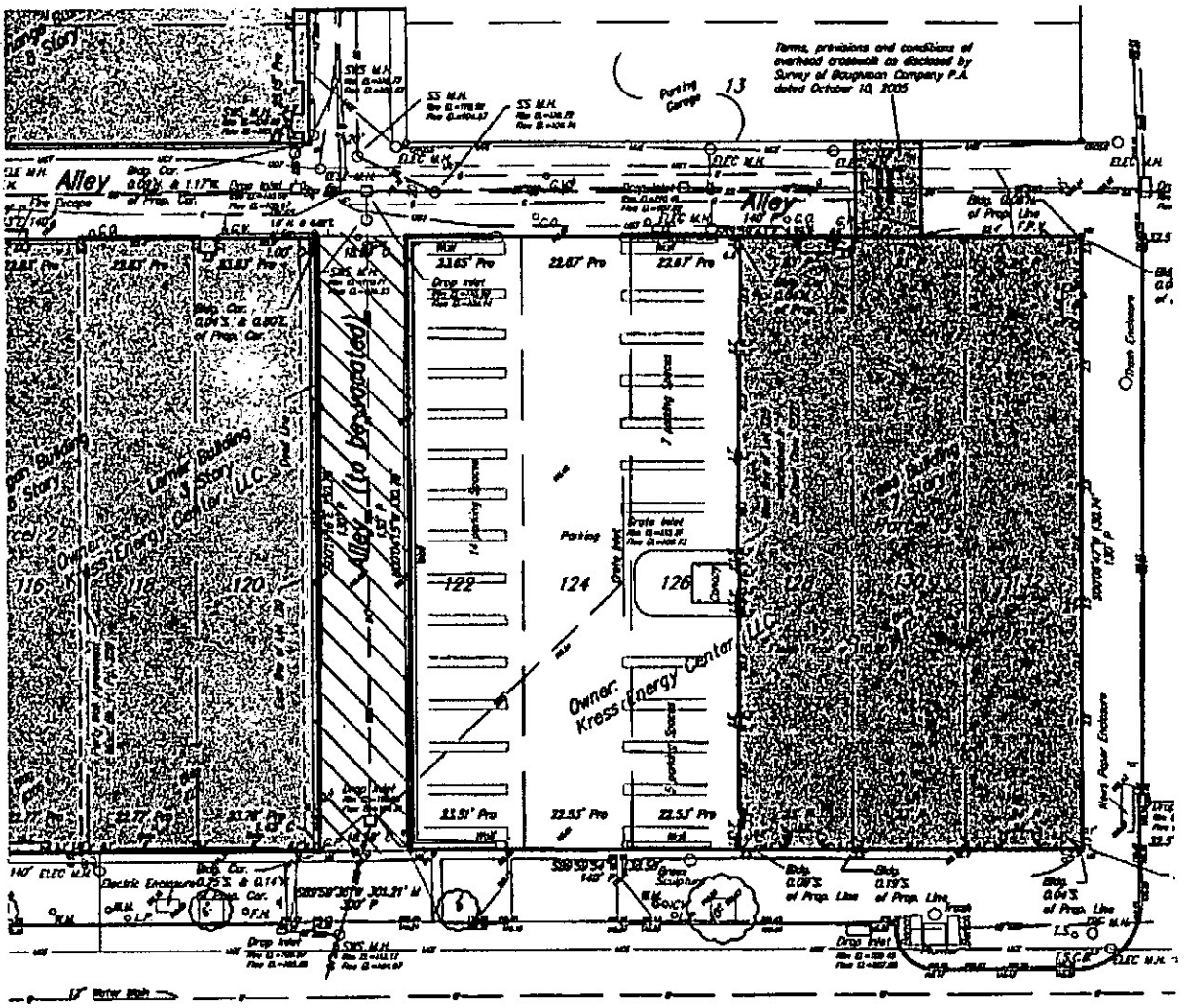
NOTE:

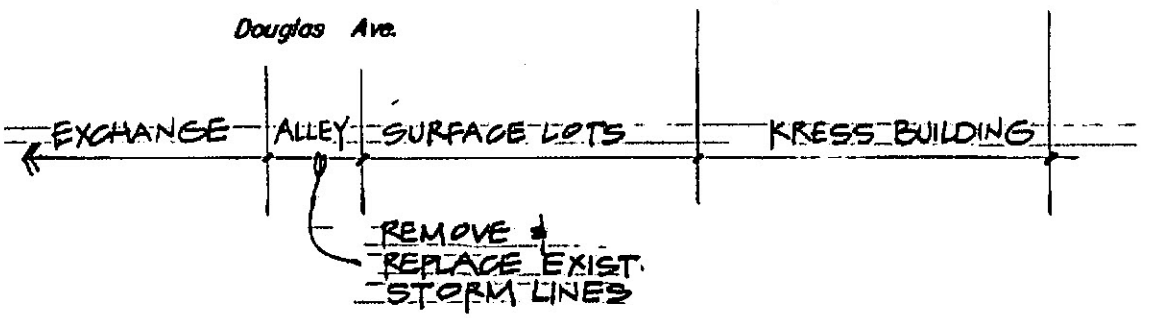
Location of all utilities shown on this drawing, reflect the best information available, consisting of both field observation and information from the records of the various utility companies. Before completing any final design or beginning any excavation on this site, contact the appropriate utility companies for verification of the utility locations.

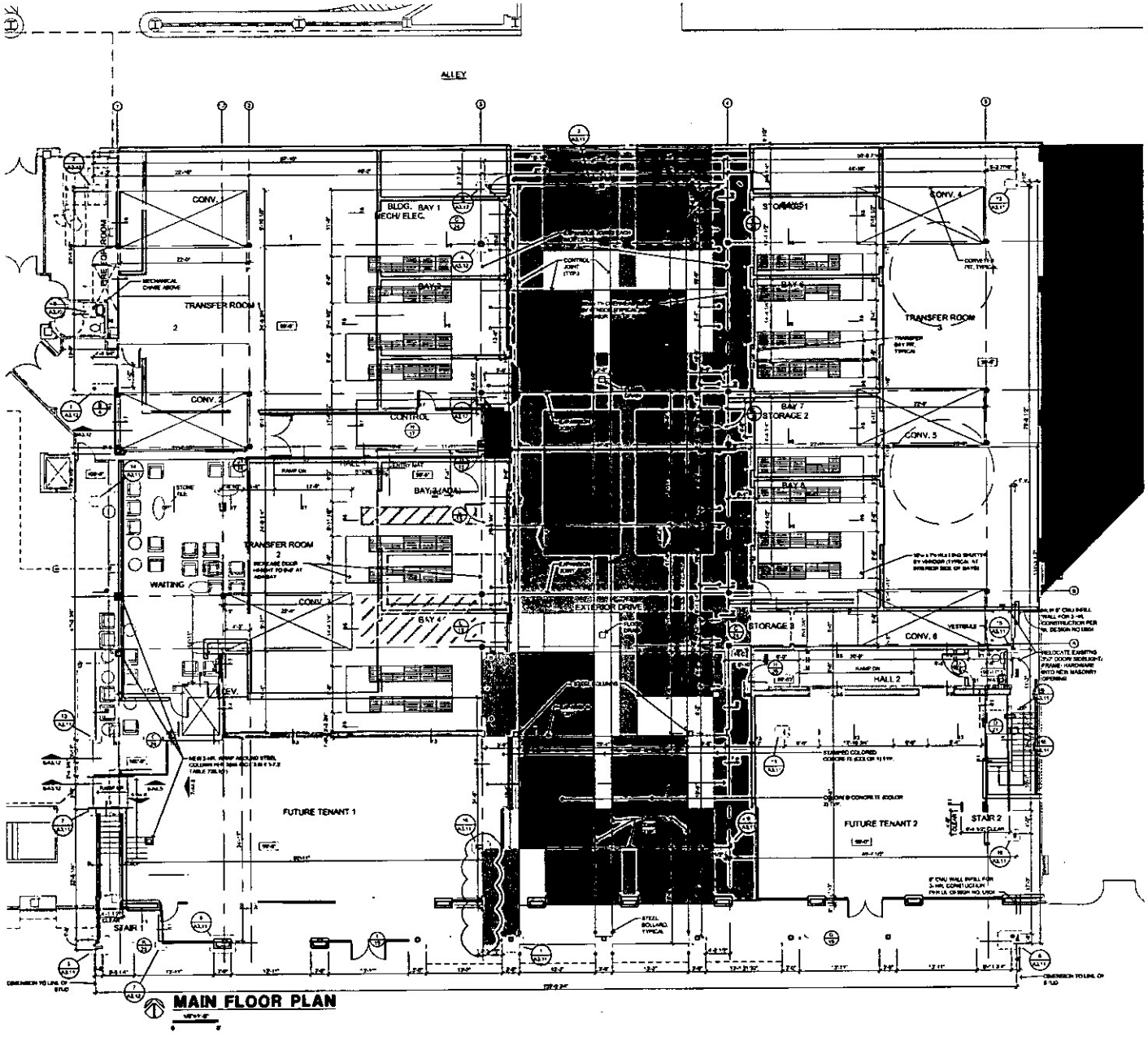
Kansas One-Call 687-2470

ALTA/ACSM LAND TITLE SURVEY

Savoy Company, P.A.
Land Surveyors


Alley
Alley
Alley (to be vacated)
Owner: Kress Energy Center LLC
Parking
Parking Garage
Terms, provisions and conditions of overhead crosswalk as disclosed by Survey of Baughman Company P.A. dated October 10, 2005
Drop Inlet
Electric Enclosure
Water Main


Douglas Ave.
EXCHANGE
ALLEY
SURFACE LOTS
KRESS BUILDING
REMOVE & REPLACE EXIST. STORM LINES



MAIN FLOOR PLAN

GENERAL NOTES

1. DIMENSIONS ARE TO CENTERLINE OF FINISHED FACE UNLESS INDICATED OTHERWISE.
2. ADA CLEARANCE AT ALL NEW DOORS TO BE MIN. OF 12" AT PUSH SIDE WHERE DOOR HAS BOTH LATCH & CLOSER AND 18" MIN. AT PULL SIDE. (DOES NOT APPLY TO DOORS INTO INDIVIDUAL UNITS.)
3. FIELD VERIFY ALL CONDITIONS AND DIMENSIONS AND NOTIFY ARCHITECT OF ANY DEVIATION BEFORE PROCEEDING.
4. ALL WORK TO BE DONE PER CODES.
5. REPAIR EXISTING CONSTRUCTION REMOVED. PATCH TO MATCH ADJACENT CONSTRUCTION.

LEGEND

CMU WALL

METAL STUD WALL

SPANGENBERG PHILLIPS ARCHITECTURE
121 N. Mead, Suite 201, Wichita, KS 67202
TEL: 316.267.4002 FAX: 316.267.1509
www.spangenbergphillips.com

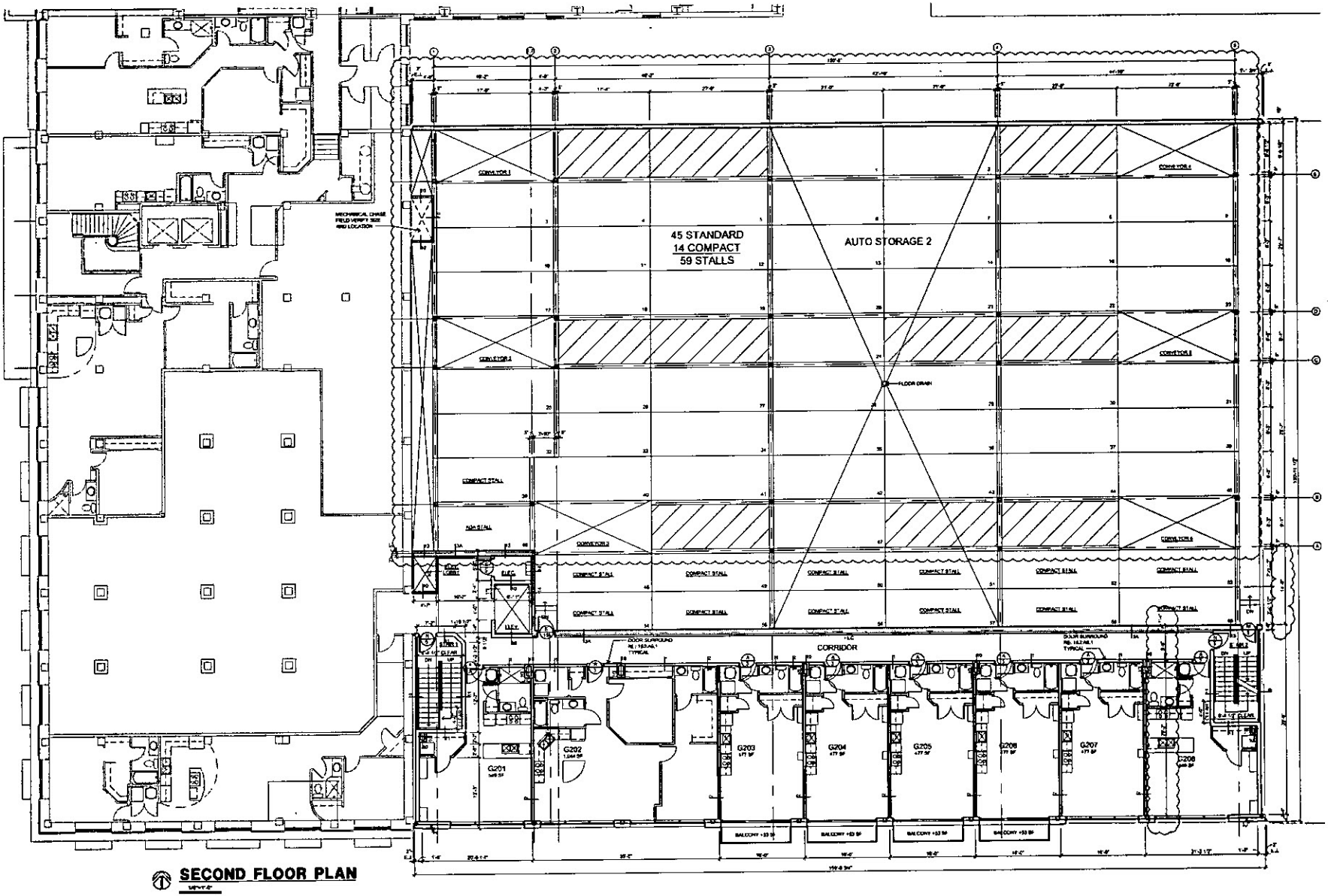
EXCHANGE PLACE APARTMENTS
EXCHANGE PLACE PARKING / APARTMENTS ADDITION

210 E. DOUGLAS AVENUE, WICHITA, KANSAS

HUD ISSUE
31 JULY 2009
PRICING
21 MAY 2009

FIRST FLOOR PLAN

A1.1



SECOND FLOOR PLAN

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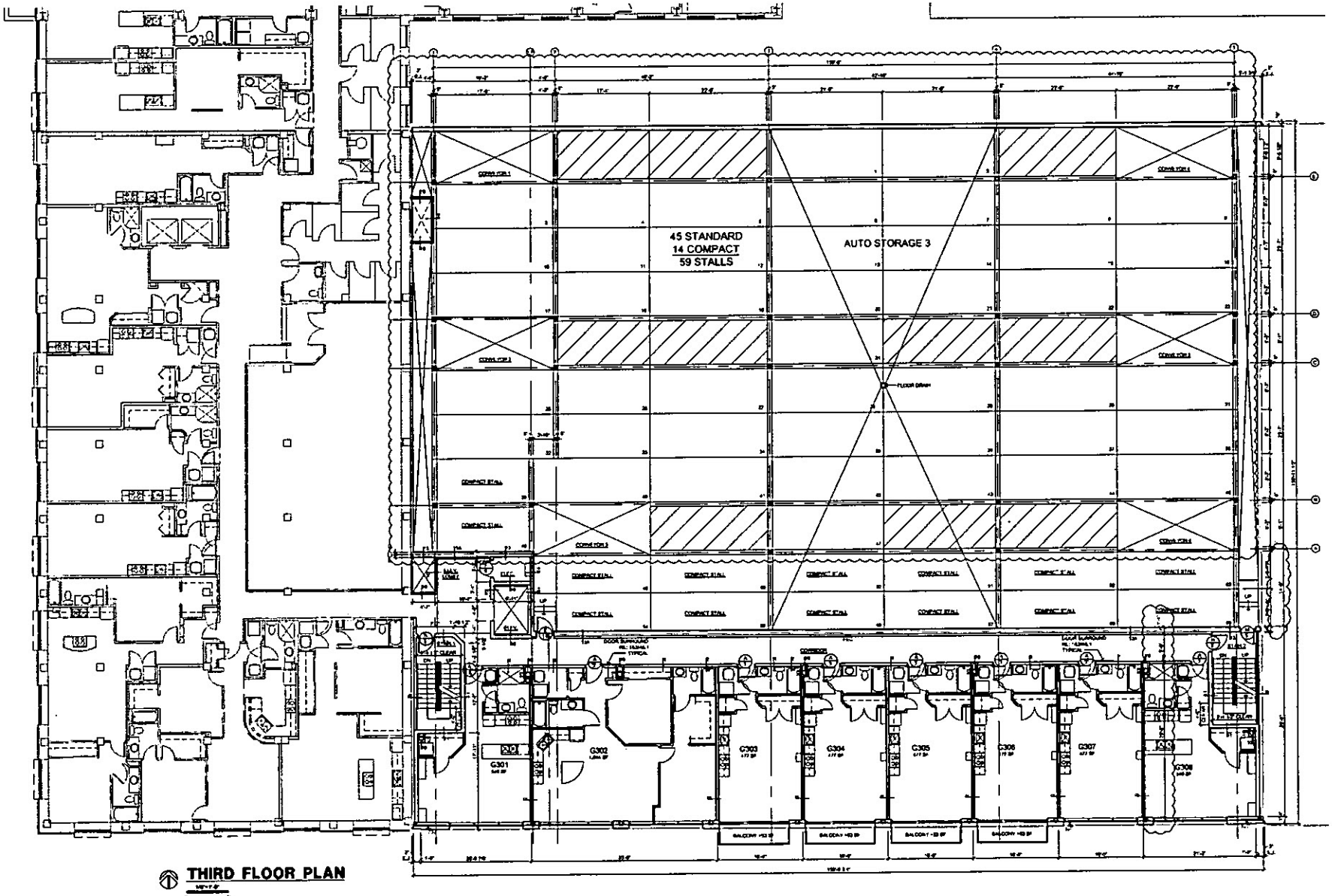
www.spangenbergphillips.com

EXCHANGE PLACE APARTMENTS
EXCHANGE PLACE PARKING / APARTMENTS ADDITION
210 E. DOUGLAS AVENUE WICHITA, KANSAS

HUD ISSUE
21 JULY 2009
PROPO
21 MAY 2009

SECOND FLOOR PLAN

A1.2



THIRD FLOOR PLAN

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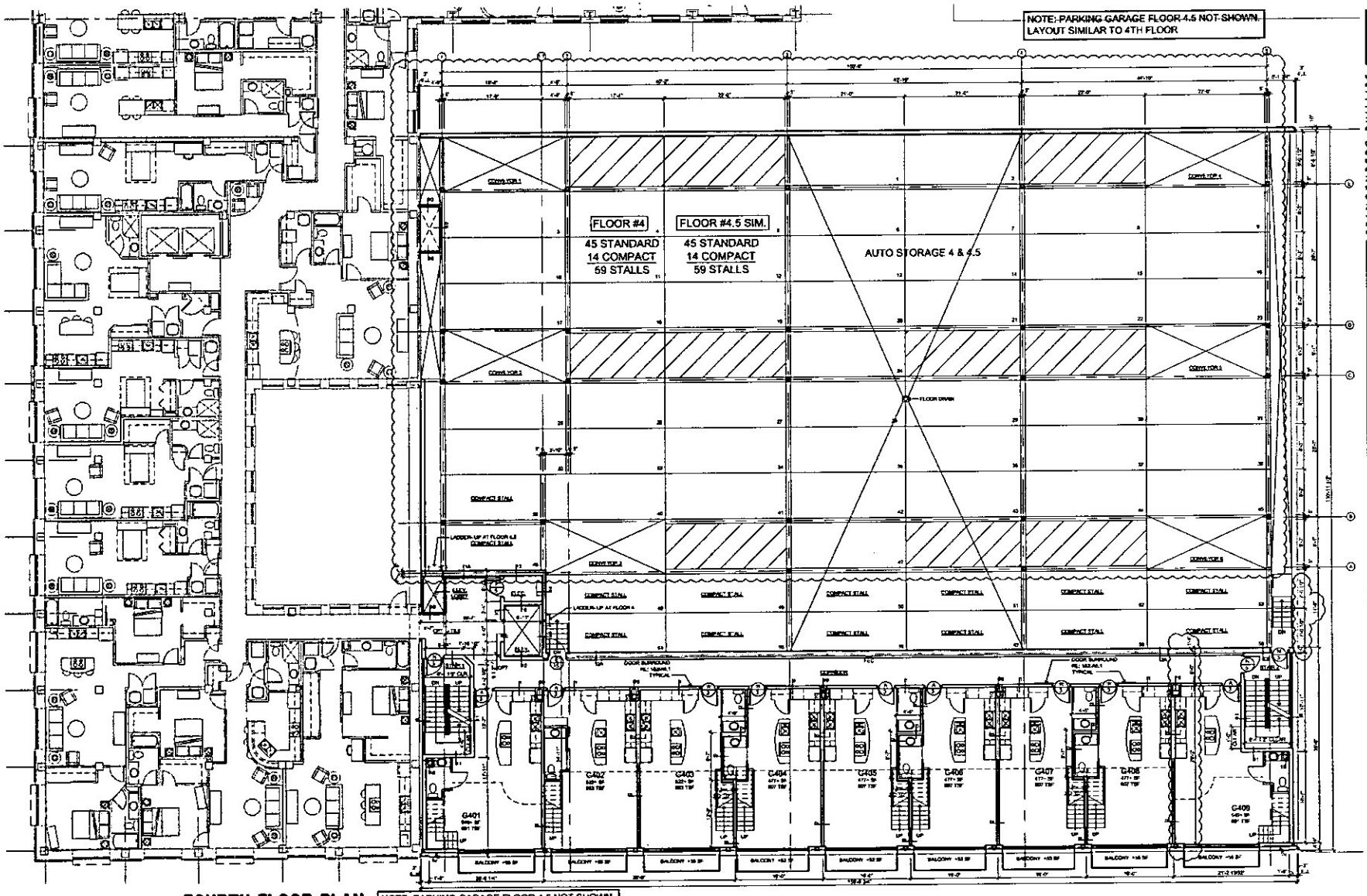
EXCHANGE PLACE APARTMENTS
EXCHANGE PLACE PARKING / APARTMENTS ADDITION
210 E. DOUGLAS AVENUE, WICHITA, KANSAS

HUD ISSUE
21 JULY 2008
PRICING
21 MAY 2008

THIRD FLOOR PLAN

A1.3



FOURTH FLOOR PLAN

NOTE: PARKING GARAGE FLOOR 4.5 NOT SHOWN.
LAYOUT SIMILAR TO 4TH FLOOR

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ARCHITECTURE
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TEL: 316.267.4002 FAX: 316.267.1509
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EXCHANGE PLACE APARTMENTS

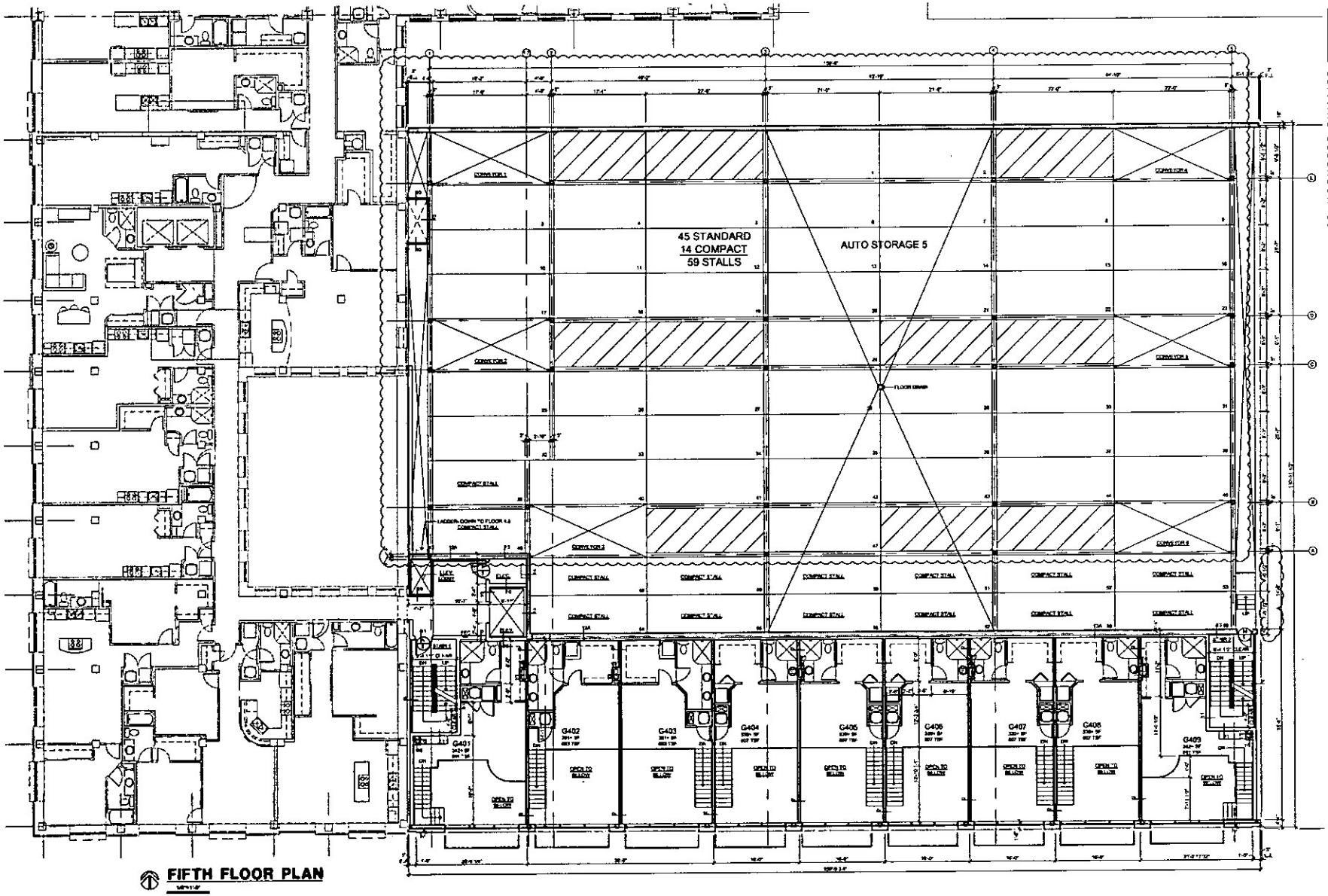
EXCHANGE PLACE PARKING / APARTMENTS ADDITION

210 E. DOUGLAS AVENUE, WICHITA, KANSAS

HUD ISSUE
21 JULY 2008
PROPO
21 MAY 2008

FOURTH
FLOOR PLAN

A1.4



FIFTH FLOOR PLAN

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TEL: 316.267.4002 FAX: 316.267.1509
www.spangenbergphillips.com

EXCHANGE PLACE APARTMENTS

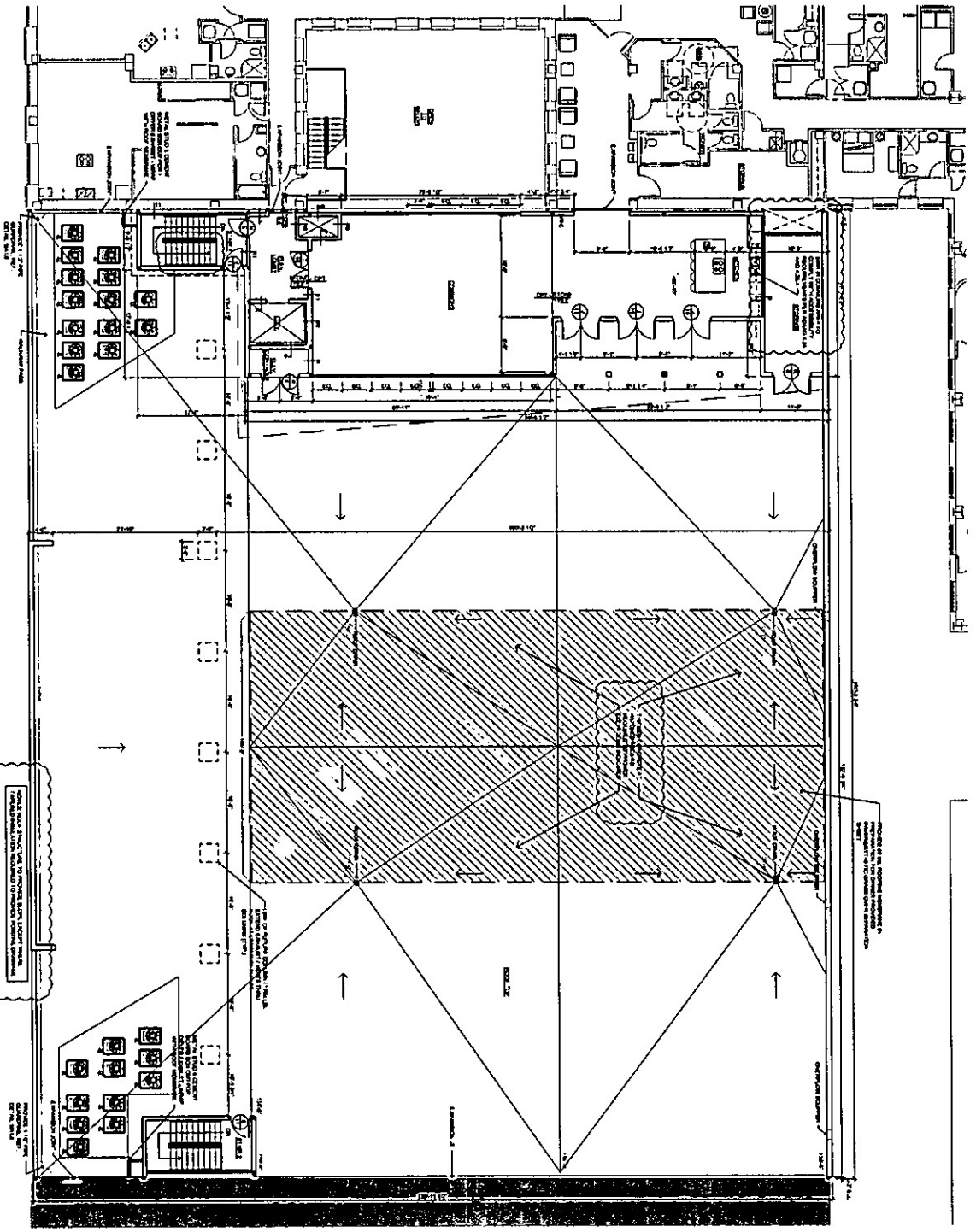
EXCHANGE PLACE PARKING / APARTMENTS ADDITION

210 E. DOUGLAS AVENUE, WICHITA KANSAS

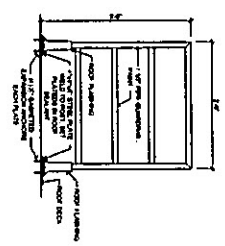
HUD ISSUE
21 JULY 2009
PRICING
21 MAY 2009

FIFTH
FLOOR PLAN

A1.5



SIXTH FLOOR / ROOF TOP PLAN



GUARDRAIL ELEVATION

EXCHANGE PLACE APARTMENTS
EXCHANGE PLACE PARKING / APARTMENTS ADDITION

210 E. DOUGLAS AVENUE, WICHITA, KANSAS

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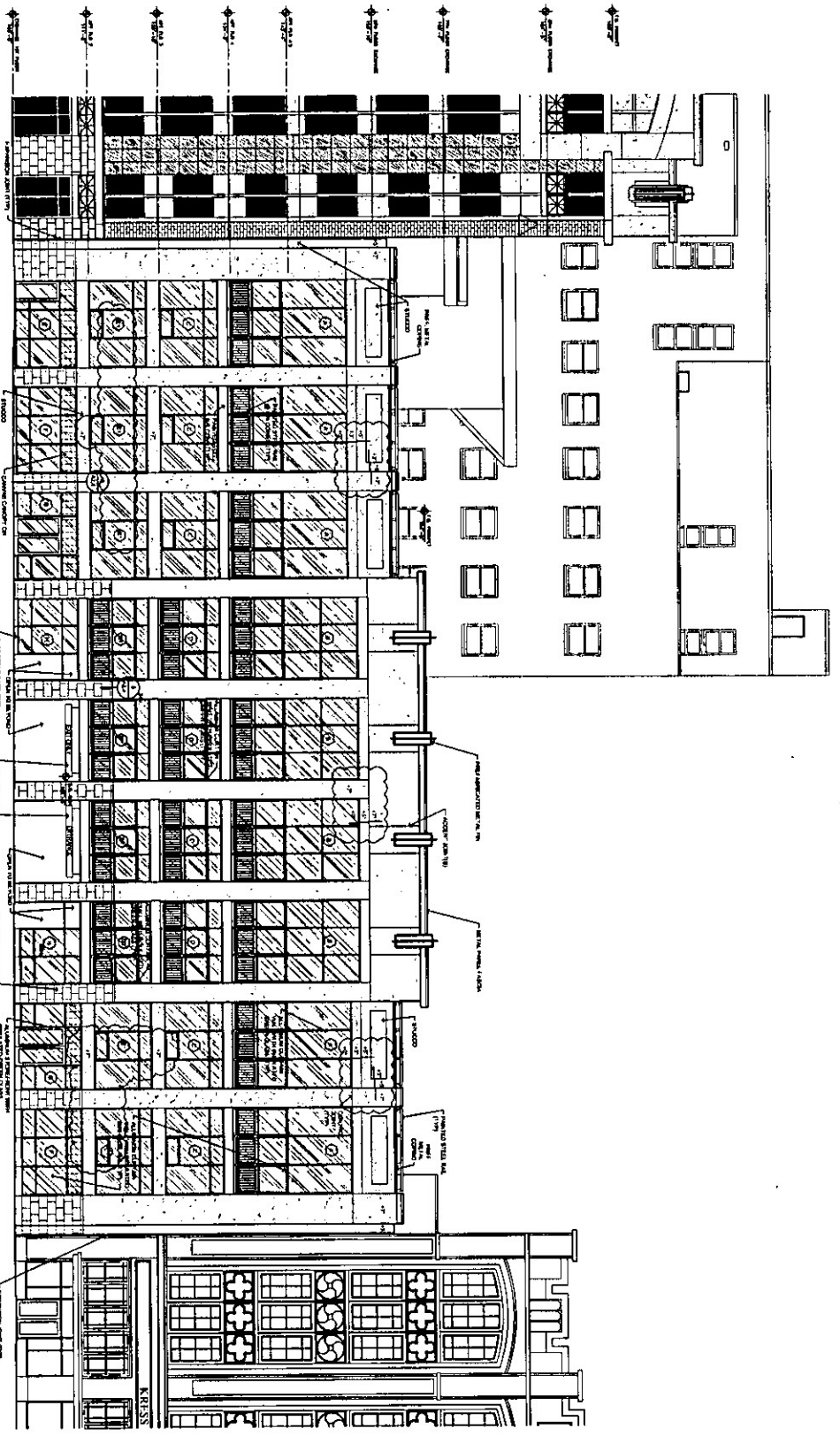
A1.6

SIXTH FLOOR PLAN



1 SOUTH ELEVATION

A2.1

EXTERIOR ELEVATIONS

EXCHANGE PLACE APARTMENTS
EXCHANGE PLACE PARKING / APARTMENTS ADDITION

210 E. DOUGLAS AVENUE, WICHITA, KANSAS

SPANGENBERG PHILLIPS
ARCHITECTURE
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DRAINAGE PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

Lot 120 and Lot 122, Douglas Street, Griffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended:

(a) That there be constructed drainage improvements to serve the above described property. That said improvements be constructed with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.

(b) That the estimated and probable cost of the foregoing improvements being **Twenty Seven Thousand ($27,000)** 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 of 1 percent per month from and after May 1, 2009.

(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 for which the improvement district shall be liable shall be on a **fractional** basis:

Lot 120 shall pay 50/100 of the improvement cost
Lot 122 shall pay 50/100 of the improvement cost

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

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 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
Lot 120, Douglas Street, Griffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas	Steven T. Cheney Steven J. Cheney	10/15/09
Lot 122, Douglas Street, Griffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas	Steven T. Cheney Steven J. Cheney	10/15/09

DRAINAGE EASEMENT

THIS INDENTURE MADE THIS ___ day of October, 2009, between the undersigned ("Grantor"), and the City of Wichita, a municipal corporation, ("Grantee").

WITNESSETH:

Grantor in consideration of the sum of $1.00 and other valuable considerations, the receipt of which is hereby acknowledged, does hereby grant and convey unto Grantee a stormwater sewer easement over and across the following described real estate situated in Sedgwick County, Kansas, to-wit:

The 20 foot wide vacated alley adjacent to Lot 120 and Lot 122, Douglas Street, Griffenstein's Original Town Addition, Wichita, Sedgwick County, Kansas

to be used for the construction, installation, maintenance, operation and repair of stormwater sewer, giving unto Grantee, its officers, agents employees, and other necessary personnel, the right of ingress and egress thereto and therefrom and the right to take thereon and remove therefrom all necessary tools, machinery, appurtenances, material and personnel used in the construction, installation, maintenance, operation, and repair of said stormwater sewer.

IT IS AGREED AND UNDERSTOOD between the parties that Grantor retains the fee title to said real estate and may have the use of the surface thereof when the same does not conflict or interfere with the right and privilege granted to Grantee herein and that this grant is binding upon and extends to the successors and assignees of Grantor.

IN WITNESS WHEREOF, Grantor has caused this indenture to be signed by its duly authorized officers and the corporate seal affixed hereto, all on the day and year first above written.

Owner – Lot 120
DGL Investments, LLC

Signed: _____
Print: Steven J. Cheney

Title: Chief Manager

Owner – Lot 122
Kress Building, LLC

Signed: _____
Print: Steven J. Cheney

Title: Chief Manager

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

BE IT REMEMBERED, That on this 15TH day of October, 2009, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came Steven J. Cheney, Chief Manager of DGL Investments, LLC and Kress Building, LLC, personally known to me and he/she has executed this instrument of writing on the date above first written on behalf of the LLC's.

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

_____
Notary Public

My Commission Expires: 1/31/10

JOHN E. WALL JR.
Notary Public
Minnesota
My Commission Expires January 31, 2010

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: SUB2010-00014 -- Plat of Woods North 2nd Addition located south of 29th Street North and west of 127th Street East. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (10-0)

Background: This site, consisting of 19 lots on 7.32 acres, is a replat of Woods North Addition and is zoned SF-5 Single-family Residential.

Analysis: Water and sewer services are available. A Restrictive Covenant has been submitted for the ownership and maintenance of the proposed reserves. Since this plat includes platting narrow street right-of-way with adjacent 15-foot street drainage and utility easements, a Restrictive Covenant has been submitted outlining restrictions for lot-owner use of these easements. A Restrictive Covenant has also been submitted to provide four (4) off-street parking spaces per lot that abuts a 32-foot street.

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

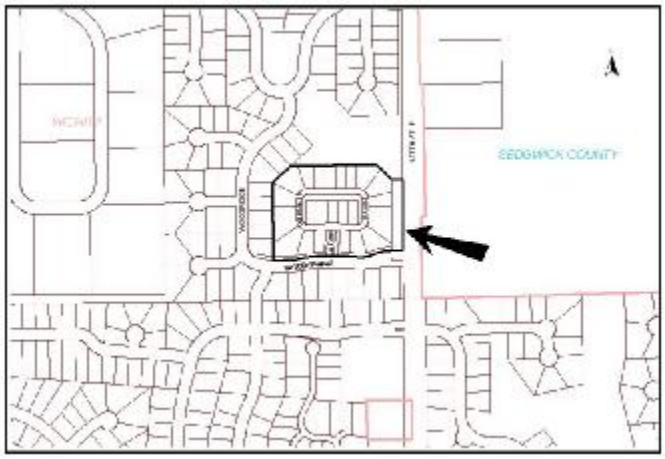
Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Restrictive Covenants will be recorded with the Register of Deeds.

Recommendations/Actions: Approve the documents and plat and authorize the necessary signatures.

Attachments: None.



RESTRICTIVE COVENANT

THIS DECLARATION made this 12th day of April, 2010, by Firethorne, L.L.C., a Kansas Limited Liability Company, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

WOODS NORTH 2ND ADDITION
Lots 1 through 15, Block A
Lots 1 through 4, Block B

WHEREAS, Declarant is desirous in connection therewith that various provisions for the maintenance and responsibility for the maintenance be placed of record for Woods North 2nd Addition, Wichita, Sedgwick County, Kansas.

NOW, THEREFORE, Declarant hereby declares and covenants:

1. That Reserve "A" is hereby reserved for open space, landscaping, entry monuments, streets, utilities and drainage purposes. The public shall not bear the cost of any repair or replacement of improvements within said Reserve "A" adversely affected by street construction, repair, or maintenance.

Reserve "B" is hereby reserved for entry monuments, berms, landscaping, open space, streets as confined to easements, drainage purposes, and utilities as confined to easements.

Reserve "C" is hereby reserved for entry monuments, berms, landscaping, open space, streets as confined to easements, drainage purposes, utilities as confined to easements, and pipelines as confined to easements.

Reserves "A", "B", and "C", shall be owned and maintained by the homeowners association for the addition.

Reserves "A", "B", and "C", shall be owned and maintained by the homeowners association for the addition provided, however, that the undersigned, or the homeowners association, as the undersigned's successor in interest, may in their discretion, deed a parcel of a Reserve to an owner or owners of an adjacent Lot, subject to the obligation to maintain such deeded parcel of a Reserve in compliance with the provisions hereof and in compliance with the maintenance covenants of any applicable restrictive covenants and/or regulatins.

2. That a Homeowner's Association shall be formed and incorporated as a non-profit corporation under Kansas Statutes at the Declarant's sole cost. Reserves "A", "B", and "C", as designated on the plat of Woods North 2nd Addition, shall be deeded to the Homeowner's Association upon its incorporation or within 30 days thereafter.

3. That the declaration of covenants and other provisions of the Homeowner's Association being formed shall provide specific pertinent language requiring that the Homeowner's Association shall include the first or any other subsequent phase or phases for the maintenance of any and all common areas contiguous to Reserves "A", "B", and "C", to Woods North 2nd Addition under the same scope of responsibility as the initial phase of development.

4. That the owners hereby grant an irrevocable easement to whichever appropriate governing body or authority has jurisdiction, to enter upon the Reserves, as defined, for the purposes of maintaining such Reserves. This easement is conditioned upon the following event or events happening:

A. That the Declarant or the Homeowners Association, as may be appropriate, has failed to maintain the reserves in a reasonable and prudent manner.
and,

B. That the appropriate governing body has given written notice to the Declarant or the Homeowners Association 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 Homeowners Association 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 all lots in Woods North 2nd 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 WOODS NORTH 2ND 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.

Firethorne, L.L.C.
By: Ritchie Development Corporation,
Managing Member

By: _____
Kevin Mullen, President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 12th day of April, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Kevin Mullen, as President of Ritchie Development Corporation, Managing Member of Firethorne, L.L.C., 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 company.

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

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-13)

JUDITH M. TERHUNE
Notary Public - State of Kansas
My Appt. Expires 11-7-13

RESTRICTIVE COVENANT

THIS DECLARATION made this 12th day of April, 2010, by Firethorne, LLC, a Kansas limited liability company, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

WOODS NORTH 2ND ADDITION
Lots 1 through 15, Block A
Lots 1 through 4, Block B

WHEREAS, the Declarant is desirous in connection therewith that various restrictions be placed of record on the 15 foot street, drainage and utility easement.

NOW, THEREFORE, Declarant hereby declares and covenants that retaining walls, change of grade, fences, earth berms, and mass plantings shall be prohibited within the said easement. Furthermore, the Declarant hereby agrees that any planting within the said easement shall be reviewed by the City Forestry Division, prior to installation.

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 title to all Lots, as platted in said Woods North 2nd 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.

Firethorne, L.L.C.
By: Ritchie Development Corporation,
Managing Member

By: _____
Kevin Mullen, President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 12th day of April, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Kevin Mullen, as President of Ritchie Development Corporation, Managing Member of Firethorne, L.L.C., 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 company.

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

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-13)

JUDITH M. TERHUNE
Notary Public - State of Kansas
My Appt. Expires 11-7-13

RESTRICTIVE COVENANT

THIS DECLARATION made this 12th day of April, 2010, by Firethorne, L.L.C., a Kansas Limited Liability Company, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

WOODS NORTH 2ND ADDITION
Lots 1 through 15, Block A
Lots 1 through 4, Block B

WHEREAS, the Declarant is desirous that restrictions involving off-street parking be placed of record.

NOW, THEREFORE, Declarant hereby declares and covenants that each residential lot within Woods North 2nd Addition, Wichita, Sedgwick County, Kansas, shall provide space for four (4) off-street parking spaces per dwelling unit on each lot.

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 title.

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.

Firethorne, L.L.C.
By: Ritchie Development Corporation,
Managing Member

By: _____
Kevin Mullen, President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 12th day of April, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Kevin Mullen, as President of Ritchie Development Corporation, Managing Member of Firethorne, L.L.C., 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 company.

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

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-13)

JUDITH M. TERHUNE
Notary Public - State of Kansas
My Appt. Expires 11-7-13

City of Wichita
City Council Meeting
May 4, 2010

TO: Wichita Airport Authority

SUBJECT: Pratt & Whitney Engine Services, Inc. – Supplemental Agreement No. 3

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Supplemental Agreement.

Background: In 1983, Pratt & Whitney entered into a lease agreement with the Wichita Airport Authority for construction of a facility at 1955 Midfield Road. The agreement included a firm, ten-year lease term with three, five-year renewal options through February 29, 2008. During the initial 20 years of the agreement (March 1, 1983 – February 28, 2003), Pratt & Whitney was required to pay only land rent to the WAA, along with special assessments over a 15-year period. During the last five-year option (March 1, 2003 – February 29, 2008, an appraisal was conducted, and facility rent became due at 50% of fair market rental value. The agreement was subsequently extended for four, six-month periods at full market rent through February 28, 2010. For the past two months, Pratt & Whitney has been in a hold-over status while a satisfactory lease extension is negotiated between the two parties.

