REVISION
(ITEM XII-6A PULLED)

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. June 16, 2009

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 June 9, 2009

AWARDS AND PROCLAMATIONS

-- Proclamation:

World Elder Abuse Awareness Day

-- Service Award:

Michael R. Steele

-- Awards:

Love Wichita (Certificate of Appreciation)
Kansas Government Engineer of the Year Award

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. Brad Schoenhofer-Alternate plan for Energy-Efficient Stimulus Money.

COUNCIL BUSINESS

II. UNFINISHED COUNCIL BUSINESS

1. Repair or Removal of Dangerous and Unsafe Structures, 1817 North Spruce. (District I)

   RECOMMENDED ACTION: Take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: 1)the structure is maintained secure as of June 16, 2009 and is kept secured during renovation; and 2)the premise is kept clean and free of debris as of June 16, 2009, and is so maintained during renovation.

III. NEW COUNCIL BUSINESS

1. Public Hearing for Issuance of Educational Facilities Revenue Bonds, Friends University. (District IV)

   RECOMMENDED ACTION: Close the public hearing, adopt the Resolution approving the issuance of KICFA bonds for Friends University; and authorize necessary signatures.

2. Public Hearing for Renovation of a Building Facade at 579 West Douglas. (District VI)

   RECOMMENDED ACTION: Close the public hearing; find and declare upon request of the Mayor that a public emergency exists requiring the final passage of the ordinance on the date of its introduction; and adopt the maximum assessment ordinance for the 579 W. Douglas commercial building facade improvements and authorize the publication of the ordinance.

3. Water and Sewer Utility Revenue Bonds, Series 2009A and 2009B.

   RECOMMENDED ACTION: Approve the Bond Purchase Agreement; adopt the Bond Ordinance and Resolution; authorize the Mayor to execute the Request for Declaration of Emergency; and authorize preparation and distribution of the final Official Statement upon completion.

4. Water and Sewer Monthly Base Charge Increases.

   RECOMMENDED ACTION: Approve the Ordinances; place the Ordinances of first reading; and authorize the necessary signatures.

5. Proposed amendments to Chapters 3.11, 3.28, 4.04, 4.12, and 4.16 of the City Code regarding Entertainment Establishments, Drinking Establishments and Community Events.

   RECOMMENDED ACTION: Approve ordinance amendments dealing with establishments that sell cereal malt beverage or alcoholic liquor; Adopt ordinances to regulate Entertainment Establishments; Approve amendments relating to the sale of alcoholic beverages at Community Events; Direct staff to initiate process to implement required changes to the Sedgwick County Unified Zoning Code in order to achieve consistency between the City Code and Zoning Code.

6. Approve Resolution Establishing Licensing Fee Structure for Community Events Pursuant to Chapter 3.11 of the Code of the City of Wichita.

   RECOMMENDED ACTION: Approve the Resolution.

7. Proposed Amendments to Plumbing Code (Title 21. 04) Relating to ProPress Copper Fittings for Natural Gas and LP Gas Piping.

   RECOMMENDED ACTION: Approve first reading of the ordinance adopting amendments to Title 21.04 of the Code of the City of Wichita that authorize use of ProPress G™ copper fittings for natural gas and LP gas piping.

8. Supplemental Agreement No. 10 for additional engineering services on East Kellogg. (District II)

   RECOMMENDED ACTION: Approve Supplemental Agreement No. 10 and authorize the necessary signatures.

9. Kansas Water Pollution Control Revolving Fund-Stormwater Projects. (District VI)

   RECOMMENDED ACTION: Approve the loan appropriation when received; permit Staff to complete the loan application packet; and authorize the Manager to sign necessary signatures for the additional application documents, as well as authorize appropriate signatures for award documents.

10. Energy Efficiency and Conservation Block Grant (EECBG).

    RECOMMENDED ACTION: Approve the application and assurances; authorize the Mayor to sign the necessary signatures; and submit supporting documents as required.