Analysis: Pratt & Whitney is desirous of amending the current agreement to reflect a five-year extension with three, five-year renewal options, commencing May 1, 2010. This amendment includes changes to the agreement relative to maintenance/replacement responsibilities. Pratt & Whitney is making a significant investment in excess of $250,000 to refurbish the building, including replacement of the building roof and fascia, HVAC equipment, and parking lot, among other things. In exchange for this investment, the WAA has agreed to assume these responsibilities after the improvements are accepted by the WAA, in that the building is owned by the WAA.

Financial Considerations: Based upon an appraisal conducted by the Martens Companies and subsequent negotiation between the parties, the rental rate recommended for use of this 15,470 sq. ft. facility is $5.00 per square foot, for an annual revenue of $77,350, payable at the rate of $6,445.83 per month. This rate compares to the previous 12-month rental of $80,262, which represents a decrease of $2,912 or 4%. This decrease is minimal and acceptable in view of much larger rates of rental decreases (20-30%) being experienced in the commercial real estate market in the vicinity of the Airport, and in consideration of the tenant's investment in the airport's facility.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through negotiating agreements which allow Mid-Continent's airport partners to continue their operations on the airport; which, in turn, generate rental income for the WAA and allows the Airport to continue its operation on a self-sustaining basis.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve Supplemental Agreement No. 3, and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 3.

SUPPLEMENTAL AGREEMENT NO. 3

By and between

THE WICHITA AIRPORT AUTHORITY
Wichita, Kansas

and

PRATT & WHITNEY ENGINE SERVICES, INC.

for

Use of Facility – 1955 Midfield Road
Wichita Mid-Continent Airport, Wichita, Kansas

THIS SUPPLEMENTAL AGREEMENT NO. 3, made and entered into as of this May 4, 2010, by and between THE WICHITA AIRPORT AUTHORITY, Wichita, Kansas, hereinafter referred to as the Lessor; and PRATT & WHITNEY ENGINE SERVICES, INC., successor by merger to Pratt & Whitney Aircraft of Canada (U.S.) Ltd., hereinafter referred to as the Lessee.

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a lease agreement (as amended, the "Lease") dated January 17, 1983, for the purpose of constructing a 15,470 square foot facility (the "premises") at 1955 Midfield Road, Wichita Mid-Continent Airport, Wichita, Kansas, for aviation purposes in connection with Lessee's business of a service and marketing center for aircraft engines, as such lease was amended by Supplemental Agreement No. 1 dated March 18, 2003 and Supplemental Agreement No. 2 dated February 12, 2008 for the purpose of extending the lease term and establishing facility rent; and

WHEREAS, the Lessor and Lessee are now desirous of entering into this Supplemental Agreement No. 3 for the purposes of, *inter alia*, extending the term of the Lease, adjusting rentals, establishing renewal options, modifying repair obligations and detailing certain improvements to the Premises.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the parties hereto agree as follows:

1. Term

The initial term of the extension evidenced by this Supplemental Agreement No. 3 shall be a five (5) year period from May 1, 2010 through April 30, 2015.

2. Renewal Options

Lessee shall have three (3) options to extend the term of the Lease for consecutive additional periods of five (5) years each (05/01/15 – 04/30/19, 05/01/19 – 04/30/24 and 05/01/24 – 04/30/29, respectively), provided Lessor is given written notice at least ninety (90) days prior to the end of the then current term. Each renewal shall be on the same terms and conditions as in the Lease with the exception that the rental rate for each renewal period shall be a fair market rental rate mutually agreed to between Lessor and Lessee. In the event Lessor and Lessee are unable to agree on a fair market rental rate within thirty (30) days after receipt by Lessor of Lessee's renewal notice, the same shall be established by an independent appraiser agreeable to both Lessor and Lessee.

3. Facility and Land Rental

Articles 2 and 3 of Supplemental Agreement No. 1 and Articles 3 and 4 of Supplemental Agreement No. 2 are hereby superseded and replaced with the following language:

"Rental for use of said facility (encompassing 15,470 sq.ft.) and the land on which it is situated (encompassing 71,589 sq.ft.) during the initial term of this extension ending April 30, 2015 shall be at the rate of Five Dollars ($5.00) per square foot for an annual total of $77,350.00, payable at the rate of $6,445.83 per month, according to the following schedule:

Term	Annual Bldg Rent	Land Rent Per Sq. Ft.	Annual Land Rent	Annual Bldg & Land Rent
05/01/10 – 04/30/11	$54,248.23	$.3227	$23,101.77	$77,350.00
05/01/11 – 04/30/12	$53,095.65	$.3388	$24,254.35	$77,350.00
05/01/12 – 04/30/13	$51,885.79	$.3557	$25,464.21	$77,350.00
05/01/13 – 04/30/14	$50,611.51	$.3735	$26,738.49	$77,350.00
05/01/14 – 04/30/15	$49,272.79	$.3922	$28,077.21	$77,350.00"

4. Maintenance and Repair

Article 11 of the Lease is hereby superseded and replaced with the following language:

(a) Lessor shall, at its sole cost and expense, keep, maintain and repair the following in good condition, and replace as Lessor deems necessary:

(i) The roof of the premises and all roof structures, inclusive of roof membrane, together with any ceiling tiles damaged by roof leaks, and appurtenances thereto;

(ii) The exterior of structure of the premises, including, but not limited to, the façade and exterior walls, gutters and downspouts and foundation;

(iii) All mechanical systems in or servicing the premises, including but not limited to, heating, ventilation and air conditioning and associated motors, pumps, ducting and filtration systems;

(iv) All plumbing and related fixtures leading to the premises up to and terminating at the shut-off valve entering the premises;

(v) The electrical system leading to the premises up to and terminating at the breaker panel entering the building premises;

(vi) The paved areas of the parking lot and sidewalks, lawn care and outdoor sprinkler system serving the premises;

(vii) All windows in the premises, provided, however, that Lessee shall be responsible for glass as set forth in subsection (b) below; and

(viii) Any hot water heaters serving the premises and all fixtures related thereto.

(b) Lessee shall, at its sole cost and expense, shall keep, maintain and repair the following in good condition, and replace as necessary:

(i) The outside sign and flagpole;

(ii) The security system serving the premises;

(iii) All exterior and interior door locks and all interior doors;

(iv) The telephone system serving the premises;

(v) Janitorial service desired by Lessee for the premises;

(vi) Trash and snow removal for areas serving the premises;

(vii) Glass replacement;

(viii) The electrical system serving the premises beginning at the breaker panel entering the building premises;

(ix) Plumbing and plumbing fixtures serving the premises beginning at the shut-off valve entering the building premises;

(x) Interior decorations, painting, finishes, carpet and/or tile, and all trade fixtures, equipment and furnishings;

(xi) All interior lighting fixtures and standards including bulbs, tubes, ballasts, starters, switches and outlets;

(xii) Building sprinkler and fire protection systems; and

(xiii) Any damage to the premises which is caused by Lessee and those for Lessee is legally responsible other than normal wear and tear.

(c) Lessor, its agents or employees, shall have the right to enter upon the premises during normal business hours and upon reasonable prior notice to Lessee to inspect the condition of the premises.

(d) Lessee shall not be responsible to Lessor for damages to property or equipment covered by insurance.

(e) In the event Lessee shall fail to so maintain, replace, repair, keep the premises and the systems and equipment therein in accordance with the foregoing, the Lessor, after thirty (30) days' written notice to theLessee, may enter upon and perform the necessary work at the expense of Lessee.

5. Improvements

Lessor hereby consents to Lessee, at Lessee's sole cost and expense, constructing the improvements and performing the work described on the scope of work attached hereto and made a part hereof as Exhibit A (the "Improvements"). Such Improvements shall thereafter be deemed to be a part of the premises. It is understood and agreed that Lessor shall assume responsibility for items specified in Article 4(a), if and when the Improvements have been completed to Lessor's satisfaction.

6. Environmental Indemnities

A new Article 29 is hereby added to the Lease as follows:

(a) Lessee shall indemnify Lessor and hold Lessor harmless from any cost, liability or expense imposed upon Lessor under any local, state or federal law, ordinance, statute, rule, regulation, or judicial or administrative order because of or arising out of any contamination of the property on which the premises are located or any contamination of groundwater or surrounding lands because of or arising out of contamination of the property on which the premises are located due to the actions of Lessee or Lessee's employees or agents.

(b) Subject to any limitations or restrictions imposed by the Kansas Budget Law or Cash Basis Law, Lessor shall indemnify Lessee and hold Lessee harmless from any cost, liability or expense imposed upon Lessee, including but not limited to, any cost liability or expense under any local, state or federal law, ordinance, statute, rule, regulation, or judicial or administrative order, because of or arising out of any contamination of the property on which the premises are located or any contamination of groundwater or surrounding lands because of or arising out of contamination of the property on which the premises are located that was not caused by the actions of Lessee or Lessee's employees or agents.

(c) The indemnifications of this Article 29 shall survive the expiration or termination of the Lease.

7. Other Terms

It is understood and agreed that except as modified herein all other terms and conditions of the original Agreement, as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental 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, A.A.E., Director of Airports

Witness:

PRATT & WHITNEY ENGINE
SERVICES, INC.

By _____

By _____

Title _____
"LESSEE"

APPROVED AS TO FORM: _____ Date: _____
Director of Law

City of Wichita
City Council Meeting
May 4, 2010

TO: Wichita Airport Authority

SUBJECT: Taxiway A1 Extension and Apron
Colonel James Jabara Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the budget adjustment.

Background: The approved Capital Improvement Program (CIP) includes this project. On June 12, 2007 the Wichita Airport Authority approved a project to extend Taxiway A1 and construct an apron for pending tenant development with a budget of $1,040,000.

Analysis: In accordance with the Authority's lease agreement with Sedgwick County for the National Center for Aviation Training (NCAT), the Authority is obligated to construct this taxiway and apron to serve the NCAT complex. The initial budget was established prior to the design of the NCAT campus and the taxiway/apron pavements. During the design phase of the taxiway, it was discovered that there would be an impact on wetlands and flood plains by the construction. Thus, additional design effort and environmental analysis was required that involved extensive coordination with the Army Corps of Engineers and the Federal Aviation Administration. There will also be a cost for purchasing wetlands credits to mitigate the impact. Since the tenant facilities had not yet been designed at the time of budget creation, during the design phase it was also determined that a larger apron was needed to serve the NCAT's hangar. In addition, the engineers determined that taking soil for fill material from the upstream drainage channel was more efficient and practical than bringing fill to the project site from off the airport, so channel improvements were incorporated into the project.

Financial Considerations: In return for the County's up-front rent payment of $3.263 million, the Authority is obligated to fund the first $1 million of the design and construction cost of the taxiway and apron that serve the NCAT complex. Sedgwick County is then obligated to reimburse the Authority for the project costs that pertain to their complex in excess of $1 million. The project will be constructed in accordance with Federal Aviation Administration (FAA) design standards in order to preserve the ability to receive future FAA Airport Improvement Program (AIP) grant funds. Until FAA funds are received, the project will be funded with General Obligation debt funded with Airport Revenue. The project budget covers estimated construction costs, engineering and design fees, environmental analysis and wetlands mitigation, project administration and contingencies. Construction bids are due on May 7, 2010, and this budget will allow the contract to be awarded in order to complete construction of the taxiway and apron prior to the opening of the NCAT in September. Therefore, a budget adjustment to increase the project total to $1,750,000 is requested.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through the development of airfield pavements to serve the aviation community.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the budget adjustment.

Attachments: None.

Agenda Item No. IX-3

City of Wichita
City Council Meeting
May 4, 2010

TO: Wichita Airport Authority

SUBJECT: Airfield Pavement Rehabilitation
Colonel James Jabara Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the capital project budget, contract, and grant application.

Background: This rehabilitation project will extend the pavement life of the runway, taxiway, and apron, thereby delaying the need for future reconstruction, and reducing the possibility of pavement debris, which could cause aircraft engine damage. Professional Engineering Consultants (PEC) was selected by the Staff Screening and Selection Committee process to provide consulting services as the most qualified from the three firms that were interviewed. This project is listed in the current CIP at $750,000.

Analysis: In an understanding with the Federal Aviation Administration (FAA), the design will occur in 2010 and include a runway pavement surface sensor system, as well as complete removal and replacement of a portion of the General Aviation Apron that was found deteriorated beyond repair in a pre-design study. Additional work determined to be needed as a result of the pre-design study includes correcting drainage problems as they relate to the pavement structure. In order to take advantage of FAA funding opportunities, there will be future grants for consultant construction services and for construction. Staff has prepared a grant application to the FAA for consultant design phase services and administrative costs in the amount of $66,758.

Financial Considerations: On December 29, 2009 the Wichita Airport Authority approved a grant from the Kansas Department of Transportation (KDOT) to provide a maximum of $118,250 for eligible runway rehabilitation costs not covered by future FAA Airport Improvement Program (AIP) grants. The contract with PEC for design and bid services is $61,758. Subsequent supplemental agreements will address the construction phases of the project. Ultimate funding is expected to be from KDOT, AIP Federal Grant funds and General Obligation bonds paid for with Airport Revenue. The budget initiation request is for $100,000 to cover the initial costs for engineering design and bid services, plus administration, contingencies, and any additional follow-on services needed prior to bidding. A budget adjustment will be requested at the time the project is bid to cover actual construction costs.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through maintaining safe airport pavements to serve the aviation community.

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

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the budget, design contract, the grant agreement and authorize necessary signatures (grant signatures by the Director of Airports).

Attachments: Contract and Grant Agreement.

CONTRACT
for
CONSULTING SERVICES
Between the
WICHITA AIRPORT AUTHORITY

and

PROFESSIONAL ENGINEERING CONSULTANTS, P. A.

THIS CONTRACT, made this _____ day of _____, 2010, by and between the WICHITA AIRPORT AUTHORITY, Wichita, Kansas, party of the first part, hereinafter called the "OWNER" and Professional Engineering Consultants, P. A. 303 South Topeka, Wichita, Kansas; party of the second part, hereinafter called the "CONSULTANT".

WITNESSETH: That,

WHEREAS the OWNER is engaged in the operation of Colonel James Jabara Airport; and whereas it is the desire of both parties that the CONSULTANT furnish consulting services in conjunction with the Airfield Pavement Rehabilitation (PROJECT); and whereas all of the aforesaid being located within the corporate limits of the City of Wichita, Sedgwick County, Kansas, and

WHEREAS, the OWNER is authorized by law to employ a consultant to provide professional consulting services NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE I - SCOPE OF SERVICES

The Scope of Services to be performed by the CONSULTANT shall be as outlined in EXHIBIT A, attached hereto and incorporated herein by reference.

ARTICLE II - THE CONSULTANT AGREES:

A. To provide the professional services, equipment, material and transportation to perform the tasks as outlined in ARTICLE I, SCOPE OF SERVICES.

B. To designate a project manager who will coordinate all work and be the point of contact for communications and to submit qualifications of the proposed project manager to the OWNER in advance of the Notice to Proceed. The OWNER reserves the right to withhold the Notice to Proceed until a qualified project manager is designated. The OWNER shall concur with any changes to this assignment.

C. That this Agreement and all subconsultant agreements shall be governed by the laws of the State of Kansas.

D. To submit to the OWNER in a timely manner, editable, electronic files of all surveys and drawings in AutoCAD format and specifications in Microsoft Word. Each submittal shall be in a single, organized file that mimics the plans and specifications.

E. To save and hold OWNER harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by negligent acts, errors or omissions of CONSULTANT, its agents, servants, employees, or subconsultants occurring in the performance of its services under this Agreement.

F. To maintain an acceptable cost accounting system. The CONSULTANT agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts and transcriptions. The CONSULTANT agrees to maintain all books, records and reports required under this Contract for a period of not less than three years after final payment is made and all pending matters are closed.

G. That the CONSULTANT shall not, participate either directly or indirectly in discrimination prohibited by the non-discrimination requirements of the City of Wichita, Kansas, as set out in EXHIBIT B, and the non-discrimination requirements of the Federal Aviation Administration, as set out in EXHIBIT C, all of which are attached hereto and incorporated herein by reference.

That the CONSULTANT assures that it will undertake an affirmative action program as 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 CONSULTANT 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 CONSULTANT assures that it will require that their covered suborganizations provide assurances to the OWNER that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

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

I. To submit billings to the OWNER for the Services performed as required by this Agreement. Billings shall not exceed progress of work as evidenced by deliverables submitted by the CONSULTANT and approved by the OWNER. During the progress of work covered by the Agreement, partial payment requests may be made at intervals of not less than four weeks. The progress billings shall be supported by documentation acceptable to the OWNER, which shall include a record of the percentage completion evidenced by approved deliverables, of the number of days allocated for completion of the work, the number of days that have elapsed, and the number of days that remain to complete the work. Progress billings shall also include copies of subconsultant invoices to the CONSULTANT for the same billing period. Payment to subconsultants, for satisfactory performance, shall be made within 30 days of receipt of payment and no retainage shall be withheld. Any delay or postponement of payment from the referenced time frame may occur only for good cause and following written approval of the OWNER.

J. To complete and deliver plans to the OWNER within the time allotted for the work as stipulated herein; except that the CONSULTANT shall not be responsible or held liable for the time required for reviews for the approving parties or other delays occasioned by the actions or inactions of the OWNER or other agencies, or for other unavoidable delays beyond the control of the CONSULTANT. The schedule is outlined in EXHIBIT D, attached hereto and incorporated herein by reference.

K. To covenant and represent to be responsible for the professional and technical accuracy and the coordination of all drawings or other work or material furnished by the CONSULTANT under this Agreement.

CONSULTANT further agrees, covenants and represents that services furnished by CONSULTANT, its agents, employees and subconsultants under this Agreement shall be free from negligent errors or omissions.

CONSULTANT further agrees, covenants and represents, that all specifications and bid documents prepared in accordance with the work required by this Agreement shall contain a clause that provides the following:

> "Notwithstanding anything to the contrary contained in these bid documents or the contract to be awarded herein, the OWNER shall not be subject to arbitration and any clause relating to arbitration contained in these bid documents or in the contract to be awarded herein shall be null and void."

L. To procure and maintain such professional liability insurance as will protect the CONSULTANT from damages resulting from negligent acts of the CONSULTANT, its agents, officers, employees and subconsultants. in an amount not less than $3,000,000 per occurrence, subject to deductible of not more than $250,000. The CONSULTANT shall be responsible for payment of all deductible amounts without reimbursement by OWNER. In addition, a Worker's Compensation and Employer's Liability policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Worker's Compensation Law.

Further, a comprehensive general liability policy shall be procured and maintained by the CONSULTANT for the duration of the project that shall be written in a comprehensive form and shall protect CONSULTANT against all claims arising from injuries to persons (other than CONSULTANT'S employees) or damage to property of the OWNER or others arising out of any negligent act or omission of CONSULTANT, its agents, officers, employees, or subconsultants in the performance of CONSULTANT services under this Agreement. The liability limit shall not be less then $500,000 per occurrence for bodily injury, death and property damage. The Wichita Airport Authority, Wichita, Kansas; the City of Wichita; their officers, employees and agents shall be named as additional insureds under the terms of the policy with respect to the names insurer's operations on Wichita Mid-Continent Airport or Colonel James Jabara Airport, whichever is applicable. Satisfactory Certificates of Insurance shall be filed with the OWNER prior to the time CONSULTANT starts any work under this Agreement. The CONSULTANT shall maintain such insurance through the duration of the PROJECT. In addition, insurance policies applicable hereto shall

contain a provision that provides that the OWNER shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or cancelled.

M. To employ Disadvantaged Business Enterprise (DBE) concerns to the extent possible of approximately 9.23 percent of the eligible federally funded services encumbered by this Agreement and related Supplemental Agreements.

1. Contract Assurance - The Consultant or subconsultant 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 CFR Part 26 in the award and administration of DOT 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.

2. Prompt Payment - The prime Consultant agrees to pay each subconsultant under this prime Contract for satisfactory performance of its contract no later than five days from receipt of each payment the prime Consultant receives from the Wichita Airport Authority. The prime Consultant agrees further to return retainage payments to each subconsultant within thirty days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Wichita Airport Authority. This clause applies to both DBE and non-DBE subconsultants.

N. Its agents, employees and subconsultants, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in effect and which apply to its activities on airport property, including such rules, regulations, orders and/or restrictions that may be adopted, enacted or amended during the term of this Agreement.

O. The CONSULTANT and the OWNER shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in any proposal or contract documents is deemed void.

P. That all information provided by the OWNER and/or developed for the PROJECT shall be considered confidential and proprietary, and shall not be reproduced, transmitted, used or disclosed by the CONSULTANT without the written consent of OWNER, except as may be necessary for the non-disclosing party to fulfill its obligations hereunder; provided, however, that the limitation shall not apply to any information or portion thereof, which is:

1. Within the public domain at the time of its disclosure.

2. Required to be disclosed by a court of competent jurisdiction or Government order.

3. Approved by the OWNER for publicity.

4. Required to be communicated in connection with filings with governmental bodies having jurisdiction over the design or construction of the PROJECT.

Q. That unless the OWNER has authorized in writing an increase in funds established for the construction estimates of cost, the CONSULTANT agrees to make any such revisions in plans and specifications as are necessary and as are satisfactory to the OWNER, to bring the PROJECT within the approved estimated cost, such revisions to be made at its own expense without cost to the OWNER, whether or not said plans and specifications have theretofore been approved by the OWNER; provided, that if said plans and specifications have been approved by the OWNER, should the OWNER desire any material changes in the type of construction or other changes not necessary to be made for the purpose of bringing the cost of the PROJECT within the estimate, the OWNER shall pay the CONSULTANT the cost of making such revisions.

R. Any violation or breach of terms of this Agreement on the part of the CONSULTANT or their subconsultants may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties of this Agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

S. All rights to inventions and materials generated under this Agreement are subject to regulations issues by the FAA and the OWNER of the Federal grant under which this Agreement is executed.

ARTICLE III - THE OWNER AGREES:

A. To furnish all available data pertaining to the PROJECT available to the OWNER. All data shall be considered confidential unless otherwise noted.

B. To pay the CONSULTANT for services in accordance with the requirements of this Agreement within thirty (30) working days from the date of receipt of invoice and upon satisfactory performance of service.

C. To provide the right of entry into secured areas for CONSULTANT'S personnel, subject to all rules and regulations of the OWNER, the Transportation Security Administration and Federal Aviation Administration regarding airfield safety and security.

D. To pay all applicable design phase fees, unless otherwise stated herein.

ARTICLE IV – PAYMENT PROVISIONS:

A. Payment to the CONSULTANT for performance of the specified services shall be on the basis of a lump sum of $57,245.33 for design phase services and $4,512.13 for bid phase services for a total lump sum fee for this Agreement of $61,757.46 as allowed in Chapter 4, Federal Aviation Administration Advisory Circular 150/5100-14D dated September 30 2005, unless otherwise noted herein. The fee summaries are provided in EXHIBITS E and E1.

B. If an addition or deduction of work should be necessary, by virtue of a change in the scope of the proposed PROJECT, or by the OWNER'S request for a change in services, the CONSULTANT will be given written notice by the OWNER along with a request for an estimate of the actual costs plus a fixed fee for profit for the change in

such services; but 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.

C. Final payment shall not occur until all work is complete and approved by the OWNER.

ARTICLE V - THE PARTIES HERETO MUTUALLY AGREE:

A. TERMINATION OF CONTRACT

The Sponsor may, by written notice, terminate this Agreement in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the Agreement obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the Sponsor.

If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

If the termination is due to failure to fulfill the CONSULTANT'S obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the CONSULTANT shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.

If, after notice of termination for failure to fulfill contract obligations, it is determined that the CONSULTANT had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided herein.

The rights and remedies of the OWNER provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

B. That deliverables shall become the property of the OWNER upon delivery or termination of the Services in accordance with this Agreement. The OWNER shall not hold the CONSULTANT liable upon the OWNER'S reuse of any part of deliverables, and there shall be no restriction or limitation on their further use by the OWNER. Consultant's seal and name shall not be reproduced on such documents if reused by the OWNER.

C. That the Services to be performed by the CONSULTANT under the terms of this Agreement are personal and cannot be assigned sublet or transferred without specific consent of the OWNER.

D. In the event of unavoidable delays in the progress of the work, reasonable extensions in the time will be granted by the OWNER, provided, however, that the CONSULTANT shall request extensions in writing giving the reason therefore.

E. Unless otherwise provided in this Agreement, the CONSULTANT and agents, servants, employees, or sub-consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous

materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

F. 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.

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

H. It is specifically agreed between the parties executing this Agreement, that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damage pursuant to the terms of provisions of this Agreement.

I. The CONSULTANT hereby certifies that:

1. The CONSULTANT has not employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above CONSULTANT) to solicit or secure this Agreement,

2. The CONSULTANT has not agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement,

3. The CONSULTANT has not paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement, except as here expressly stated (if any).

4. By acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the CONSULTANT or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this Agreement.

5. The Consultant agrees to abide by the foreign trade restrictions as set out in EXHIBIT F, attached hereto and incorporated herein by reference. The CONSULTANT acknowledges that this certification is to be furnished to the Federal Aviation Administration, in connection with this Agreement involving participation of Airport Improvement Program (AIP) funds and is subject to applicable State and Federal laws, both criminal and civil.

6. That the CONSULTANT and subconsultant's overhead rates used on this Contract are consistent with Federal cost principles contained in 48 CFR, Part 31, and to provide to the OWNER such certification prior to the execution of the Agreement.

J. Lobbying and Influencing Federal Employees

1. No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

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

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

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Karen Sublett, City Clerk

By: _____
Carl Brewer, President
"OWNER"

By: _____
Victor D. White, Director of Airports

ATTEST:

Professional Engineering Consultants, P. A.
303 South Topeka
Wichita, Kansas 67202

By: Jeff K Spencer

Title: Vice President

By: Richard A. Schlitt

Title: Secretary / Treasurer
"CONSULTANT"

APPROVED AS TO FORM: Gary E Rubenstein GTK
Director of Law

Date: _____

ATTACHMENTS: EXHIBIT A – Scope of Services and Site Plan
EXHIBIT B - Non-Discrimination and EEO Program
EXHIBIT C - Civil Rights Act
EXHIBIT D - Schedule
EXHIBITS E & E1 - Payment Provisions
EXHIBIT F - Foreign Trade Restrictions

SCOPE OF SERVICES
PAVEMENT REHABILITATION AND DRAINAGE IMPROVEMENT PROJECT
COLONEL JAMES JABARA AIRPORT

The CONSULTANT agrees to furnish and perform the related engineering and technical services for the PROJECT in accordance with the following Scope of Services:

SCOPE OF SERVICES:

A. PHASE I, FINAL ENGINEERING PLANS, SPECIFICATIONS, AND CONSTRUCTION COST ESTIMATES. When authorized by the OWNER, the CONSULTANT will proceed with the preparation of Preliminary Report, Engineer's Report, Final Engineering Plans, Contract Documents and Cost Estimates for the PROJECT, described as concrete pavement rehabilitation including patching and/or full panel replacement, joint sealing, and drainage structure and ditch improvements for the portions of the airfield as designated on the attached map. Phase I services shall conclude with the advertisement of the PROJECT for bid. Specifically the CONSULTANT will undertake the following tasks:

1. Participate in Pre-design conference with OWNER.
2. Conduct field reconnaissance including surveys and visual inspection of the existing pavement, taxiway drainage structures, ditches, and under drain outfall structures identifying deficiencies needing repairs and/or improvements. Deficiencies include the following items.
    a. Cracked pavement panels.
    b. Concrete pavement D-cracking, spalling and breakouts along existing joints.
    c. Expansion joint condition (all other joints will be bevel sawed, cleaned and resealed).
    d. Other pavement distress conditions not identified above.
    e. Poor drainage of the grassy areas and pavement between the north T hangers.

f. Poor ditch drainage on the west side of north T-hangars.

g. Damaged/eroded drainage structures crossing taxiways, including end sections and minor ditch grading to drain.

h. Erosion of channels and slopes adjacent to taxiway drainage structures.

i. Evaluate all under drain outfall pipe structures for problems including possible clean out or repairs of pipes, including at the SW end of T/W A-6.

j. Conduct geotechnical investigation of subgrade soils under pavement on east 80' of G.A. Apron to evaluate condition of existing subgrade soils.

3. Prepare base plans utilizing record drawings and OWNER provided data including electronic files of existing airport pavement layout and jointing. Information provided will be field verified by visual inspection and field surveys.

4. Evaluate and prepare options for repairs and/or rehabilitation procedures to address identified problems.

5. Include details for installation of in-pavement sensors for Runway 18-36 in plans and specifications.

6. Prepare and submit a preliminary report to OWNER identifying cracked panels and other pavement deficiencies for the east 80 feet of the FBO Apron. Report to include preliminary construction cost estimates for repair work on Apron. Prepare a separate construction cost estimate for entire airfield repairs. Complete Engineer's report for PROJECT.

7. Prepare PROJECT construction safety, operations and sequencing plans.

8. Participate in up to two meetings to coordinate with OWNER to discuss airport operations and sequencing of construction.

9. Prepare and submit for review by OWNER 90% plans, specifications and construction cost estimates for repair work including repairs to east 80 feet of the FBO Apron

10. Make revisions to 90% plans and specifications and submit Final plans, specifications and construction cost estimate for bidding.

B. PHASE II, BIDDING PHASE SERVICES. When requested by the OWNER, the CONSULTANT shall perform the following tasks in conjunction with the advertising and letting of Phase I of the PROJECT to bid.

1. Print required number of sets of plans and project manuals (specifications) for bidding purposes.
2. Issues plans, specifications and addenda to prospective bidders.
3. Entertain and answer technical questions and produce addenda, if required.
4. Assist with presentation at Pre-Bid Conference.
5. Prepare and provide OWNER a final construction cost estimate just prior to bid opening.

C. PHASE III, CONSTRUCTION PHASE SERVICES. When requested by the OWNER, the CONSULTANT will prepare and negotiate a supplemental agreement to perform construction phase services for Phase I PROJECT.

D. TIME OF PERFORMANCE

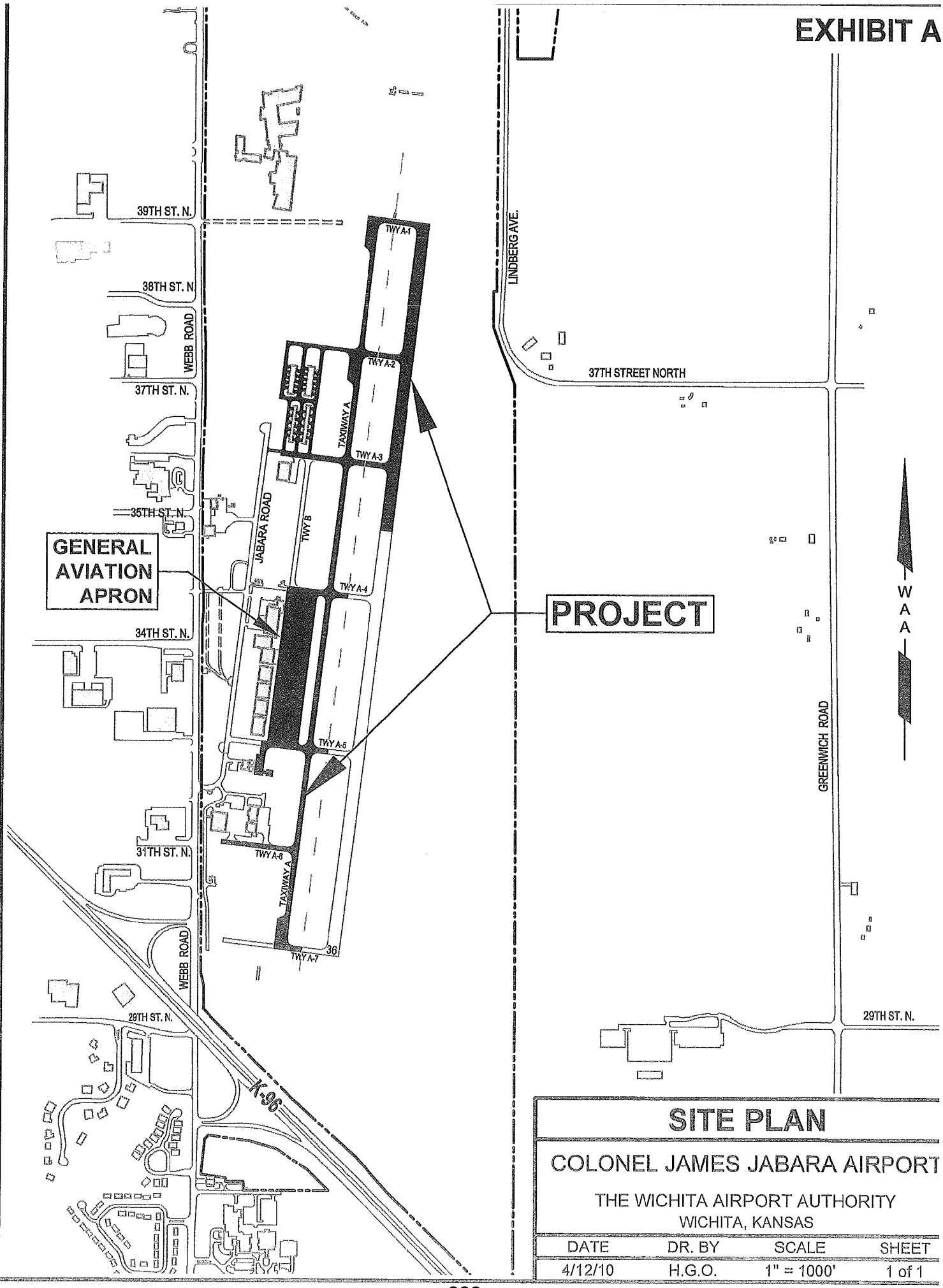
1. The CONSULTANT shall commence work on PHASE I of the PROJECT within seven (7) days following authorization by the OWNER to proceed and shall endeavor to complete the PROJECT in accordance with the following schedule, except that the CONSULTANT shall not be responsible or held liable for delays occasioned by the action or inaction of the OWNER or other agencies.
    a. Complete and submit a Preliminary cracked panel report within 30 days following the OWNER's authorization to proceed.
    b. Complete and submit the 90% plans for review by the OWNER within 30 days following the OWNER's authorization to proceed.
    c. Complete and submit Final plans, specifications and estimate for the OWNER's review within days 10 days following receipt of OWNER's 90% plan review comments.

d. Prepare Phase II bidding documents within days 10 days following receipt of OWNER's Final plan review comments.

E. EXCLUSIONS.

1. The foregoing Scope of Services does not include preparation of an environmental assessment or environmental impact statement.
2. Any evaluation of pavement on private aprons including first 20' east of FBO hangers, south portions of Runway, T/Ws A-4, A-5, and A-6 as identified on attached map.

EXHIBIT A



SITE PLAN

COLONEL JAMES JABARA AIRPORT

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
4/12/10	H.G.O.	1" = 1000'	1 of 1

D:\Drawings\JABARA\202-General\CIP\2009\Pavements.dwg, 8.5x11Portrait Lanier, 4/12/2010 9:39:41 AM

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

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

a) During the performance of this contract, the Contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; **the Americans with Disabilities Act of 1990** and laws, regulations or amendments as may be promulgated thereunder.

b) Requirements of the State of Kansas:

1. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, **disability, Vietnam Era Veteran or Special Disabled Veteran and age except where age is a 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 KSA 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 and contracting agency;

4. If the Contractor is fund 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 cancelled, terminated or suspended in whole or in part by the contracting agency;

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

c) Exempted from these requirements is (State of Kansas):

1. Any contractor, subcontractor, vendor or supplier who has already complied with the provisions set forth in sections pertaining to the State of Kansas by reason of holding a contract with the Federal government, or a contract involving Federal funds;

2. Contracts entered into by a contractor, subcontractor, vendor or supplier who employs fewer than four (4) employees during the term of this contract;

3. Contracts with the City of Wichita with a cumulative total of five thousand dollars ($5,000) or less during the fiscal year of the City.

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

1. The vendor, supplier, contractor or subcontractor shall observe the provisions of the Code of the City of Wichita against discrimination (Section 2.12.900, et seq. of the Code of the City of Wichita, Kansas) and shall not discriminate against any employee or applicant for employment in the performance of work under the present contract, purchase order or agreement because of race, religion, color, sex, **"disability, Vietnam Era Veteran or Special Disabled Veteran and age except where age is a bona fide occupational qualification"**, national origin, ancestry or marital status. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, up 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 Rights and Services Board of the City of Wichita, Kansas, **Civil Rights and Services** in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or in behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, **"disability, Vietnam Era Veteran or Special Disabled Veteran and age except where age is a bona fide occupational qualification"**, national origin, ancestry or marital status. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase that is deemed acceptable by the **Wichita Civil Rights and Services Board**;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the rules, regulations and the orders issued by the Board pursuant thereto, and will permit access to books, records and procedures concerning employment relations by the **Civil Rights and Services Board** of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor or subcontractor fails to comply with the manner in which he/she or it reports to the Board 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 cancelled, terminated or suspended terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be initiated against such vendor supplier, contractor or subcontractor;

4. If the vendor, supplier, contractor or subcontractor is found guilty of a violation of any provision of the Code of the City of Wichita pertaining to and regulating Non-Discrimination and Equal Employment Opportunity under a decision or order of the **Civil Rights and Services Board** of the City of Wichita, Kansas, which has become final, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement, and it may be cancelled, terminated or suspended in whole or in part by the City of Wichita, and such other synchronous and remedies may be imposed as provided by law;

5. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsection 1 through 4, inclusively, 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.

e) Exempted from these requirements are: (City of Wichita)

1. Any contractor or subcontractor, vendor or supplier of the City of Wichita, or any of its agencies, who wishes to enter into a contract, purchase order or agreement which is covered by the provisions of Section 2.12.908 of the Code of the City of Wichita, Kansas, shall prior to entering into such contract, purchase order or agreement, submit to the **Civil Rights and Services Board** of the City of Wichita, Kansas, A preliminary report on forms provided by the

Board concerning Non-Discrimination and Equal Employment/Affirmative Action for review and evaluation. Upon review of the preliminary form submitted:

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

b. The provisions of Section 2.12.908 shall not apply to vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reasons of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) days period from the Federal agency involved.

c. Those contractors, subcontractors, vendors or suppliers not exempted herein whose preliminary report reveals deficiencies shall be required to submit goals and timetables for correction of such deficiencies in accordance with instructions included with the preliminary report for review, evaluation and acceptance prior to a contract, purchase order or agreement award.

f) Failure of any contractor, subcontractor, vendor or supplier to report to the **Kansas Human Rights Commission** as required by KSA 1976 Supp. 44-1031, as amended, or to the **Civil Rights and Services Board** of the City of Wichita as required by 2.12.908, of the Code of the City of Wichita, Kansas; or has been found guilty of a violation of the City's Ordinances, State Statutes, or Federal Statutes, or regulations pertaining to unlawful discrimination, which finding, decision or order has become final, shall be deemed a breech of this contract and said contract may be cancelled, terminated or suspended in whole or in part by the City or its contracting agency.

CIVIL RIGHTS ACT OF 1964, TITLE VI - 49 CFR PART 21
CONTRACTUAL REQUIREMENTS

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations. The CONSULTANT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONSULTANT shall 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 Subcontracts, including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports. The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the OWNER or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the OWNER or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the OWNER shall impose such contract sanctions as it or the FAA 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.

6. Incorporation of Provisions. The CONSULTANT shall include the provisions of Paragraphs 1 through 5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as the OWNER or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the 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 OWNER to enter into such litigation to protect the interests of the OWNER and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520
GENERAL CIVIL RIGHTS PROVISIONS

The CONSULTANT assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the CONSULTANT or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal Assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the OWNER or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the OWNER or any transferee retains ownership or possession of the property. In the case of CONSULTANTS, this provision binds the CONSULTANTS from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

COLONEL JAMES JABARA AIRPORT
AIRFIELD PAVEMENT REHABILITATION

CALENDAR DAYS FROM NOTICE TO PROCEED

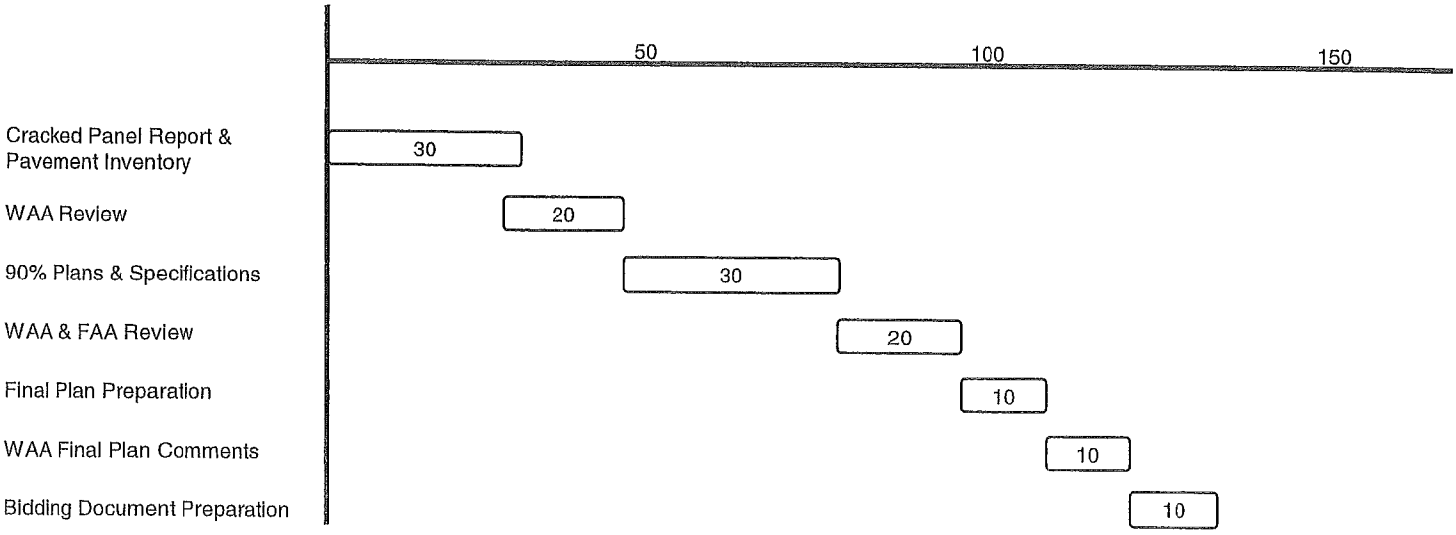


EXHIBIT E

ENGINEERING FEE ESTIMATE

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

ENGINEERS

WICHITA, KANSAS

PROJECT	LOCATION	
Jabara Airfield Pavement Rehabilitation		Colonel James Jabara Airport
WORK ITEM	PROJECT NO.	DATE
Design Phase Services	PEC File # 09661-0019	13 April 2010

DESCRIPTION
Crack Study, Pavement Inventory, and Design Engineering Services

(I) SALARY COSTS				
POSITION TITLE	RATE	MAN HOURS	AMOUNT	TOTAL (SUBTOTAL)
1. PRINCIPALS	$45.00 / hr.	156	$ 7,020.00	
2. PROJECT MANAGER	$38.00 / hr.	133	$ 5,054.00	
3. PROJECT ENGINEER	$33.50 / hr.	8	$ 268.00	
4. DESIGN ENGINEER	$28.00 / hr.	0	$ -	
5. DESIGN TECHNICIAN	$27.90 / hr.	46	$ 1,283.40	
6. DRAFTER	$18.50 / hr.	150	$ 2,775.00	
SUBTOTAL		493		$ 16,400.40
(II) OVERHEAD 1.2945 X (I)				$ 21,230.32
(III) SUBTOTAL [I + II]				$ 37,630.72
(IV) FIXED FEE 15%				$ 5,644.61
(V) OTHER EXPENSE	RATE	UNITS	AMOUNT	
1. CAD PER HOUR	$16.00 / hr.	145	$ 2,320.00	
2. PRINTING (SPEC. ETC.)	$750.00		$ 750.00	
3. PREMIUM TIME (0.585 X Direct)	$1,500.00		$ 1,500.00	
4. ALLIED LABS GEOTECH	$2,600.00		$ 2,600.00	
5. RUGGELS & BOHM SURVEY	$1,500.00		$ 1,500.00	
6. BLEVINS AND BRADBURY (DBE)	$5,300.00		$ 5,300.00	
SUBTOTAL				$ 13,970.00
(VI) TOTAL FEE FOR PROJECT (III + IV + V)				$ 57,245.33

ALLIED LABORATORIES
Department of Professional Engineering Consultants, P. A.

March 30, 2010

Mr. David Hubbard, P.E.
Professional Engineering Consultants, P.A.
303 South Topeka
Wichita, Kansas 67202

Re: **Geotechnical Proposal**
Jabara Airport Apron Rehabilitation
North Webb Road
Wichita, Kansas

Mr. Hubbard,

Allied Laboratories is pleased to submit this proposal for geotechnical services for the above referenced project. We understand the required work will consist of coring and drilling two locations on the existing apron to investigate the subsurface conditions. The borings will be drilled to depths of 5 feet with a Mobile Drill B-31drill rig.

Samples of the subsurface materials will be obtained from the auger cuttings during drilling. Laboratory testing will be performed to determine index and engineering properties on selected samples. Anticipated testing includes moisture content and Atterberg Limits testing. The geotechnical report will include field and laboratory test results, and our conclusions regarding the subsurface conditions.

Fees for the Geotechnical Services as outlined above are estimated to be $ 2,600.00. This estimate may be a lump sum cost for the scope of services presented. Additional services (if necessary) would be performed at the unit rates presented on Attachment A. The estimate assumes all boring locations are accessible with a truck mounted drill rig. Costs associated with site access including leveling, clearing trees or other items are not included in this proposal.

Prior to drilling, Allied Laboratories will perform a utility check of the site by notifying the Kansas One Call system. However, on-site private utilities may not be identified by the Kansas One Call system. The client/owner should mark and notify Allied Laboratories of all known on-site utilities not covered by Kansas One Call.

FORWARD ALL MAIL TO
ALLIED LABORATORIES
303 SOUTH TOPEKA
WICHITA, KANSAS 67202
E-MAIL: Allied@PEC1.com

CONSTRUCTION/SURVEY/GEOTECHNICAL
DIVISIONS LOCATED AT
350 SOUTH WASHINGTON
WICHITA, KANSAS 67202
(316) 262-6457
FAX NO. (316) 262-6592

We appreciate the opportunity to provide this proposal. Our General Provisions for Professional Services and Special Provisions for Geotechnical Services are presented on Attachments B and C, respectively. Please contact us at your convenience if you have questions or need additional information.

Respectfully,

Allied Laboratories
Department of Professional Engineering Consultants, P.A.

Steven M. Herman, P.E.
Geotechnical Division Manager

attachments

GEOTECHNICAL ENGINEERING FEE SCHEDULE

1 JANUARY 2010

ALLIED LABORATORIES
Department of Professional Engineering Consultants, P.A.

MOBILIZATION

126	Project Setup (local/base charge)	400.00 day
140	Drill Rig & Crew Mileage	3.00 mile
148	Drill Crew Per Diem & Motels	300.00 day
68	Pickup Trucks, Vans	0.60 mile
69	Pickup Trucks with Trailers	0.75 mile
80	Meals and Incidentals	30.00 day
95	Lodging	Direct Cost

FIELD EXPLORATION

149	Drill Rig & Crew	220.00 hour
160	Grout Borings	3.00 foot
165	Shelby Tubes	10.00 each
120	Other Equipment	(Price on Request)
121	Non-Standard Tests	(Price on Request)

LABORATORY TESTING

166	Moisture Content (ASTM D-2216 / microwave)	10.00 each
167	Dry Unit Weight (ASTM D-2166)	30.00 each
168	Atterberg Limits (ASTM D-4318)	70.00 each
169	Material Finer than 200 Sieve (ASTM D-1140)	30.00 each
170	Unconfined Compressive Strength (ASTM D-2166)	70.00 each
171	Sieve Analysis (ASTM C-136, C-117)	45.00 each
172	Particle Size Analysis of Soils (Hydrometer, ASTM D-422)	140.00 each
173	Specific Gravity (ASTM D-854)	120.00 each
174	Swell-Consolidation (ASTM D-2435)	400.00 each
175	Falling Head Permeability (ASTM-5084)	400.00 each
176	Constant Head Permeability (ASTM D-2434)	400.00 each
177	Moisture-Density Curves (ASTM D-698/1557)	130.00 each
178	One Point Curve Checks (ASTM D-698/1557)	50.00 each
179	California Bearing Ratio (ASTM D-1883)	350.00 each
180	Relative Density (ASTM D-4253/4254)	400.00 each
181	Lime Determination (ASTM D-4253/4254)	550.00 each
735	Direct Shear (ASTM D-3080)	400.00 point

CONSULTATION, ANALYSIS & REPORT

2	Principal Engineer/Project Manager	120.00 hour
8	Senior Engineer/Geotechnical Engineer	110.00 hour
9	Staff Engineer/Field Engineer	80.00 hour
10	Administrative Assistant	50.00 hour
23	Senior Engineering Technician	60.00 hour
27	Engineering Technician	50.00 hour

GENERAL PROVISIONS FOR PROFESSIONAL SERVICES

ALLIED LABORATORIES
Department of Professional Engineering Consultants, P.A.

1. **STANDARD OF CARE.** Allied Laboratories, a department of Professional Engineering Consultants, P.A. (herein referred to as Allied) shall provide professional services according to the agreed upon scope of services. Allied will perform the services with the level of care and skill ordinarily exercised by other Consultants of the same profession under similar circumstances at the time the services are performed and in the same locality. Allied makes no warranties, express or implied, under this Agreement, or in any report, opinion, document, or otherwise. Client shall give Allied prompt written notice of all suspected defects in the services.

2. **INITIATION.** Allied is authorized to proceed upon receipt of an executed copy of the Agreement or Notice to Proceed. If verbal notice to proceed is given, the terms of these provisions will apply whether or not a signed proposal is returned. Client shall provide Allied right-of-entry to property. Client shall notify Allied of all known health and safety hazards on the site. Client shall correctly identify the location of known subsurface structures and utilities. Allied shall not be responsible for damage to underground structures or utilities.

3. **TAXES.** Client shall reimburse Allied for any sales, use and value-added taxes which apply to these services. Client shall reimburse Allied for the amount of such taxes in addition to the compensation due for the services.

4. **INSURANCE.** Allied agrees to maintain during the performance of the services: Statutory Workers' Compensation coverage; and Comprehensive General and Automobile Liability insurance coverage in the sum of the agreed amount; and to the extent applicable, Professional Liability insurance for Allied's negligent acts, errors or omissions in providing services.

5. **FORCE MAJEURE:** Neither party shall hold the other responsible for damages or for delays in performance caused by force majeure, acts of God, or other acts or circumstances beyond the control of the other party, or that could not have been reasonably foreseen and prevented including, but not be limited to, weather, floods, earthquakes, epidemics, war, riots, terrorism, strikes, and unanticipated site conditions.

6. **INDEMNIFICATION/HOLD HARMLESS.** Allied shall indemnify and hold harmless the Client and its employees from any and all liability, settlements, loss, attorney's fees, and expenses in connection with damages resulting from Allied's negligent acts, errors, or omissions in services provided pursuant to this Agreement; provided, however, that if any such liability, settlements, attorney's fees or expenses result from the concurrent negligence of Allied and the Client, this indemnification applies only to the extent of Allied's negligence.

7. **USE OF DOCUMENTS.** Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and as such are applicable only to the subject project. Allied shall retain an ownership and property interest therein.

8. **DISPUTES.** Any action for claims arising out of or relating to this Agreement or the project that is the subject of this Agreement shall be governed by the laws of the State of Kansas. Good faith negotiation and mediation are express conditions precedent to the filing of any legal action. Unless the parties agree otherwise, the mediation shall be conducted pursuant to the Construction Mediation Rules of the American Arbitration Association.

9. **TERMINATION OF AGREEMENT.** Each party reserves the right to terminate this Agreement at any time, upon a 15 day written notice, provided that Allied shall be paid the value of the services rendered up to the time of termination.

10. **AGREEMENT SOLELY FOR PARTIES' BENEFIT.** This agreement is solely for the benefit of Allied and Client. Nothing herein is intended in any way to benefit any third party or otherwise create any duty or obligation on behalf of Allied or Client in favor of such third parties.

11. **LIMITATION OF LIABILITY.** Client and Allied agree that to the fullest extent permitted by law, Allied's total liability to the Client is limited to $20,000 for any and all damages or expenses arising out of this Agreement from any cause(s) or under any theory of liability. In no event shall Allied be liable for consequential damages, including, without limitation, loss of use or loss of profits, incurred by Client or its subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

SPECIAL PROVISIONS FOR GEOTECHNICAL SERVICES

ALLIED LABORATORIES
Department of Professional Engineering Consultants, P.A.

1. **RIGHT OF ENTRY.** Client shall provide Allied Laboratories, a Department of Professional Engineering Consultants, P.A. and its employees (herein referred to as Allied) right of entry to the project site. Client shall also provide all approvals, consents, permits and licenses necessary for the performance of our services. Allied will take reasonable precautions to minimize property damage. Client recognizes that damage may occur due to heavy equipment and drilling activities. Restoration of the project site is not included with our services unless specifically identified in the proposal.

2. **ACCESS.** The geotechnical proposal assumes all boring locations are accessible to our drilling equipment. Client shall provide access to all boring locations, including but not limited to, clearing of trees and vegetation, removal of fences or other obstructions, and leveling the site, unless specifically included in Allied's scope of services. Allied may terminate this agreement if access to the boring locations is not provided.

3. **HAZARDOUS MATERIALS.** Client shall inform Allied of all known or suspected health and safety hazards at the project site. If unanticipated hazardous materials are observed or suspected during performance of our services, Allied may terminate, or suspend work until a suitable safety plan is developed. Allied does not create hazardous materials and will not be responsible for hazardous materials resulting from drilling activities. Hazardous materials, including but not limited to fluids and soil cuttings, from the drilling activities are the property of the client and will be left at the site. The client is responsible for treatment or disposal of hazardous materials.

4. **UTILITIES.** Client shall correctly identify and mark the location of known subsurface structures and utilities. Allied will take reasonable precautions to avoid damage to underground structures and utilities including notifying Kansas One Call prior to drilling. Allied shall not be responsible for direct or indirect damages to Client or third parties caused by the failure to correctly locate and mark underground structures and utilities.

5. **BORING LOCATIONS AND ELEVATIONS.** Allied's drilling crew will locate borings by measuring distances and estimating angles from existing site features. Borings will be drilled at the approximate proposed or requested locations. Allied may move boring locations due to site access restrictions or subsurface variations. Ground surface elevations will be determined by the drilling crew using a level survey referencing readily accessible benchmarks and an assumed elevation unless an established benchmark is provided. Boring locations and elevations will be approximate within the limits of these methods. If more accuracy is required, Client should employ a registered land surveyor to obtain locations and elevations.

6. **SAMPLES.** Samples obtained during the field exploration will be tested in the laboratory for index and engineering properties as outlined in the proposal referencing ASTM procedures. Samples will be disposed of immediately after completion of the geotechnical report unless other arrangements are made.

7. **SAFETY.** Allied has safety procedures for our drilling crew and personnel. Allied is not responsible for safety of persons other than Allied employees. Allied is not responsible for damages incurred by third parties due to drilling activities.

8. **DIFFERING SITE CONDITIONS.** A "Differing Site Condition" is a subsurface, latent, or physical condition at a project site not revealed by the site exploration or other information provided to the Client and which cannot be reasonably anticipated. Special risks occur whenever engineering is applied to identifying site conditions. Even a comprehensive exploration program according to the professional standard of care may not detect all subsurface or site conditions. Subsurface explorations are based on widely spaced, small diameter borings with intermittent sampling at various depths and identifies subsurface conditions only at the specific points and times the samples are obtained. Subsurface/site conditions can vary substantially at other sampling/testing locations, between the exploratory boring locations, and with the passage of time. The subsurface/site conditions at the site are the property of the client/owner regardless of whether or not they could be identified by a limited subsurface exploration. Allied shall not be liable for site conditions which could not be identified by a limited subsurface exploration. Accordingly, the owner/client agrees to indemnify, including all costs and attorney fees, and hold Allied harmless from all claims for Differing Site Conditions, provided Allied performs the services specified in the Contract in a manner reasonably conforming to the terms of the Contract and to the Standard of Care.

Attachment E-2

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

924 North Ma
Wichita, Kansas 672

(316) 264-80
fax (316) 264-46

www.rbkansas.cc
info@rbkansas.cc

April 1, 2010

Dave Hubbard, P.E.
Professional Engineering Consultants, PA
303 S. Topeka
Wichita, KS 67202-4309
dave.hubbard@pec1.com
Office: (316) 262-2691
Fax: (316) 262-3003

Subject: Topographic Survey
Re: Jabara Airport General Aviation Ramp

Dear Dave,

Our proposal to provide a topographic survey for the above referenced site to include topographic shots around the perimeter of the site at the construction joints would be $1,500.00.
If you have any questions feel free to contact me.

Sincerely,

James D. Hestermann, L.S.
Ruggles & Bohm, P.A.

RUGGLES & BOHM
RB
WICHITA

BLEVINS AND
BRADBURY, INC.
ARCHITECTS • ENGINEERS • PLANNERS

Mr. Dave Hubbard, P.E.
Professional Engineering Consultants
303 S. Topeka
Wichita, Kansas 67202

April 1, 2010

Dear Mr. Hubbard:

Blevins and Bradbury, Inc. is pleased to submit our cost proposal for civil engineering services for the Jabara Pavement Rehabilitation Project. Specifically, Blevins and Bradbury, Inc. will perform the following task:

Scope of Services

1. Quality Control. Provide quality assurance review of the final project plans.

Blevins and Bradbury, Inc. is prepared to enter into a formal agreement to provide the engineering services listed above. For this scope, we propose to provide these services for a fixed fee of $ 5,300.00.

We appreciate the opportunity to work on this project with you. If you have any questions regarding the outlined scope or estimated fees, please call me at (913) 422-1620.

Sincerely,
BLEVINS AND BRADBURY, Inc.

Kristina M. Blevins

PH. 913/422-1620 • FAX 913/422-1619 • 134 N. NETTLETON • BONNER SPRINGS • KANSAS • 66012

EXHIBIT E1

ENGINEERING FEE ESTIMATE

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

ENGINEERS

WICHITA, KANSAS

PROJECT	LOCATION	
Jabara Airfield Pavement Rehabilitation	Colonel James Jabara Airport	
WORK ITEM	PROJECT NO.	DATE
Bid Phase Services	PEC File # 09661-0019	13 April 2010

DESCRIPTION
Bid Document Preparation

(I) SALARY COSTS				
POSITION TITLE	RATE	MAN HOURS	AMOUNT	TOTAL (SUBTOTAL)
1. PRINCIPALS	$45.00 / hr.	9	$ 405.00	
2. PROJECT MANAGER	$38.00 / hr.	27	$ 1,026.00	
3. PROJECT ENGINEER	$33.50 / hr.	0	$ -	
4. DESIGN ENGINEER	$28.00 / hr.	0	$ -	
5. DESIGN TECHNICIAN	$27.90 / hr.	10	$ 279.00	
6. DRAFTER	$18.50 / hr.	0	$ -	
SUBTOTAL		46		$ 1,710.00
(II) OVERHEAD 1.2945 X (I)				$ 2,213.60
(III) SUBTOTAL [I + II]				$ 3,923.60
(IV) FIXED FEE 15%				$ 588.53
(V) OTHER EXPENSE	RATE	UNITS	AMOUNT	
1. CAD PER HOUR	$16.00 / hr.	0-	$ -	
2. PRINTING (SPEC. ETC.)	$0.00		$ -	
SUBTOTAL				$ -
(VI) TOTAL FEE FOR PROJECT (III + IV + V)				$ 4,512.13

TRADE RESTRICTIONS

The CONSULTANT or subconsutant, by submission of an offer and/or execution of a contract, certifies that it:

a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a consultant or subconsultant who is unable to certify to the above. If the consultant knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the consultant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The consultant shall provide immediate written notice to the Sponsor if the consultant learns that its certification or that of a subconsultant was erroneous when submitted or has become erroneous by reason of changed circumstances. The subconsultant agrees to provide written notice to the consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the consultant or subconsultant knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

Version 7/03

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED: May 4, 2010	Applicant Identifier: N/A
3. DATE RECEIVED BY STATE: N/A	State Application Identifier: N/A
4. DATE RECEIVED BY AGENCY	Federal Identifier: AIP 3-20-0089-19-2010

1. TYPE OF SUBMISSION

Application	Pre-application
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: **Wichita Airport Authority**

Organizational DUNS: **124970641**

Address:

Street: **2173 Air Cargo Road**

City: **Wichita**

County: **Sedgwick**

State: **KS** Zip Code: **67209**

Country: United States

Organizational Unit: **Wichita Airport Authority**

Department: **Airport**

Division: **Airport Engineering**

Name and telephone of person to be contacted on matters involving this application (give area code)

Prefix: **Mr.** First Name: **Victor**

Middle Name:

Last Name: **White**

Suffix:

Email: **vwhite@wichita.gov**

Phone Number (give area code): **(316) 946 - 4700**

Fax Number (give area code): **(316) 946 - 4793**

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 4 8 - 6 0 0 0 6 5 3

8. TYPE OF APPLICATION

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐

Other (specify)

7. TYPE OF APPLICANT (See back of form for Application Types)

C

Other (Specify)

9. NAME OF FEDERAL AGENCY: Federal Aviation Administration

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NO. 2 0 - 1 0 6

TITLE (Name of Program): **Airport Improvement Program**

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Pavement Rehabilitation for Colonel James Jabara Airport

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*: Wichita, Sedgwick County, Kansas

13. PROPOSED PROJECT

Start Date	Ending Date
5/2010	10/2010

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project
4th	4th

15. ESTIMATED FUNDING:

a. Federal	$ 63,420.00
b. Applicant	$ 3,338.00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 66,758.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE : _____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes, If "Yes", attach an explanation ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix **Mr.** First Name: **Victor** Middle Name:

Last Name: **White** Suffix:

b. Title: **Director of Airports** c. Telephone: **316-946-4700**

d. Signature of Authorized Representative: e. Date Signed: **5-4-2010**

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Standard Form 424 (Rev 9-2003)
Prescribed by OMB Circular A-102

PART II

PROJECT APPROVAL INFORMATION
SECTION A

Item 1. Does this assistance request require State, local, regional, or other priority rating? ☐ Yes ☒ No	Name of Governing Body: Priority:
Item 2. Does this assistance request require State, or local advisory, educational or health clearances? ☐ Yes ☒ No	Name of Agency or Board: (Attach Documentation)
Item 3. Does this assistance request require clearinghouse review in accordance with OMB Circular A-95? ☐ Yes ☒ No	(Attach Comments)
Item 4. Does this assistance request require State, local, regional or other planning approval? ☐ Yes ☒ No	Name of Approving Agency: Date: / /
Item 5. Is the proposal project covered by an approved comprehensive plan? ☐ Yes ☒ No	Check one: State ☐ Local ☐ Regional ☐ Location of Plan:
Item 6. Will the assistance requested serve a Federal installation? ☐ Yes ☒ No	Name of Federal Installation: Federal Population benefiting from Project:
Item 7. Will the assistance requested be on Federal land or installation? ☐ Yes ☒ No	Name of Federal Installation: Location of Federal Land: Percent of Project:
Item 8. Will the assistance requested have an impact or effect on the environment? ☐ Yes ☒ No	See instruction for additional information to be provided
Item 9. Will the assistance requested cause the displacement of individuals, families, businesses, or farms? ☐ Yes ☒ No	Number of: Individuals: Families: Businesses: Farms:
Item 10. Is there other related Federal assistance on this project previous, pending, or anticipated? ☒ Yes ☐ No	See instructions for additional information to be provided.

PART II - SECTION C

The Sponsor hereby represents and certifies as follows:

1. Compatible Land Use. - The Sponsor has taken the following actions to assure compatible usage of land adjacent to or in the vicinity of the airport:

In as far as this is within our power, the Wichita Airport Authority of Wichita, Kansas, will affirmatively work to obtain appropriate zoning by the Wichita Sedgwick County Metropolitan Area Planning Commission which has zoning authority to take action to restrict the use of land in the immediate vicinity of Colonel James Jabara Airport. The current zoning ordinance has obstruction zoning prohibiting certain manufacturing facilities, which produce smoke, dust, gaseous fumes, and electrical interference or glare impairing the visibility of pilots.

2. Defaults. - The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

NONE

3. Possible Disabilities. - There are no facts or circumstances (including the existence of effective or proposed leases, use agreements or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of Part V of this Application, either by limiting its legal or financial ability or otherwise, except as follows:

NONE

4. Consistency with Local Plans. – The project is reasonably consistent with plans existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

YES

5. Consideration of Local Interest - It has given fair consideration to the interest of communities in or near where the project may be located.

YES

6. Consultation with Users. In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport which project is proposed.

YES

7. Public Hearings. – In projects involving the location of an airport, an airport runway or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

N/A

8. Air and Water Quality Standards. – In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable and air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

N/A

PART II - SECTION C (Continued)

9. Exclusive Rights – There is no grant of an exclusive right for the conduct of any aeronautical activity at any airport owned or controlled by the Sponsor except as follows:

N/A

10. Land. – (a) The sponsor holds the following property interest in the following areas of land* which are to be developed or used as part of or in connection with the Airport subject to the following exceptions, encumbrances, and adverse interests, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

The Wichita Airport Authority of Wichita, Kansas, has the Fee Simple Title to all land comprising Colonel James Jabara Airport free and clear of all encumbrances and/or restrictions, subject however, to the leases and/or use agreements.

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

(b) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interest in the following areas of land* on which such construction work is to be performed, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

N/A

(c) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interest in the following areas of land* which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the aforementioned property map designated as Exhibit "A"

N/A

**State character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.*

PART III - BUDGET INFORMATION - CONSTRUCTION

SECTION A - GENERAL

1. Federal Domestic Assistance Catalog No..... 20-106

2. Functional or Other Breakout ..... _____

SECTION B -CALCULATION OF FEDERAL GRANT

Cost Classification	Use only for revisions		Total Amount Required
	Latest Approved Amount	Adjustment + or (-)	
1. Administration expense	$ 5,000.00	$	$ 5,000.00
2. Preliminary expense			
3. Land, structures, right-of-way			
4. Architectural engineering basic fees	61,758.00		61,758.00
5. Other Architectural engineering fees			
6. Project inspection fees			
7. Land development			
8. Relocation Expenses			
9. Relocation payments to Individuals and Businesses			
10. Demolition and removal			
11. Construction and project improvement			
12. Equipment			
13. Miscellaneous			
14. Total (Lines 1 through 13)	66,758.00		66,758.00
15. Estimated Income (if applicable)			
16. Net Project Amount (Line 14 minus 15)	66,758.00		66,758.00
17. Less: Ineligible Exclusions			
18. Add: Contingencies			
19. Total Project Amt. (Excluding Rehabilitation Grants)	66,758.00		66,758.00
20. Federal Share requested of Line 19 95%	63,420.00		63,420.00
21. Add Rehabilitation Grants Requested (100 Percent)			
22. Total Federal grant requested (lines 20 & 21)	63,420.00		63,420.00
23. Grantee share	3,338.00		3,338.00
24. Other shares			
25. Total Project (Lines 22, 23 & 24)	$ 66,758.00	$	$ 66,758.00

SECTION C - EXCLUSIONS

Classification	Ineligible for Participation (1)	Excluded From Contingency Provision (2)
a.	$	$
b.		
c.		
d.		
e.		
f.		
g. **Totals**	$	$

SECTION D - PROPOSED METHOD OF FINANCING NON-FEDERAL SHARE

27. Grantee Share	$ 3,338.00
a. Securities	
b. Mortgages	
c. Appropriations (By Applicant)	
d. Bonds	3,338.00
e. Tax Levies	
f. Non Cash	
g. Other (Explain)	
h. TOTAL - Grantee share	3,338.00
28. Other Shares	
a. State	
b. Other	
c. Total Other Shares	
29. TOTAL	$ 3,338.00

SECTION E - REMARKS

PART IV PROGRAM NARRATIVE (Attach - See Instructions)

PART IV
PROGRAM NARRATIVE
(Suggested Format)

DEPARTMENT OF TRANSPORTATION - FEDERAL AVIATION ADMINISTRATION OMB NO. 2120-0569

PROJECT : Pavement Rehabilitation

AIRPORT : Colonel James Jabara Airport

1. Objective:

This project will repair pavement (runway, taxiway and apron) damage, add a runway pavement surface sensor system and miscellaneous drainage improvements related to pavement damage.

2. Benefits Anticipated:

Smooth pavements will provide a safer environment for airport users.

3. Approach : *(See approved Scope of Work in Final Application)*

Project will be sequenced and phased to minimize disruption of the airfield and tenants.

4. Geographic Location:

Wichita, Kansas (see attached map).

5. If Applicable, Provide Additional Information:

6. Sponsor's Representative: *(include address & telephone number)*

Victor White, A.A.E.

2173 Air Cargo Road

Wichita, KS 67209

316-946-4700

STANDARD DOT TITLE VI ASSURANCES

Wichita Airport Authority (hereinafter referred to as the Sponsor) hereby agrees that as a condition to receiving Federal financial assistance from the Department of Transportation (DOT), it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and all requirements imposed by 49 CFR Part 21, - Nondiscrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Regulations") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. Without limiting the above general assurance, the sponsor agrees concerning this grant that:

1. Each "program" and "facility" (as defined in Sections 21.23(e) and 21.23 (b)) will be conducted or operated in compliance with all requirements of the Regulations.

2. It will insert the clauses of Attachment 1 of this assurance in every contract subject to the Act and the Regulations.

3. Where Federal financial assistance is received to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.

4. Where Federal financial assistance is in the form or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over, or under such property.

5. It will include the appropriate clauses set forth in Attachment 2 of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the sponsor with other parties:

(a) for the subsequent transfer of real property acquired or improved with Federal financial assistance under this Project; and

(b) for the construction or use of or access to space on, over, or under real property acquired or improved with Federal financial assistance under this Project.

6. This assurance obligates the Sponsor for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods.

(a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or

(b) the period during which the sponsor retains ownership or possession of the property.

7. It will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other sponsors, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants or Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations, and this assurance.

8. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining Federal financial assistance for this Project and is binding on its contractors, the sponsor, subcontractors, transferees, successors in interest and other participants in the Project. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Sponsor.

DATED 5-4-2010

Wichita Airport Authority
(Sponsor)

By_____
(Signature of Authorized Official)

CONTRACTOR CONTRACTUAL REOUIREMENTS

ATTACHMENT 1

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations**. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination**. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall 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 Subcontracts, Including Procurements of Materials and Equipment**. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports**. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance**. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions**. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued Pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

CLAUSES FOR DEEDS, LICENSES, LEASES, PERMITS OR SIMILAR INSTRUMENTS

ATTACHMENT 2

The following clauses shall be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of Assurances 5(a) and 5(b).

1. The (grantee, licensee, lessee, permitee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as a covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permitee, etc.) 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.

2. The (grantee, licensee, lessee, permitee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "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 (grantee, licensee, lessee, permitee, etc.) 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.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

AIRPORT IMPROVEMENT PROGRAM
SPONSOR CERTIFICATION

DRUG-FREE WORKPLACE

Wichita Airport Authority	Colonel James Jabara	AIP 3-20-0089-19-2010
(Sponsor)	*(Airport)*	*(Project Number)*

Description of Work:
Pavement Rehabilitation

Title 49, United States Code, section 47105(d), authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General requirements on the drug-free workplace within Federal grant programs are described in Title 49, Code of Federal Regulations, Part 29. Sponsors are required to certify they will be, or will continue to provide, a drug-free workplace in accordance with the regulation. The AIP project grant agreement contains specific assurances on the Drug-Free Workplace Act of 1988.

Except for the certified items below marked not applicable (N/A), the list includes major requirements for this aspect of project implementation, although it is not comprehensive, nor does it relieve the sponsor from fully complying with all applicable statutory and administrative standards.

	Yes	No	N/A
1. A statement has been or will be published notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the sponsor's workplace, and specifying the actions to be taken against employees for violation of such prohibition.	☒	☐	☐
2. An ongoing drug-free awareness program has been or will be established to inform employees about: **a.** The dangers of drug abuse in the workplace; **b.** The sponsor's policy of maintaining a drug-free workplace; **c.** Any available drug counseling, rehabilitation, and employee assistance programs; and **d.** The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.	☒	☐	☐
3. Each employee to be engaged in the performance of the work has been or will be given a copy of the statement required within item 1 above.	☒	☐	☐
4. Employees have been or will be notified in the statement required by item 1 above that, as a condition employment under the grant, the employee will: **a.** Abide by the terms of the statement; and **b.** Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.	☒	☐	☐

	Yes	No	N/A
5. The FAA will be notified in writing within ten calendar days after receiving notice under item 4b above from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title of the employee, to the FAA. Notices shall include the project number of each affected grant.	☒	☐	☐
6. One of the following actions will be taken within 30 calendar days of receiving a notice under item 4b above with respect to any employee who is so convicted:			
a. Take appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or	☒	☐	☐
b. Require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency.			
7. A good faith effort will be made to continue to maintain a drug-free workplace through implementation of items 1 through 6 above.	☒	☐	☐

I have prepared documentation shown below or attached hereto with site(s) for performance of work (street address, city, county, state, zip code). There are no such workplaces that are not identified below or in the attachment. I have prepared additional documentation for any above items marked "no" and attached it hereto. I certify that, for the project identified herein, responses to the forgoing items are accurate as marked and attachments are correct and complete.

	Location	**Location**	**Location**
Street Address:	2173 Air Cargo Rd		
City:	Wichita		
State:	KS		
Zip code:	67209		

Wichita Airport Authority
Name of Sponsor

Signature of Sponsor's Designated Official Representative

Victor White
Type Name of Sponsor's Designated Official Representative

Director of Airports
Typed Title of Sponsor's Designated Official Representative

5-4-2010
Date of Signature

ASSURANCES
Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

a. Title 49, U.S.C., subtitle VII, as amended.
b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.[1]
c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
d. Hatch Act - 5 U.S.C. 1501, et seq.[2]

e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.[1 2]
f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).[1]
g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.[1]
h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
i. Clean Air Act, P.L. 90-148, as amended.
j. Coastal Zone Management Act, P.L. 93-205, as amended.
k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.[1]
l. Title 49 ,U.S.C., Section 303, (formerly known as Section 4(f))
m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
q Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.[1]
r. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.[1]
s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.[1]
t. Copeland Anti kickback Act - 18 U.S.C. 874.[1]
u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.[1]
v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.[2]
x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

Executive Orders

Executive Order 11246 - Equal Employment Opportunity[1]
Executive Order 11990 - Protection of Wetlands
Executive Order 11988 – Flood Plain Management
Executive Order 12372 - Intergovernmental Review of Federal Programs.
Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction[1]
Executive Order 12898 - Environmental Justice

Federal Regulations

a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
c. 14 CFR Part 150 - Airport noise compatibility planning.
d. 29 CFR Part 1 - Procedures for predetermination of wage rates.[1]
e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.[1]
f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).[1]
g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).[1]

h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.[3]
i. 49 CFR Part 20 - New restrictions on lobbying.
j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
k. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.[1 2]
m. 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.[1]
o. 49 CFR Part 29 – Government wide debarment and suspension (non-procurement) and government wide requirements for drug-free workplace (grants).
p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.[1]

Office of Management and Budget Circulars

a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
b A-133 - Audits of States, Local Governments, and Non-Profit Organizations

[1] These laws do not apply to airport planning sponsors.
[2] These laws do not apply to private sponsors.
[3] 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

2. Responsibility and Authority of the Sponsor.

a. **Public Agency Sponsor:** It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. **Private Sponsor:** It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person

to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. **Sponsor Fund Availability.** It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.

4. **Good Title.**

   a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

   b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. **Preserving Rights and Powers.**

   a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

   b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

   c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

   d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that

property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.

6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.

8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.

11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such

reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. **Accounting System, Audit, and Record Keeping Requirements.**

    a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

    b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. **Minimum Wage Rates.** It shall include, in all contracts in excess of $2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. **Veteran's Preference.** It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. **Conformity to Plans and Specifications.** It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved

plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.

17. **Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. **Planning Projects.** In carrying out planning projects:

    a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.

    b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

    c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

    d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

    e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

    f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

    g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

    h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. **Operation and Maintenance.**

    a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably

operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary.

In furtherance of this assurance, the sponsor will have in effect arrangements for-

(1) Operating the airport's aeronautical facilities whenever required;

(2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

(3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

(1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

(2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. **Exclusive Rights.** It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations,

aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure. It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections. It will:

a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use

agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
   (i) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
   (ii) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. **Use by Government Aircraft.** It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that-
   a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
   b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. **Land for Federal Facilities.** It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. **Airport Layout Plan.**

   a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall

be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

30. **Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

31. **Disposal of Land.**

a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.

b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (2) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. **Engineering and Design Services.** It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement **prescribed** for or by the sponsor of the airport.

33. **Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. **Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

35. **Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. **Access By Intercity Buses**. The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. **Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure

non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

38. **Hangar Construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. **Competitive Access.**

a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-

1. Describes the requests;
2. Provides an explanation as to why the requests could not be accommodated; and
3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.

b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date

City of Wichita
City Council Meeting
May 4, 2010

TO: Wichita Airport Authority

SUBJECT: Frontier Airlines – Supplemental Agreement No. 4

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Supplemental Agreement.

Background: The Wichita Airport Authority has a uniform lease and use agreement with the passenger carrying airlines serving Wichita Mid-Continent Airport. On February 23, 2010, the WAA approved a supplemental agreement with Frontier Airlines, which extended the airline agreement through December 31, 2010. The airline agreement includes language which allows an airline to make space changes.

Analysis: The supplemental agreement includes an exhibit which reflects the leasing of Gate 1 holdroom and operations space. Frontier Airlines formerly leased Gate 7 holdroom and operations space; however a change to larger aircraft, which commenced on April 19, resulted in the need to relocate to a larger holdroom. Frontier Airlines requested the use of Gate 1 holdroom and operations space to accommodate the larger aircraft, and to afford their passengers the benefit of using the passenger loading bridge already positioned at Gate 1. The supplemental agreement is effective April 19, 2010.

Financial Considerations: The relocation of Frontier Airlines to Gate 1 provides an increase of square footage that will result in additional net revenue to the WAA of $14,800 for the remainder of this year. Loading bridge fees of $66 per flight will also be applicable, which will result in additional revenue to the WAA of $35,640 for the remainder of this year.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through modifying agreements, in cooperation with the airlines, which allow the airlines to make adjustments in their operations, thereby providing the most efficient and economical services to their Wichita passengers.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Department of Law.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Supplemental Agreement, and authorize the necessary signatures.

Attachment: Supplemental Agreement No. 4.

SUPPLEMENTAL AGREEMENT NO. 4

AIRLINE AIRPORT USE AND LEASE AGREEMENT
WICHITA MID-CONTINENT AIRPORT

BY AND BETWEEN

WICHITA AIRPORT AUTHORITY

AND

FRONTIER AIRLINES HOLDINGS, INC.

THIS SUPPLEMENTAL AGREEMENT NO. 4 made and entered into this May 4, 2010, by and between the WICHITA AIRPORT AUTHORITY, hereinafter referred to as "AUTHORITY", and FRONTIER AIRLINES HOLDINGS, INC., hereinafter referred to as "AIRLINE".

WITNESSETH:

WHEREAS, the parties hereto have heretofore entered into an Airline Airport Use and Lease Agreement dated October 16, 2007 for the purpose of providing air service to the traveling public using Wichita Mid-Continent Airport; and

WHEREAS, the original Agreement has been amended by Supplemental Agreement No. 1 dated December 11, 2007, which extends the Agreement and modifies the exhibits within the Agreement; Supplemental Agreement No. 2 dated January 13, 2009, which extends the Agreement and modifies the exhibits within the Agreement; Supplemental Agreement No. 3 dated February 23, 2010 for the purpose of modifying certain language, extending the term of the Agreement, and modifying exhibits within the Agreement; and

WHEREAS, the Authority and Airline are now desirous of entering into this Supplemental Agreement No. 4 for the purpose of modifying exhibits within the Agreement;

NOW, THEREFORE, the parties further agree as follows:

1.

Article III – Premises, Section 3.1.A. – Airline Premises, shall be modified to include the following language:

As provided in Section 3.1.B, Authority and Airline may, from time to time, by written agreement, add space to or delete space from the Airline Premises.

Authority does hereby lease to Airline the following areas: ticket counter, office, bag makeup, holdroom and operations space as reflected on Exhibits "B-1", dated April 12, 2010, attached hereto and incorporated herein, which shall be retroactive to April 19, 2010.

Exhibits "C" attached hereto and incorporated herein, shall replace like exhibits included in the original Agreement, as previously supplemented.

2.

Other Terms. It is understood and agreed that all other terms and conditions of any and all existing Agreements and Supplements between the parties hereto shall remain in full force and effect.

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

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By_____
Carl Brewer, President
"Authority"

By_____
Victor D. White, Director of Airports

ATTEST:

FRONTIER AIRLINES HOLDINGS, INC.

By _____

By_____
"Airline"

APPROVED AS TO FORM: _____ Date: _____
Director of Law

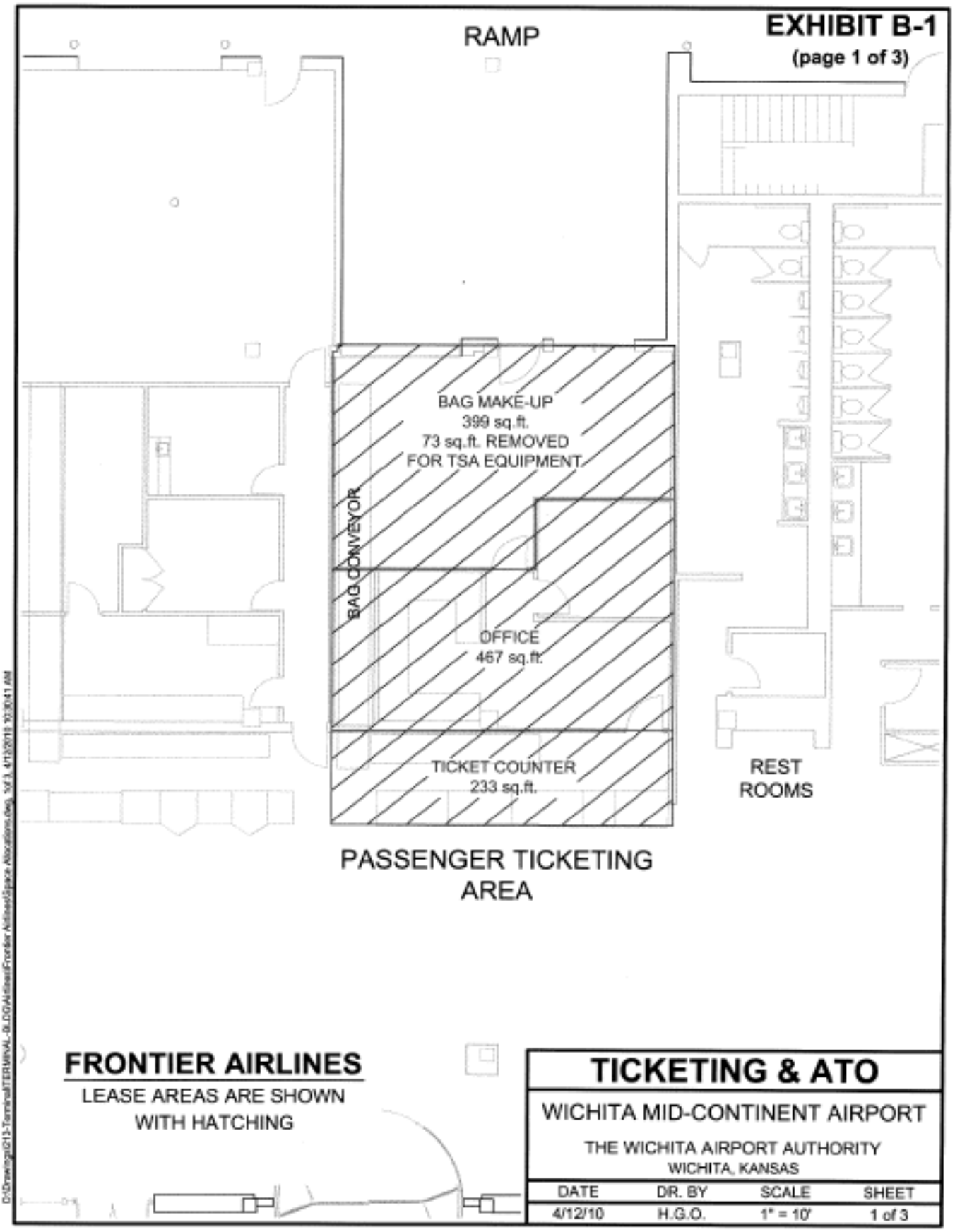
EXHIBIT B-1
(page 1 of 3)
RAMP
BAG MAKE-UP
399 sq.ft.
73 sq.ft. REMOVED
FOR TSA EQUIPMENT
BAG CONVEYOR
OFFICE
467 sq.ft.
TICKET COUNTER
233 sq.ft.
REST
ROOMS
PASSENGER TICKETING
AREA
FRONTIER AIRLINES
LEASE AREAS ARE SHOWN
WITH HATCHING
TICKETING & ATO
WICHITA MID-CONTINENT AIRPORT
THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS
DATE
DR. BY
SCALE
SHEET
4/12/10
H.G.O.
1" = 10'
1 of 3

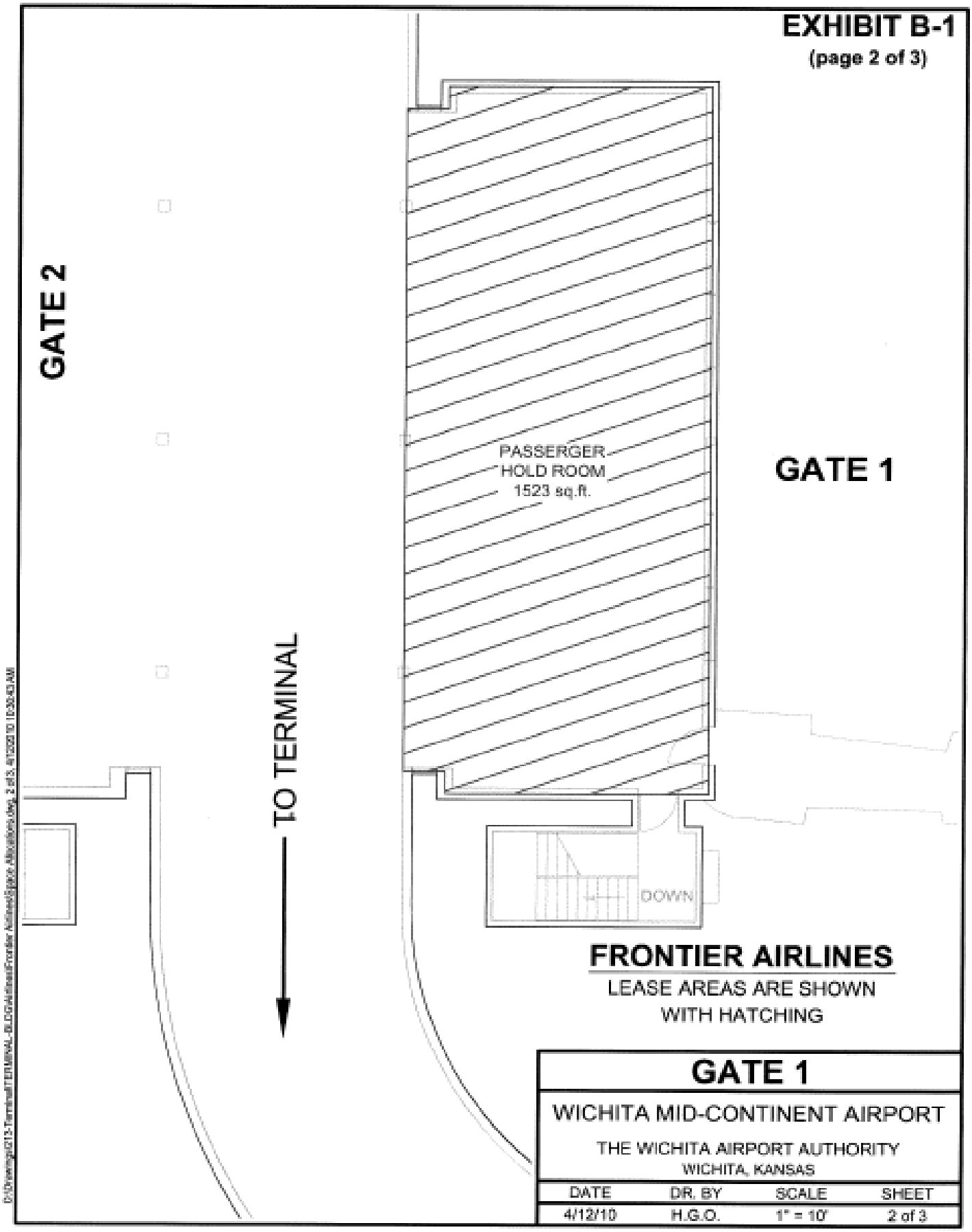
EXHIBIT B-1
(page 2 of 3)
GATE 2
GATE 1
PASSERGER
HOLD ROOM
1523 sq.ft.
TO TERMINAL
DOWN
FRONTIER AIRLINES
LEASE AREAS ARE SHOWN
WITH HATCHING
GATE 1
WICHITA MID-CONTINENT AIRPORT
THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS
DATE
DR. BY
SCALE
SHEET
4/12/10
H.G.O.
1" = 10'
2 of 3

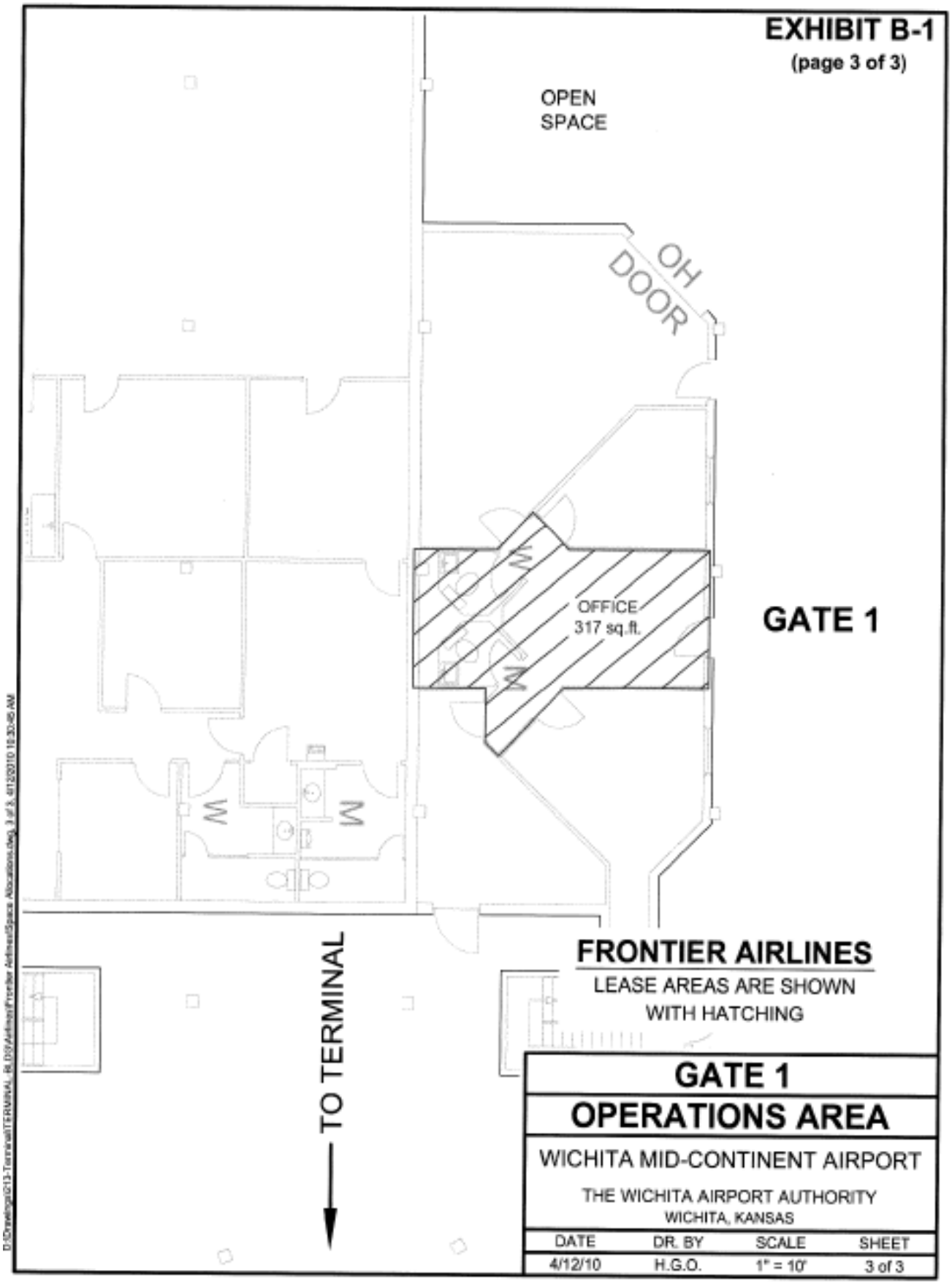
EXHIBIT B-1
(page 3 of 3)
OPEN SPACE
OH DOOR
OFFICE
317 sq.ft.
GATE 1
TO TERMINAL
FRONTIER AIRLINES
LEASE AREAS ARE SHOWN WITH HATCHING
GATE 1
OPERATIONS AREA
WICHITA MID-CONTINENT AIRPORT
THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS
DATE
DR. BY
SCALE
SHEET
4/12/10
H.G.O.
1" = 10'
3 of 3

EXHIBIT "C"

SUMMARY OF TERMINAL AREAS

AIRLINE TERMINAL SPACE

	Ticket Counter (Type 1)	Hold Rooms (Type 2)	Offices (Type 3)	VIP/Club (Type 3)	Operations (Type 4)	Bag Make-Up (Type 4)	Total	
AirTran	233	1,689	581	-	150	651	3,304	s.f.
America West (US Airways)	-	-	-	-	-	-	-	s.f.
American	200	2,224	1,098	-	1,728	1,752	7,002	s.f.
American Eagle	-	-	-	-	-	-	-	s.f.
Atlantic Southeast	-	-	-	-	-	-	-	s.f.
Chautauqua	-	-	-	-	-	-	-	s.f.
Continental	105	1,470	-	-	203	-	1,778	s.f.
Delta	434	3,221	1,589	-	1,396	1,093	7,733	s.f.
Frontier Holdings	233	1,523	467	-	317	399	2,939	s.f.
Mesa	-	-	-	-	-	-	-	s.f.
Northwest	-	-	-	-	-	-	-	s.f.
Pinnacle	-	-	-	-	-	-	-	s.f.
Republic	-	-	-	-	-	-	-	s.f.
Skywest	-	-	-	-	-	-	-	s.f.
United	335	1,467	1,145	-	-	668	3,615	s.f.
Vacant	1,120	7,711	4,336	-	19,990	3,981	37,138	s.f.
	2,660	19,305	9,216	-	23,784	8,544	63,509	s.f.