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

None

V. CONSENT PLANNING AGENDA

1. *DER 2009-02 -- Request for a Street Name Change from Wild Rose Cir. to Beach Club Cir., located on the south side of 37th Street North and west of Ridge Road. (District V)

   RECOMMENDED ACTION: Place the ordinance for the name change on first reading.

HOUSING AGENDA

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

Allan Murdock, 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 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

1. *Airline Use Agreements.

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

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

1. Approval of travel expenditures for Council Member Lavonta Williams to attend NLC NBC-LEO Annual Summer Conference Meeting,, July 22-27, 2009, Hartford, CT.

RECOMMENDED ACTION: Approve the expenditures.

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUGH 16A)

1. Report of Board of Bids and Contracts dated June 15, 2009.
   a. Report of Board of Bids and Contracts.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2009	(Consumption off Premises)
Stephen Diehl	Dillon Stores #272	10304 West 13th Street North
Petro America	`Kulwinder Jaswal	2700 N. Amidon

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

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

RECOMMENDED ACTION: Receive and file.

4. Consideration of Street Closures/Uses.
   a. Automobilia's Moonlight Car Show and Street Party, July 11, 2009 to July 12, 2009. (District VI)
   b. 7th Annual Community Day, July 25, 2009. (District I)

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

5. Change Order:
   a. Midtown Bike Path. (District VI)

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

6. Property Acquisitions:
   a. ***Partial Acquisition of 4830 South Broadway for the I-135/47th Street South Interchange Project. (District III)*** **(PULLED PER PROPERTY MANAGEMENT)**
   b. Partial Acquisition of Agricultural Land in the East Half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian for Integrated Local Water Supply Plan. (County)
   c. Partial Acquisition of Agricultural Land in the South Half of the Southeast Quarter of Section 7, Township 25 South, Range 1 West of the 6th Principal Meridian for Integrated Local Water Supply Plan. (County)
   d. Partial Acquisition of Agricultural Land at 11801 North 119th Street West for Integrated Local Water Supply Plan. (County)
   e. Partial Acquisition of Land at 13301 West 125th Street North for Integrated Local Water Supply Plan. (County)

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

7. Minutes of Advisory Boards/Commissions

Wichita Board of Appeals of Refrigeration, Air-Conditioning, Warm Air Heating and Boiler, April 23, 2009

RECOMMENDED ACTION: Receive and file.

8. Settlement of Lawsuit.

RECOMMENDED ACTION: Authorize payment of $10,000.00 as a full settlement of all possible claims which are the subject of this lawsuit.

9. Repair or Removal of Dangerous and Unsafe Structures. (District I)

Property Address	Council District
a. 2031 East 16th North	I
b. 1648 North Piatt	I
c. 647 South Sylvan	I

RECOMMENDED ACTION: Adopt the resolutions to schedule a public hearing before the City Council on August 4, 2009 at 9:30 a.m. or as soon as possible thereafter, to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes and local ordinances.

10. Notice of Intent to Use Debt Financing - Administration Building Rehabilitation.

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

11. Dedication of a portion of 1140 East 47th Street South for the I-135/47th Street South Interchange Project. (District III)

RECOMMENDED ACTION: Approve the Budget; approve the Contract for Conveyance of Real Estate; and authorize the necessary signatures.

12. Appeal from an Order of the Chief of Police to suspend Local Liquor License of El Farol Rojo Club, 1030 South Broadway. (District I)

RECOMMENDED ACTION: Rescind the order suspending the drinking establishment license for El Farol Rojo Club.

13. Contract Metropolitan Transportation Plan 2035.

RECOMMENDED ACTION: Approve the selection of Wilbur Smith Associates to complete the MTP 2035 and authorize the necessary signatures to execute the contract as the fiscal agent for the WAMPO.

14. City Buildings and Facilities - Americans with Disabilities Act Compliance.

RECOMMENDED ACTION: Adopt the amending resolution and authorize the necessary signatures.