AIRLINE JOINT USE SPACE

	Concourses (Type 2)	Bag Claim (Type 2)	Elevators (Type 4)	Inbound Baggage/ Tug Lane (Type 5)	Stairwells (Type 5)	Total	
Joint Use	7,917	7,808	1,205	4,374	1,661	22,965	s.f.

EXHIBIT "C"

SUMMARY OF TERMINAL AREAS

TERMINAL SPACE SUMMARY

	Airline Use	Joint Use	Concession Space	Commercial Space	Public Area	Mechanical/ Utility Space	Total	
Airline Space	63,509	22,965	-	-	-	-	86,474	s.f.
Other Rentable	-	-	20,912	5,558	12,028 (a)	-	38,498	s.f.
Subtotal Rentable Space	63,509	22,965	20,912	5,558	12,028	-	124,972	s.f.
Other Areas	-	-	-	16,885 (b)	40,006	5,245	62,136	s.f.
Total Terminal Area	63,509	22,965	20,912	22,443	52,034	5,245	187,108	s.f.

(a) For purposes of this agreement, the public concourse area between Gates 1 & 2 and 7 & 8 is considered rentable.
(b) For purposes of this agreement, a portion of the commercial area on the second floor is considered unusable.

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL MAY 4, 2010

a. KLINK 1R Resurfacing (FY 2009-2010) US 54, Kellogg from 111th to 119th Street West (north of Harry, west of Tyler) (472-84815b/707006/209471) Traffic will be maintained using flagpersons and barricades. (District IV,V) - $374,500.00

b. 2010 Contract Maintenance Street Rehabilitation (north of 55th Street South, east of West Street) (472-84897/132723/620552/133116/) Traffic will be maintained using flagpersons and barricades. (District III,IV) - $629,000.00

c. Water Distribution System to serve Summit Crossing Addition (south of 21st Street North, west of 127th Street East) (448-90423/735441/470114) Does not affect existing traffic. (District II) - $102,000.00

d. Lateral 6, Main 10 Four Mile Creek Sewer to serve Summit Crossing Addition (south of 21st Street North, west of 127th Street East) (468-84579/744310/480002) Does not affect existing traffic. (District II) - $113,000.00

e. Storm Water Drain #355 to serve Summit Crossing Addition (south of 21st Street North, west of 127th Street East) (468-84580/751487/485378) Does not affect existing traffic. (District II) - $179,000.00

Agenda Item No. XII-4a

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Petition for Street Paving in B.G.'s 1st Addition (south of MacArthur, west of Hoover) (District IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

- -

Recommendation: Approve the new petition.

Background: On September 1, 2009, the City Council approved a petition for street paving in B.G.'s 1st Addition. An attempt to award a construction contract within the budget 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.

Analysis: The project will provide street paving for a new residential development located south of MacArthur, west of Hoover.

Financial Considerations: The existing petition totals $65,000. The new petition totals $77,000. The funding source is special assessments.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing street paving required for a new residential development.

Legal Considerations: State Statutes provide that a petition is valid if signed by a majority of resident property owners or owners of a majority of property in the improvement district.

Recommendations/Actions: It is recommended that the City Council approve the new petition, adopt the resolution and authorize the necessary signatures.

Attachments: Petition and resolution.

132019

First Published in the Wichita Eagle on May 7, 2010

RESOLUTION NO. 10-130

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON GILDA CT. FROM THE EAST LINE OF GILDA TO AND INCLUDING THE CUL-DE-SAC (SOUTH OF MACARTHUR, WEST OF HOOVER) 472-84862 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 GILDA CT. FROM THE EAST LINE OF GILDA TO AND INCLUDING THE CUL-DE-SAC (SOUTH OF MACARTHUR, WEST OF HOOVER) 472-84862 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 09-291 adopted on September 1, 2009 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Gilda Ct. from the east line of Gilda to and including the cul-de-sac (south of MacArthur, west of Hoover) 472-84862.

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 Seventy-Seven Thousand Dollars ($77,000) 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 of 1 percent per month from and after August 1, 2009.

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:

B.G.'S 1ST ADDITION
Lots 1 through 6, Block 1

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.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through 6, Block 1 B.G.'S 1ST ADDITION shall each pay 1/6 of the total cost of the improvement district.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot or parcel and shall be in addition to the assessment for other improvements.

SECTION 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 4th day of May, 2010.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

Agenda Item No. XII-5a

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Community Events – Intrust Bank Arena Pro Bull Riding (District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events Procedure, the event promoter Mike Sandbo is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure requests have been submitted:

Pro Bull Riding May 6, 2010 7:00 am – May 9, 2010 2:00 am

- William Street, St. Francis to Commerce Street
- Commerce Street, William to Waterman

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

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

Goal Impact: Enhance the Quality of Life

Legal Consideration: None

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

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Encroachment Agreement with Southern Star Central Gas Pipeline, Inc for the Greenwich Road, Harry to Kellogg improvements (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the agreement.

Background: On September 15, 2009 the City Council approved a project to improve Greenwich Road, Harry to Kellogg. A portion of the road improvements are located within a prior existing private easement granted to Southern Star Central Gas Pipeline, Inc. An agreement has been created in which Southern Star will allow the City of Wichita to install sidewalks, bike paths, and street improvements in this private easement. One specific street improvement is the installation of a traffic signal pole on the northwest corner of Harry and Greenwich Road; this traffic signal pole will be located within six feet of a twenty inch natural gas pipeline owned by Southern Star. This necessary planned location of the traffic signal pole will encroach into a ten foot clearance area specified within the private easement. The encroachment agreement requires the City of Wichita's general contractor to carry specified amounts and types of insurance. The City of Wichita agrees to indemnify Southern Star against claims or damages claimed as a result of construction, maintenance, or other operations of the City and its contractors and subcontractors within the encroachment area.

Analysis: The Greenwich Road general contractor has proof of insurance in the amounts, types and duration specified in the agreement. The City of Wichita agrees to indemnify Southern Star against claims or damages arising from construction, maintenance, or other operations of the City and its contractors and subcontractors within the encroachment area. The City's contract with the contractor provides for an indemnity agreement.

Financial Considerations: The encroachment agreement requires no financial outlay. The City of Wichita will be covered by its standard policy of self-insurance in the event that future damage results from construction, maintenance, or other operations of the City and its contractors and subcontractors within the encroachment area. The Greenwich Road general contractor has proof of insurance in the amounts, types and duration specified in the agreement.

Goal Impact: This agreement addresses the Efficient Infrastructure goal by improving an important transportation route.

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

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

Attachment: Encroachment agreement.

Tract #10420, 20421
City of Wichita, Kansas Line: G

ENCROACHMENT AGREEMENT

THIS AGREEMENT, entered into by and between **Southern Star Central Gas Pipeline, Inc**., formerly Williams Gas Pipelines Central, Inc., Williams Natural Gas Company, Northwest Central Pipeline Corporation and Cities Service Gas Company, a Delaware corporation with its principal place of business being P.O. Box 20010, Owensboro, Kentucky, hereinafter referred to as **"Company"** and the **City of Wichita, Kansas**, Sedgwick County, Kansas, a Kansas Municipal Corporation, hereinafter referred to as "City", WITNESSETH:

WHEREAS, Company is the owner of a 20 inch natural gas pipeline and easements therefore covering the Southeast Quarter (SE/4) of Section 28, Township 27 South, Range 2 East, according to a certain pipeline right-of-way Easement dated May 1, 1928, recorded in Misc. Book 47 at Pate 73, on May 10, 1928; and a pipeline Easement Partial Release of right-of-way dated July 18, 1985, recorded in Film 741, at Page 789, recorded on July 29, 1985; and a pipeline Easement therefore cover the Southwest Quarter (SW/4) of Section 27, Township 27 South, Range 2 East, according to a certain pipeline right-of-way Easement dated May 5, 1928, recorded in Misc. Book 47, at Page 92, on May14, 1928, all in the Register of Deeds Office, Sedgwick County, Kansas; and,

WHEREAS, the City is the owner of the Street right-of-way East Harry and Greenwich Road located the Southeast Quarter (SE/4) of Section 28, Township 27 South, Range 2 East; and the owner of the Street right-of-way Greenwich Road located in the Southwest Quarter (SE/4) of Section 27, Township 27, Range 2 East, Sedgwick County, Kansas, and,

WHEREAS, the City proposes to develop and widen East Harry Street from 40 feet to a road right of way of 60 feet, and widen Greenwich Road from 50 feet to a road right-of-way 60 feet, to install curb and gutter street improvements, sidewalks, and a traffic signal structure, in such a manner as to conflict, interfere with, and encroach on, Company's easement rights as referenced to drawings for Greenwich Road Project No. 87 N-0386-01, Drawing No. 35751A, sheet #13 and #147 of 255, dated November 23, 2009 prepared by parsons Brinkerhoff.

WHEREAS, under the terms of this agreement Company is willing to permit street improvements, traffic signal, and sidewalks across pipeline right-of-way at East Harry Street and Greenwich Road under the following terms and conditions.

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, Company and the City agree as follows:

1. Under the terms of this Agreement, Company will allow City to install, sidewalks, bike paths, and street improvements, on Company's Easement.

2. Company will allow the installation of a traffic signal a minimum of six feet from 20" natural gas pipeline at the Northwest corner, of intersection East Harry Street and Greenwich Road. In the event that Company excavates the pipeline Easement, City agrees temporarily removal or support of traffic signal structure, and City will be responsible for restoration of sidewalks, bike paths, and street improvements.

3. City agrees to inform Company of any construction activities, including the installation or repair of other utility lines that may cross the Company easement, at least 48 hours in advance by contacting the Kansas One-Call System at 1-800-334-7233.

4. In the event during the exercise of its easement rights to construct, maintain and operate the pipeline and appurtenances, Company or its contractors destroy or damage the encroachments herein permitted, all such damages to said permitted items shall be the sole responsibility of the City, unless Company is negligent in such action.

5. To the extent permitted by law, the City agrees to indemnify, save and hold Company, its parent and affiliates, and the employees, officers, directors and agents thereof, harmless from and against any loss, cost or expense incurred by Company, including without limitation losses resulting from claims for damages to property or injuries to or deaths of persons, judgments, court costs and attorneys' fees which arise out of, or a claimed to have arisen out of the construction, maintenance or other operations of City, their contractors and subcontractors, on the Company easement upon City property, unless such loss, cost of expense is proximately caused by the sole negligence of Company, its contractors and/or subcontractors.

6. Prior to commencement of construction of the above reference, work, the General Contractor selected by City shall provide Company certificates of insurance expressly naming Southern Start Central Gas Pipeline, Inc., as an additional insured and evidencing coverage in the amount of one million dollars ($1,000,000.00) general liability, one million dollars ($1,000,000.00) auto liability, and one million dollars ($1,000,000.00) workers compensation and employers liability insurance for the construction area described herein, and containing thirty (30) days prior written notice of cancellation.

IN WITNESS WHEREOF, we hereunto set our hands and seals on the day and year below our signatures indicated.

COMPANY:
SOUTHERN STAR CENTRAL GAS PIPELINE, INC.

_____
Robert S. Bahnick, Sr. Vice-President
Operations and Technical Services

Date:_____

CORPORATE ACKNOWLEDGMENT

STATE OF KENTUCKY

COUNTY OF DAVIESS

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on this _____ day of _____, 2010, personally appeared Robert S. Bahnick, who being by me duly sworn, did say that he is the Senior Vice President, Operations and Technical Services of Southern Star Central Gas Pipeline, Inc., a corporation, and that said instrument was signed o behalf of said corporation by authority of its Board of Directors, and said Robert S. Bahnick acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

_____
Notary Public

My Commission Expires _____, 20____.

WITNESS OUR HANDS AND SEALS the day and year first above written.

CITY
On behalf of the City Council

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

ACKNOWLEDGEMENT

STATE OF KANSAS)
)SS:
SEDGWICK COUNTY)

BE IT REMEMBERED that on this ____ day of _____, 2010, before me, a notary public in and for said County and State, came Carl Brewer, who is the Mayor of the City of Wichita, who is personally known tome to be the same person who executed, as such officer, the within instrument on behalf of said city, and such person duly acknowledged the execution of the same to be the act and deed of said municipal corporation.

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

_____
Notary Public

My Commission Expires:

_____

Tract # 10420, 10421
City of Wichita, Kansas

Line: G

ENCROACHMENT AGREEMENT

THIS AGREEMENT, entered into by and between **Southern Star Central Gas Pipeline, Inc.**, formerly Williams Gas Pipelines Central, Inc., Williams Natural Gas Company, Northwest Central Pipeline Corporation and Cities Service Gas Company, a Delaware corporation with its principal place of business being P.O. Box 20010, Owensboro, Kentucky, hereinafter referred to as "**Company**" and the **City of Wichita, Kansas,** Sedgwick County, Kansas, a Kansas Municipal Corporation, hereinafter referred to as "**City**", WITNESSETH:

WHEREAS, Company is the owner of a 20 inch natural gas pipeline and easements therefore covering the Southeast Quarter (SE/4) of Section 28, Township 27 South, Range 2 East, according to a certain pipeline right-of-way Easement dated May 1, 1928, recorded in Misc. Book 47 at Page 73, on May 10, 1928; and a pipeline Easement Partial Release of right-of-way dated July 18, 1985, recorded in Film 741, at Page 789, recorded on July 29, 1985; and a pipeline Easement therefore cover the Southwest Quarter (SW/4) of Section 27, Township 27 South, Range 2 East, according to a certain pipeline right-of-way Easement dated May 5, 1928, recorded in Misc. Book 47, at Page 92, on May 14, 1928, all in the Register of Deeds Office, Sedgwick County, Kansas; and,

WHEREAS, the City is the owner of the Street right-of-way East Harry and Greenwich Road located in the Southeast Quarter (SE/4) of Section 28, Township 27 South, Range 2 East; and the owner of the Street right-of-way Greenwich Road located in the Southwest Quarter (SW/4) of Section 27, Township 27, Range 2 East, Sedgwick County, Kansas, and,

WHEREAS, the City proposes to develop and widen East Harry Street from 40 feet to a road right of way of 60 feet, and widen Greenwich Road from 50 feet to a road right-of-way 60 feet, to install curb and gutter street improvements, sidewalks, and a traffic signal structure, in such a manner as to conflict, interfere with, and encroach on, Company's easement rights as referenced to drawings for Greenwich Road Project No.87 N-0386-01, Drawing No. 35751A, sheet #13 and #147 of 255, dated November 23, 2009 prepared by Parsons Brinckerhoff.

WHEREAS, under the terms of this agreement Company is willing to permit street improvements, traffic signal, and sidewalks across pipeline right-of-way at East Harry Street and Greenwich Road under the following terms and conditions

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, Company and the City agree as follows:

1. Under the terms of this Agreement, Company will allow City to install sidewalks, bike paths, and street improvements, on Company's Easement.

2. Company will allow the installation of a traffic signal a minimum of six feet from 20" natural gas pipeline at the Northwest corner, of intersection East Harry Street and Greenwich Road. In the event that Company excavates the pipeline Easement, City agrees temporarily removal or support of traffic signal structure, and City will be responsible for restoration of sidewalks, bike paths, and street improvements.

3. City agrees to inform Company of any construction activities, including the installation or repair of other utility lines that may cross the Company easement, at least 48 hours in advance by contacting the Kansas One-Call System at 1-800-334-7233.

4. In the event that during the exercise of its easement rights to construct, maintain and operate the pipeline and appurtenances, Company or its contractors destroy or damage the encroachments herein permitted, all such damages to said permitted items shall be the sole responsibility of the City, unless Company is negligent in such action.

5. To the extent permitted by law, the City agrees to indemnify, save and hold Company, its parent and affiliates, and the employees, officers, directors and agents thereof, harmless from and against any loss, cost or expense incurred by Company, including without limitation losses resulting from claims for damages to property or injuries to or deaths of persons, judgments, court costs and attorneys' fees which arise out of, or are claimed to have arisen out of the construction, maintenance or other operations of City, their contractors and subcontractors, on the Company easement upon City property, unless such loss, cost or expense is proximately caused by the sole negligence of Company, its contractors and/or subcontractors.

6. Prior to commencement of construction of the above reference work, the General Contractor selected by City shall provide Company certificates of insurance expressly naming Southern Star Central Gas Pipeline, Inc., as an additional insured and evidencing coverage in the amount of one million dollars ($1,000,000.00) general liability, one million dollars ($1,000,000.00) auto liability, and one million dollars ($1,000,000.00) workers compensation and employers liability insurance for the construction area described herein, and containing thirty (30) days prior written notice of cancellation.

IN WITNESS WHEREOF, we hereunto set our hands and seals on the day and year below our signatures indicated.

COMPANY:
SOUTHERN STAR CENTRAL GAS PIPELINE, INC.

_____
Robert S. Bahnick, Sr. Vice-President
Operations and Technical Services

Date: _____

CORPORATE ACKNOWLEGEMENT

STATE OF KENTUCKY

COUNTY OF DAVIESS

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on this _____day of _____, 2010, personally appeared Robert S. Bahnick, who being by me duly sworn, did say that he is the Senior Vice President, Operations and Technical Services of Southern Star Central Gas Pipeline, Inc., a corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said Robert S. Bahnick acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

_____
Notary Public

My Commission Expires_____, 20_____.

WITNESS OUR HANDS AND SEALS the day and year first above written.

CITY
On behalf of the City Council

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

ACKNOWLEDGEMENT

STATE OF KANSAS)
)SS:
SEDGWICK COUNTY)

BE IT REMEMBERED that on this ____ day of _____, 2010, before me, a notary public in and for said County and State, came Carl Brewer, who is the Mayor of the City of Wichita, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said city, and such person duly acknowledged the execution of the same to be the act and deed of said municipal corporation.

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

_____
Notary Public

My Commission Expires:

_____

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Agreement with the Kansas Department of Transportation for improvements of K-96 from I-135 to Rock Road (Districts I &VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the agreement.

Background: The Kansas Department of Transportation (KDOT) intends to install cable median barrier, including part of the interchange ramps along K-96 from I-135 to Rock Road. Because this section of K-96 is located within the city limits and because the operation and maintenance of K-96 and other federal and state highway connecting links are covered by another agreement between the State and City, it is necessary for the City and KDOT to enter into an agreement for this construction project.

Analysis: The agreement authorizes the work to be done within the city limits. It contains a provision whereby the City and KDOT shall mutually agree on how traffic will be handled during construction. K-96 traffic and access through local streets is maintained.

Financial Considerations: There is no cost to the City associated with this agreement.

Goal Impact: This Agreement addresses the Efficient Infrastructure Goal by providing improved, safer highway connecting links within the City.

Legal Considerations: The City/State Agreement has been approved as to form by the Law Department.

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

Attachments: Agreement.

PROJECT NO. 96-87 KA-1673-01
HSIP-A167(301)
CABLE MEDIAN BARRIER
CITY OF WICHITA, KANSAS

AGREEMENT

PARTIES: **DEBRA L. MILLER, Secretary of Transportation**, Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary,"

The City of Wichita, Kansas, hereinafter referred to as the "City,"

Collectively referred to as the "Parties."

PURPOSE: The Secretary has authorized a cable median barrier project, hereinafter referred to as the "Project." The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City. The Secretary desires to construct the Project on K-96, a city connecting link. The City agrees to the Project in the City. The Secretary and the City desire to enter into an Agreement to make improvements to the state highway through the use of state or federal funds or a combination of state and federal funds.

PROJECT: The Secretary and the City desire to enter into this Agreement for the construction of a Project for the improvement of K-96, a connecting link of the State Highway System in the City and is described as follows:

Installation of cable median barrier, including part of the interchange ramps, along K-96, from I-135 east to Rock Road.

EFFECTIVE DATE: The Parties in consideration of the premises and to secure the approval and construction of the Project shall mutually agree to perform in accordance with this Agreement as of the _____ day of _____ 20____.

ARTICLE I

THE SECRETARY AGREES:

1. The Project shall be undertaken and completed by the Secretary except as otherwise modified by this Agreement.

2. In the name of the Secretary, to perform appraisal and acquisition work including condemnation, if necessary, for rights of way and easements as shown on the Project plans. All costs

for rights of way and easements as shown on the Project plans will be paid for with state funds or federal funds or a combination of state and federal funds.

3. To receive and disburse all funds directly to the Parties involved in acquisition of rights of way and easements.

4. To prepare the Project plans, let the contract for the Project and administer the construction of the Project as required by the Federal Highway Administration to negotiate with and report to the Federal Highway Administration and administer the payments due the contractor.

5. All construction items included in the Project plans shall be paid for with state funds or federal funds or a combination of state and federal funds.

6. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the Secretary will defend, indemnify, hold harmless, and save the City and its 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 Secretary, the Secretary's employees, agents, or subcontractors. The Secretary shall not be required to defend, indemnify, hold harmless, and save the City for negligent acts or omissions of the City or its authorized representatives or employees.

7. 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.

ARTICLE II

THE CITY AGREES:

1. It shall, by resolution, authorize the Secretary to undertake and complete the Project within the corporate limits of the City.

2. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final design plans, for the purpose of constructing the highway Project. Neither the Secretary nor the Federal Highway Administration shall participate in the cost of these rights of way or easements, unless the Secretary determines the City will incur an unnecessary hardship. The City shall execute the appropriate deeds and easements transferring its property rights to the Secretary. Further, the City acknowledges the execution and transferring of the deeds and easements by the City to the Secretary is an obligation of the City for this Agreement and construction of the Project.

3. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the right of way shown on the Project plans for this Project, and it will initiate and proceed with diligence to remove or require the removal of encroachments. It is further agreed all such encroachments be removed before the Project is advertised for letting (provided, however, if the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the City and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The City further agrees it will not in the future permit the erection of gas and fuel dispensing pumps upon the rights of way of the Project, and it will require any gas and fuel dispensing pumps erected, moved or installed along the Project be placed no less than 12 feet back of the right of way line. All rights of way provided for the Project shall be used solely for public highway purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the rights of way limits except as provided by state laws.

4. To adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.

5. To prohibit parking of vehicles on the city connecting link and on the acceleration and deceleration lanes of all connecting streets and highways and on additional portions of the connecting streets and highways the Secretary may deem necessary to permit free flowing traffic throughout the length of the improvement covered by this Agreement.

6. To maintain the control of access rights and to prohibit the construction or use of any entrance or access points along the Project other than those shown on the Project plans. The City agrees any exceptions therefrom must be approved by the Secretary.

7. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of the KDOT and all costs incurred by the City not to be reimbursed by the KDOT for preliminary engineering, rights of way, utility adjustments, construction, and construction engineering work phases, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

ARTICLE III

THE PARTIES MUTUALLY AGREE:

1. Under the terms of the Federal-Aid Highway Acts and the rules and regulations of the Federal Highway Administration, states and cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of roads and streets, provided, however, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of the state of Kansas and federal requirements.

2. The Secretary will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipe lines, meters, manholes and other utilities, publicly or privately owned, which may be 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 Kansas Department of Transportation Utility Accommodation Policy (UAP), as amended or supplemented.

If the City has a population of less than 2,501 (based on the U.S. Bureau of Census-2000 Census), the Secretary agrees to be responsible for the expense to remove or adjust City owned utility facilities located on public rights of way as necessary to construct the Project in accordance with the final design plans. The payment of such expense by the Secretary shall be by a separate utility adjustment agreement between the Secretary and the City. If the City has a population of more than 2,500 (based on the U.S. Bureau of Census-2000 Census), the utility owners shall be responsible for the expense to remove or adjust all utility facilities on public rights of way as necessary to construct the Project in accordance with the final design plans. The expense of removal or adjustment of utility facilities located on private easements shall be reimbursed to the utility owners by the Secretary. The payment of such expense by the Secretary shall be by separate utility adjustment agreement between the Secretary and the utility owners.

3. The final design plans for the Project are by reference made a part of this Agreement.

4. They shall determine the manner in which traffic is to be handled during construction. It is therefore agreed between the Parties before Project plans have been completed, detour routes and street closings, if necessary, shall be agreed upon by authorized representatives of the City and the Secretary, and noted on the Project plans. If revisions to the traffic handling plan are proposed during the progress of construction, the City and the Secretary shall approve such revisions before they become effective.

5. They have in the past entered into an agreement covering routine maintenance of the city connecting link, and it is the intention of the Secretary and the City that the agreement for routine maintenance shall remain in full force and effect and the mileage set out thereon shall not be affected by this Agreement.

6. 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, shall conform to the manual and specifications adopted under K.S.A. 8-2003 and any amendments thereto are incorporated by reference.

7. The Special Attachment No. 1 attached hereto, pertaining to the implementation of the Civil Rights Act of 1964, is hereby made a part of this Agreement.

8. 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.

9. No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:

THE CITY OF WICHITA, KANSAS

_____
CITY CLERK

_____
MAYOR

(SEAL)

Kansas Department of Transportation
Debra L. Miller, Secretary of Transportation

By:_____
Jerome T. Younger, P.E.
Deputy Secretary for Engineering and
State Transportation Engineer

APPROVAL AS TO FORM

Gary Rebenstorf, Director of Law

KANSAS DEPARTMENT OF TRANSPORATION

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 relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which 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 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 natural 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 contractor 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 contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or 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 this Order.

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.

State of Kansas
Department of Administration
DA-146a (Rev. 1-01)

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. 1-01), 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.

2. **Agreement With Kansas Law**: All contractual agreements shall be subject to, governed by, and construed according to the laws of 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 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**: Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred 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.

   Parties to this contract understand that 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 shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit 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 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 shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State 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 vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor 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."

CITY OF WICHITA
City Council Meeting
May 4, 2010

TO: Mayor and City Council Members

SUBJECT: Settlement of Claim

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize payment of $10,396.96 as a full settlement for all claims arising out of an automobile accident.

Background: This claim arose from a September, 2008 automobile accident involving a police officer. The driver of the other vehicle sustained personal injuries and medical expenses.

Analysis: The claimant has offered to accept a lump sum payment of $10,396.96 as reimbursement of her medical expenses in the claim against the City. Because of the risk of an adverse judgment if it went to trial, the Law Department recommends acceptance of the offer. This is a settlement of a long disputed claim.

Goal Impact: Payment of the sum contributes to the City goal of providing a safe and secure community. It provides certain resolution to a contingent liability.

Financial Considerations: Funding for this settlement payment is from the City's Tort Claims Fund.

Legal Considerations: The Law Department recommends acceptance of the offer of settlement.

Recommendations/Actions: It is recommended that the City Council authorize payment of $10,396.96 as a full settlement of all possible claims which were made or could have been made in the claim.

Attachments: None.

CITY OF WICHITA
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Notice of Intent to Use Debt Financing Amendment
Taxiway A1 Extension and Apron – Jabara Airport

INITIATED BY: Department of Airports

AGENDA: Consent

Recommendation: Adopt the Amended Resolution.

Background: Capital projects undertaken at Colonel James Jabara Airport by the Wichita Airport Authority are funded by Federal Aviation Administration grants and Airport operating revenues including reimbursements from tenants. The timing for the actual receipt of outside funds can vary depending on circumstances such as Congressional action and contractual agreements. In order to assure that capital project schedules are not interrupted due to these timing fluctuations, City procedure calls for a notice of intent to issue debt financing for the full budget of the project. The Airport Authority relies on the City of Wichita for the issuance of General Obligation bonds and/or notes for capital projects. In order to use debt financing for a project it is necessary to declare that a public necessity exists for, and that the public safety, service and welfare will be advanced by, the authorization of certain capital improvements to the Jabara Airport facility. Additionally, the nature of said improvements, the estimated costs thereof and the manner of payment needs to be disclosed. The actual issuance of the bonds/notes will require a separate authorization from the City Council. Debt financing can be in the form of temporary notes for durations as short as six months for timing considerations or the form of General Obligation bonds for long term financing.

Resolution No. A07-005 was adopted on June 12, 2007 finding the existence of a public necessity for Taxiway A and Apron at an estimated cost of $1,040,000.

Analysis: On May 4, 2010, the City Council sitting as the Wichita Airport Authority will take action on a request to increase the budget of the Taxiway A and Apron project to allow for additional pavement and the inclusion of drainage channel improvements. It is appropriate to make notice of the intent to use debt financing for this project with the specific financing amount and length being identified when the actual issuance of the bonds/notes are authorized in the future by City Council.

Financial Considerations: The budget increase requested will result in a total budget of $1,750,000 which represents the maximum cost that will be financed with General Obligation bonds/notes. The source of repayment for the bonds/notes will be a combination of grants and Airport revenues.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is leveraged through the use of financing for capital projects.

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

Recommendation/Action: It is recommended that the City Council adopt the Amended Resolution and authorize the necessary signatures.

Attachments: Authorizing Resolution.

OCA = 510240; UC1 = 1008

Published in the Wichita Eagle on May 7, 2010

RESOLUTION NO. 10-128

A RESOLUTION AMENDING RESOLUTION NO. A07-005, DECLARING THAT A PUBLIC NECESSITY EXISTS FOR, AND THAT THE PUBLIC SAFETY, SERVICE AND WELFARE WILL BE ADVANCED BY, THE AUTHORIZATION OF LAND ACQUISITION AND/OR CERTAIN CAPITAL IMPROVEMENTS TO THE COLONEL JAMES JABARA AIRPORT FACILITY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS; THE ESTIMATED COSTS THEREOF; AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 3-114 provides that an airport authority established pursuant to K.S.A. 3-162 shall have the power to equip, improve and maintain an airport; and,

WHEREAS, K.S.A. l3-1348a provides that a city having an airport authority established pursuant to K.S.A. 3-162 is authorized to issue general obligation bonds for the purpose of purchasing land for airport purchases or for the construction, enlargement, reconstruction, repair or addition to or of any improvements to any such lands; and,

WHEREAS, Resolution No. A07-005 of the City of Wichita, Kansas, adopted on June 12, 2007 and published on June 14, 2007, found the existence of public necessity for improvements to Taxiway A and Apron , and approved the payment and financing of the same, at an estimated cost of $1,040,000, exclusive of the cost in interest on borrowed money; and,

WHEREAS, it has now become necessary to amend Resolution No. A07-005 to expand the Project approved therein to add certain related additional paving and drainage channel improvements to the project.

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

SECTION 1. That Section 1 of Resolution No. A07-005 is hereby amended to read as follows:

> "SECTION 1. That a public necessity exists for, and that the public safety, service and welfare will be advanced by, the authorization of land acquisition and/or certain capital improvements, specifically, **Taxiway A1 Extension and Apron** to the Colonel James Jabara Airport facility operated by the Wichita Airport Authority of the City of Wichita, Kansas (such land acquisition and/or improvement to be referred to herein as the "Project")."

SECTION 2. That Section 2 of Resolution No. A07-005 is hereby amended to read as follows:

> "SECTION 2. That the cost of the above described Project is estimated to be One Million Seven Hundred and Fifty Thousand Dollars ($1,750,000), exclusive of the cost of interest on borrowed money, and is to be paid by the Wichita Airport Authority of the City of Wichita. Said Wichita Airport Authority cost shall be financed through the

issuance of general obligation bonds under the authority of K.S.A. l3-1348a, as amended by Charter Ordinance No. 78 of the City of Wichita, Kansas. The maximum principal amount of bonds issued for this Project shall not exceed $1,750,000."

SECTION 3. That, to the extent the Project is a capital improvement, the above described Project shall be made in accordance with the Plans and Specifications prepared under the direction of the Airport Engineering and Planning Manager and approved by the Wichita Airport Authority. Said plans and specifications are to be placed on file in the office of the Airport Engineering and Planning Manager located at Wichita Mid-Continent Airport.

SECTION 4. That the original versions of Sections 1 and 2 of Resolution No. A07-005, as the same previously existed, are hereby repealed and replaced with the amended versions set forth herein.

SECTION 5. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

ADOPTED at Wichita, Kansas, May 4, 2010.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

CITY OF WICHITA
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Notice of Intent to Use Debt Financing
Airfield Pavement Rehabilitation – Colonel James Jabara Airport

INITIATED BY: Department of Airports

AGENDA: Consent

Recommendation: Adopt the Resolution.

Background: Capital projects undertaken by the Wichita Airport Authority at Jabara Airport are funded by Federal Aviation Administration grants, grants from other sources such as the Kansas Department of Revenue and Airport operating revenues. The timing for the actual receipt of outside funds can vary depending on circumstances such as Congressional action and funding program schedules. In order to assure that capital project schedules are not interrupted due to these timing fluctuations, City procedure calls for a notice of intent to issue debt financing for the full budget of the project. The Airport Authority relies on the City of Wichita for the issuance of General Obligation bonds and/or notes for capital projects. In order to use debt financing for a project it is necessary to declare that a public necessity exists for, and that the public safety, service and welfare will be advanced by, the authorization of certain capital improvements to the Colonel James Jabara Airport facility. Additionally, the nature of said improvements, the estimated costs thereof and the manner of payment needs to be disclosed. The actual issuance of the bonds/notes will require a separate authorization from the City Council. Debt financing can be in the form of temporary notes for durations as short as six months for timing considerations or the form of General Obligation bonds for long term financing.

Analysis: On May 4, 2010, the City Council sitting as the Wichita Airport Authority will take action on a request to approve a capital budget and contract for the professional services related to Airfield Pavement Rehabilitation at Jabara Airport. It is appropriate to make notice of the intent to use debt financing for this project with the specific financing amount and length being identified when the actual issuance of the bonds/notes are authorized in the future by City Council.

Financial Considerations: The budget requested is $100,000 which represents the maximum cost that will be financed with General Obligation bonds/notes. The source of repayment for the bonds/notes will be a combination of grants and Airport revenues.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is leveraged through the use of financing for capital projects.

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

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

Attachments: Authorizing Resolution.

OCA = 500496; UC1 = 1008

Published in the Wichita Eagle on May 7 and May 14, 2010

RESOLUTION NO. 10-129

A RESOLUTION DECLARING THAT A PUBLIC NECESSITY EXISTS FOR, AND THAT THE PUBLIC SAFETY, SERVICE AND WELFARE WILL BE ADVANCED BY, THE AUTHORIZATION OF LAND ACQUISITION AND/OR CERTAIN CAPITAL IMPROVEMENTS TO THE COLONEL JAMES JABARA AIRPORT FACILITY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS; THE ESTIMATED COSTS THEREOF; AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 3-114 provides that an airport authority established pursuant to K.S.A. 3-162 shall have the power to equip, improve and maintain an airport; and,

WHEREAS, K.S.A. l3-1348a provides that a city having an airport authority established pursuant to K.S.A. 3-162 is authorized to issue general obligation bonds for the purpose of purchasing land for airport purposes or for the construction, enlargement, reconstruction, repair or addition to or of any improvements to any such lands.

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

SECTION 1. That a public necessity exists for, and that the public safety, service and welfare will be advanced by, the authorization of land acquisition and/or certain capital improvements, specifically,

Airfield Pavement Rehabilitation – Jabara Airport (design)

to the Colonel James Jabara Airport facility operated by the Wichita Airport Authority of the City of Wichita, Kansas (such land acquisition and/or improvement to be referred to herein as the "Project").

SECTION 2. That the cost of the above described Project is estimated to be One Hundred Thousand Dollars ($100,000), exclusive of the cost of interest on borrowed money, and is to be paid by the Wichita Airport Authority of the City of Wichita. Said Wichita Airport Authority cost shall be financed through the issuance of general obligation bonds under the authority of K.S.A. l3-1348a, as amended by Charter Ordinance No. 78 of the City of Wichita, Kansas. The maximum principal amount of bonds issued for this Project shall not exceed $100,000.

SECTION 3. That to the extent the Project is a capital improvement, the above described Project shall be made in accordance with the Plans and Specifications prepared under the direction of the Airport Engineering and Planning Manager and approved by the Wichita Airport Authority. Said plans and specifications are to be placed on file in the office of the Airport Engineering and Planning Manager located at Wichita Mid-Continent Airport.

SECTION 4. That the City Clerk shall make proper publication of this resolution, which shall be published once each week for two consecutive weeks in the official City paper and which shall be effective from and after said publication.

ADOPTED at Wichita, Kansas, May 4, 2010.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Approval of Sublease (H2 Corporate Office, LLC) (District II)

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendation: Approve the sublease.

Background: On October 7, 2008, City Council approved the issuance of Industrial Revenue Bonds (IRBs) for H2 Corporate, LLC ("H2") in the amount not to exceed $7,200,000 and a 100% five-plus-five-year property tax exemption. H2 will sublease the project to Hartman Oil Co, Inc. ("Hartman Oil"). Bond proceeds financed the construction of a 45,000 square foot corporate headquarters facility at 10918 E 13th Street North. The headquarters is home to Hartman Oil and its related companies. Hartman has the option to lease portions of the building to unrelated entities. A payment in lieu of taxes ("PILOT") is required if Hartman chooses this option. As a condition of the bond documents, the City Council will approve the subleases as they are negotiated. Hartman is requesting approval of a sublease at this time.

Analysis: Hartman has negotiated a sublease with ATLASMD, LLC for 4,087 square feet of the building. ATLASMD, LLC is not affiliated with Hartman Oil. ATLASMD, LLC is the real estate holding company for Dr. Umbehr and his Wichita-based family practice. Hartman Oil is required by the conditions of the bond documents to make a ratable PILOT for any portion of the building that is used by or subleased to entities not related to Hartman Oil. The ratable payment will be calculated when the 2010 taxes are due and payable in May 2011. The payment will be based on the percentage of the building footprint that is leased to the unrelated entity and the 2010 valuation of the property.

Financial Consideration: Hartman Oil is required by the conditions of the bond documents to make a ratable PILOT for any portion of the building that is used by or subleased to entities not related to Hartman Oil. The ratable payment will be calculated when the 2010 taxes are due and payable in May 2011. The payment will be based on the percentage of the building footprint that is leased to the unrelated entity and the 2010 valuation of the property.

Goal Impact: Economic Vitality and Affordable Living. Cooperating with the IRB Tenant is a necessary part of preserving the credibility and integrity of the City's IRB program for future projects.

Legal Consideration: The City Attorney's Office has advised that if the City approves a sublease or subleases that do not provide for the IRB Tenant to enforce compliance with certain conditions by the subtenants, the City will not be able to cause the IRB Tenant to bring its subtenants into compliance. The City will retain the right to rescind the abatement or require a payment in lieu of tax (PILOT) in the event of noncompliance as a standard condition of tax abatement.

Recommendation/Actions: It is recommended that the City Council approve the sublease between Hartman Oil and ATLASMD, LLC.

Attachment: Sublease

LEASE AGREEMENT

PREAMBLE

THIS LEASE AGREEMENT ("Lease") is made and entered into as of April 6th, 2010 ("Effective Date"), by and between H2 Corporate Office, LLC ("LANDLORD"), a Kansas limited liability company with its principal place of business located at 10500 E. Berkeley Square Parkway, Suite 100, Wichita, KS 67206 and ATLASMD, LLC ("TENANT"). This Lease is effective as of the Effective Date.

In consideration of the mutual agreements and promises set forth herein, the sufficiency of which consideration the parties hereby acknowledge, the parties agree as follows:

SECTION I. INCORPORATION, TERM, PREMISES.

1.01 INCORPORATION. The Preamble set forth above is incorporated by reference and made a part of this Lease as if here fully set forth.

1.02 LEASE TERM. The term of this Lease shall be for a period of eight (8) years or upon expiration of LANDLORD's Tax Abatement period, whichever is sooner, commencing **July 1st, 2010,** and ending **June 30th, 2018.** TENANT shall have two (2) five year renewal options.

1.03 PREMISES. LANDLORD leases to TENANT and TENANT leases from LANDLORD the premises designated as **10500 E. Berkeley Square Parkway, Suite 200, (including the common areas of the building) Wichita, KS 67206 (the "Premises").** The Premises contain approximately 3087 square feet. The Premises are outlined on Exhibit A attached hereto. Exhibit A is incorporated herein by reference and made a part of this Lease as if here fully set forth.

1.03-1 ACCEPTANCE OF PREMISES. Occupying all or any portion of the Premises by TENANT shall be conclusive evidence that the Premises is in satisfactory condition and acceptable to TENANT, subject to latent defects and deficiencies listed in writing by TENANT and given to LANDLORD within thirty days after TENANT'S occupancy.

1.03-2 BOND-FINANCED PREMISES. The acquisition and construction of the Premises have been financed through the issuance by the City of Wichita, Kansas (the "City") of its Taxable Industrial Revenue Bonds, Series IV, 2008 (H2 Corporate Office, LLC) (the "Bonds"). Landlord represents and agrees that the City is the lawful owner of the Premises, free and clear of any liens, encumbrances, tenancies and restrictions of any kind, except those shown on the title commitment issued by American Title, and those created by the Lease between the City and the Landlord (the "Bond Lease") and the other documents executed and delivered as a part of the issuance of the Bonds.

Landlord's Initials _____ Tenant's Initials _____

SECTION II - RENT: ADJUSTMENTS TO RENT, SECURITY DEPOSIT, LANDLORD LIEN

2.01 RENT; WHEN DUE; WHERE PAID. All monies payable by TENANT to LANDLORD under this Lease shall be deemed to be rent and shall be payable and recoverable as rent in the manner herein provided and LANDLORD shall have all rights against TENANT for default in any such payment. Rent shall be paid to LANDLORD in advance, on the 1st day of each calendar month, during the entire term of the Lease, without deduction or setoff, at the address of LANDLORD, **10500 E. Berkeley Square Parkway, Suite 100, Wichita, Kansas 67206** or to such other person or entity or to such other address as LANDLORD may designate in writing. TENANT'S obligation to pay all rent due under this Lease shall survive the expiration or earlier termination of this Lease. Should this Lease commence on a day other than the first day of the month or terminate on a day other than the last day of the month, the rent for such partial month shall be prorated based on a 30 day month.

2.01-1 BASE RENT. TENANT shall, pay to LANDLORD the total rent for the 3,082 square feet as set forth in Section 1.03 of **$57,109.50 per year for the first two years** which will be payable in **twenty-four (24)** equal monthly installments of **$4,759.12** with the first installment due and payable **July 1, 2010.**

2.01-2 LATE PAYMENT CHARGE. If the monthly rental payment is not paid by midnight on the fifth day of the month, a late payment charge of **ten per cent (10%) of the payment** due shall be added to the rental payment for that month. All subsequent payments received from TENANT will first be credited against any outstanding late fees (and interest if applicable) and then toward rent.

2.01-3 INTEREST RATE ON DELINQUENCIES. If TENANT shall fail to pay any rent or other payments when due, such unpaid amounts shall bear interest at the rate of **18%** from the due date until paid. This interest is in addition to the late payment above in Section 2.01-2.

2.02 ADJUSTMENTS TO RENT. TENANT shall pay its pro-rata share of any increase in the building operating expenses over the base year of 2011. Such additional rent shall be due within thirty (30) days after receipt of invoice by LANDLORD. At TENANT'S request, LANDLORD shall provide evidence of the increased operating expenses in accordance with generally accepted accounting principles. Operating expenses are defined as set forth on Exhibit D hereto. Any such additional rent shall be calculated by dividing the increase in operating expenses by the square footage of the leasehold, with TENANT to pay its pro-rata share per square foot.

2.03 SECURITY DEPOSIT. TENANT has deposited with LANDLORD the sum of $4,500.00 as additional security for the performance by TENANT of its covenants and obligations hereunder. Such security deposit shall not bear interest and shall not be considered

an advance payment of rent or a measure of LANDLORD'S damages in case of default by TENANT. If TENANT defaults in the performance of any of the covenants and obligations to be performed by it, LANDLORD may, from time to time, without prejudice to any other remedy, use such security deposit to the extent necessary to make good any arrearages in rent or any sum as to which TENANT is in default and any other damage, injury, expense or liability caused to LANDLORD by such default including any damages or deficiency in the re-letting of the Premises, whether such damages or deficiency may accrue before or after termination of this Lease. Following any such application of the security deposit, TENANT shall pay to LANDLORD on demand the amount so applied in order to restore the security deposit to its original amount. If TENANT is not then in default hereunder, any remaining balance of the security deposit shall be returned by LANDLORD to the TENANT within thirty (30) days upon termination of this Lease and after delivery of possession of the Premises to LANDLORD in accordance with this Lease. If LANDLORD assigns its interest in the Premises during the lease term, LANDLORD may assign the security deposit to the assignee and thereafter LANDLORD shall have no further liability for the return of such security deposit and TENANT agrees to look solely to the new LANDLORD for the return of such security deposit. This provision shall apply to every transfer or assignment made of the security deposit to a new LANDLORD. TENANT agrees that it will not assign or encumber or attempt to assign or encumber the monies deposited as security and that LANDLORD and its successors and assignees shall not be bound by any such actual or attempted assignment or encumbrance.

LANDLORD may waive the requirement of a security deposit at the beginning of the Lease. LANDLORD may, in its sole discretion, later require a security deposit from TENANT, if TENANT fails timely to pay the rent.

2.04 ACTION FOR RENT. If LANDLORD brings an action to collect unpaid rent, TENANT shall pay all LANDLORD's attorneys' fees and the costs of collection.

SECTION III - USE; RESTRICTIONS ON USE; BUILDING REGULATIONS; QUIET ENJOYMENT; SERVICES BY LANDLORD

3.01 USE. The Premises shall be used for **general medical office use** and examination and diagnostic treatment of patients and for no other purpose without the prior written consent of LANDLORD. TENANT shall, at TENANT'S expense, comply with all laws, rules, regulations, requirements, and ordinances existing or hereafter enacted or imposed by any governmental authority having jurisdiction over the building ("Building"), Premises, LANDLORD, or TENANT applicable to TENANT and TENANT'S use of the Building and Premises.

3.02 RESTRICTIONS ON USE. TENANT shall not:

3.02-1 Do or permit to be done anything which will invalidate or increase the cost of insurance on the Premises, or will obstruct or interfere with the rights of other tenants in the Building.

Landlord's Initials _____ Tenant's Initials _____

3.02-2 Allow or permit the Premises to be used for any improper, objectionable, or unlawful purpose or cause, commit or permit any nuisance or waste in or about the Premises.

3.02-3 Bring onto the Premises any equipment, fixtures, material, etc. that will overload, obstruct, or damage the utility lines, HVAC equipment, floors, structure, or systems providing services to the Building.

3.02-4 Install or affix any window coverings, shades, draperies or materials between the glass on the exterior wall of the Premises and the Building without written consent of LANDLORD.

3.02-5 Use or permit the use of any portion of the Premises for the purpose of housing any multi-game casino-style gambling.

3.03 BUILDING REGULATIONS. TENANT shall obey all rules and regulations of the Building as imposed by LANDLORD and set forth in Exhibit B and incorporated as a part of this Lease. The rules and regulations are in addition to, and shall not be construed to modify or amend the Lease in any way. LANDLORD shall have the right to make changes or additions to such rules and regulations provided such changes or additions, except those affecting the safety and operation of the Building or Premises, do not unreasonably affect TENANT'S use of the Premises. LANDLORD shall not be liable for failure of any TENANT to obey such rules and regulations. Failure by LANDLORD to enforce any current or subsequent rules or regulations against any TENANT of the Building shall not constitute a waiver thereof.

3.04 QUIET ENJOYMENT. LANDLORD represents and covenants that it has the authority to enter into this Lease, and that TENANT, upon payment of the rentals and performance of the covenants and provisions of this Lease, shall and may peaceably and quietly occupy the Premises during the term of this Lease and any renewal or extension thereof. LANDLORD agrees to make reasonable efforts to protect TENANT from interference or disturbance by other tenants or third persons (including but not limited to the City and the Bond Trustee); however, LANDLORD shall not be liable for any such interference or disturbance, nor shall TENANT be released from any obligations of this Lease because of such interference or disturbance.

3.05 SERVICES BY LANDLORD; TIMES AND LEVEL FURNISHED.

3.05.1 SERVICES. LANDLORD shall furnish TENANT with the following services:

a. Washing of exterior Building windows
b. Disposal facility for refuse.

Landlord's Initials WH

Tenant's Initials

3.05.2 TIMES AND LEVEL FURNISHED.
Washing of exterior Building windows shall be at intervals determined solely by LANDLORD. Except for holidays, all other services shall be furnished between the hour of 8:00 a.m. and 5:00 p.m. on weekdays. If, upon advance written request by TENANT, its agents or employees, such services are provided to Premises on Saturdays, Sundays, holidays or times other than as specified, TENANT shall pay LANDLORD as additional rent the added cost of those services due to the timing of the work performed. If any services to be provided are suspended, interrupted, or varied by strikes, accidents, repairs, maintenance, orders from any governmental authority or any cause beyond LANDLORD'S control, LANDLORD shall not be liable for any damages, direct, indirect or consequential, or for damages for personal discomfort, illness or inconvenience of TENANT, its employees, agents or invitees, or for loss, damage or theft of TENANT'S improvements, equipment or property, unless caused by the deliberate act or gross negligence of LANDLORD, its agents or employees. Suspension or interruption shall not result in any abatement of rent, be deemed an eviction or relieve TENANT of performance of TENANT'S obligations under this Lease.

SECTION IV - ASSIGNMENT; SUBLET; MORTGAGE BY LANDLORD; SUBORDINATION; ATTORNMENT; ESTOPPEL CERTIFICATE; SALE BY LANDLORD

4.01 ASSIGNMENT; SUBLET. TENANT shall not assign or sublet all or any portion of the Premises without LANDLORD'S prior written consent; which, if consented to by LANDLORD, shall be in a form acceptable to LANDLORD and will not release TENANT from any of its obligations under the Lease.

4.02 SUBORDINATION. This Lease and all rights of the TENANT hereunder are subject and subordinate to any deeds of trust, mortgage or other instruments of security which do now or may hereafter cover the Building and the land or any interest of LANDLORD therein, and to any and all advances made on the security thereof, and to any and all increases, renewals, modifications, consolidations, replacements and extensions of any such deeds of trust, mortgages or instruments of security. This provision is hereby declared to be self-operative and no further instrument shall be required to effect such subordination of this Lease.

4.02-1 SUBORDINATION TO BOND LEASE. Without limiting the foregoing, Landlord and Tenant both agree and acknowledge that this Lease is subject and subordinate to all the terms and conditions of the Bond Lease, including without limitation all of the obligations of Landlord, as tenant under, the Bond Lease, and the rights and interests of the City and the owners of the Bonds. Tenant shall not do anything which will cause an event of default by Landlord under Sections 1.02(v) or 28.04 or, Articles VIII, IX or X of the Bond Lease. Tenant acknowledges that this Lease and the rentals due hereunder will be assigned to the City and/or the Bond Trustee as a part of the Bond Transaction. Notwithstanding the foregoing, should the City succeed to the interest of Landlord hereunder, the City shall have no duty or obligation to perform any of the

various duties, obligations or covenants of Landlord, other than the covenant of quiet enjoyment provided for in Section 3.04.

4.03 ATTORNMENT. If the interest of LANDLORD is transferred to any person or entity by reason of foreclosure, or other proceedings for enforcement of any mortgage, deed of trust or security interest or by delivery of a deed in lieu of foreclosure or other proceedings, TENANT shall upon delivery to TENANT by said transferee of a non-disturbance agreement, immediately and automatically attorn to such person or entity. In event of such transfer, this Lease and TENANT'S rights hereunder shall continue undisturbed so long as TENANT is not in default.

4.04 MORTGAGE BY LANDLORD. LANDLORD shall have the right to transfer, assign, mortgage, or convey in whole or in part the Building, including the Premises, the land upon which it is situated, and any and all of its rights under this Lease, and nothing herein shall be construed as a restriction upon LANDLORD'S doing so.

4.05 ESTOPPEL CERTIFICATE. TENANT will at any time and from time to time, upon not less than ten (10) days prior request by LANDLORD, execute, acknowledge and deliver to LANDLORD a statement in writing executed by TENANT certifying that this Lease is unmodified and in full effect or if there have been modifications, that this Lease is in full effect as modified, setting forth such modifications; the dates to which the rent has been paid; and either stating that to the knowledge of the signer of said statement that no default exists or specifying each such default of which the signer may have knowledge. It is intended that any such statement executed by TENANT may be relied upon by any prospective purchaser or mortgagee or existing mortgagee of the Building or land upon which is situated.

4.06 LIABILITY OF LANDLORD; SALE BY LANDLORD. TENANT shall look solely to LANDLORD'S interest in the Building and land upon which it is situated, for recovery of any judgement against LANDLORD. A sale, conveyance or assignment of LANDLORD'S interest in the Building shall operate to release LANDLORD from liability from and after the effective date thereof upon all of the covenants, terms and conditions of this Lease, express or implied, except as such may relate to the period prior to such effective date and TENANT shall thereafter look solely to LANDLORD'S successor in interest in and to this Lease. This Lease shall not be affected by any such sale, conveyance or assignment, and TENANT shall attorn to LANDLORD'S successor in interest thereunder.

SECTION V - MAINTENANCE AND REPAIRS; RIGHTS OF ENTRY; ALTERATIONS; LIENS; SIGNS

5.01 MAINTENANCE AND REPAIRS BY TENANT. After completion of any initial tenant improvements by LANDLORD in accordance with this Lease, TENANT shall maintain the Premises and any alterations and additions to the Premises in good condition and repair, reasonable wear and tear and damage or destruction by fire or other casualty which TENANT is

not obligated to repair excepted. TENANT shall repair or replace any damage or injury to the Premises or the Building caused by TENANT, its agents, employees, or invitees. All maintenance and repairs made by TENANT shall be performed only by licensed contractors first approved by LANDLORD. TENANT shall require its contractor to comply with LANDLORD'S regulations regarding all work performed.

5.01-1 LANDLORD'S RIGHT TO MAINTAIN OR REPAIR. If within ten (10) days following notice by LANDLORD, TENANT fails or refuses to do any maintenance or to make any repairs or replace any damage to the Premises or Building caused by TENANT its agents, employees, or invitees, LANDLORD may, at its option, cause all required maintenance, repairs or replacements to be made. TENANT shall pay promptly to LANDLORD on demand all costs incurred plus an administrative fee equal to 20% of such costs.

5.02 LANDLORD'S RIGHT OF ENTRY. LANDLORD, or its authorized representatives, shall have the right to enter the Premises at reasonable hours and upon reasonable notice to TENANT, for the purpose of inspecting, making repairs or alterations, or for the purpose of exhibiting same to prospective tenants, purchasers and others. LANDLORD shall not be liable to TENANT such action, nor shall the exercise of such right be deemed an eviction or disturbance of TENANT'S use or possession.

5.03 MAINTENANCE BY LANDLORD. LANDLORD shall perform all necessary repairs to the heating, ventilating, electrical, plumbing, and air conditioning systems. LANDLORD shall maintain and repair the exterior walls, roof, foundation and all common areas of and within the Building including entrances, hallways, stairwells, and parking lots.

5.04 ALTERATIONS BY TENANT. TENANT shall make no changes, additions, alterations or improvements to the Premises without the prior written consent of LANDLORD and subject to all rules, requirements and conditions imposed by LANDLORD at the time such consent is given. LANDLORD shall have the right to withhold its consent.

5.05 ALTERATIONS BY LANDLORD. LANDLORD may make any repairs, alterations or improvements which LANDLORD deems necessary or advisable for the preservation, safety or improvement of the Building or Premises.

5.06 LIENS. TENANT shall keep the Premises free and clear of all liens arising out of any work performed, materials furnished or obligations incurred by TENANT. LANDLORD shall have the right to post and keep posted on the Premises any notices that may be provided by law or which LANDLORD may deem to be proper for the protection of LANDLORD, the Premises, and the Building, from such liens, or to take any other action LANDLORD deems necessary to remove or discharge liens or encumbrances at the expense of TENANT.

5.07 SIGNS. TENANT shall not display, inscribe, paint or affix any sign, picture,

Landlord's Initials _____ Tenant's Initials _____

advertisement, or notice visible from anywhere outside or within the Premises without LANDLORD'S prior written consent. If consented to by LANDLORD, any such sign and installation shall be installed or painted by a contractor approved by LANDLORD and shall be maintained by TENANT during TENANT'S occupancy. All costs for production, installation, maintenance and removal shall be TENANT'S responsibility. All such approved signs shall be removed by TENANT upon vacating the Premises and any damage caused by such removal shall be immediately repaired at the TENANT'S expense.

SECTION VI - INSURANCE; INDEMNITY; SUBROGATION.

6.01 INSURANCE BY LANDLORD. LANDLORD shall maintain in effect with a responsible insurance company or companies, policies of insurance covering the Premises providing protection of not less than eighty percent (80%) of the replacement value of said Building (excluding excavation, footing and foundations) against all casualties under standard insurance industry practices under the classification of "fire and extended coverage", together with such public liability coverage for the benefit of LANDLORD as LANDLORD deems appropriate.

6.02 INSURANCE BY TENANT. At all times during the term of this Lease or any renewal period, TENANT shall maintain, at TENANT'S own cost and expense, a Commercial General Liability insurance policy or policies to protect LANDLORD and the City against any and all liability incidental to the use of, or resulting from any accident occurring in, or upon the Premises with a combined single limit of not less than **One Million Dollars ($1,000,000.00)** per occurrence and **Two Million Dollars ($2,000,000.00)** in the annual aggregate; Workers' Compensation insurance per Kansas statutory limits; Employer's Liability insurance in the minimum amount of Five Hundred Thousand Dollars ($500,000.00) per accident, Five Hundred Thousand Dollars ($500,000.00) for disease, and Five Hundred Thousand Dollars ($500,000.00) per employee; Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than One Million Dollars ($1,000,000.00) per accident; All Risk or Special Form coverage protecting TENANT against loss of, or damage to, TENANT's alterations, additions, improvement, carpeting, floor coverings, paneling, decorations, fixtures, inventory, plate glass, and other business personal property situated in or about the Premises to the full replacement value of the property so insured; and Business Interruption insurance with limits of liability representing loss of at least approximately six months income. H2 Corporate, LLC and the City of Wichita shall be named as an additional insured (or loss payee as appropriate) under the above named policies, not including Workers' Compensation. TENANT shall provide Certificates of Insurance or copies of the above policies to LANDLORD. In the event that any of the above required policies are cancelled or materially changed before the expiration date thereof, TENANT or the issuing company shall notify LANDLORD immediate via e-mail (jsanders@hartmanoil.com) or via voice communication (316) 636-2090. All insurance shall be written by an insurance company authorized to do business in the state of Kansas, and must have an A.M. Best rating of A- or greater.

Landlord's Initials _____ Tenant's Initials _____

6.03 INDEMNITY. TENANT acknowledges that if any property owned by TENANT or any property other than LANDLORD's property located on the Premises shall be damaged or destroyed by fire, explosion, falling plaster or drywall, steam, gas, electricity, water, rain, or snow leaks or by any other cause, LANDLORD shall have NO LIABILITY to TENANT or any such other party with respect thereto, except for LANDLORD's negligence or negligent acts. TENANT acknowledges that all property owned by the TENANT on or about the Premises, including, but not limited to TENANT's vehicles parked in the parking lot of the Building, shall be at the SOLE RISK AND HAZARD of TENANT. LANDLORD is not liable or responsible for any loss or damage to TENANT or anyone claiming under or through TENANT, whether caused by or resulting from any peril required to be insured hereunder or otherwise, and TENANT shall indemnify and hold LANDLORD harmless with respect thereto. TENANT shall indemnify and hold harmless and pay on behalf of LANDLORD and the City all loss claims, demands, expense and judgments against LANDLORD and the City caused by or arising out of, directly or indirectly:

6.03-1 The performance of this Lease by TENANT,

6.03-2 TENANT'S occupancy or use of the Building or Premises,

6.03-3 Any business or operation of TENANT, or,

6.03-4 Any matter or thing done, permitted or omitted to be done by TENANT, its agents, employees, contractors, licensees, or invitees, whether occasioned by negligence or otherwise. TENANT's agreement to hold harmless and pay on behalf of LANDLORD shall extend to all losses, claims, demands and expense by reason of improper or faulty erection or construction of facilities, trade fixtures, or equipment installed on or in the Premises by TENANT.

6.03-5 Liability of TENANT for any indemnity or hold harmless shall be limited to the insured amounts as stated and identified in Section 6.02 of this Lease.

6.04 WAIVER OF SUBROGATION. LANDLORD and TENANT do each hereby relieve and release the other and waive their entire claim of recovery for loss or damage to the Premises, or loss of the use thereof, arising out of or incident to any occurrence or act covered by insurance then in force and being provided by either party, whether due to the negligence of either LANDLORD or TENANT, their officers, agents, licensees, employees, guests, invitees, visitors or otherwise.

SECTION VII - DAMAGE AND DESTRUCTION.

7.01 DAMAGE REPAIR. In the event the Building or the Premises shall be destroyed or rendered untenantable, either in whole or in part, by fire or other casualty, LANDLORD may, at

its option, restore the Building or Premises to as near their previous condition as is reasonably possible, and in the meantime, unless the damage was caused by acts, omissions or negligence of TENANT, its agents, employees, contractors or invitees, the rent shall be abated in the same proportion as the untenantable portion of the Premises bears to the whole thereof; but unless LANDLORD, within thirty (30) days after the happening of any such casualty, shall notify TENANT of its election not to restore, this Lease shall continue and LANDLORD shall commence the necessary restoration. Such restoration by LANDLORD shall not include replacement of furniture, equipment or other items that do not become part of the Building or any improvements to the Premises in excess of those provided for in the allowance for Building Standard items as of the commencement date of this Lease. Restoration of the Premises required beyond LANDLORD's obligation shall be performed by the TENANT at no cost to the LANDLORD. If LANDLORD shall elect to notify TENANT that LANDLORD shall not restore, this Lease shall terminate as of the date of the occurrence and TENANT shall promptly vacate the Premises. Upon vacating, any prepaid rent from date of vacating shall be refunded to TENANT.

7.02 DELAY BEYOND LANDLORD'S CONTROL. No penalty shall accrue to LANDLORD for delay in commencing or completing repairs caused by adjustment of insurance claims, governmental requirements or any cause beyond LANDLORD's reasonable control.

7.03 BUSINESS INTERRUPTION. No damages, compensation or claim shall be payable by LANDLORD for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or of the Building. LANDLORD shall use its best efforts to affect such repairs promptly and in such manner as to not unreasonably interfere with TENANT'S occupancy.

7.04 TENANT IMPROVEMENTS. LANDLORD will not carry insurance of any kind on any improvements, additions or alterations made and paid for by TENANT or TENANT'S furniture or furnishings or on any fixtures, equipment, improvements or appurtenances of TENANT under this Lease and LANDLORD (except as provided by law by reason of its negligence) shall not be obligated to repair any damage thereto or replace the same, LANDLORD shall be obligated to make repairs or restoration only of those portions of the Premises which were originally provided at LANDLORD's expense, and the repair and restoration of items not provided at LANDLORD'S expense shall be the obligation of TENANT.

7.05 DESTRUCTION DURING LAST YEAR OF TERM. In case the Building shall be substantially destroyed by fire or other causes at any time during the last year of the term of this Lease, either LANDLORD or TENANT may terminate this Lease upon written notice to the other party hereto given within thirty (30) days of the date of such destruction.

7.06 MUTUAL RELEASE. Upon any termination of this Lease as a result of damage or destruction of the Building or Premises as provided herein, the parties shall be released thereby

without further obligation to the other from the date possession of the Premises is surrendered to LANDLORD except for rent and any other monies which have accrued and are then unpaid.

SECTION VIII - CONDEMNATION.

In the event of the taking or condemnation for any reason by any public or quasi-public authority, entity, or corporation having the power of eminent domain the following shall apply:

8.01 TOTAL TAKING; BUILDING; PREMISES. If all the Building or Premises is taken or condemned the Lease shall terminate effective as of the date of taking and any prepaid rent shall be refunded to TENANT.

8.02 PARTIAL TAKING; BUILDING; PREMISES; UNTENANTABLE. If a portion of the Building or Premises is taken or condemned and the remainder is, in LANDLORD'S opinion, not economically usable, LANDLORD shall notify TENANT of the termination of the Lease effective as of the date of taking and any prepaid rent shall be refunded to TENANT.

8.03 PARTIAL TAKING; PREMISES; TENANTABLE. If a portion of the Building or Premises is taken or condemned and the remainder is, in LANDLORD'S opinion, economically usable, this Lease shall terminate as to the portion taken effective as of the date of taking and continue as to the remainder. LANDLORD shall to the extent reasonably possible, repair and restore the remainder to its condition as of the date of taking. Any prepaid rent shall be applied against subsequent rental due.

8.04 VOLUNTARY SALE. A voluntary sale or transfer in lieu of, but under the threat of condemnation, shall be considered a taking or condemnation.

8.05 AWARD. LANDLORD shall be entitled to all compensation paid as a result of such taking or condemnation without participation by TENANT. TENANT may pursue a claim against the condemning authority for loss of business, cost of relocation or cost of removal of TENANT'S trade fixtures, furniture and equipment only if such claim does not diminish or adversely effect the compensation to be paid to LANDLORD.

SECTION IX - SURRENDER OF PREMISES.

9.01 SURRENDER AT TERMINATION. At the expiration or termination of this Lease by whatever cause, TENANT shall peaceably vacate and deliver the Premises and all alterations and additions thereto in good order, repair and condition, reasonable wear and tear excepted, restoring the Premises wherever necessary and leaving them clean and neat. TENANT shall deliver all keys to the Premises, remove all personal property prior to the expiration of this Lease, including any signs, notices and displays placed by TENANT, and TENANT shall perform any necessary restoration of the Premises occasioned by such removal. TENANT shall

also remove those improvements, alterations and additions made by TENANT or by LANDLORD on behalf of TENANT which LANDLORD required TENANT to remove when LANDLORD consented to the installation of such improvements, alterations and additions, unless LANDLORD, prior to the expiration or termination of this Lease, elects in writing not to require such removal. TENANT shall repair any damage caused by such removal and shall restore the Premises and leave them clean. If TENANT is not required by LANDLORD to remove such improvements, alterations or additions to the Premises upon the expiration or termination of this Lease, such improvements, alterations and additions to the Premises, as well as any of TENANT'S personal property left on the Premises by TENANT, shall become the property of LANDLORD and shall remain and be surrendered with the Premises. TENANT waives all claims against LANDLORD for any damage to TENANT resulting from LANDLORD'S retention or disposition of any such improvements, alterations, additions or TENANT'S personal property. TENANT shall be liable to LANDLORD for LANDLORD'S costs for storing, removing and disposing of any improvements, alterations, additions or TENANT'S personal property.

SECTION X - DEFAULT; EVENTS; REMEDIES

10.1 EVENTS OF DEFAULT. The occurrence of any one of the following events shall constitute a default of this Lease by TENANT:

10.01-1 Failure of TENANT to make any payment of rent or other required payment, when due, and such failure continues for a period of thirty (30) days after mailing of written notice by LANDLORD to TENANT, provided however that no notice shall be necessary if two such notices have been given during the preceding 12-month period;

10.01-2 Failure by TENANT to take possession of the Premises within thirty (30) days following commencement of this Lease;

10.01-3 Vacating or abandonment of all or a substantial portion of the Premises;

10.01-4 Failure of TENANT to comply with any provision of this Lease, other than payment of rent, and such failure shall continue for fifteen (15) days after mailing of written notice by LANDLORD to TENANT specifying the nature of non-compliance by TENANT with reasonable particularity provided, however, that if the nature of TENANT'S default is such that more than fifteen (15) days are reasonably required for its cure, TENANT shall not be in default if TENANT immediately commences or has commenced such cure and thereafter diligently proceeds to cure such default within ten (10) days.

10.01-5 The making of an assignment or general arrangement for the benefit of creditors by TENANT or any guarantor of TENANT'S obligations under the Lease;

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10.01-6 The filing by TENANT or any guarantor of TENANT'S obligations under this Lease of a petition under any section or chapter of the present Federal Bankruptcy Act (or foreign equivalent) or amendment thereto or under any similar law or stature of the United States (or foreign country) or any state (or province) thereof, or the failure of the dismissal, within ninety (90) days after the filing of an involuntary petition of bankruptcy or insolvency against TENANT or guarantor of TENANT'S obligations;

10.01-7 The appointment of a receiver or trustee for all or substantially all the assets of TENANT or any guarantor of TENANT'S obligations under this Lease and such receivership shall not have been terminated or stayed within the time permitted by law;

10.01-8 The attachment, execution or other judicial seizure of substantially all of TENANT'S assets located in the Premises or of TENANT'S interest in this Lease where such seizure is not discharged within thirty (30) days;

10.02 EVENTS OF DEFAULT. The occurrence of any one of the following events shall constitute a default of this Lease:

10.02-1 The filing by either party or any guarantor of any such party's obligations under this Lease of a petition under any section or chapter of the present Federal Bankruptcy Act (or foreign equivalent) or amendment thereto or under any similar law or statute of the United States (or foreign country) or any state (or province) thereof, or the failure of the dismissal, within ninety (90) days after the filing of an involuntary petition of bankruptcy or insolvency against any such party or guarantor of any such party's obligations;

10.02-2 The appointment of a receiver or trustee for all or substantially all the assets of either party or any guarantor of any such party's obligations under this Lease and such receivership shall not have been terminated or stayed within the time permitted by law;

10.02-3 The attachment, execution or other judicial seizure of substantially all of either party's assets located in the Premises or of either party's interest in this Lease where such seizure is not discharged within thirty (30) days;

10.02-4 Failure of either party to perform its material duties under this agreement upon written notice from the other party within a reasonable time, but in no event beyond sixty days from receipt of notice.

10.03 REMEDIES IN EVENT OF DEFAULT. Upon the occurrence of any event of default, the parties to this agreement shall have the option to do any one or more of the following without any notice or demand;

10.03-1 TERMINATION OF LEASE. In the event LANDLORD terminates this Lease,

TENANT shall immediately surrender the Premises to LANDLORD. If TENANT shall fail to do so, LANDLORD may enter and take possession of the Premises and remove TENANT or anyone occupying the Premises and its effects without being liable to prosecution or any claim for damages, except where such acts would place LANDLORD in a position to compromise, invade upon or to violate patients' privacy rights under any Federal, State or Local laws, including but not limited to HIPAA. TENANT agrees to indemnify LANDLORD for all loss and damage suffered by LANDLORD because of such termination whether through inability to re-let the Premises or otherwise, including any loss of rent for the remainder of the term of this Lease. If LANDLORD elects to terminate this Lease, TENANT'S liability to LANDLORD for damages shall survive such termination. In the event TENANT terminates this Lease, TENANT shall vacate the Premises within thirty days of the termination. If TENANT elects to terminate this Lease, LANDLORD'S liability to TENANT for damages shall survive such termination. TENANT'S termination shall not extinguish the duties and obligations of TENANT to LANDLORD under this Lease agreement upon TENANT'S surrender of the Premises to LANDLORD, but TENANT's duties and obligations under this Lease shall continue until such time as LANDLORD re-lets the Premises.

10.03-2 ACCELERATION OF RENT. Declare the entire amount of all rent past due as well s which would have become due and payable during the remainder of the term of this Lease to be due and payable immediately, in which event TENANT agrees to pay the same to LANDLORD immediately. Such payment shall constitute payment of past due rent and payment in advance of the rent stipulated for the remainder of the Lease term. Acceptance by LANDLORD of the payment of such shall not constitute a waiver of any then existing default occurring thereafter.

10.03-3 RE-LETTING OF PREMISES. Enter upon and take possession of the Premises as agent of TENANT, except where such agency would place LANDLORD in a position to compromise, invade upon or to violate patients' privacy rights under any Federal, State or Local laws, including but not limited to HIPAA, without terminating this Lease and without being liable to prosecution or any claim for damages. LANDLORD may re-let the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but LANDLORD shall not be required to re-let for any use or purpose other than that specified in this Lease or for general office use or which LANDLORD may reasonably consider injurious to the Premises, or to any TENANT which LANDLORD may consider objectionable. LANDLORD may re-let all or any portion of the Premises, alone or in conjunction with other portions of the Building, for a term longer or shorter than the term of this Lease, at a rental rate greater or less than the then current rental rate provided in this Lease, and upon such other terms (including the granting of concessions) as LANDLORD solely determines to be acceptable. If LANDLORD elects to reenter and re-let all or any portion of the Premises, LANDLORD shall be entitled to recover, as damages, immediately, without waiting until the due date of any future rent, or until the date fixed for expiration of this Lease, the total of all rent owing and unpaid as of the date of the default; the

costs of reentry and re-letting including without limitation the cost of any cleanup, refurbishing, removal of TENANT'S property and fixtures; and other expense occasioned by TENANT'S failure to quit the Premises and to leave them in the required condition; any remodeling costs, attorneys' fees; court costs; brokers' commissions; advertising costs and the difference between the rent and all of TENANT'S other obligations under this Lease and the actual rent received by LANDLORD from the Premises for the period commencing with the date of the default and continuing through the date designated as the expiration date of this Lease. No such reentry or taking possession of the Premises shall be construed as an election on LANDLORD'S part to terminate this Lease unless a written notice of such intention is given to TENANT. If LANDLORD elects to enter and re-let the Premises the LANDLORD may at any time thereafter elect to terminate this Lease for TENANT'S default. If LANDLORD takes possession of the Premises, LANDLORD shall have the right to rent any other available space in the Building before re-letting or attempting to re-let the Premises.

10.03-4 LANDLORD'S RIGHT TO PERFORM. LANDLORD may do whatever TENANT is obligated to do by the provisions of this Lease and may enter the Premises without being liable to prosecution or claim for damages in order to accomplish this purpose. TENANT agrees to reimburse LANDLORD immediately upon demand for any expenses, which LANDLORD may incur in complying with the terms of this Lease on behalf of TENANT. TENANT agrees that LANDLORD shall not be liable for any damages to TENANT from such action, whether caused by negligence of LANDLORD or otherwise.

10.03-5 RIGHT TO SUE MORE THAN ONCE. The parties may periodically sue to recover damages during the period corresponding to the remainder of the term of this Lease, and no action for damages shall bar a later action for damages subsequently accruing.

10.03-6 REMEDIES CUMULATIVE. The remedies as set forth and available to the parties because of the default of the other party shall be in addition to and shall not exclude any other remedy available to the parties under this Lease or applicable law or in equity.

10.04 WAIVER OF REDEMPTION RIGHTS. TENANT, for itself, and on behalf of any and all persons claiming through or under it, including creditors of all kinds, does hereby waive and surrender all right and privilege which they or any of them might have under or by reason of any present or future law, to redeem the Premises or have a continuance of this Lease for its remaining term after having been dispossessed or ejected from the Premises by process of law or under the terms of this Lease or after the termination of this Lease as herein provided, except where such acts would place LANDLORD in a position to compromise, invade upon or to violate patients' privacy rights under any Federal, State or Local laws, including but not limited to HIPAA.

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SECTION XI - GENERAL PROVISIONS.

11.01 HAZARDOUS SUBSTANCES. TENANT is advised that hazardous substances including, but not limited to asbestos, radon gas and water pollutants may be present in or under the Building. Such hazardous substances may present a health risk to persons who are exposed to them over time. These substances have been found in other buildings in Wichita. Additional information may be obtained from your county health unit.

11.02 LIMITATION OF LANDLORD'S LIABILITY. Except as provided otherwise herein, LANDLORD shall not be responsible or liable to TENANT for any injury or damage resulting from acts or omission of third parties or persons occupying property adjoining the Premises or any part of the Building of which the Premises is a part, or for any injury or damage resulting to TENANT or TENANT'S property from acts of God or bursting, stoppage or leaking of water, gas, sewer or pipes, except where such loss or damage arises from the willful or negligent misconduct of the LANDLORD, its agents, servants, or employees, or from LANDLORD'S failure to make the repairs which it is obligated to make hereunder.

11.03 WAIVER. Failure of LANDLORD to insist, in any one or more instances, upon strict performance of any term, covenant or condition of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such term, covenant, condition or option, but the same shall continue and remain in full force and effect. The receipt by LANDLORD of rents with knowledge of a breach of any of the terms, covenants or conditions of this Lease to be kept or performed by TENANT shall not be deemed to have waived any provision of this Lease unless expressed in writing and signed by LANDLORD.

11.04 HOLDING OVER. If TENANT shall continue to occupy the Premises after expiration or sooner termination of this Lease, TENANT shall pay, as liquidated damages, for each month of continued occupancy an amount equal to one and a half (1.5) times the rent being paid for the month the Lease expires or is terminated. No receipt of money by LANDLORD from TENANT after expiration or termination of this Lease shall reinstate or extend this Lease or affect any prior notice given by LANDLORD to TENANT.

11.05 REMOVAL OF PROPERTY. Upon expiration or sooner termination of this Lease, all of TENANT'S, trade fixtures, personal property and improvements remaining in the Premises or the Building shall be deemed conclusively to have been abandoned by TENANT and may be appropriated, sold, destroyed or otherwise disposed of by LANDLORD without notice or obligation to compensate TENANT or to account therefor, and TENANT shall pay to LANDLORD on written demand all costs incurred by LANDLORD in connection therewith, unless TENANT shall make arrangements with LANDLORD to remove all such personal property, and improvements within five (5) business days of the expiration or sooner termination of the Lease.

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11.06 DESIGNATED PARTIES. LANDLORD may act in any matter provided for herein by its property manager or any other person who shall from time to time be designated by LANDLORD by notice to TENANT. TENANT may designate in writing a person to act on its behalf in any matter provided for herein and may, by written notice, change such designation. In the absence of such designation, the person or person executing this Lease for TENANT shall be deemed to be authorized to act on behalf of TENANT in any matter proved for herein.

11.07 NOTICES.

Any notice or other communication to LANDLORD or to TENANT will be deemed properly given if such notice or communication is made in writing and is sent by first class mail, postage pre-paid, return receipt requested, or by traceable courier service (such as UPS or FedEx) to the address set forth below or such other address as each party may designate by notice given in accordance with this Paragraph.

If to TENANT:	ATLASMD, LLC Attn: Josh Umbehr, MD 10500 E. Berkeley Sq. Pkwy, Suite 200 Wichita, KS 67206 (316)
If to LANDLORD:	H2 Corporate Office, LLC Attn: Building Manager 10500 E. Berkeley Sq. Pkwy Suite 100 Wichita, KS 67206 (316) 636-2090
With a copy to:	H2 Corporate Office, LLC Attn: In-House Counsel 10500 E. Berkeley Sq. Pkwy Suite 100 Wichita, KS 67206 (316) 636-2090

Any party sending notice under this Lease shall also send a copy of such notice to the following:

Sunflower Bank, N.A. Attn: Trust Dept. 2090 South Ohio Salina, Kansas 67402	Sunflower Bank, N.A. Attn: President 201 N. Main Wichita, Kansas 67202

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11.08 AMERICAN'S WITH DISABILITIES ACT OF 1990. TENANT shall comply with the American's with Disabilities Act of 1990 ("ADA") and the Regulations promulgated thereunder, and without limiting the foregoing, all responsibility for compliance with the ADA within the Premises and the activities conducted by TENANT within the Premises shall be exclusively that of TENANT, which responsibility TENANT hereby expressly assumes. Any alteration to the Premises made by TENANT for the purpose of complying with the ADA shall be done in accordance with this Lease; provided that such alterations shall not constitute LANDLORD'S assumption, in whole or in part, of TENANT'S responsibility for compliance with the ADA, or representation of confirmation by LANDLORD that such alterations comply with the provisions of ADA. TENANT shall indemnify, defend with counsel acceptable to LANDLORD and hold LANDLORD harmless from and against any claims, damages, costs and liabilities arising out of TENANT'S failure, or alleged failure, to comply with the ADA or which otherwise require compliance with the ADA, such indemnification shall survive the termination of this Lease.

LANDLORD shall comply with the Americans with Disabilities Act of 1990 ("ADA") and the Regulations promulgated thereunder, and, without limiting the foregoing, all responsibility for compliance with the ADA within the Common Areas of the Building, which responsibility LANDLORD hereby expressly assumes. LANDLORD shall indemnify, defend with counsel and hold TENANT harmless from and against any claims, damages, costs and liabilities arising out of LANDLORD'S failure, or alleged failure, to comply with the ADA or which otherwise require compliance with the ADA, such indemnification shall survive the termination of this Lease.

11.09 JOINT AND SEVERAL LIABILITY. If there is more than one TENANT, the obligations hereunder imposed upon TENANT shall be joint and several.

11.10 SUCCESSORS. Except as otherwise specifically provided, the terms, covenants and conditions contained in this Lease shall apply to and bind the heirs, successors, executors, administrators and assignees of the parties to this Lease.

11.11 MERGER. The voluntary or other surrender of this Lease by TENANT or the cancellation of this Lease by mutual agreement of LANDLORD and TENANT shall not work a merger, and shall at LANDLORD'S option terminate all or any subleases or subtenancies. LANDLORD'S option shall be exercised by notice to TENANT and all known TENANTS under any sublease or subtenancy.

11.12 RELATIONSHIP OF PARTIES. Nothing contained in this Lease shall create any relationship between the LANDLORD and TENANT other than that of LANDLORD and TENANT, and it is acknowledged and agreed that LANDLORD does not in any way or for any purpose become a partner of TENANT in the conduct of TENANT'S business, or a joint venturer or a member of a joint or common enterprise with TENANT.

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11.13 CORPORATE, LLC, OR PARTNERSHIP AUTHORITY. If TENANT is a corporation, TENANT shall, upon request from LANDLORD, furnish LANDLORD with a certified copy of resolutions of the Board of Directors of TENANT authorizing this Lease and granting the person or persons who executed this Lease the authority to execute it. If TENANT is a limited liability company, TENANT shall, upon request of LANDLORD, furnish LANDLORD with documentation that the person authorizing this lease has the authority as managing member, to execute it. If TENANT is a general or limited partnership and less than all the general partners of TENANT have executed this Lease, TENANT shall, upon request of LANDLORD, furnish LANDLORD with an agreement executed by all partners authorizing this Lease and granting the person or persons who executed this Lease the authority to execute it.

11.14 WAIVER OF JURY TRIAL. In event suit or action is commenced by either LANDLORD or TENANT against the other in connection with any controversy arising out of this Lease, LANDLORD and TENANT each hereby waive their right to a jury trial.

11.15 ATTORNEYS' FEES. In the event of litigation between the parties hereto declaratory or otherwise, for the enforcement of any of the covenants, terms and conditions of this Lease, the losing party shall pay the costs thereof and reasonable attorneys' fees which shall be determined and taxed by the court as part of the costs of such action.

11.16 SEVERABILTY. If any clause or provision of this Lease is held to be illegal, invalid or unenforceable under present or future law effective during the term of this Lease, the remainder of this Lease shall not be affected thereby. In lieu of such clause or provision held to be illegal, invalid or unenforceable there shall be added, as a part of this Lease, a clause or provision as similar in terms as possible, which shall be legal, valid and enforceable.

11.17 GENDER. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

11.18 BUILDING NAME. LANDLORD shall have the right, after 30 days notice to TENANT, to change the name, number or designation of the Building without liability to TENANT.

11.19 GOVERNING LAW. This Lease will be governed by and construed in accordance with the laws of the State of Kansas, without regard to choice of law or conflicts of law principles. The parties consent to the jurisdiction and venue of the state or federal courts located in Sedgwick County, Kansas, and hereby waive personal service.

11.20 FORCE MAJEURE. The parties shall not be required to perform any term, condition or covenant in this Lease so long as such performance is delayed or prevented by acts of God,

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strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of the parties and which by the exercise of due diligence the parties are unable, wholly or in part, to prevent or overcome.

11.21 TIME OF THE ESSENCE. In all instances where the parties are required by the terms and provisions of this Lease to pay any sum or to do any act at a particular indicated time or within an indicated period, it is understood and agreed that time is of the essence.

11.22 EXHIBITS. The following indicated Exhibits are attached to this Lease and incorporated by reference and made a part of this Lease as if here fully set forth.

X Exhibit A - Description Of Real Property And Floor Plan
X Exhibit B - Rules and Regulations
X Exhibit C – Additional Terms
X Exhibit D – Estimated Operating Expenses

If any provision or provisions set out in said Exhibits are in conflict with any other provisions of the Lease, the provision or provisions set forth in said Exhibit shall be controlling.

11.23 ENTIRE AGREEMENT; CAPTIONS. This Lease contains the entire agreement of the parties and no representations, promises or agreements, oral or otherwise, between the parties and not contained in this Lease shall be of any force and effect. Neither this Lease nor any provisions hereof may be changed, waived, discharged or terminated except in writing executed by LANDLORD and TENANT, and approved in writing by Sunflower Bank, N.A., Salina, Kansas, as Bond Trustee. The captions for sections of this Lease are for convenience only and shall have no effect upon the construction or interpretation of any part of this Lease.

11.24 NO JOINT VENTURE OR PARTNERSHIP. This Lease shall not be deemed to create a joint venture, partnership, principal-agent, employer-employee, or similar relationship between LANDLORD and TENANT. Each party shall perform its obligations hereunder and neither shall be deemed an agent or partner of the other. Neither party shall have any right, power, or authority to enter into any agreement or bind or incur any obligation or liability on behalf of the other party.

11.15 COMPLIANCE WITH APPLICABLE LAWS. TENANT shall comply with all applicable laws, regulations, and/or ordinances and shall not permit its employees, agents, invitees, or licensees to engage in any activity, while on the Premises, that would violate any applicable laws, regulations, and/or ordinances.

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

"LANDLORD"	**"TENANT"**
By _____	By _____
Willis E. Hartman	Josh Umbehr, MD for ATLASMD, LLC
Managing Member	Managing Member

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EXHIBIT A

DESCRIPTION OF REAL PROPERTY AND FLOOR PLAN

The Premises commonly known as 10500 E. Berkeley Square Pkwy, Suite 200, Wichita, Kansas and legally described as Lot 1, Block 1, Greenwich Office Park Addition, Wichita, Sedgwick County, Kansas.

FLOOR PLAN

(no scale)

See Schedule 1 to Exhibit A attached hereto.

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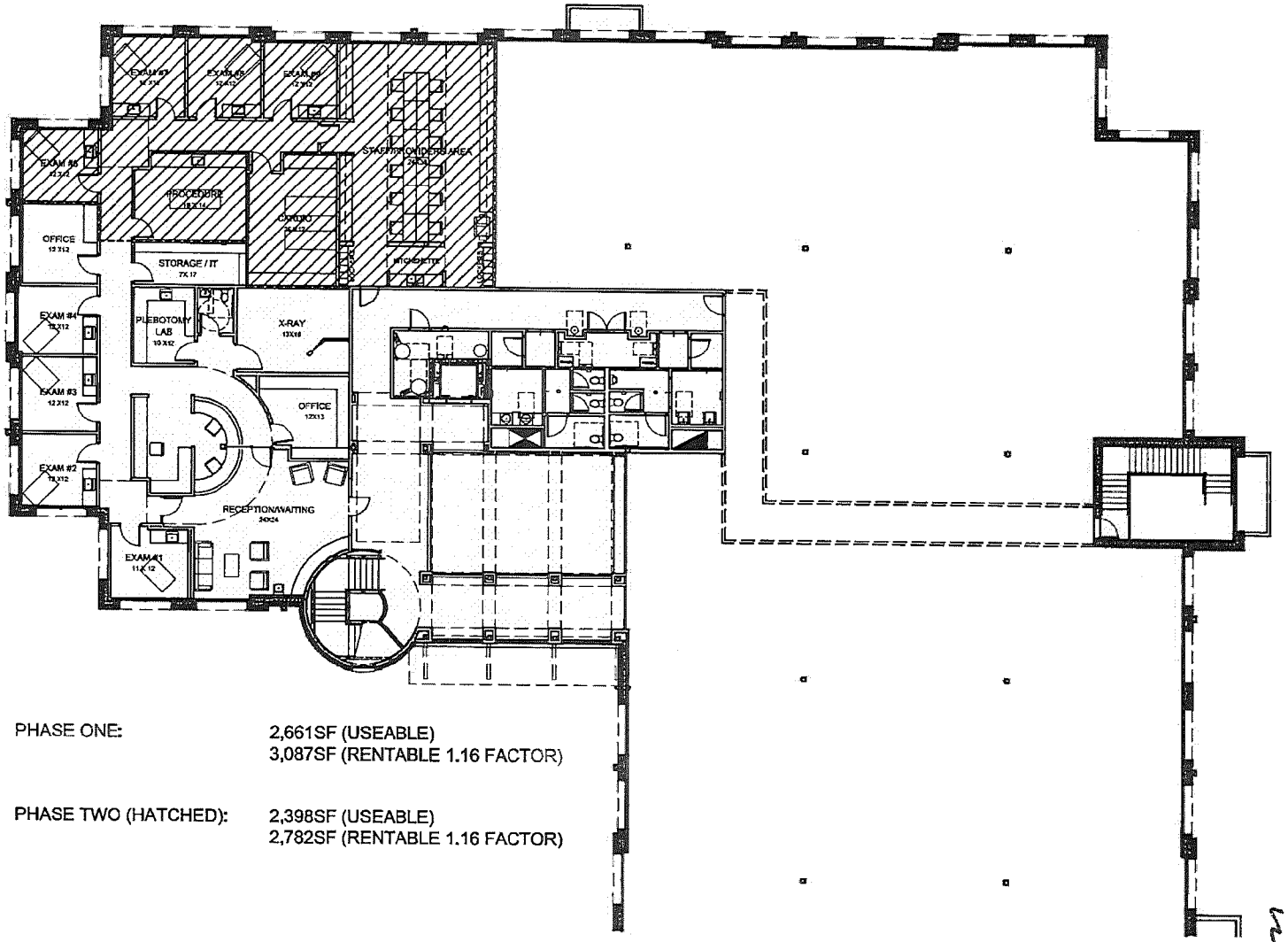

PHASE ONE: 2,661SF (USEABLE)
3,087SF (RENTABLE 1.16 FACTOR)

PHASE TWO (HATCHED): 2,398SF (USEABLE)
2,782SF (RENTABLE 1.16 FACTOR)

SHELDENARCHITECTURE
800 E. WEST STREET, STE. 140 TEL: 316.263.4300
WICHITA, KANSAS 67207 FAX: 316.263.4301

DR. UMBEHR TENANT FINISH - HARTMAN OIL OFFICE BUILDING - SECOND FLOOR

13TH AND GREENWICH - WICHITA, KANSAS

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SCHEDULE 1

EXHIBIT B

RULES AND REGULATIONS

1. TENANT shall maintain all portions of the Premises and immediately adjoining areas in a good, clean, orderly, and safe condition. The sidewalks, driveways and entrances shall not be obstructed by any Tenant or used for any purpose other than ingress and egress to and from the Premises and TENANT shall not permit any of its employees, agents, or invitees to congregate in any of said areas nor go upon the roof of the Building.

2. No awnings or projections shall be attached to the outside walls of the Building. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises, without the prior written consent of LANDLORD. Such permitted curtains, blinds, shades or screens must be of a quality, type, design and color, and attached in the manner, approved by LANDLORD, and, if same are provided by LANDLORD, shall not be removed. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Building.