15. Acquisition by Eminent Domain of Tracts required for the Greenwich: Harry to Kellogg Improvement Project. (District II)

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

16. Second Reading Ordinances: (First Read June 9, 2009)
    a. List of Second Reading Ordinances. (See Attached)

    RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Agenda Item No.

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: Repair or Removal of Dangerous & Unsafe Structures
1817 N. Spruce (District I)

INITIATED BY: Office of Central Inspection

AGENDA: Unfinished Business

Recommendations: Take appropriate action based on testimony received during the review hearing.

Background: In the fall of 2008, the south exterior wall of this house collapsed, severely damaging the exterior gas meter and gas supply lines. City inspections verified the house was unsafe for occupancy due to the dangerous condition of the gas supply and gas lines, and many significant structural problems. The Department of Housing and Community Services subsequently worked with Mr. Johnson and his daughter to relocate Mr. Johnson into safe, code compliant housing.

During the Board of Code Standards and Appeals (BCSA) hearing on February 2, 2009, Mr. Johnson indicated he did not have the funds to repair the house, and hoped to sell the property. Mr. Johnson also indicated he might be willing to sell the property to the City for construction of a new house for someone else. After hearing testimony, the BCSA voted to recommend condemnation, demolition and removal of the house. Immediately after the February 2, 2009 BCSA hearing, a report was submitted to the Council with respect to the dangerous and unsafe conditions on the property at 1817 N. Spruce. On February 17, 2009, the Council adopted a resolution providing for a public hearing to be held on the condemnation action at 9:30 a.m., or as soon thereafter, on April 7, 2009.

On April 7, 2009, the owner of this property, Mr. Johnson, attended the Council meeting but became ill. The City Council voted to defer action on this property until early May.

At the May 5, 2009 Council meeting, this property was represented by the owner, Mr. Johnson. Mr. Johnson stated he would like to repair the house so he could move back in. Mr. Johnson requested additional time to further review home repair programs with the City. In response to a question from Mayor Brewer, Mary K. Vaughn, Director of the Department of Housing and Community Services (DHCS), stated that DHCS staff had spoken with Mr. Johnson, and told him DHCS was willing to inspect the property again, with a structural engineer, to determine the cost and financial feasibility of rehabilitating the house to minimum DHCS program standards. Ms. Vaughn indicated preliminary DHCS property rehabilitation cost estimates significantly exceeded the maximum loan and/or grant caps of current DHCS home repair programs; therefore, in addition to DHCS funding, Mr. Johnson would have to obtain other rehabilitation financing. City Council Member Lavonta Williams made a motion to defer action on the property for thirty days, giving the owner time to work with the DHCS in regard to rehabilitation financing options, and to develop a possible plan of action with Neighborhood Improvement Services. The motion carried.

Analysis: DHCS staff recently inspected the house, in conjunction with a structural engineer, and developed a rehabilitation cost estimate. Because federal funding would be involved, the estimate also includes costs for assessment and remediation of asbestos, lead and mold. The total estimated cost to rehabilitate the house to required minimum program standards, and to assess and remediate asbestos, lead and mold, is about $106,000. DHCS can only provide $35,000 for rehabilitation of the house under its current programs, meaning the property owner would have to pay for or finance the remaining

rehabilitation costs. Neighborhood Improvement Services has recommended that the structure be razed due to the extremely high estimated costs for rehabilitation and the current market value of homes in the immediate vicinity. A summary report and a cost estimate provided by DHCS, Neighborhood Improvement Services, are attached.

OCI Staff inspected the property on May 26, 2009; no repairs had been made, but the property was secure. There was bulky waste, miscellaneous debris and bricks on south side of the house, and an apparently inoperable vehicle in the rear yard.

The property taxes are current and there are no special tax assessments pending.

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: The owner has been informed of the date and time of the hearing.

Recommendations/Actions: It is recommended that the City Council take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) the structure is maintained secure as of June 16, 2009 and is kept secured during renovation; and (2) the premise is kept clean and free of debris as of June 16, 2009, and is 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 resolution published once in the official city paper and advise the owners of these findings.