3. No sign, insignia, advertisement, object, notice or other lettering shall be exhibited, inscribed, painted or affixed by any TENANT on any part of the outside or inside of the Premises or of the Building without prior written consent of LANDLORD. In the event of the violation of the foregoing by TENANT, LANDLORD, upon twenty-four (24) hours written notice, may remove the same without any liability, and may charge the expense incurred in such removal to the TENANT for TENANT'S violation of this rule. Interior signs and lettering on doors and directory shall, if and when approved by LANDLORD, be inscribed, painted or affixed for each TENANT by LANDLORD at the expense of such TENANT, (unless furnished by LANDLORD) and shall be of a size, color, and style acceptable to LANDLORD.

4. The water closets and other plumbing fixtures shall not be used for any purpose other than those for which they were designed or constructed, and no sweepings, rubbish, rags, acids, feminine products, or other substances shall be thrown or deposited therein. All damages resulting from any misuse of the fixtures shall be borne by TENANT who, or whose servants, employees, agents, visitors or licensees shall have caused such damage.

5. No TENANT shall mark, paint, drill into, or in any way deface any part of the Premises of the Building. No nailing, boring, screwing, cutting, or stringing of wires shall be permitted, except with prior written consent of LANDLORD and as LANDLORD may direct.

6. No bicycles, vehicles, animals (except seeing-eye dogs), or birds of any kind shall be brought into or kept in or about the Premises or the Building, other than those bicycles and vehicles kept outside of the building and used in the normal course of daily access by an

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employee or client of TENANT and shall not be left beyond the time during which such employee or client is in the Premises in the normal course of business.

7. No noise, including but not Limited to, music or the playing of musical instruments, recording, radio or television, which in the judgment of LANDLORD, might disturb other TENANTS in the Building shall be made or permitted by TENANT. Nothing shall be done or permitted in the Premises by any TENANT, which would impair or interfere with the use or enjoyment by any other TENANT.

8. No TENANT, nor any of TENANT'S employees, agents, visitors or licensees, shall at any time bring or keep upon the Premises any flammable, combustible or explosive fluids, chemicals or substances, beyond those necessary for the conduct of the medical office, and its associated diagnostic and treatment activities. TENANT shall take all prudent care to prevent inadvertent explosion or ignition of any such chemicals or substances.

9. No additional locks or bolts shall be placed upon the doors or window by TENANT, or changes of any kind made to those currently existing lock and bolts unless previously approved in writing by LANDLORD. LANDLORD will not unreasonably withhold permission to install appropriate security equipment to safeguard patient records and federally controlled medications which may be on the premises. LANDLORD will furnish two (2) keys for each lock in the Premises. Additional keys will be ordered through LANDLORD and paid for by TENANT. Upon the termination of its tenancy, TENANT shall turn over to the LANDLORD all lock combinations and keys for the Premises and left safes and vaults, either furnished to, or otherwise procured by, such TENANT, or reimburse LANDLORD for all expenses necessary to obtain such keys and combinations.

10. All safes, furniture, or other heavy articles shall be carried up, into or out of the Building or Premises only at such times and in such manner as shall be determined by the LANDLORD from time to time and the LANDLORD shall have the right to specify the acceptable weight for any specific position of any such safe or heavy article. Any damage done to the Building by taking in or removing any such article or overloading any floor or elevator in any way shall be paid by the TENANT. Only hand trucks with rubber tires, side guards and such other safeguards as LANDLORD shall require may be used in the Building and/or Premises for moving or delivery of any articles. Any damage done to the Building by such delivery or movement or articles shall be paid by the TENANT causing or requesting such activity.

11. Nothing shall be thrown out of the windows of the Building.

12. TENANT, before closing and leaving the Premises at any time, shall see that all operable windows are closed, all lights not required for the operations of the TENANT within control of the TENANT are turned out, and thermostats adjusted as appropriate to conserve energy. All entrance doors in the demise Premises shall be left locked by TENANT when the Premises are

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not in use. Entrance doors shall not be left open at any times beyond the normal operating hours of TENANT'S business operations.

13. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purpose.

14. TENANT shall use reasonable efforts to not cause or permit any odors of cooking or other processes or any unusual or objectionable odors to emanate from the Premises, which would annoy other TENANTS or create a public or private nuisance. No cooking, other than microwave cooking of prepackaged meal items or snack items shall be done in the Premises except as is expressly permitted in the foregoing Lease or by LANDLORD.

15. If LANDLORD has agreed to provide parking for TENANT, or if LANDLORD leases parking stalls to TENANT, TENANT, its employees, and guests shall park their cars only in the areas so designated by LANDLORD from time to time. TENANT shall make reasonable efforts to ensure that no car shall be parked in such a manner to occupy more than one stall or to impede the use of another stall. Repeated failure to park cars in such designated areas or manner shall be grounds for towing the improperly parked vehicle at the expense of TENANT. . TENANT shall make reasonable efforts to ensure that no vehicle of TENANT, or TENANT's employees or guests, may be in such condition that allows leaking fluids to damage or stain the parking surfaces. Repeated violations may result in the assessment of those direct costs to repair and maintain those areas damaged as additional rent and the remainder of the Lease obligations by both parties would still remain in force and effect. The TENANT agrees, upon written notice from LANDLORD, to furnish within three (3) days the description, state and license numbers of all cars for occupants of the Premises.

16. LANDLORD reserves the right to make additional rules and regulations or to rescind, alter or waive any rule or regulation at any time when in it sole judgment it deems it necessary or desirable for the reputation, appearance, safety, operation, or maintenance of the Building, or the equipment thereof, or the comfort of TENANT or others in the Building. Such changes, waivers, additional rules and regulations will not unreasonably prejudice TENANT'S ability to conduct the customary and normal operations of its business. No recession, alteration or waiver of any rule or regulation in favor of one TENANT shall operate as a rescission, alteration or waiver in favor of any other TENANT.

17. LANDLORD has designated 10500 E. Berkeley Square Pkwy as a totally non-smoking building. The designated smoking area will be inside the smoker's vehicle. Absolutely no smoking will be permitted at either entrance of the Building.

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EXHIBIT C
ADDITIONAL TERMS

1. LANDLORD shall not market the rentable square feet adjacent to the Premises ("Expansion Area") until June 30, 2011. Thereafter, TENANT shall lease the area at the same rate as then initial space rate.

2. TENANT shall rent the Premises as is.

3. LANDLORD shall provide TENANT with a Tenant Improvement allowance of $40.00 per useable square foot on the initial space (2,661 square feet) and $35.00 per useable square foot in the Expansion Area.

4. Ink Construction, LLC shall provide all construction work.

5. The rental rate shall be as follows:

Month	Full Service Rate per Square Foot
1-24	$18.50
25-48	$21.00
49-72	$22.00
73-96	$23.00

Please note that the rental rates above are estimated and are subject to change.

6. TENANT shall be responsible for the proper disposal of all medical waste and for cleaning within its suite. TENANT shall not dispose of any medical waste or hazardous material in the disposal facility for refuse provided by LANDLORD.

7. TENANT shall have two (2) five (5) year options to renew at the following rates:

Years	Full Service Rate per Square Foot
9-13	$24.00
14-18	$26.00

8. TENANT shall have access to a minimum of four (4) parking spaces for every one thousand (1,000) rentable square feet leased.

9. TENANT, at TENANT's cost, shall be allowed to place signage on the Building's monument sign as well as adjacent to the TENANT's interior suite. All signage shall meet City codes and is subject to LANDLORD's review and approval.

10. TENANT and its patients shall have 24 hour access to the Premises. Any afterhour's visits shall be handled in a manner that is mutually acceptable to TENANT and LANDLORD.

11. TENANT may holdover at a rental rate of 125% of its then current rate.

Landlord's Initials _____ Tenant's Initials _____

EXHIBIT D

ESTIMATED CURRENT OPERATING EXPENSES PER SQUARE FOOT

Taxes	$1.42
Insurance	$0.39
Utilities	$3.16
Landscape	$0.92
Building/Common Areas	$0.15
Management/Pro. Fees	$0.11
Maintenance/Repair	$0.12
Trash	$0.09
Common Area Cleaning	
Total	$6.36

Tenant Premises Janitorial Services to be provided by TENANT

Landlord's Initials _____ Tenant's Initials _____

Agenda Item XII-12

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council Members

SUBJECT: 2010 CSBG Discretionary Fund Application

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

- -

Recommendation: Approve submission of funding application and authorize the necessary signatures.

Background: The Community Services Block Grant (CSBG) is a federal program targeted to the needs of the low-income persons. In addition to the formula funds granted to the City of Wichita by the State of Kansas Housing Resources Corporation (KHRC), CSBG Discretionary Funds are made available through competitive Request for Proposals. The Housing and Community Services Department's Career Development Office (CDO), which is responsible for administration of CSBG funds, has applied for and been awarded Discretionary Funds for the last three years.

Analysis: The CDO is requesting $40,000 in CSBG Discretionary Funds to operate a community gardens project. This funding will be used to enhance the operations of the six existing community gardens and to establish four additional gardens in low-income neighborhoods, one in each quadrant of the City. In the four new gardens, which will be organized through the Neighborhood City Halls, the funds will be used for fencing, running water lines, purchasing gardening equipment, seeds and other first year operational costs. In a collaborative effort with community organizations operating existing gardens, the funding would be used to enhance operations and to increase outreach to and recruitment of low-income participants. There would also be a coordinated organization and marketing effort to engage and empower those affected by the gardens at every stage of planning, building, and managing the project.

Financial Considerations: No general operating funds from the City's budget are obligated by this application.

Goal Impact: The neighborhood community gardens project will impact the City's Quality of Life goal by providing resources to help low-income families achieve self-sufficiency and improved health with a source of inexpensive nutritious food.

Legal Considerations: The CSBG Review Committee will review the application and provide recommendations and input for implementation.

Recommendation/Action: It is recommended that the City Council approve submission of the 2010 CSBG Discretionary Fund Application and authorize the necessary signatures.

Attachments: 2010 Community Services Block Grant Discretionary Fund Application summary

Community Gardens Program Summary

The City of Wichita Career Development Office (CDO) is submitting a proposal to use $40,000 in Federal Fiscal Year (FFY) 2010 Community Services Block Grant (CSBG) Discretionary Funds to initiate a Community Gardens Project in Sedgwick County. The project will carry out the intended use of CSBG funds by using an effective community-based approach to address the effects of poverty. The project will also address the priorities established for FFY 2010 discretionary funds by supporting an improvement in service delivery that moves individuals and families to greater levels of economic self-reliance.

National and local statistics indicate a need for additional food resources targeted to low-income individuals. A study by the United States Department of Agriculture indicates that food security for U.S. households dropped in 2008. This study defines food insecure households as, at times during the year, having uncertainty of, or unable to acquire, enough food to meet the needs of all their members because they had insufficient money or other resources for food. Study results indicate that 14.6 percent of U.S. households were food insecure at some time during 2008. This is an increase from 11.1 percent in 2007. When this food insecure definition was applied to households with incomes below the official poverty line the percentage of such households increased to 42.2 percent. The study also ranked Kansas as a state with food insecurity above the U.S. average. Locally, in 2007 the Catholic Charities' food pantry experienced a 31% increase in distributions from the previous year, and an additional 5% increase for 2008.

To assist in meeting this need for additional food resources for low-income households, the CDO will collaborate with four Neighborhood City Halls and local community organizations to establish and operate a community gardens project. The goal of the project will be to enhance the operations of six existing community gardens and to establish four additional gardens in low-income neighborhoods, one in each quadrant of the City/Sedgwick County. In the four new gardens, which will be organized through the Neighborhood City Halls, CSBG Discretionary funds will be used for fencing, running water lines, purchasing gardening equipment, seeds and other first year operational costs. In a collaborative effort with community organizations operating existing gardens, the funding would be used to enhance operations and to increase outreach to and recruitment of low-income participants. There would also be a coordinated organization and marketing effort to engage and empower those affected by the gardens at every stage of planning, building, and managing the project.

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Termination of Restrictive Covenant (District IV)

INITIATED BY: Department of Water Utilities

AGENDA: Consent

Recommendation: Approve the Termination of Restrictive Covenant document.

Background: In 2000, the Blasi Camp Ground, located south of Kellogg and west of 111th Street West, removed their private sanitary sewer system from their sewage lagoon, and connected their private sewer system to a public sewer main. As a part of this process, the Water Utilities Department required a restrictive covenant which stated that public sewer would need to be extended to serve several other adjacent lots owned by Blasi, and those separate parcels would not be allowed to connect to the private sewer system which continues to serve the camp ground. A restrictive covenant was written by an agent representing Blasi, and the City of Wichita was not included as a party to the filed document, although the document referenced that this was a requirement of the City of Wichita.

Analysis: The Water Utilities Department's original requirements for the extension of public sewer have been met, so it is appropriate to release the restrictive covenant. A title company representing Blasi has created this Termination of Restrictive Covenant document, as to their form, and is requesting the City of Wichita to sign it, acknowledging that the restrictive covenant is no longer a requirement.

Financial Considerations: There are no financial considerations.

Legal Considerations: The Law Department has reviewed the Termination of Restrictive Covenant and approved it as to form.

Goal Impact: This action supports the Economic Vitality goal, by working with economic development and affordable living stakeholders to allow appropriate use of private property.

Recommendations/Actions: It is recommended that the City Council approve the Termination of Restrictive Covenant and authorize the necessary signatures.

Attachments: Termination of Restrictive Covenant.

TERMINATION OF RESTRICTIVE COVENANT

Whereas, a certain Restrictive Covenant was recorded July 19, 2000, on Film 2071, Page 128, covering the following described property:

See Exhibit A attached

a copy of which is attached hereto as Exhibit B

and whereas Vernon J. Blasi, an original signatory to said restrictive covenant has died, and his interest in the described property has passed to Theresa C. Blasi

and whereas, portions of the described property have been conveyed to Fawnwood, Inc.

and whereas, it is the desire of the undersigned, being all of the current owners of said property, to terminate said restrictive covenant,

Now therefore, the undersigned owners do hereby terminate and revoke the restrictive covenant filed on Film 2071, Page 128 in its entirety.

The City of Wichita, Kansas, which required the recording of said restrictive covenant, hereby consents to the Termination thereof.

This complete document, including Exhibit A and Exhibit B, consists of (8) pages.

Dated this 31st day of March, 2010.

[redacted]

Blasi Tire Center, Inc.

By: Theresa C. Blasi
Theresa C. Blasi, President

Fawnwood, Inc.

By: Howard A. Rishel
Howard A. Rishel, President

Theresa C. Blasi
Theresa C. Blasi

State of Kansas)
) ss:
Sedgwick County)

The foregoing instrument was acknowledged before me this 31st day of March, 2010 by Theresa C. Blasi, President of Blasi Tire Center, Inc., for and on behalf of the corporation.

MARY ANN WESTBROOK
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 2-14-11

Mary Ann Westbrook
Notary Public

My appointment expires: February 14, 2011

State of Kansas)
) ss:
Sedgwick County)

The foregoing instrument was acknowledged before me this 31st day of March, 2010 by Theresa C. Blasi, a single person.

MARY ANN WESTBROOK
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 2-14-11

Mary Ann Westbrook
Notary Public

My appointment expires: February 14, 2011

State of Kansas)
) ss:
Sedgwick County)

The foregoing instrument was acknowledged before me this 31st day of March, 2010 by Howard A. Rishel, President of Fawnwood, Inc., for and on behalf of said corporation.

Mary Ann Westbrook
Notary Public

My appointment expires: February 14, 2011

MARY ANN WESTBROOK
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 2-14-11

[redacted]

State of Kansas)
) ss:
Sedgwick County)

The Consent in the foregoing instrument was acknowledged before me this _____ day of _____, 2010 by Carl Brewer, Mayor of the City of Wichita, Kansas, for and on behalf of said City.

_____
Notary Public

My appointment expires:

Attest:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Director of Law, City of Wichita

EXHIBIT A

Parcel "A": Lot 1, Block A, Blasi Park, Wichita, Sedgwick County, Kansas.

Parcel "B": Beginning 511.84 feet south of the NE corner of the NW ¼ of Sec. 31, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas, thence west 208 feet; thence south 225.74 feet more or less to the north line of the A.T. & S.F. Railroad R.O.W.; thence northeasterly along the said railroad R.O.W. to a point south of the point of beginning; thence north 178.65 feet to the point of beginning.

Parcel "C": A tract of land in the NW ¼ of Sec. 31, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas, described as follows: The south 209.42 feet of the north 511.84 feet of the east 208 feet of said NW ¼, EXCEPT the east 30 feet for road.

Parcel "D": A tract of land in the NW ¼ of Sec. 31, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas, described as follows: The south 209.42 feet of the north 302.42 feet of the east 208 feet of said NW ¼, EXCEPT the east 30 feet for road and EXCEPT the north 70 feet thereof.

Parcel "E": Beginning at the south right-of-way line of U.S. Highway 54 and 30 feet west of the east line of the NW ¼ of Sec. 31, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas; thence west 178 feet; thence south 70 feet; thence east 178 feet; thence north 70 feet to the point of beginning.

Parcel "F": A tract of land in the NW ¼ of Sec. 31, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning on the south line of U.S. Highway 54 and 208 feet west of the east line of said NW ¼; thence south, 300 feet; thence west, 100 feet; thence north, 300 feet; thence east, 100 feet to the point of beginning.

1901918 -198

FLM2071 PAGE0128

EXHIBIT B

STATE OF KANSAS } SS
SEDGWICK COUNTY }

JUL 19 11 16 AM '00

BILL MEEK
REGISTER OF DEEDS

RESTRICTIVE COVENANT

THIS DECLARATION, made this 11th day of July, 2000, by Blasi Tire Center, Inc., a Kansas Corporation and Vernon J. Blasi and Theresa C. Blasi, husband and wife, hereinafter called "Declarants",

WITNESSETH

WHEREAS, Declarants are the owner of the following described real property:

(SEE ATTACHED EXHIBIT 'A')

Judy Pagel
Deputy

and,

WHEREAS, Parcels "A" through "F" inclusive, are contiguous to and lie directly adjacent to each other.

WHEREAS, the Declarant at some undetermined time in the future intends to construct sanitary sewer improvements to serve Parcel "A" of the above-described real property, and as a condition of the sanitary sewer extension to serve Parcel "A", the City of Wichita has required this covenant.

NOW, THEREFORE, Declarants hereby covenant and agree as follows:

Upon the sale of any of said Parcels "A" through "F", Declarants hereby agree to extend public sanitary sewer mains to serve said parcels.

This covenant shall run with said parcels and 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 title for the above described tract located in Wichita, Sedgwick County, Kansas.

Blasi Tire Center, Inc.

Vernon J. Blasi
Vernon J. Blasi, President

Vernon J. Blasi
Vernon J. Blasi

Theresa C. Blasi
Theresa C. Blasi

10.00 CC

Baumgartner Co., P.A.
315. S. Ellis
Wichita, KS 67211

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 11th day of July, 2000, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Vernon J. Blasi and Theresa C. Blasi, husband and wife, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

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

MARY ANN WESTBROOK
Notary Public - State of Kansas
My Appt. Expires 2-14-2003

Mary Ann Westbrook
Notary Public

My Appointment Expires:
February 14, 2003

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 11th day of July, 2000, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Vernon J. Blasi, as President of Blasi Tire Center, Inc., a Kansas Corporation, 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 and as the act and deed of said corporation.

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

MARY ANN WESTBROOK
Notary Public - State of Kansas
My Appt. Expires 2-14-2003

Mary Ann Westbrook
Notary Public

My Appointment Expires:
February 14, 2003

EXHIBIT 'A'

Parcel "A": Lot 1, Block A, Blasi Park, Wichita, Sedgwick County, Kansas.

Parcel "B": Beginning 511.84 feet south of the NE corner of the NW ¼ of Sec. 31, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas, thence west 208 feet; thence south 225.74 feet more or less to the north line of the A.T. & S.F. Railroad R.O.W.; thence northeasterly along the said railroad R.O.W. to a point south of the point of beginning; thence north 178.65 feet to the point of beginning.

Parcel "C": A tract of land in the NW ¼ of Sec. 31, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas, described as follows: The south 209.42 feet of the north 511.84 feet of the east 208 feet of said NW ¼, EXCEPT the east 30 feet for road.

Parcel "D": A tract of land in the NW ¼ of Sec. 31, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas, described as follows: The south 209.42 feet of the north 302.42 feet of the east 208 feet of said NW ¼, EXCEPT the east 30 feet for road and EXCEPT the north 70 feet thereof.

Parcel "E": Beginning at the south right-of-way line of U.S. Highway 54 and 30 feet west of the east line of the NW ¼ of Sec. 31, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas; thence west 178 feet; thence south 70 feet; thence east 178 feet; thence north 70 feet to the point of beginning.

Parcel "F": A tract of land in the NW ¼ of Sec. 31, Twp. 27-S, R-1-W of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning on the south line of U.S. Highway 54 and 208 feet west of the east line of said NW ¼; thence south, 300 feet; thence west, 100 feet; thence north, 300 feet; thence east, 100 feet to the point of beginning.

Kansas Department of Health and Environment
Office of Vital Statistics

CERTIFICATE OF DEATH

115-2006-16940
State File Number

1. Decedent's Legal Name (First, Middle, Last)	2. Sex	3. Date Of Death (Month, Day, Year)	4. Social Security Number	5. Date Filed By State Registrar
VERNON JOHN BLASI	MALE	08/16/2006	515-20-0884	09/29/2006

6a. Date Of Birth (Month, Day, Year)	6b. Age	7. Place Of Birth (City And State Or Foreign Country)	8. Decedent Ever In U.S. Armed Forces
02/23/1927	79 YEAR(S)	NASHVILLE, KANSAS	YES

9a. Place Of Death	9b. Facility Name (If Not Institution, Street And Number)	9c. City Or Town Of Death	9d. Zip Code
INPATIENT	VIA CHRISTI - ST FRANCIS	WICHITA	67214

9e. County Of Death	10. Marital Status	11. Surviving Spouse (If Wife, Name Before First Marriage)	12a. Residence State or Foreign Country
SEDGWICK	MARRIED	THERESA C SCHOENECKER	KANSAS

12b. County or Province	12c. City Or Town	12d. Street Address	12e. Zip Code	12f. Inside City Limits
SEDGWICK	WICHITA	11409 W 54 HWY	67209	YES

13. Decedent's Ancestry	14. Decedent's Race
SWISS, GERMAN	WHITE

15. Decedent's Hispanic Origin
NOT SPANISH, HISPANIC, LATINO

16. Decedent's Education	17. Decedent's Occupation	18. Decedent's Industry
HIGH SCHOOL GRADUATE OR GED COMPLETED	OWNER	TIRE STORE / CAMPGROUNDS

19. Father's Name (First, Middle, Last)	20. Mother's Name Prior To First Marriage (First, Middle, Last)
LEO BLASI	ANNA SCHNITTKER

21a. Informant's Name (First, Middle, Last)	21b. Mailing Address (Street, Number, City, State, And Zip Code)	21c. Relationship To Decedent
THERESA C BLASI	11409 W 54 HWY, WICHITA, KANSAS, 67209	WIFE

22. Method Of Disposition	23a. Place Of Disposition	23b. Location
BURIAL	ST PETER CATHOLIC CHURCH CEMETERY	SCHULTE, KANSAS

24. Funeral Service Licensee And License Number	25. Name Of Embalmer And License Number
/s/THOMAS R MORRIS - 2217	BRIAN P SMITH - 3523

26. Name And Address Of Firm DOWNING AND LAHEY MORTUARY, 6555 E CENTRAL STREET, WICHITA, KANSAS, 67206

27. Cause Of Death
Part I. Events (diseases, injuries, or complications) that directly caused the death.

		Approximate Interval: Onset To Death
IMMEDIATE CAUSE (Final Disease Or Condition Resulting In Death)	a. COMPLICATIONS OF FRACTURED RIGHT FEMUR	
	Due To (Or As A Consequence Of):	
Conditions, if any, leading To cause listed on line a.	b.	
	Due To (Or As A Consequence Of):	
UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LISTED LAST.	c.	
	Due To (Or As A Consequence Of):	
	d.	
	Due To (Or As A Consequence Of):	

Part II. Other Significant Conditions Contributing To Death But Not Resulting In The Underlying Cause Given In Part I.	28a. Autopsy	28b. Autopsy Findings Available To Complete The Cause Of Death	28c. Coroner Contacted
PARKINSONS DISEASE	NO		YES

29. Did Tobacco Use Contribute To Death?	30. If Female:	31. Manner Of Death
NO		ACCIDENT

32a. Date Of Injury (Month, Day, Year)	32b. Time Of Injury	32c. Injury At Work	32d. How Injury Occurred
08/11/2006	1847	NO	FELL FROM STANDING HEIGHT

32e. Place Of Injury	32f. Location (Street And Number Or Rural Route, City Or Town, State, And Zip Code)
RESIDENCE	11409 W 54 HWY, WICHITA, KANSAS, 67209

33a. Date Pronounced Dead (Month, Day, Year)	33b. Time Pronounced Dead	33c. Actual Or Presumed Time Of Death	33d. Name Of Person Pronouncing Death	33e. License No.
08/16/2006	1800	1800	DR YANG	

34a. Pronouncing and Certifying Physician	34b. License No.	34c. Date Certified (Month, Day, Year)	34d. Address And Zip Code Of Person Completing Cause Of Death
/s/MARY DUDLEY - MD	424939	09/28/2006	1109 N MINNEAPOLIS ST, WICHITA, KANSAS, 67214

VS231A - Rev. 06/18/2004

DEATH 10/3/2006 T2400046700 05 BLASI 200604016940 10c

Agenda Item No. XII-14

City of Wichita
City Council Meeting
May 4, 2010

To: Mayor and City Council

Subject: 2010 Senior Wednesdays Program at WATER Center (District III)

Initiated By: Department of Public Works – Office of Environmental Health

Agenda: Consent

Recommendation: Authorize receipt of the Public Works WATER Center's portion of the Kansas Health Foundation Recognition Grant for the *Senior Wednesdays* program.

Background: The WATER Center is part of a local coalition of museums which focus their efforts specifically on seniors once each month. The *Senior Wednesdays* program has been offered by the WATER Center since 2005, funded by a portion of a Kansas Health Foundation Recognition Grant. This program enhances senior adults' quality of life through community involvement, lifelong learning and the opportunity to socialize with other senior adults.

Analysis: The WATER Center received notice recently that the *Senior Wednesdays* program had been awarded a 2010 Kansas Health Foundation Recognition Grant. The grant will be managed in 2010 by the Kansas African American Museum, which submitted the grant application. The grant money will be used to offset the marketing expenses associated with the program and to fund the program supplies and presentations of the ten museums involved in presenting *Senior Wednesday* programs, including the WATER Center.

Financial Consideration: The WATER Center has been awarded $1,903.00 for the 2010 *Senior Wednesday* program from the Kansas Health Foundation Recognition Grant received by the Kansas African American Museum. There is no match required. The WATER Center agrees to:

- To use the grant monies toward *Senior Wednesdays'* programming, and
- To make available, upon request by the Kansas Health Foundation, all financial and other records relating to *Senior Wednesdays*.

Goal Impact: This program addresses the Quality of Life goal by educating senior citizens on water pollution and conservation concepts to protect the City of Wichita's natural resources.

Legal Consideration: The Department of Law has approved the grant award as to form.

Recommendation/Actions: Approve receipt of the grant award.

Attachments: None.

Agenda Item No. XII-15

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: Registration of Johns Sludge Pond into KDHE's EUC Program (District I)

INITIATED BY: Department of Public Works–Office of Environmental Health

AGENDA: Consent

Recommendations: Authorize staff to enroll the Johns Sludge Pond into the Kansas Department of Health and Environment (KDHE) Environmental Use Control (EUC) program.

Background: The Johns Sludge Pond was created by the owner of Johns Super Refined Oil, disposing of contaminated sludge from the refining process near what is now the junction of I-135 and K-96. The accumulated sludge was highly acidic and contained lead, PCBs, other metals and organic materials. The Johns Refinery went out of business in 1970. In 1983 the City of Wichita acquired portions of the site to construct drainage for I-135 and built berms around the site to reduce run-off, which was impacting Chisholm Creek. The Environmental Protection Agency (EPA) issued a consent order to the City, as owner of the site, requiring cleanup action. The City constructed a heavily lined pit at the site, stabilized the sludge with cement kiln dust, deposited the stabilized sludge in the pit, and capped it with a clay cap. The work was completed in 1986, and a vegetative cover to prevent erosion and a fence were installed to protect the site.

The EPA accepted the City's remediation as the "final remedial action" and a restrictive covenant was registered with the Sedgwick County Clerk's office on the property deed to prevent future development of the site, which is considered a chemical landfill under the Toxic Substance Control Act.

The EPA has completed its third, five-year review of the site and found everything in order. However, the EPA now requires the City to register the site with KDHE's EUC program; the existing deed restriction will be superseded by the KDHE EUC covenant. Proof of the EUC registration and a one-time fee of $2,000 are required to register with the State's program. The registration allows the site to be listed in the State's inventory of "controlled use" properties that have periodic inspections by KDHE.

Analysis: The remedial action for the Johns Sludge Pond was completed prior to KDHE's EUC Program. This action will bring the Johns Sludge Pond into compliance with current State programs and the EPA oversight requirement.

Financial Considerations: The one-time $2,000 registration fee will be paid to KDHE from the Landfill Post Closure Fund managed by Public Works. This fee will be in addition to the normal maintenance and analytical expenditures of $5,400 per year.

Goal Impact: Registration with the EUC program addresses the Efficient Infrastructure and the Safe & Secure Community goals, by ensuring the protection of human health and the environment, and City compliance with regulatory oversight.

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

Recommendation/Action: It is recommended that the City Council authorize staff to complete the enrollment process, obtain the necessary signatures, and to pay the required fees.

Attachments: None.

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and Members of the City Council

SUBJECT: Home Improvement Loan Program (Districts I, III, IV, V, VI)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendations: Approve a budget transfer from the Rental Housing Loan Program to the Home Improvement Loan Program.

Background: The City Council approved an allocation of $100,000 of Community Development Block Grant (CDBG) funds for the 2008-2009 program year, to continue operation of the Rental Housing Loan Program. The program provides low interest loans to eligible investment property owners to rehabilitate single and multi-family rental properties located within the Local Investment Areas (LIAs). Properties rehabbed using these funds must be rented to low-income families upon completion.

In 2000 the Home Improvement Loan Program (HILP) was created to provide low interest home repair loans to homeowners. The program partners with private lenders and provides funds to reduce the interest rate, creating 2% interest loans. The program makes private market home repair loans more affordable to low and moderate-income households.to owner-occupants in the Redevelopment Incentive Area. The maximum loan amount is $15,000.

Analysis: Community Development Block Grant regulations require that program income be spent prior to accessing new allocations. Program income from rental loan payments has been used to fund Rental Housing Loan Program applications over the past two years. For that reason the 2008 allocation has not been accessed to fund projects. There is currently a balance of $30,000 in program income available to fund rental rehab projects.

Program outreach and marketing in START target areas, Local Investment Areas and the Neighborhood Revitalization Strategy Area, has resulted in a high demand for the Home Improvement Loan Program (HILP). As a result, the HILP currently has a balance of $236.11.

Financial Considerations: Staff recommends the transfer of $40,000 from the 2008-2009 Rental Housing Loan Program to the Home Improvement Loan Program. This will leave a balance of $60,000 for rental projects, in addition to the program income balance of $30,000. The proposed transfer will support a minimum of eight new HILP projects and leverage over $170,000 in private investment.

Goal Impact: Funding will contribute to the Economic Vitality and Affordable Living, Quality of Life, and Core Area and Neighborhoods goals.

Legal Considerations: Administrative Regulation 2.5 requires that budget transfers of $25,000 or more be submitted for City Council approval.

Recommendation/Actions: It is recommended that the City Council approve a budget transfer from the Rental Housing Loan Program to the Home Improvement Loan Program.

Attachments: None.

Agenda Item No. XII-17

City of Wichita
City Council Meeting
May 4, 2010

TO: Mayor and City Council

SUBJECT: HPC2009-00476: Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita, (Districts I and VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: City Council Consent

HPB Recommendation: Adopt the resolution (7-0)

MAPD Staff Recommendation: Adopt the resolution.

Background: Under the State Environs Law, any project requiring a permit, located within 500 feet of a state or national registered property, must be reviewed to determine if the project "encroaches, damages or destroys" the environs of the historic designated property. Since 1997, the State Historic Preservation Office (SHPO) has maintained a memorandum of understanding that transfers Environs Review authority to the local Historic Preservation Board (HPB), and potentially the City Council.

One of the comments that preservation staff has heard from property owners was that there was not any convenient way for them to know what design criteria to follow to have the best chance of submitting an appropriately designed project the first time. In June 2008, the City of Wichita Historic Preservation Office received a grant to illustrate Environs Law design standards for structures located in the Central Business District.

The boundaries of the study area were: Central, Washington, Kellogg and Waco. This area was chosen as it contains the largest number of state and national registered buildings, and the design guidelines will assist with downtown redevelopment. Preservation staff worked with the Wichita Downtown Development Corporation (WDDC), property owners, architects, realtors, business owners, the HPB, the SHPO and Goody Clancy to develop the recommended guidelines entitled, *Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita*.

In December 2009, a draft of *Making the State Environs Law Work for You* was submitted to the SHPO and HPB for review and comment. The draft design guidelines were also submitted to the WDDC for their comment. In February 2010, SHPO confirmed the draft document was in compliance with the spirit and intent of the Environs Law and HPB voted unanimously to adopt the document. The WDDC also endorsed the document. On April 13, 2010, the document was presented at a City Council workshop and no changes were requested.

Analysis: Specifically, the document provides information regarding how the Environs Law is applied to architectural character, use of building materials, scale, mass and rhythm for projects located in the Central Business District, as defined earlier. This information will assist property owners and design professionals with their planning and help ensure a uniform review and decision-making process. The design standards will be updated as necessary.

Financial Considerations: None

Goal Impact: *Making the State Environs Law Work for You* will assist with the goal of creating Vibrant Neighborhoods, as well as promoting Economic Vitality.

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

Recommendation/Actions: It is recommended that the City Council adopt the resolution endorsing *Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita*, April 2010.

Attachments: Approved minutes Wichita Historic Preservation Board, February 8, 2010
Resolution
Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita, April 2010

RESOLUTION NO. 10-124

A RESOLUTION ENDORSING THE DESIGN STANDARDS RECOMMENDED IN MAKING THE STATE ENVIRONS LAW WORK FOR YOU: SUCCESSFUL ARCHITECUTRAL DESIGN FOR DOWNTOWN WICHITA, KANSAS, APRIL 2010

WHEREAS, The Kansas Preservation Act of 1977 (KSA 75-2724, as amended 1981) mandates that owners of all structures within 500 feet of a building or district that is listed on the Register of Historic Kansas Places (RHKP) and/or the National Register of Historic Places (NRHP) must submit plans for exterior rehabilitation, new construction, or demolition to be reviewed by the State Historic Preservation Office (SHPO); and

WHEREAS, a programmatic agreement between the City and the State Historic Preservation Office (SHPO) allows the local Historic Preservation Board (HPB) and the historic preservation staff of the Metropolitan Area Planning Department (MAPD) to perform the review on behalf of the SHPO; and

WHEREAS, the environs review law affects nearly all of the area bounded by Central Avenue to Kellogg Street and Washington Street to Waco Avenue because of the many historic buildings and districts in downtown Wichita; and

WHEREAS, the MAPD commissioned a study at the request of the Wichita Downtown Development Corporation to examine existing architectural qualities in the downtown area and produce design standards for properties subject to review under the environs law; and

WHEREAS, many property owners, developers, architects, real estate agents, and other interested parties feel encumbered by a unique state law that affects their plans to develop a thriving downtown community in Wichita; and

WHEREAS, the City Council of the City of Wichita recognizes the importance of creating a collaborative vision and long-term plan for the purposes of fostering new vitality, beautification and economic revitalization, as well as enhancing safety and livability; and

WHEREAS, the City of Wichita has worked in partnership with the SHPO, Wichita Historic Preservation Board, WDDC and other key community stakeholders in the development of a design standards for properties subject to review under the environs law; and

WHEREAS, the *Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita, Kansas, April 2010* represents the culmination of that planning process, and contains recommended design standards that comply with KSA 75-2724, as amended; and

WHEREAS, the recommended design standards contained in the *Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita, Kansas, April 2010* are subject to further changes and refinements that will invariably come from additional properties being listed in the Register of Historic Kansas Places and/or the National Register of Historic Places, new development and ongoing lessons learned from other similar initiatives in Wichita.

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

Section 1. The City Council of the City of Wichita endorses the design standards recommended in the *Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita, Kansas, April 2010*.

Section 2. The City of Wichita shall use the recommended design standards contained in the *Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita, Kansas, April 2010* as guidance in future planning and decision-making regarding the area bounded by Central Avenue to Kellogg Street and Washington Street to Waco Avenue.

Section 3. The City Council of the City of Wichita directs the staff of the City of Wichita to update the Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita, Kansas as necessary changes and refinements are identified through the design and construction of specific improvements, and ongoing lessons learned from similar initiatives.

ADOPTED by the governing body of the City of Wichita, Kansas, this 4th day of May, 2010.

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk
(SEAL)

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

MINUTES

WICHITA HISTORIC PRESERVATION BOARD
8 FEBRUARY 2010
CITY HALL, 455 N. MAIN, 10TH FLOOR
3:00 P.M.

ITEM NO. 1 ROLL CALL

Members Present:
Jim Guy
Jacob Laha
Vicki Churchman
Randy Doerksen
Rachelle Pulkkila
Claire Willenberg
Mike Seiwert

Members Absent:

Staff Present:
Kathy Morgan, Senior Planner, Historic Preservation Office
Barbara Hammond, Associate Planner, Historic Preservation Office
Jeff VanZandt, City Attorney
Mike Gable, Office of Central Inspection
Carol Shallue, City Archaeologist

ITEM NO. 2 ADDITIONS OR ADJUSTMENTS TO THE AGENDA

Mr. Seiwert would like to make comments under Miscellaneous Matter in reference to the Seminar he attended regarding a presentation by Donovan Rypkema

ITEM NO. 3 REVOLVING LOAN FUND UPDATE

Revolving Loan Fund – Residential	$118,369.17
Revolving Loan Fund – Non-Residential	
Deferred Loan Fund – Residential	$ 40,000.00

ITEM NO. 4 CORRESPONDENCE

NONE

ITEM NO. 5 APPROVAL OF MINUTES FROM THE 11 JANUARY 2010 MEETING

Motion #1 made by Churchman, 2nd by Seiwert to approve the January 11, 2010 Minutes as presented. Motion carried unanimously (7-0).

ITEM NO. 6 OLD BUSINESS

A. MAJOR: HPC2009-00472 Environs, Dunbar Theatre
APPLICANT: Richard Brown, architect
FOR: 923 N Cleveland

Submission of final drawings for FEMA shelter addition to Dunbar School.

Motion #2 made by Laha, 2nd by Churchman to find that the new addition FEMA shelter does not encroach upon, damage, or destroy the environs of the Dunbar Theater, as reviewed in accordance with K.S.A. 75-2715-2725. Motion carried unanimously (7-0).

B. MAJOR: HPC2009-00475 Environs, Linwood Greenhouse and Maintenance Building
APPLICANT: Jonathan Brooks, PBA Architects
FOR: 1654 S Hydraulic

Submission of east parking lot plan reducing number of trees being destroyed.

Jonathan Brooks, PBA Architects and Kenneth W. Arnold, Schaffer, Cox, Fry, bond issue plan manager for school district were present for questions and comments.

Motion #3 made by Seiwert, 2nd by Willenberg to accept the redesign of the parking lot that reduces the number of trees removed, Motion carried unanimously (7-0).

C. MAJOR: HPC2009-00476
APPLICANT: Wichita Historic Preservation Office
FOR: N/A

Formal adoption of ***Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita*** by the Historic Preservation Board.

Jeff Fluhr, WDDC, was present for questions and comments.

Motion #4 made by Doerksen, 2nd by Willenberg to adopt Making the State Environs Law Work for You: Successful Architectural Design for Downtown Wichita as presented and submit to City Council for formal adoption. Motion carried unanimously (7-0).

ITEM NO. 7 CONSENT AGENDA

The following items were reviewed in accordance with K.S.A. 75-2715 – 2725, as amended

A. Roof Repairs

HPC2009-00477	1814 N Fairview	Re-roof on residence. ENV Park Place-Fairview H.D.
HPC2009-00478	1021 N Cleveland	Re-roof on residence. ENV Dunbar Theatre
HPC2009-00480	1521 Park Place	Re-roof on residence. Park Place Fairview H.D.
HPC2009-00481	1026 N Matthewson	Re-roof on residence. ENV Dunbar Theatre
HPC2010-00001	136 S Pattie	Re-roof on commercial. ENV Mentholatum Building
HPC2010-00003	1421 N Broadway	Re-roof on commercial. ENV Park Place Fairview H.D., Adeline Apartment
HPC2010-00004	1933 N Wellington	Re-roof on residence. ENV Park Place Fairview H.D., Steinbuchel House
HPC2010-00005	174 S Crestway	Re-roof on residence. ENV Belmont Arches
HPC2010-00008	237 N Fountain	Re-roof on residence. ENV W.O. VanArsdale House
HPC2010-00012	1217 E Douglas	Re-roof on commercial. ENV Mentholatum Building

B. Signs

HPC2010-00002	358 N Main	Sign face change updated WSU logo. ENV US Post Office & Federal Bldg, Occidental Hotel

C. Other

HPC2010-00007	3022 S Martinson	Build new shelter structures in OJ Watson Park. ENV John Mack Bridge
HPC2010-00011	1056 N Cleveland	Complete interior construction, replace vinyl siding and windows. ENV Dunbar Theatre
HPC2010-00013	904 E. Douglas	Repair interior fire and smoke damage. Warehouse and Jobbers H.D.

Motion #5 made by Laha, 2nd by Seiwert to approve the consent agenda, as reviewed in accordance with K.S.A. 75-2715-2725. Motion carried unanimously (7-0).

ITEM NO.8 PROJECT REVIEW

A. MAJOR: HPC2010-00006 Submission of state/national register nomination for the Fred Wilson House and application for historic revolving loan in the amount of $25,000.
APPLICANT: Jeff Roth, owner
FOR: 205 N. Pershing

Submission of nomination of Fred Wilson house under Criterion A and C and consideration of historic revolving loan application in the amount of $25,000.

Jeff Roth was present for questions and comments.

Motion #6 made by Seiwert, 2nd by Churchman to support the proposed nomination of the Wilson House as reviewed in accordance with K.S.A. 75-2715-2725. Motion carried unanimously (7-0).

Motion #7 made by Doerksen, 2nd by Willenberg to approve the request for the revolving loan in an amount not to exceed $25,000 with the condition that the applicant meet all other loan requirements and that the house is listed in the Register of Historic Kansas Places before the loan is packaged.. Motion carried unanimously (7-0).

ITEM NO. 9 MISCELLANEOUS MATTERS

1. Presentation by Mitch Coffman, Associate Planner, Transportation Division – update on 2035 Long Range Transportation Plan, please visit their website for additional information and fill out the survey(s) at www.wampoks.org.

2. Presentation by Scott Knebel, Principal Planner, Advance Plans Division – overview of Goody Clancy preliminary marketing analysis and results, (survey, photos, and comments are viewable at www.flicker.com/photos/walkshops). In addition, the Downtown Wichita Redevelopment-master plan is at www.downtownwichita.org/development-master_city_plan-three.php. Board members were invited to attend; Jim Cloar, WDDC speaker on February 25, 2010, at the Scottish Rite Center, 332 E 1st Street at 5:30 p.m.; and the Downtown Master Plan Charrette will occur on February 27, 2010 at the Wichita Art Museum starting at 9:00 a.m.
3. HPB board members were asked their opinions about changing the HPB meeting time from 3:00 p.m. to 2:00 p.m.
4. Remarks were made by Mr. Seiwert about Donovan Rypkema, Place Economics, comments on Sustainable Economic of Historic Preservation.

EXECUTIVE SESSION:

MR. GUY MOVED THAT THE WICHITA HISTORIC PRESERVATION BOARD RECESS INTO EXECUTIVE SESSION TO CONSIDER:

1. **Confidential data relating to the financial affairs of a business.**

THAT THE BOARD RETURN FROM EXECUTIVE SESSION NO EARLIER THAN 5:10 P.M. O'CLOCK AND RECONVENE IN THE LARGE CONFERENCE ROOM CHAMBERS ON THE 10TH FLOOR OF CITY HALL.

THE BOARD HAS RETURNED FROM EXECUTIVE SESSION, THERE WAS NO ACTION TAKEN AND THERE IS NO ACTION NEEDED AS A RESULT OF THE EXECUTIVE SESSION. MR. GUY MOVED THAT THE EXECUTIVE SESSION BE CLOSED.

ITEM NO. 10 ADJOURNMENT

Motion #8 made by Willenberg, 2nd by Doerksen to adjourn at 5:15 p.m. Motion carried unanimously (7-0).

Making the State Environs Law Work for You

Successful Architectural Design for Downtown Wichita, Kansas

Important tips for
property owners,
developers,
real estate agents,
architects,
contractors,
sign companies,
municipal planners,
and other interested parties

DRAFT

3-18-2010

1

Acknowledgements

Wichita City Council

Carl Brewer	Mayor
Lavonta Williams	District 1
Sue Schlapp	District 2
Jim Skelton	District 3
Paul Gray	District 4
Jeff Longwell	District 5
Janet Miller	District 6
Robert Layton	City Manager

Metropolitan Area Planning Department Staff

John Schlegel	Director of Planning
Dale Miller	Division Manager, Current Plans
David Barber	Division Manager, Advanced Plans
Scott Knebel	Principal Planner, Advanced Plans
Kathy Morgan	Senior Planner, Historic Preservation
Barbara Hammond	Associate Planner, Historic Preservation

Wichita Historic Preservation Board

Claire Willenberg	Mayor's Appointee
Vicki Churchman	District 1 Appointee
Rachelle Ablah Pukkila	District 2 Appointee
Jacob Laha	District 3 Appointee
Randall Doerksen	District 4 Appointee
Mike Seiwert	District 5 Appointee
Jim Guy	District 6 Appointee/President
Ex Officio Members:	
Michelle Enke	Local History Librarian, Wichita Public Library
Mike Gable	Senior Permit Examiner, Central Inspection
Carol Shallue	City Archaeologist, Wichita State University
Eric Cale	Director, Wichita-Sedgwick County Museum

Consulting Team

JEO Consulting Group, Inc.	Wahoo, Nebraska
Berggren Architects	Lincoln, Nebraska

Cover Photo: From the collection of the Wichita-Sedgwick County Historical Museum, Wichita, Kansas

Funding: This publication has been financed in part with Federal funds from the National Park Service, a division of the United States Department of the Interior, and administered by the Kansas State Historical Society. The contents and opinions, however, do not necessarily reflect the view or policies of the United States Department of the Interior or the Kansas State Historical Society. Matching in-kind funds were provided by staff of the Metropolitan Area Planning Department.

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The Concept of "Environs" in Kansas

Many property owners, developers, architects, real estate agents, and other interested parties feel encumbered by a unique state law that affects their plans to develop a thriving downtown community in Wichita.

The Kansas Preservation Act of 1977 (KSA 75-2724) was amended in 1981 to include a portion known in everyday terms as the "environs law." The statute mandates that owners of all structures within 500 feet of a building or district that is listed on the Register of Historic Kansas Places (RHKP) and/or the National Register of Historic Places (NRHP) must submit plans for exterior rehabilitation, new construction, or demolition to be reviewed by the State Historic Preservation Office (SHPO).

In Wichita a programmatic agreement between the City and the SHPO allows the local Historic Preservation Board (HPB) and the historic preservation staff of the Metropolitan Area Planning Department (MAPD) to perform the review on behalf of the SHPO. The design review is prompted by applications for a change in zoning or for building, demolition, or sign permits.

The intent of the preservation statute is to protect the historic context of the registered building(s). The review process is conducted in accordance with state guidelines to evaluate the effects of the proposed project on the historic environs.

However, this review requirement often comes as a surprise to unsuspecting developers or prospective buyers. Because there are many historic buildings and districts in downtown Wichita, the environs review law affects nearly all of the area bounded by Central Avenue to Kellogg Street and Washington Street to Waco Avenue (see map at right).

In order to facilitate the review process, the City of Wichita's Historic Preservation Office commissioned a study to examine existing architectural qualities in the downtown area and produce design standards for properties subject to review under the environs law.

This publication is the result of that study and serves as advance notice to give stakeholders the greatest chance for successful design reviews. The content has been approved by the SHPO and adopted by the Wichita Historic Preservation Board.

Twenty-one Design areas were analyzed, and an Architectural Context was formulated for each area. These Architectural Contexts provide approvable possibilities for rehabilitation and new construction that comply with the state guidelines and will enable all parties to understand appropriate architectural options for properties of interest.

The Architectural Contexts take into consideration the existing structures in each area, including whether they have historic significance.

TIP: Style, scale, massing, rhythm, and materials are among the factors in each area that determine appropriate renovation of old buildings or construction of new ones.

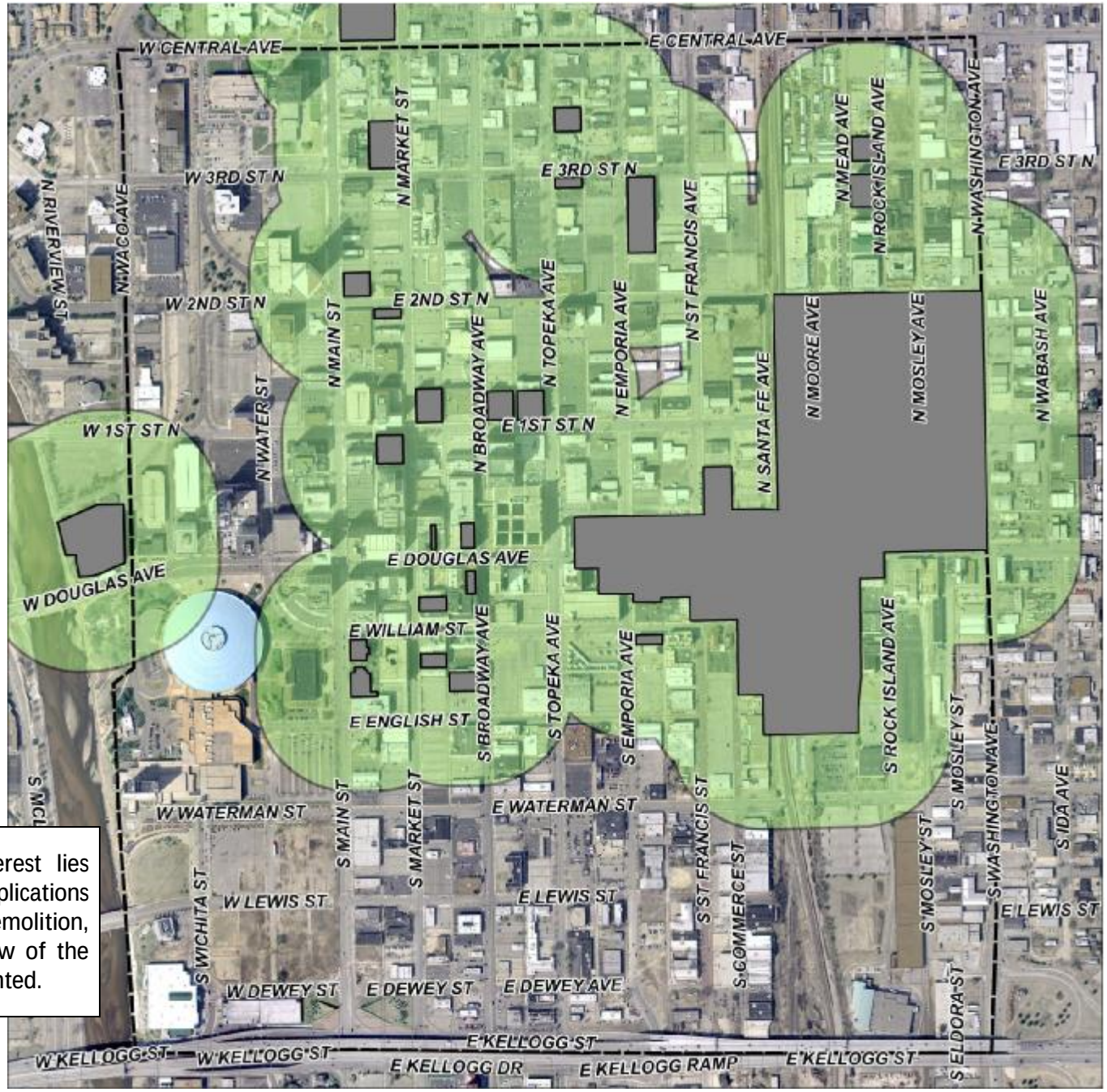
Map of Environs

Most of downtown Wichita is affected by the 500-foot environs that surround historic register properties.

Historic properties and historic districts

Environs

[Designations on this map are current as of 8/2009]]



Reminder: If a property of interest lies within an environs boundary, all applications for zoning changes and building, demolition, or sign permits will trigger a review of the project before the permit will be granted.

Methodology

After an initial windshield survey in downtown Wichita, the consulting team reviewed existing surveys and maps, design guidelines for two National Register Historic Districts, and Kansas Statute KSA 75-2724, as amended.

This analysis determined the scope of architectural and historic integrity throughout the area. It identified twenty-one specific Design Areas for which Architectural Contexts were written. The data was mapped to illustrate how the Contexts are applied to each distinct area.

This document was approved by the Kansas State Historic Preservation Office and filed with the Wichita City Council.

Study Area

The Study Area covers slightly more than ½-square mile in the original business center of Wichita between Central Avenue on the north, Kellogg Street on the south, Washington Street on the east, and Waco Avenue on the west.

Two National Register Historic Districts – the East Douglas Historic District, and the Warehouse and Jobbers Historic District – are located within these boundaries.

In addition, the Study Area contains twenty-three buildings that are listed individually on the National Register of Historic Places and many buildings that are eligible for historic listing. There are also segments of the area that offer potential for new construction.

Introduction to Architectural Contexts

The purpose of these Architectural Contexts is to enable architects, engineers, and developers to create successful designs that are compatible with designated historic structures in the central business area. The Contexts provide parameters for building design and signage.

Application of these Architectural Contexts will create a cohesive downtown architectural environment that respects the existing styles as well as allowing creativity and workable design solutions for any particular project.

Attention to these architectural ideas at the beginning of the project will expedite the review process because they comply with the Secretary of the Interior's "Standards for Rehabilitation" and "Kansas Standards and Guidelines for Evaluating the Effect of Projects on Environs."

> TIP: Developers and architects are encouraged to discuss plans informally with Wichita Historic Preservation staff in the early stages of a project to prevent unnecessary design costs.

As more properties gain historic designation, the environs area may enlarge. Current information about the environs coverage area is available from the Wichita Historic Preservation Office, 10th floor, City Hall, 455 N. Main Street, Wichita, Kansas. 316.268.4421

Numbered Design Areas

1. Locate your property of interest and corresponding Design Area Number on the map at right.
2. Turn to an enlarged view of your selected Design Area (pages 10-50)
3. Review the Architectural Context that applies to your property.

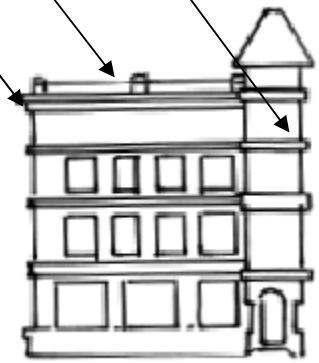
Design Area 1, Architectural Context

Historic buildings that create Environs:

1. Old County Courthouse, 510 N Main
2. Soldiers and Sailors Monument, 510 N Main
3. Navarre-Nokomis Apartments, 420-426 N Topeka
4. Virginia Apartments, 401 E Third
5. U.S. Post Office and Federal Building, 401 N Market

Character-defining features:
Multi-story residential
Multi-story office
Well-defined cornices
Flat roofs with parapets
Corner towers

Sedgwick County Courthouse



Scale

Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 2 to 4 stories in height.

Massing:

Rectangular, 5 to 10 bays wide by 4 to 6 bays deep.

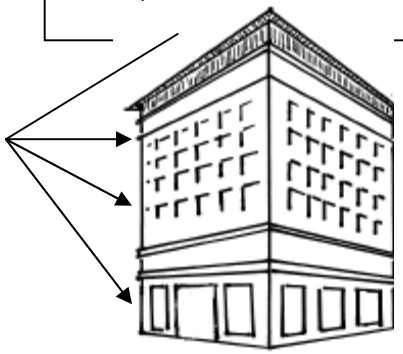
Rhythm:

Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

Materials:

Historic materials are brick, limestone, marble, and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

Building design is composed of a distinct cap, middle, and base.



Navarre Apartment Building

Design Area 1

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register

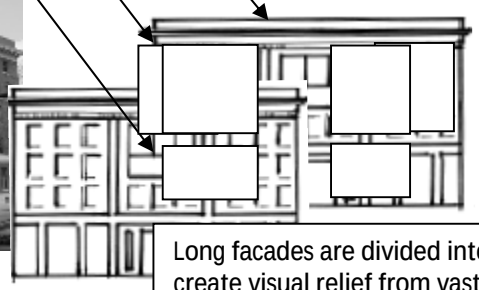
Design Area 2, Architectural Context

Historic buildings that create Environs:

1. Occidental Hotel, 300 N Main
2. Lassen Hotel, 155 N Market
3. Farmers and Bankers Insurance Company Buildings, 212 N Market and 200 E First
4. Orpheum Theater, 200 N Broadway
5. Scottish Rite Temple, 324 E First
6. Hayford Buildings, 255 N Market and 115-127 E Second

Character-defining features:
Multi-story
Strong horizontal banding
Well-defined cornices
Flat roofs with parapet walls

Farmers & Bankers Insurance Building



Long facades are divided into vertical masses that create visual relief from vast modern expanses.

Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 2 to 8 stories in height.

Massing:
Rectangular, 4 to 8 bays wide by 4 to 6 bays deep, zero lot line.

Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

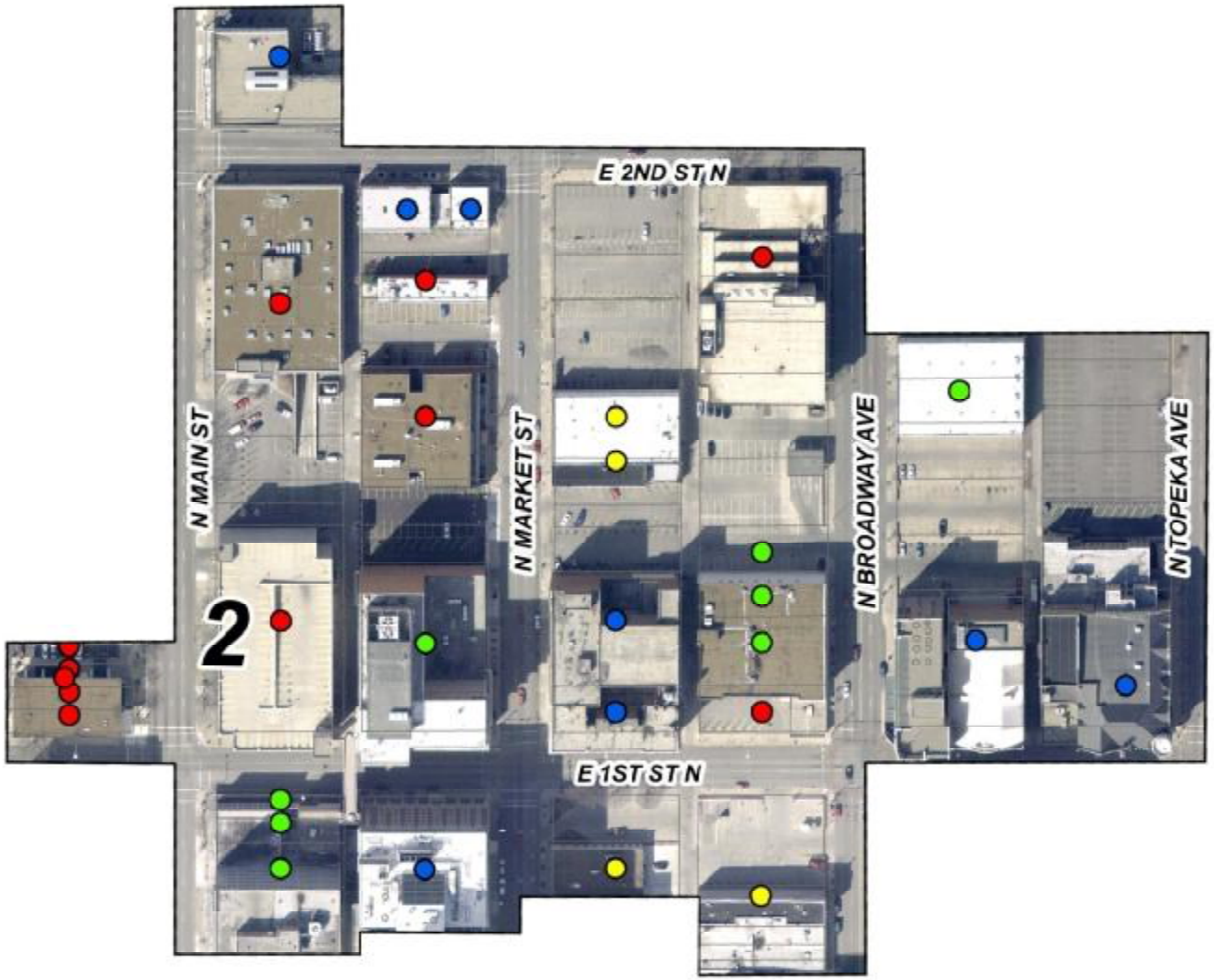
Materials:
Historic materials are brick, limestone and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

Lassen Hotel

Design Area 2

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register



Design Area 3, Architectural Context

Historic buildings that create Environs:

1. Lassen Hotel, 155 N Market
2. Kress Building, 224 E Douglas
3. Brown Building, 105 S Broadway
4. Wheeler Kelly Hagny Building, 120 S Market
5. Kauffman Building, 212 S Market
6. Ellis-Singleton (Petroleum) Building, 221 S Broadway

Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 3 to 12 stories in height.

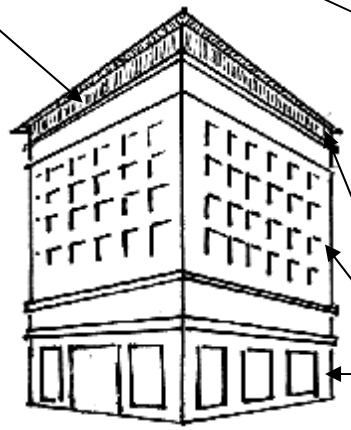
Massing:
Rectangular, 4 to 6 bays wide by 4 to 6 bays deep; zero lot line.

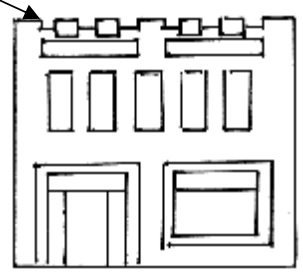
Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

Materials:
Historic materials are brick, terra cotta and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

Character-defining features:
Multi-story
Strong vertical bays
Well-defined cornices
Flat roof with parapets

Kress Building





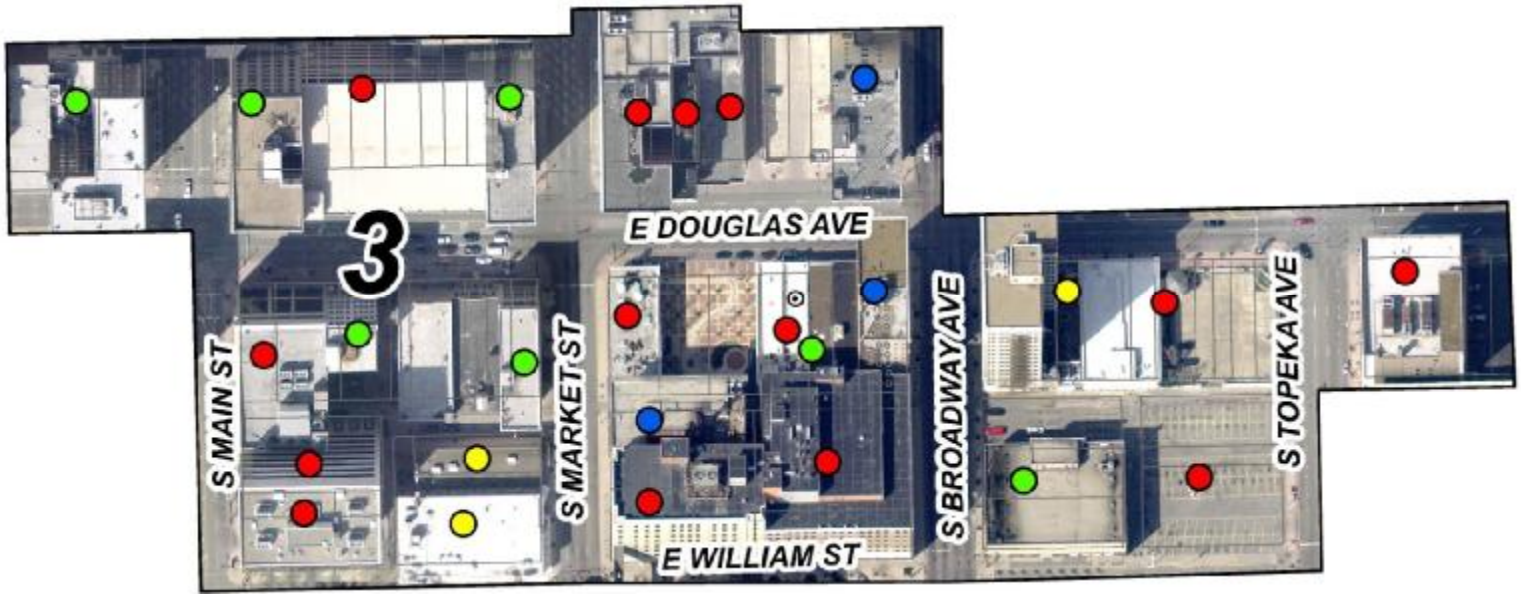
Commercial building design is composed of a distinct cap, middle, and base.

Brown Building

Design Area 3

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register



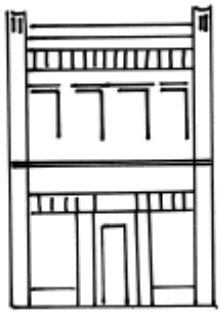
Design Area 4, Architectural Context

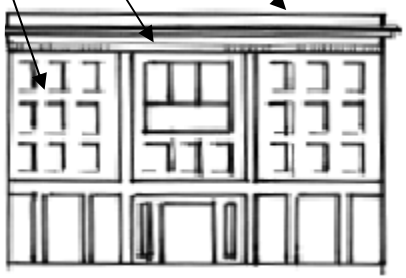
Historic buildings that create Environs:
Entire area is the East Douglas Avenue Historic District

Refer to the East Douglas Avenue Historic District Guidelines Online at http://www.wichita.gov/CityOffices/Planning or contact the Wichita Historic Preservation Office in the Metropolitan Area Planning Department at 316.268.4421

Character-defining features:
Multi-story commercial
Flat roofs with parapets
Well-defined cornices
Strong vertical bays

Fralick Building





Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 3 to 6 stories in height.

Massing:
Rectangular, 3 to 5 bays wide by 4 to 6 bays deep, zero lot line.

Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

Materials:
Historic materials are brick and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

Carey House (Eaton Hotel)

Design Area 4

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register

Design Area 5, Architectural Context

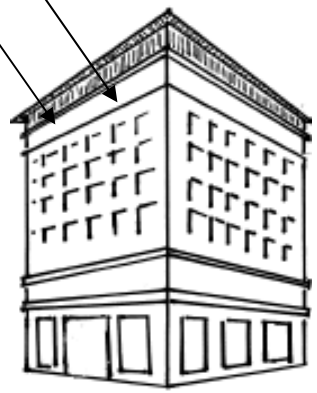
Historic buildings that create Environs:

1. Warehouse and Jobbers Historic District bounded by Douglas, Santa Fe, Washington and Second Streets
2. International Harvester Building, 355 N Rock Island
3. Keep Klean Building, 800 E Third

Refer to the Old Town Overlay District Design Guidelines, online at http://www.wichita.gov/CityOffices/Planning or contact the Wichita Historic Preservation Office in the Metropolitan Area Planning Department at 316.268.4421

Character-defining features:
Multi-story warehouse
Loading docks and doors
Flat roofs with parapets
Well-defined cornices
Steel frame casement windows

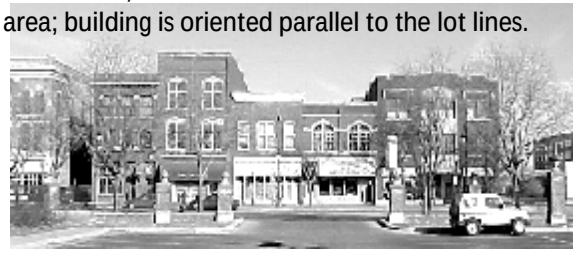
Keep Klean Building



Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 1 to 5 stories in height.

Massing:
Rectangular, 3 to 5 bays wide by 4 to 6 bays deep, zero lot line.

Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: loading docks and doors; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.



Materials:
Historic materials are brick and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

Wholesale Grocery Warehouse

Design Area 5

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register

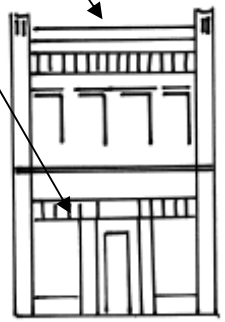
Design Area 6, Architectural Context

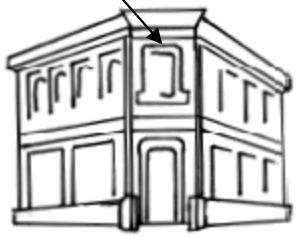
Historic buildings that create Environs:

1. Old City Hall, 204 S Main
2. Carnegie Library, 220 S Main
3. East Douglas Avenue Historic District
4. Wheeler Kelly Hagny Building, 120 S Market
5. Kauffman Building, 212 S Market
6. Ellis-Singleton (Petroleum) Building, 221 S Broadway
7. Eagles Lodge #132, 200 S. Emporia

Character-defining features:
Multi-story
Retail storefronts with transoms
Well-defined cornices
Flat roofs with parapets
Canted walls

19 Brown Building





Commercial building design is composed of a distinct cap, middle, and base.

Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should 3 to 8 stories in height.

Massing:
Rectangular, 5 to 8 bays wide by 4 to 6 bays deep, zero lot line.

Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

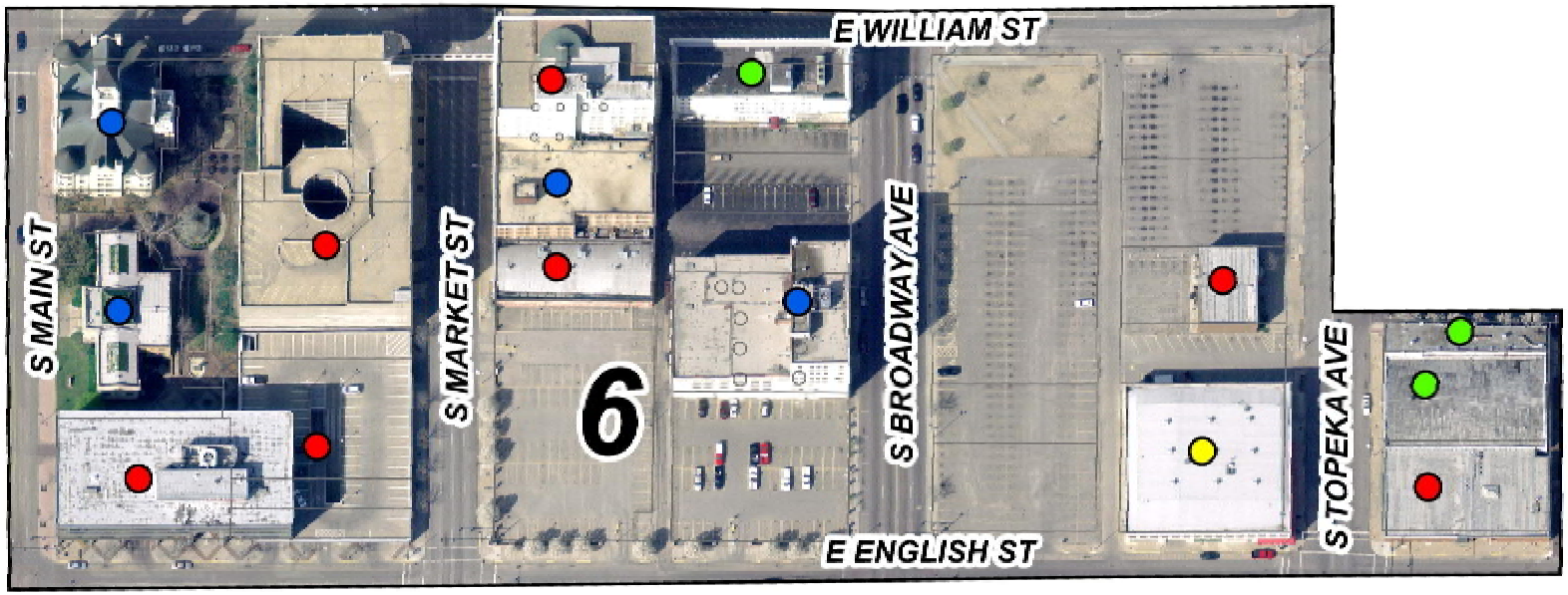
Materials:
Historic materials are brick, limestone, terra cotta, and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

Eagles Lodge

Design Area 6

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register



Design Area 7

At the time of this publication, no buildings in this area were within a historic environs, therefore no Architectural Context applies.

NOTE: Some buildings here are marked as eligible for listing on a historic register. Listing of such buildings is done at the property owner's request, usually for the purpose of accessing related financial incentives.

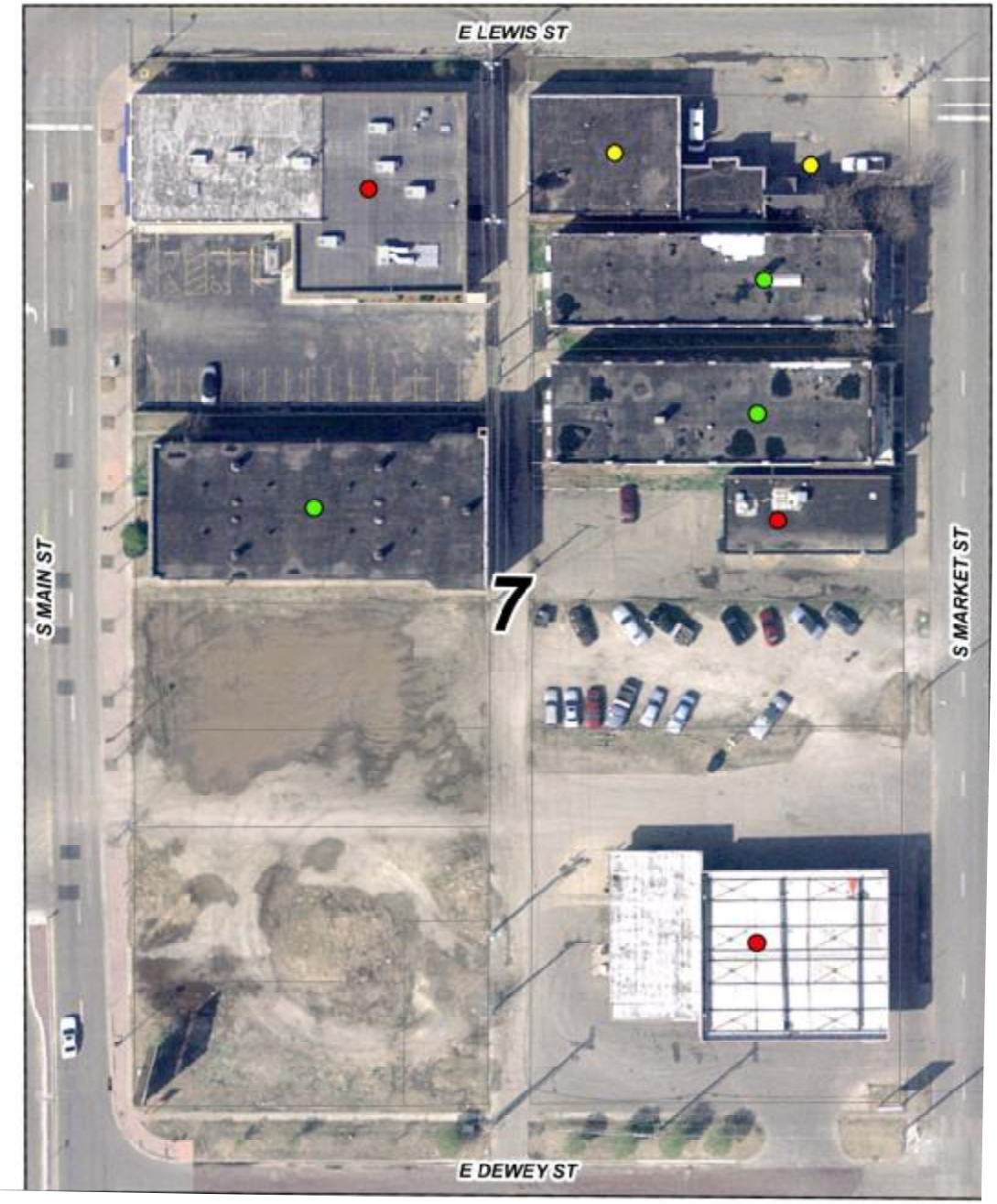
If buildings in this, or adjacent Design Areas, become listed on a state or national register in the future, an Architectural Context and environs review would come into effect.

Historic Preservation staff recommends that you contact the City of Wichita Historic Preservation Office to determine the current status of this area before beginning a design project. 316.268.4421

Design Area 7

If your building of interest is marked with a green or yellow dot, contact the Wichita Historic Preservation Office for information on historic register listing, 316.268.4421.

	Eligible to be listed on state or national historic register (individual nomination)
	Eligible to be listed on state or national historic register (part of multiple property nomination)
	Not eligible for any historic register



Design Area 8

At the time of this publication, no buildings in this area were within a historic environs, therefore no Architectural Context applies.

NOTE: Some buildings here are marked as eligible for listing on a historic register. Listing of such buildings is done at the property owner's request, usually for the purpose of accessing related financial incentives.

If buildings in this, or adjacent Design Areas, become listed on a state or national register in the future, an Architectural Context and environs review would come into effect.

Historic Preservation staff recommends that you contact the City of Wichita Historic Preservation Office to determine the current status of this area before beginning a design project. 316.268.4421

Design Area 8

If your building of interest is marked with a green or yellow dot, contact the Wichita Historic Preservation Office for information on historic register listing, 316.268.4421.

Eligible to be listed on state or national historic register (individual nomination)

Eligible to be listed on state or national historic register (part of multiple property nomination)

Not eligible for any historic register

Design Area 9

At the time of this publication, no buildings in this area were within a historic environs, therefore no Architectural Context applies.

NOTE: Some buildings here are marked as eligible for listing on a historic register. Listing of such buildings is done at the property owner's request, usually for the purpose of accessing related financial incentives.

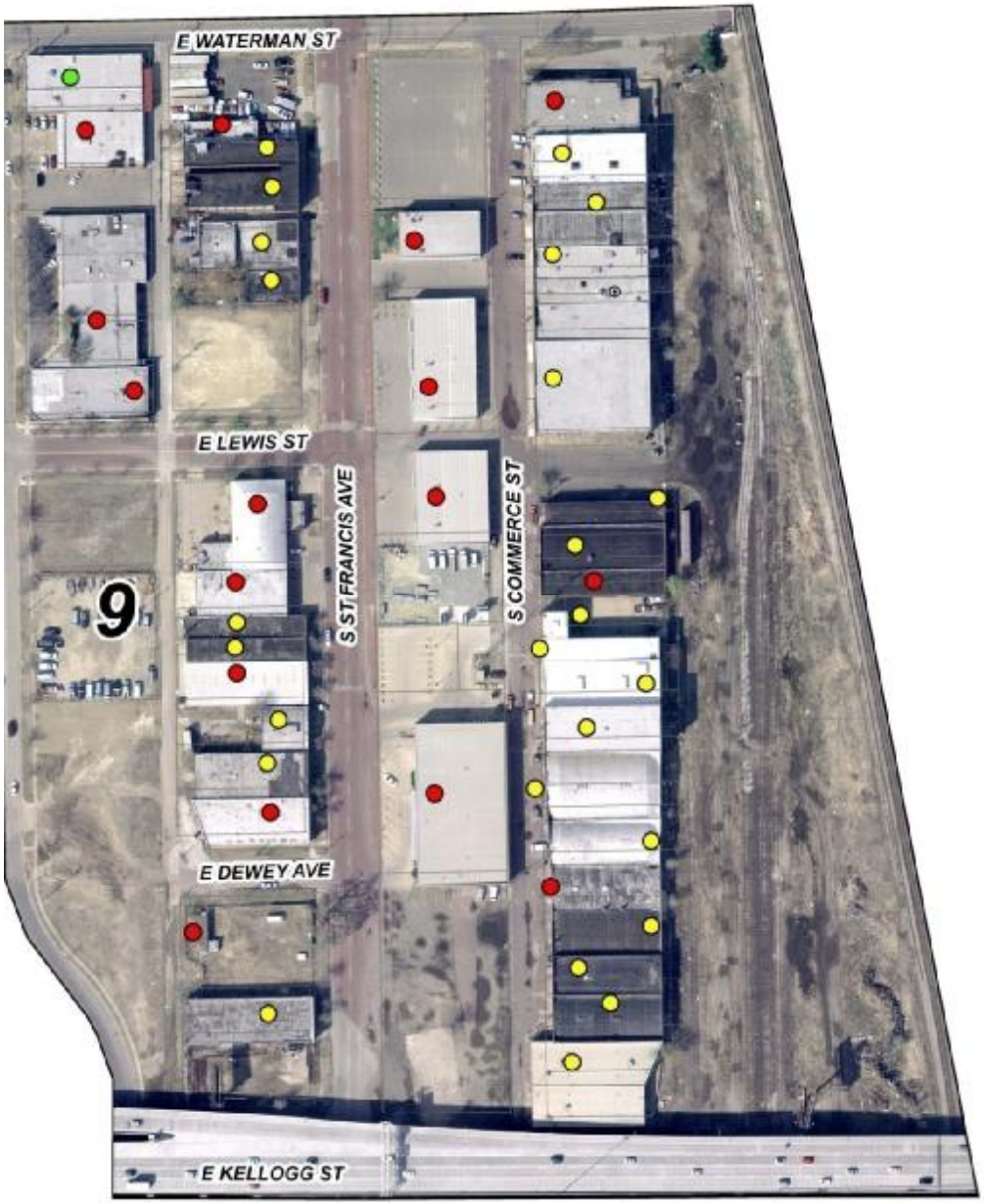
If buildings in this, or adjacent Design Areas, become listed on a state or national register in the future, an Architectural Context and environs review would come into effect.

Historic Preservation staff recommends that you contact the City of Wichita Historic Preservation Office to determine the current status of this area before beginning a design project. 316.268.4421

Design Area 9

If your building of interest is marked with a green or yellow dot, contact the Wichita Historic Preservation Office for information on historic register listing, 316.268.4421

- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register



Design Area 10, Architectural Context

Historic buildings that create Environs:

1. Warehouse and Jobbers Historic District bounded by Douglas, Santa Fe, Washington and Second Streets
2. International Harvester Building, 355 N Rock Island
3. Keep Klean Building, 800 E Third

Refer to the Old Town Overlay District Design Guidelines online at http://www.wichita.gov/CityOffices/Planning, or contact the Wichita Historic Preservation Office in the Metropolitan Area Planning Department at 316.268.4421.

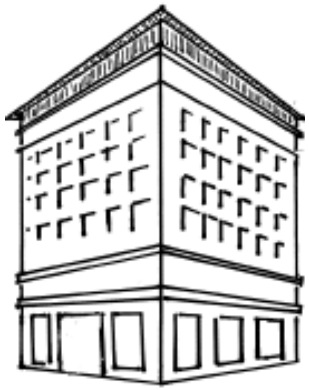
Character-defining features:
Multi-story warehouse
Loading docks and doors
Well-defined cornices
Flat roofs with parapets
Steel casement windows

Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 1 to 6 stories in height.

Massing:
Rectangular, 3 to 5 bays wide by 4 to 6 bays deep, zero lot line.

Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: loading docks and doors; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

Materials:
Historic materials are brick, limestone and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.



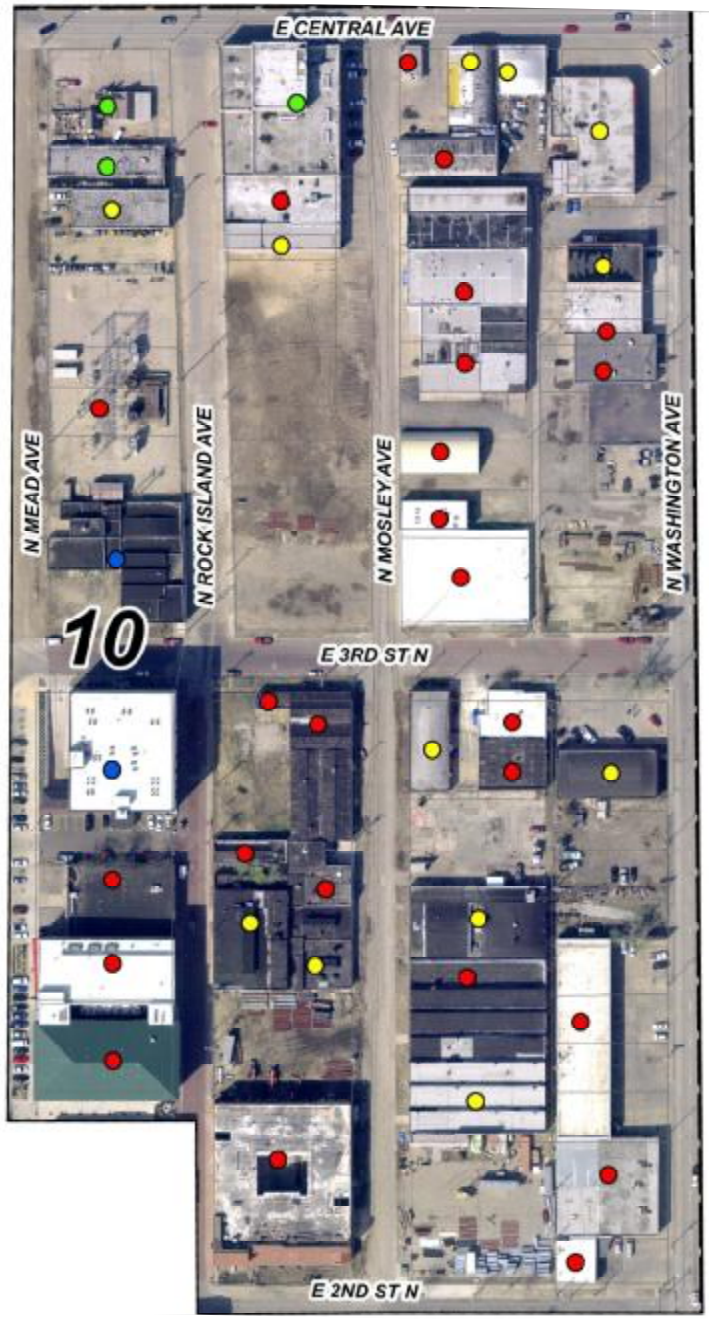
Keep Klean Building

Wholesale Grocery Warehouse

Design Area 10

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register



Design Area 11

At the time of this publication, no buildings in this area were within a historic environs, therefore no Architectural Context applies.

NOTE: Some buildings here are marked as eligible for listing on a historic register. Listing of such buildings is done at the property owner's request, usually for the purpose of accessing related financial incentives.

If buildings in this, or adjacent Design Areas, become listed on a state or national register in the future, an Architectural Context and environs review would come into effect.

Historic Preservation staff recommends that you contact the City of Wichita Historic Preservation Office to determine the current status of this area before beginning a design project. 316.268.4421

Design Area 11

If your building of interest is marked with a green or yellow dot, contact the Wichita Historic Preservation Office for information on historic register listing, 316.268.4421.

- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register

Design Area 12, Architectural Context

Historic buildings that create Environs:

1. Warehouse and Jobbers Historic District bounded by Douglas, Santa Fe, Washington and Second Streets
2. East Douglas Avenue Historic District

Character-defining features:
Multi-story warehouse
Multi-story commercial
Loading docks and doors

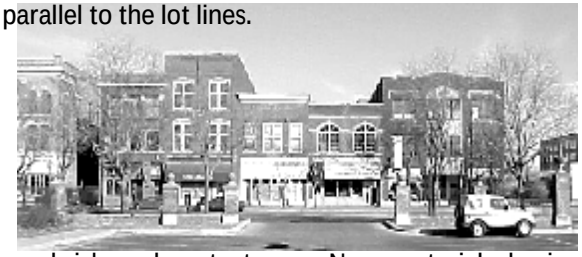
International Harvester Building

Morton-Simmons/Keen Kutter Building

Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 1 to 6 stories in height.

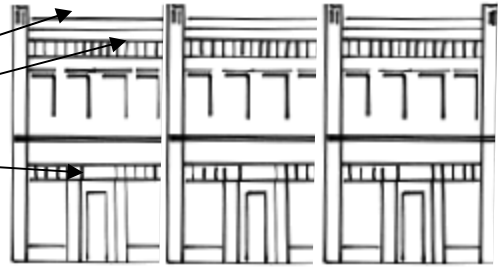
Massing:
Rectangular, 3 to 5 bays wide by 4 to 6 bays deep, zero lot line.

Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements for commercial and warehouse buildings, such as: loading docks and doors; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.



Materials:
Historic materials are brick and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica material that would create a false historic fabric.

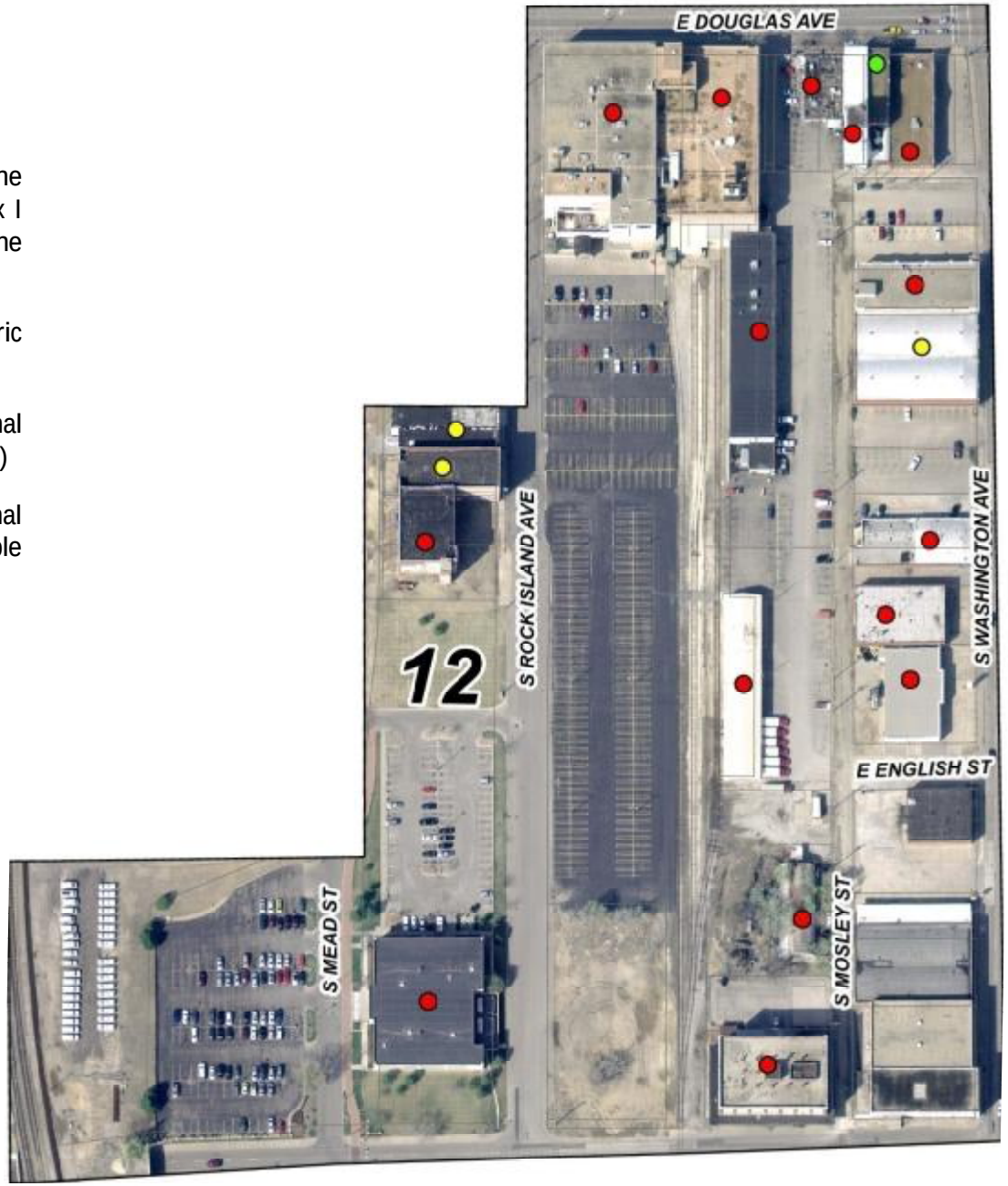
Flat roofs with parapets
Well-defined cornices
Storefronts with transoms



Design Area 12

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register



Design Area 13

At the time of this publication, no buildings in this area were within a historic environs, therefore no Architectural Context applies.