Attachments: Summary of DHCS findings; DHCS cost estimate.

Visual Assessment ONLY

OWNER: **Andrew Johnson** **DATE: May 7, 2009**
Address: **1817 N. Spruce** **PHONE #: 990-8299**

Rough estimate of work and costs

Elevate and brace structure to remove basement walls & reset structure after new basement walls are installed	$ 5,000.00
Excavate and remove existing basement walls and footings and disposal of the material	$ 3,800.00
Pour new footings, 4 basement walls, seal coat exterior of walls, and backfill (interior of basement will not be finished) – new basement windows are included	$17,885.00
Final grade of yard	$ 800.00
Debris removal from the structure (trash, furniture, dumpster cost, labor)	$ 800.00
Remove existing roof shingles, replace decking & re-roof	$ 7,500.00
Remove brick veneer and install OSB, house wrap, vinyl siding, wrap fascia, soffits and all exterior trim with coil stock	$ 9,500.00
Gutters , downspouts and splash blocks	$ 650.00
New exterior doors/storm doors (2 each)	$ 1,500.00
Remove and replace concrete drive, porches, patio	$ 5,500.00
New vinyl windows (9) including wrapping window trim with coil stock	$ 3,600.00
Interior doors (7) and new interior trim (the trim will have to be abated due to lead requirements)	$ 1,600.00
Remove and replace attic insulation	$ 1,200.00
Kitchen cabinets and counter top	$ 2,000.00
Carpet living room, bedroom #1, bedroom #2, and hallway, install underlayment and vinyl sheet flooring kitchen, bathroom, and stairway landing	$ 4,500.00
Replace damaged and /or missing sheetrock throughout structure and repair cracks in the remaining sheetrock. Prime and paint all walls, woodwork and spray texture ceilings	$ 8,500.00

Remove and replace ceiling joists and extensive wall framing due to mold penetration (estimate likely to climb as temperature increases causing mold to spread)	$ 3,000.00
Electrical fixtures/GFCI/smoke detectors/new panel box and bring up to code. **Note** due to the amount of sheet rock that will have to be removed will open walls which will require the electrical to meet current codes.	$ 4,250.00
Plumbing; Replace water service, sewer main, re-pipe, new waste lines connected to sewer, and replace all fixtures. **Note** home has galvanized water supply, frozen supply lines, and clay tile sewer that has been unused for a year. Tub is included in fixtures because at the time of inspection, it was full of ceiling sheetrock and thus was unable to determine what condition it was in.	$ 7,510.00
Water heater	$ 950.00
Replace furnace and all ductwork (due to mold) – provide A/C unit	$ 5,300.00
Remove shed and dispose of debris and trim trees from over roof area	$ 1,500.00
Lead Risk Assessment	$ 875.00
Engineer Report	$ 220.00
Lead Abatement	$ 3,500.00
Mold Remediation	$ 2,500.00
Asbestos Abatement (floor tile in basement based on age and style of tile)	$ 1,500.00
Lead Clearance	$ 650.00
Total	$ 106,090.00

SUMMARY

OWNER: Andrew Johnson PHONE #: 990-8299
ADDRESS: 1817 N. Spruce

Neighborhood Improvement Services (NIS) was asked to inspect the structure at 1817 N. Spruce to identify the existing code violations and provide a cost estimate of the required repairs. Due to the condition of the basement walls, a structural engineer was called in to assess the structural integrity and to provide a method to correctly repair the walls. Because federal dollars would be used to help finance the project, a Lead-Based Paint Risk Assessment was also performed. The following is a summary of their respective reports:

Engineer Report

Hartwell Structural Engineering Company inspected the structure on May 12, 2009 to evaluate the structural condition of the property. His assessment was the west and south basement walls are in extremely poor structural condition and have pushed inward too far to be serviceable as support for the house. Secondly; due to the walls being pushed in so far, the brick veneer has pulled away from the house sheathing and needs to be removed and the house re-sided. The report also states that due to the brick siding falling off it has exposed the sheathing, wall studs, and interior sheetrock to water damage and is not sure how much damage has been done to the wood support (framing).He does state that he would suspect that much of the exterior sheathing, studs and possibly all sheetrock will need to be replaced or supplemented. The roof is extremely deteriorated allowing water into the structure which has destroyed the ceiling and further exposure will require the rafters to be supplemented or replaced. In the opinion of the Engineer; the house is quite questionable whether it would be cost-effective to try to reconstruct the house for usage.

Risk Assessment

Because of the potential of federal funds being used to rehabilitate the structure, a Risk Assessment was performed on the structure on May 14, 2009 by Hernly Associate, Inc. The testing was done with a lead-in-paint analyzer (XRF machine), dust wipe and soil sampling were also taken. Based upon the results obtained from the XRF data and the analytical laboratory report it was determined that lead based paint is present and will require abatement. Those areas include the exterior trim, windows and doors. The interior has a heightened level of lead in the dust samples taken on the windows sills and kitchen floor.

Hernly Associates, Inc. also performs air quality test on residential dwellings. Although we did not contract with them to perform an air quality test on the structure, in the conversation I had with Larry Hopkins, LBP Project Manager for Hernly Associates, Inc., he stated that the biggest problem he saw was the amount of mold in the dwelling. The weather in Wichita had not gotten hot at the time of the Risk Assessment, however the house was full of mold and the mold on the living room ceiling was blooming already. The mold is so bad that he believes it has penetrated all the wood framing members. If it has, to obtain good air quality, all the wood framing will have to be replaced – that would be the only way to remove the mold from the dwelling.

On May 7, 2009 NIS rehab inspectors inspected property to identify code violations and ascertain the necessary work required to bring the structure into compliance with the minimum housing code. Their cost estimate to correct all code violation and to comply with the Lead-Based Paint regulations comes to $106,090.00. The maximum amount of financial assistance NIS has available to assist in the rehabilitation of the structure is $35,000.00 from the Deferred Loan Program. This would require Mr. Johnson to bridge the financial gap of $71,090.00. Sedgwick County tax assessment of this property is $31,000. The County's tax assessment of the other properties in the block is:

ADDRESS	ASSESSMENT
1821 N Spruce	$32,700.00
1822 N Spruce	$38,200.00
1826 N Spruce	$36,700.00
1833 N Spruce	$45,100.00
1837 N Spruce	$31,400.00

Due to the cost of rehabilitating this property to bring it into compliance with the minimum housing and the fact that the other homes in the block has an average County tax assessment of $36,820.00. I Michael Hollimon, Neighborhood Improvement Administrator recommends that this structure be razed.

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: Public Hearing for Issuance of Educational Facilities Revenue Bonds (Friends University) (District IV)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close the public hearing and adopt the Resolution.

Background: The Kansas Independent College Association (KICA) was formed in 1988 to allow independent colleges throughout Kansas to take advantage of special low-cost tax-exempt bond financings that were authorized under federal legislation. The Kansas Independent College Finance Authority (KICFA) is a separate legal entity under KICA and is authorized to issue bonds or notes for the purpose of making loans to independent colleges and universities to finance, refinance and reimburse the costs of educational facilities, working capital funds and related costs. KICFA is proposing to issue its tax-exempt Educational Facilities Revenue Bonds in the aggregate principal amount of $4,000,000, on behalf of Friends University. KICFA and Friends University are requesting City Council approval for the issuance of Bonds. To satisfy the federal requirements on tax exempt bonds, it is necessary to hold a Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing prior to approving the issuance of the bonds.

Analysis: Friends University is a four-year liberal arts university founded in 1898; it is a Kansas not-for-profit corporation, located at 2100 West University Street in west Wichita. The University offers more than 40 baccalaureate and 12 master's degree programs. The University operates its programs at its Wichita campus and other locations within the State of