NOTE: If buildings in adjacent Design Areas become listed on a state or national register in the future, an Architectural Context and environs review would come into effect.

Historic Preservation staff recommends that you contact the City of Wichita Historic Preservation Office to determine the current status of this area before beginning a design project. 316.268.4421

Design Area 13

I

Not eligible for any historic register

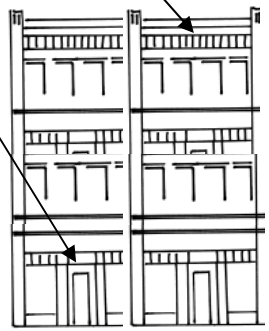
Design Area 14, Architectural Context

Historic buildings that create Environs:

1. Old County Courthouse, 510 N. Main
2. Soldiers and Sailors Monument, 510 N. Main
3. U.S. Post Office and Federal Building, 401 N. Market
4. Occidental Hotel, 300 N. Main
5. Lassen Hotel, 155 N. Market
6. Broadview Hotel, 400 W. Douglas
7. Old City Hall, 204 S Main
8. Carnegie Library, 220 S Main

Character-defining features:
Multi-story
Flat roofs with parapets; stepped parapets
Retail storefronts with transoms
Well-defined cornices

Broadview Hotel

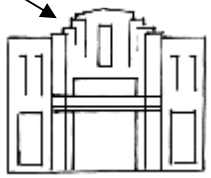


Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 1 to 8 stories in height.

Massing:
Rectangular, 5 to 8 bays wide by 4 to 6 bays deep, zero lot line.

Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

Materials:
Historic materials are brick, limestone, marble, and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric



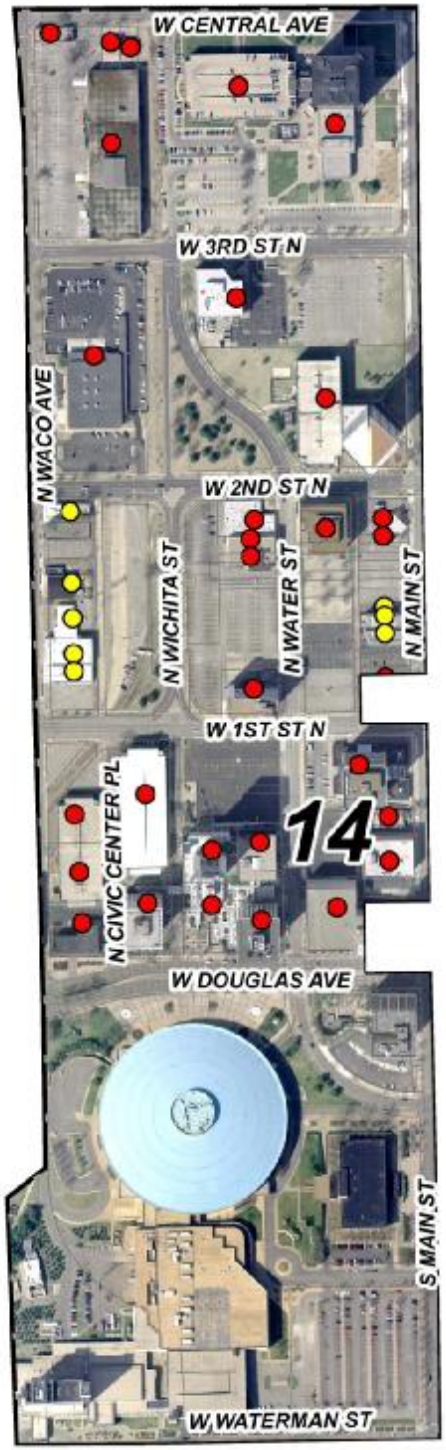
Occidental Hotel

US Federal Building

Design Area 14

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register

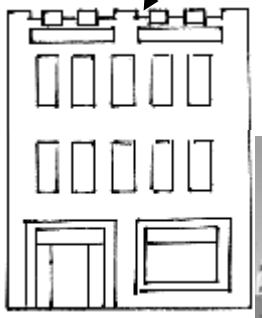


Design Area 15, Architectural Context

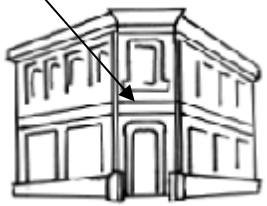
Historic buildings that create Environs:

1. Lassen Hotel, 155 N Market
2. Farmers and Bankers Insurance Company Building, 212 N Market and 200 E. First
3. Orpheum Theater, 200 N. Broadway
4. Kress Building, 224 E Douglas
5. Scottish Rite Temple, 324 E. First
6. East Douglas Avenue Historic District located between Topeka and Mead on East Douglas

Character-defining features:
Multi-story
Flat roofs with parapets
Well-defined cornices & strong vertical bays
Storefronts with transom windows
Canted walls



Kress Building



Orpheum Theater

Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be constructed 3 to 8 stories in height.

Massing:
Rectangular, 4 to 6 bays wide by 4 to 6 bays deep, zero lot line.

Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

Materials:
Historic materials are brick, terra cotta and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

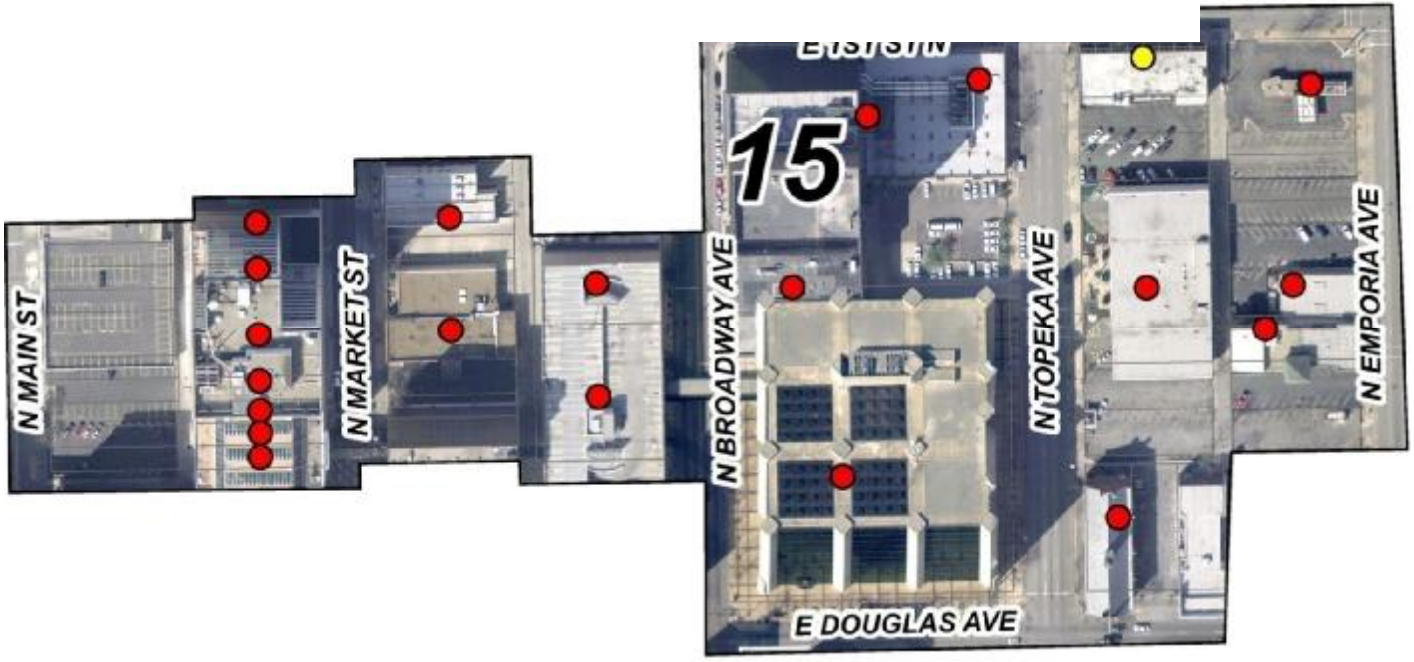
Commercial building design is composed of a distinct cap, middle, and base.

Lassen Hotel

Design Area 15

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination).
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register



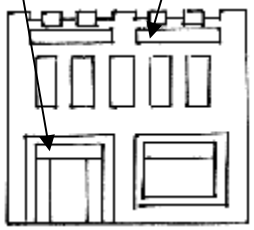
Design Area 16, Architectural Context

Historic buildings that create Environs:

1. Occidental Hotel, 300 N. Main
2. Navarre-Nokomis Apartments, 420-426 N Topeka
3. Virginia Apartments, 401 E Third
4. U.S. Post Office and Federal Building, 401 N Market
5. Wichita High School, 324 N. Emporia
6. East Douglas Avenue Historic District located between Topeka and Mead streets on East Douglas
7. Warehouse and Jobbers Historic District bounded by Douglas, Santa Fe, 2nd and Washington

Character-defining features:
Multi-story residential
Multi-story office; Multi-story commercial
Storefronts with transom windows
Flat roofs with parapets
Well-defined cornices

Virginia Apartment Building



Wichita High School

Scale:

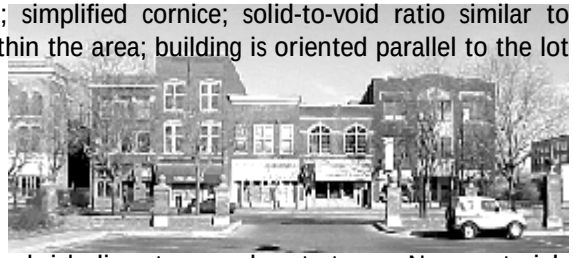
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 2 to 6 stories in height.

Massing:

Rectangular, 5 to 8 bays wide by 4 to 6 bays deep, zero lot line.

Rhythm:

Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

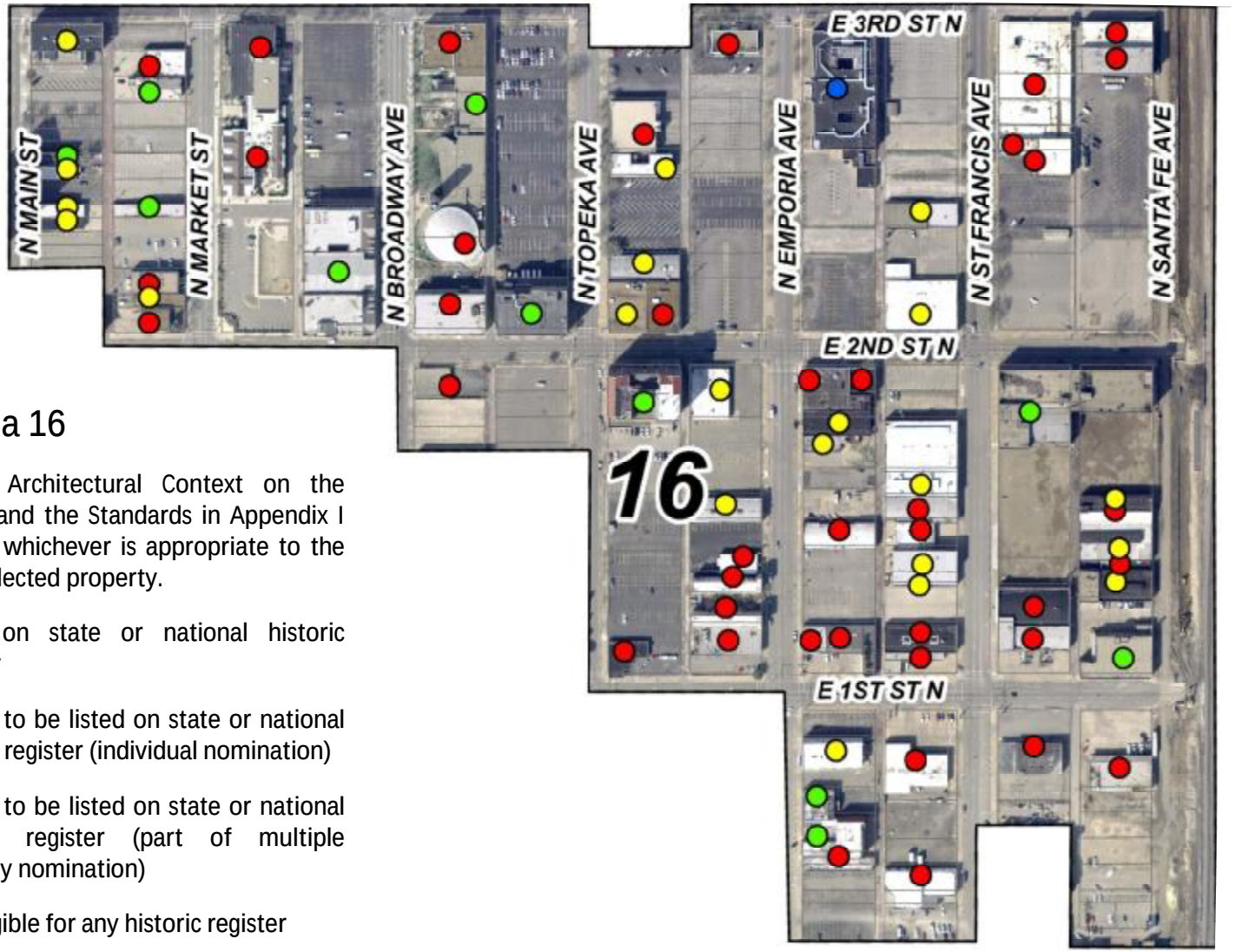


Materials:

Historic materials are brick, limestone and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

US Federal Building

Occidental Hotel



Design Area 16

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

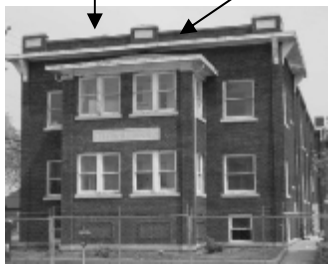
	Listed on state or national historic register
	Eligible to be listed on state or national historic register (individual nomination)
	Eligible to be listed on state or national historic register (part of multiple property nomination)
	Not eligible for any historic register

Design Area 17, Architectural Context

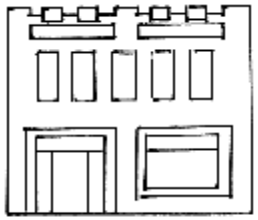
Historic buildings that create Environs:

1. Navarre-Nokomis Apartments, 420-426 N Topeka
2. Virginia Apartments, 401 E Third
3. Wichita High School, 324 N. Emporia

Character-defining features:
Multi-story residential
Multi-story office; Multi-story commercial
Storefronts with transom windows
Flat roofs with parapets
Well-defined cornices



Virginia Apartment Building



Navarre Apartment Building

Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 1 to 3 stories in height.

Massing:
Rectangular, 5 to 8 bays wide by 4 to 6 bays deep, zero lot line.

Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

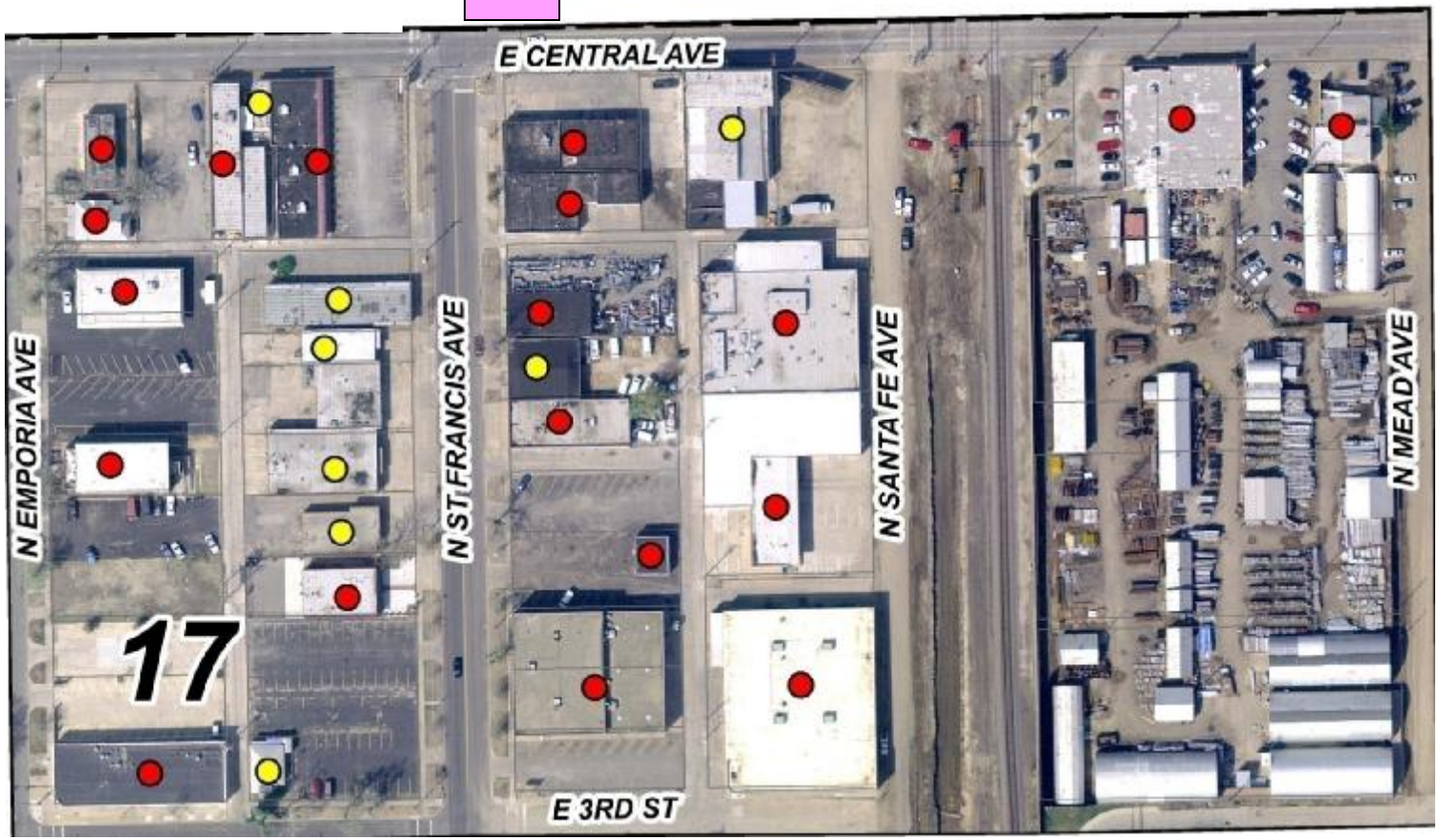
Materials:
Historic materials are brick and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

Wichita High School

Design Area 17

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register



Design Area 18

At the time of this publication, no buildings in this area were within a historic environs, therefore no Architectural Context applies.

NOTE: Some buildings here are marked as eligible for listing on a historic register. Listing of such buildings is done at the property owner's request, usually for the purpose of accessing related financial incentives.

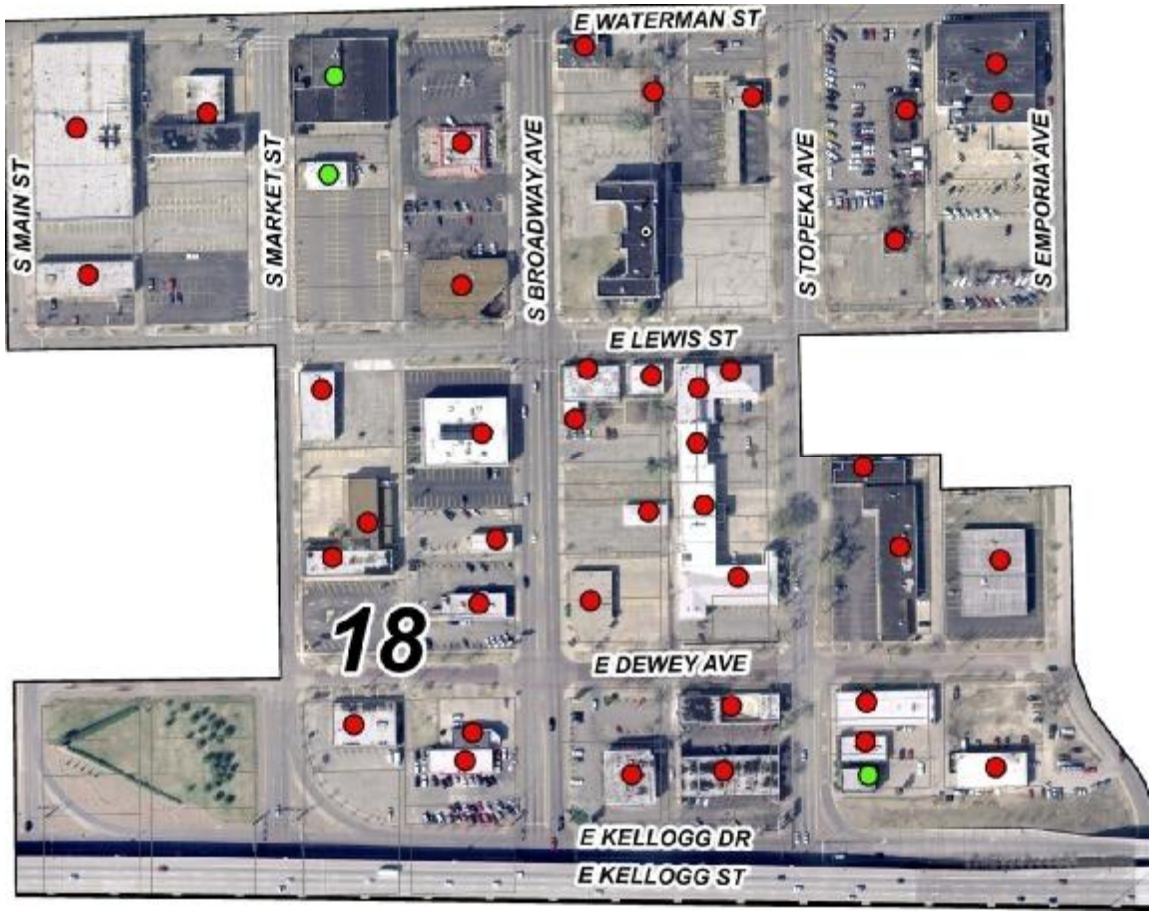
If buildings in this, or adjacent Design Areas, become listed on a state or national register in the future, an Architectural Context and environs review would come into effect.

Historic Preservation staff recommends that you contact the City of Wichita Historic Preservation Office to determine the current status of this area before beginning a design project. 316.268.4421

Design Area 18

If your building of interest is marked with a green or yellow dot, contact the Wichita Historic Preservation Office for information on historic register listing, 316.268.4421.

	Eligible to be listed on state or national historic register (individual nomination)
	Eligible to be listed on state or national historic register (part of multiple property nomination)
	Not eligible for any historic register

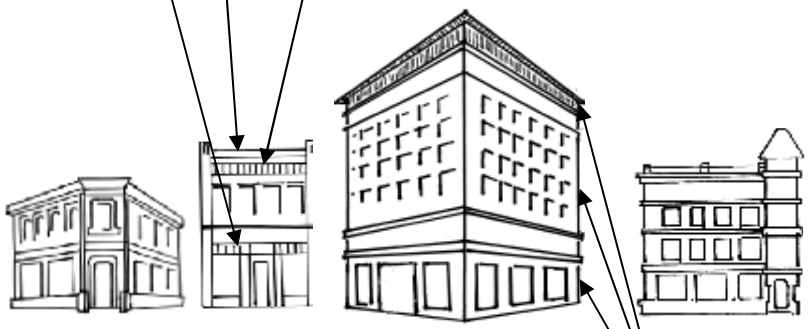


Design Area 19, Architectural Context

Historic buildings that create Environs:

1. Old City Hall, 204 S Main
2. Carnegie Library, 220 S Main
3. Kauffman Building, 212 S Market
4. Ellis-Singleton (Petroleum) Building, 221 S Broadway
5. Eagles Lodge #132, 200 S. Emporia

Character-defining features:
Multi-story
Storefronts with transom windows
Flat roofs with parapets
Well-defined cornices



Eagles Lodge

Commercial building design is composed of a distinct cap, middle, and base.

Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 3 to 6 stories in height.

Massing:
Rectangular, 5 to 8 bays wide by 4 to 6 bays deep, zero lot line.

Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

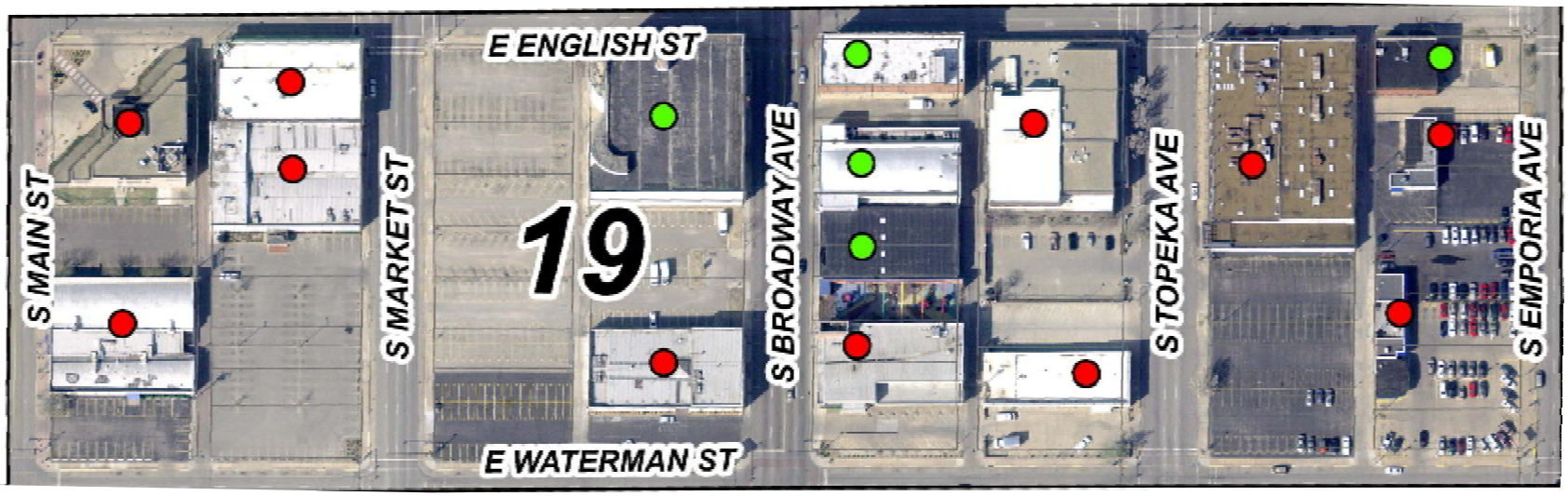
Materials:
Historic materials are brick, limestone, terra cotta and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

Old City Hall

Design Area 19

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register



Design Area 20, Architectural Context

Historic buildings that create Environs:

1. Brown Building, 105 S. Broadway
2. Kauffman Building, 212 S Market
3. Ellis-Singleton (Petroleum) Building, 221 S Broadway
4. East Douglas Avenue Historic District located between Topeka and Mead on E. Douglas
5. Eagles Lodge #132, 200 S. Emporia

Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 2 to 6 stories in height.

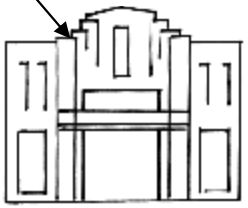
Massing:
Rectangular, 4 to 7 bays wide by 4 to 6 bays deep, zero lot line.

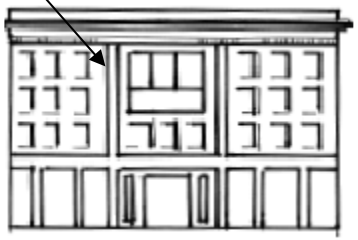
Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings within the area; building is oriented parallel to the lot lines.

Materials:
Historic materials are brick, limestone, terra cotta, and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

Character-defining features:
Multi-story
Storefronts with transom windows
Flat roofs with parapets; stepped parapets
Well-defined cornices

47 Carey House (Eaton Hotel)





Commercial building design is composed of a distinct cap, middle, and base.

Brown Building

Design Area 20

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register

Design Area 21, Architectural Context

Historic buildings that create Environs:

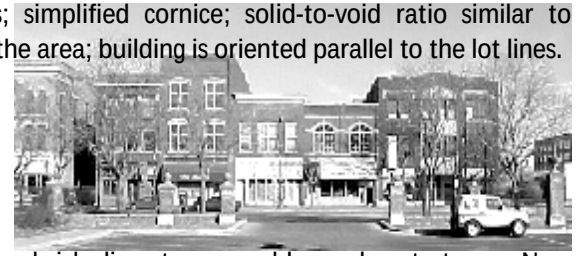
1. Old County Courthouse, 510 N Main
2. Soldiers and Sailors Monument, 510 N Main
3. Twentieth Century Club, 536 N Broadway
4. Navarre-Nokomis Apartments, 420-426 N Topeka
5. Virginia Apartments, 401 E Third
6. U.S. Post Office and Federal Building, 401 N Market

Character-defining features:
Multi-story office; Multi-story residential
Flat roofs with parapets; stepped parapets
Well-defined cornices
Corner towers

Scale:
Floor-to-floor height should appear similar to the surrounding historic buildings and horizontal alignment of façade elements should be maintained. New structures should be 2 to 4 stories in height.

Massing:
Rectangular, 5 to 8 bays wide by 4 to 6 bays deep, zero lot line.

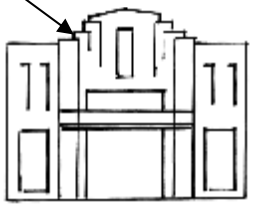
Rhythm:
Create visual compatibility with historic structures through simplified interpretations of traditional building elements such as: vertical bays; articulated pilasters; simplified cornice; solid-to-void ratio similar to historic buildings in the area; building is oriented parallel to the lot lines.



Materials:
Historic materials are brick, limestone, marble, and cast stone. New materials having demonstrated durability that replicate textures of the historic materials are appropriate. Do not use replica materials that would create a false historic fabric.

20th Century Club

Virginia Apartments

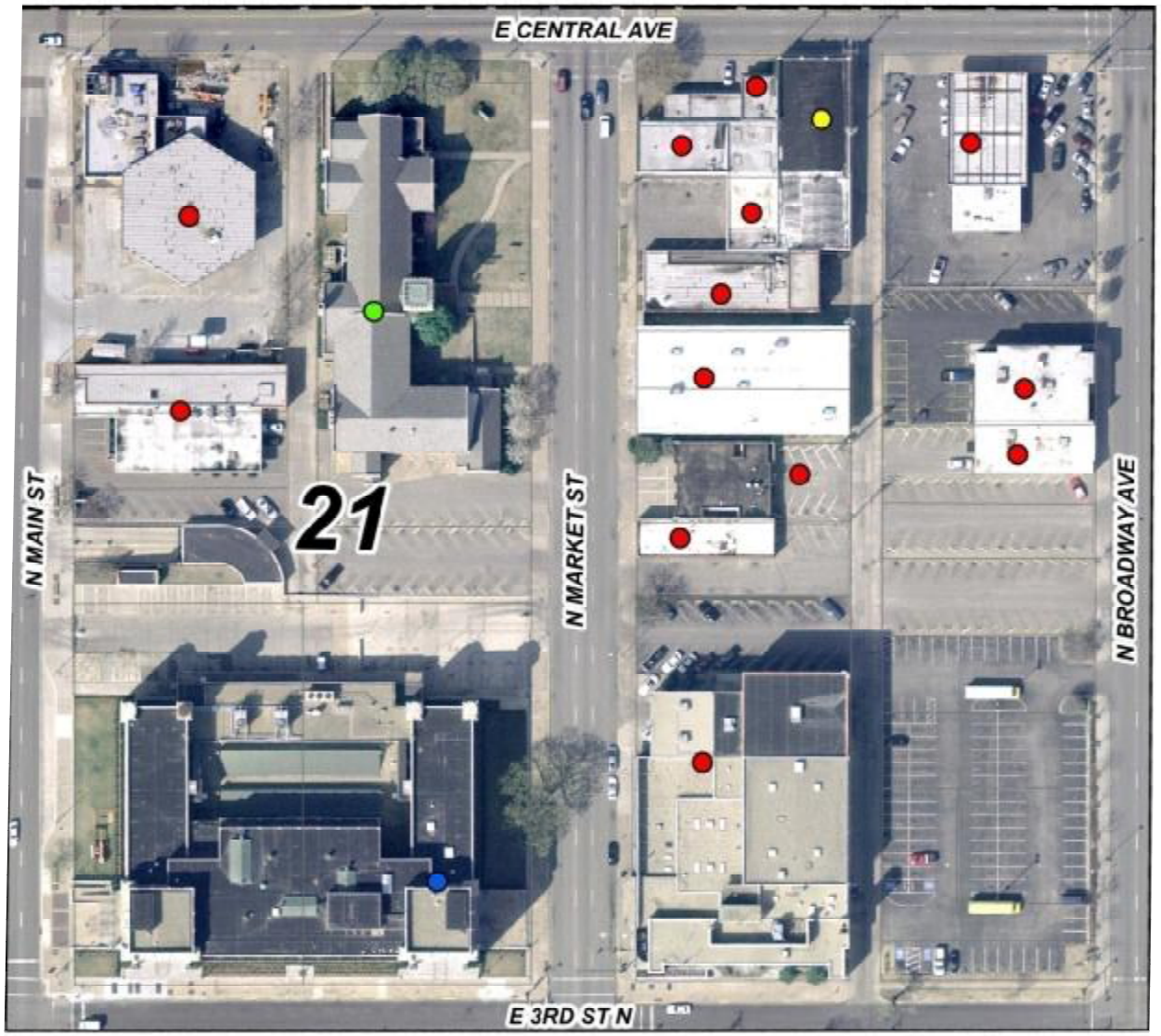


US Federal Building

Design Area 21

Refer to the Architectural Context on the opposite page and the Standards in Appendix I or Appendix II, whichever is appropriate to the color of your selected property.

- Listed on state or national historic register
- Eligible to be listed on state or national historic register (individual nomination)
- Eligible to be listed on state or national historic register (part of multiple property nomination)
- Not eligible for any historic register



Appendix I:

I	Development of structures that are listed on the State or National Historic Register

The Wichita Historic Preservation Board follows the Secretary of the Interior's Standards for Rehabilitation (page 52) and Chapter 24.04 (Sign Regulation) of the Wichita Code of Ordinances (page 54) to review projects on state and national register properties.

The Board's mission is to determine whether a development plan "encroaches upon, damages, or destroys" the *historic* property, pursuant to KSA 75-2724 as amended.

TIP:

Certain financial incentives may apply for rehabilitation of historic properties. For information, contact the Wichita Historic Preservation Office. 316.268.4421

Technical information and guidance on the repair of historic buildings is available from the National Park Service at http:// www.nps.gov/ history/hps/tps/

Secretary of the Interior's Standards for Rehabilitation

"Rehabilitation" is defined as "the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values." The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

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Sign Guidelines for Structures Listed on the State or National Register

Review is required for all signs at each site. Application to the Office of Central Inspection for a sign permit will trigger review by the Historic Preservation Office. Applications for Historic Preservation review shall include drawings/graphics/photos indicating the sign legend, location, dimensions, construction, and structural design as required by the City of Wichita Sign Code.

Types

Flush-mounted wall signs shall be located within existing decorative moldings, transom panels, etc. on the structure to create "sign panels." If no such architectural features exist, new signs should not obscure any other significant façade features. Size shall not exceed approximately 20% of the total wall area.

Pole-mounted signs shall have an effective area not greater than thirty-two square feet.

Projecting signs shall be located near the business entrance in accordance with the Sign Code. Note that other approvals may be required to allow a sign to overhang the public right-of-way.

Window signs may be painted or applied to the window surface; size shall not exceed approximately 25% of the total window area.

Directory signs for several tenants in a single-entrance building shall be aligned as a group or located within a single panel. Buildings with separate entrances for various tenants may have single signs or multi-tenant sign panels at their relevant entrances.

Materials

Materials shall be compatible with that of the building façade. Paint or vinyl graphics applied to wood, metal, or other durable materials are appropriate. Individually-shaped, non-illuminated letters of any material are acceptable. Preserve historic signs including painted signs ("ghost signs") where they exist. New cabinet signs with plastic faces are prohibited. Existing plastic-faced cabinet signs may be retained; change of graphics is allowed.

Lighting

The light for a sign shall originate from an indirect, external source. Neon lighting is allowed. Translucent plastic cabinet signs with internal illumination are prohibited. An exception to the internal illumination policy is made for metal faces with push-through or backup plastic lettering. Exceptions are also made for lighted channel letters and halo-lighted letters.

Electronic Message Signs

No electronic message signs shall be permitted, except on or for theater buildings. Electronic message signs for theaters shall be considered on a case-by-case basis by the Historic Preservation Board.

Awnings and Canopies

Original awnings and canopies should be retained where feasible. When replacement is necessary, or when adding canopies or awnings where none previously existed, use styles similar to those used in the historic context of Wichita's downtown area: Examples: fixed metal canopies; fabric awnings mounted within the window frame.

Appendix II:

	Development of structures that are eligible to be listed on the State or National Historic Register (individual nomination)
	Development of structures that are eligible to be listed on the State or National Historic Register (in multiple property nomination)
	Development of structures that are not eligible for any historic register

The Wichita Historic Preservation Board reviews projects for buildings in the green, yellow, and red categories to determine whether they "encroach upon, damage, or destroy" the *environs* of a listed historic property.

The tool for this review is the Kansas Standards and Guidelines for Evaluating the Effect of Projects on Environs (page 56) and Chapter 24.04 (Sign Regulation) of the Wichita Code of Ordinances (page 59)

Buildings eligible for listing on a register are not required, but may follow the Secretary of the Interior's Standards for Rehabilitation (National Park Service) and are encouraged to do so for best success in the review process.

TIP:

The decision to nominate an eligible structure to a historic register is at the discretion of the property owner. The first assessment of eligibility requires that (a) the building be at least 50 years old, and (b) the building retains its original architectural features. Technical assistance and certain financial incentives may apply if eligible buildings achieve a register listing. Contact the Wichita Historic Preservation Office. 316.268.4421

The Kansas Standards and Guidelines for Evaluating the Effect of Projects on Environs

Kansas Standards:

1. The character of a historic property's environs should be retained and preserved. The removal or alteration of distinctive buildings, structures, landscape features, spatial relationships, etc. that characterize the environs should be avoided.

2. Environs should be used as it has been historically or allow the inclusion of new uses that require minimal change to the environs' distinctive materials, features, and spatial relationships.

3. The environs of each property will be recognized as a physical record of its time, place, and use. Changes to the environs that have acquired historic significance in their own right should be retained and preserved.

4. Demolition of character-defining buildings, structures, landscape features, etc. in a historic property's environs should be avoided. When the severity of deterioration requires removal within the environs compatible reconstruction shall occur.

5. Archaeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.

6. New additions, exterior alterations, infill construction, or related new construction should not destroy character-defining features or spatial relationships that characterize the environs of a property. The new work shall be compatible with the historic materials, character-defining features, size, scale and proportion, and massing of the environs.

7. Moved historic properties that have not retained or acquired historic significance in their new environs shall be considered as artifacts without environs.

Kansas Guidelines:

In an environs review the objective is to determine the impact of a proposed project on a listed property and its environs. While the issue of materials and design may be discussed in relationship to compatibility with the environs and impact on the listed property, personal opinions regarding the aesthetics of a proposed project are not germane.

Identify, Retain, and Preserve

Like the treatments for historic properties, guidance for environs review begins with the identification of the character-defining features of the environs, its historic and current character, and what must be retained in order to preserve that character. The character of a listed property's environs may be defined by form, exterior materials, such as masonry, wood, or metal; exterior features and elements, such as roofs, porches, windows, or construction details; as well as size, scale and proportion, massing, spatial relationships, etc.

Protect, Maintain, Repair, and/or Replacement

After identifying those materials and features that are important, the effect of the proposed work on the environs of a listed property must be determined. Work that generally involves the least degree of intervention is recommended. Protecting historic features and materials through cyclical maintenance and repair lessens the need for replacement which is always the less preferable alternative and usually more costly. Substitute materials can be installed, when the degree of deterioration requires replacement, provided the substitution is compatible with the environs.

Alterations / Additions for the New Use

Interior alterations of properties within the environs of a listed property have little, if any, impact on the listed property. Exterior alterations of properties in the environs of a listed property are generally needed to assure continued use, but it is important that such alterations do not radically change, obscure, or destroy character-defining spaces, materials, features, and/or relationships. Alterations may include demolition of structure(s) and/or features, providing additional parking, modification of entries, installation of signs, or cyclical maintenance involving repairs with non-compatible materials.

The construction of additions is sometimes essential for the continued use of a property, but the addition should only be reviewed for its impact on the listed property and the environs. The line of sight between a listed property and a proposed project is often directly related to the impact of a project on the listed property.

Buildings eligible for listing on a register are not required, but may follow the Secretary of the Interior's Standards for Rehabilitation (National Park Service) and are encouraged to do so for best success in the review process.

TIP:

The decision to nominate an eligible structure to a historic register is at the discretion of the property owner. The first assessment of eligibility requires that (a) the building be 50 years old, or older and (b) the building retains its original architectural style.

Technical assistance and certain financial incentives may apply if eligible buildings achieve a register listing. Contact the Wichita Historic Preservation Office. 316.268.4421

If a property owner does not wish to pursue historic register designation, the following standards apply:

Application for Demolition
During review, if the Historic Preservation Board votes that a demolition will "encroach upon, damage, or destroy" an environs, the project cannot proceed unless the Wichita City Council determines that no feasible or prudent alternative to the project exists and provisions have been made to minimize damage to the environs.

Façade Design
Design for renovation of multi-story office and mercantile buildings constructed between 1880 and 1930 shall maintain the traditional form of base/shaft/cap that characterizes the Chicago School of American commercial architecture.

Design for renovation of multi-story commercial buildings constructed between 1930 and 1960 shall respect the existing (original) vertical and horizontal patterns of ornament, fenestration, and materials.

Building Materials
Street level facades shall be constructed of masonry, steel, wood, or other durable materials that promote the context of the specific design area.

Sign Guidelines for Structures Eligible/Not Eligible to be Listed on the State or National Register

Environs Review is required for all signs at each site. Application to the Office of Central Inspection for a sign permit will trigger the sign review by the Historic Preservation Office. Applications for Historic Preservation review shall include drawings/graphics/photos indicating the sign legend, location, dimensions, construction, and structural design as required by the Sign Code of the City of Wichita.

Types

Flush-mounted wall signs shall be located within existing decorative moldings, transom panels, etc on the structure to create "sign panels." If no such architectural features exist, new signs should not obscure any other significant façade features. Size shall not exceed approximately 20% of the total wall area.

Pole-mounted signs shall have an effective area not greater than thirty-two square feet.

Projecting signs shall be located near the business entrance in accordance with the Sign Code. Note that other approvals may be required to allow a sign to overhang the public right-of-way.

Window signs may be painted or applied to the window surface; size shall not exceed approximately 25% of the total window area.

Directory signs for several tenants in a single-entrance building shall be aligned as a group or located within a single panel. Buildings with separate entrances for various tenants may have single signs or multi-tenant sign panels at their relevant entrances.

Materials

Materials shall be compatible with that of the building façade. Paint or vinyl graphics applied to wood, metal, or other durable materials are appropriate. Individually-shaped, non-illuminated letters of any material are acceptable. Preserve historic signs including painted signs ("ghost signs") where they exist. New cabinet signs with plastic faces are prohibited. Existing plastic-faced cabinet signs may be retained; change of graphics is allowed.

Lighting

The light for a sign shall originate from an indirect, external source. Neon lighting is allowed. Translucent plastic cabinet signs with internal illumination are prohibited. An exception to the internal illumination policy is made for metal faces with push-through or backup plastic lettering. Exceptions are also made for lighted channel letters and halo-lighted letters.

Electronic message signs

Not more than one electronic message sign shall be permitted on a zoning lot. Animated, flashing, moving, or scrolling electronic message signs are not permitted. An exception is made for scrolling signs that display only time and temperature.

Static electronic images or messages shall not change more than once every three seconds.

All electronic message signs shall contain dimming controls to ensure the sign is appropriately dimmed at night. The maximum nighttime brightness and/or light intensity shall not exceed 3,000 nits (or equivalent).

Electronic message building signs shall be limited in total area to 10% of the area of the wall elevation to which the sign is attached, and no electronic message building sign shall exceed 200 square feet in area. Electronic message ground signs shall be limited in area to a maximum size equal to or less than 50% of the linear street frontage of the zoning lot on which the electronic message ground sign is located, with a maximum electronic message sign area of two hundred square feet.

All types of electronic message signs shall be mounted within an architectural framework that is compatible in materials and features with its associated building. Unframed electronic panels are prohibited.

Awnings and Canopies

Original awnings and canopies should be retained where feasible. When replacement is necessary, or when adding canopies or awnings where none previously existed, use styles similar to those used in the historic context of Wichita's downtown area: Examples: fixed metal canopies; fabric awnings mounted within the window frame.

Development works for historic buildings

Second Reading Ordinances for May 4, 2010 (first read on April 27, 2010)

<u>Abatement of Dangerous and Unsafe Structures.</u> (District I, II, III, and IV)

ORDINANCE NO. 48-730

An ordinance making a special assessment to pay for the removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance (Building Emergency Board-Up) under the provision of Sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas.

ORDINANCE NO. 48-731

An ordinance making a special assessment to pay for the removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance (Building Condemnation-Demolition) under the provision of sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas.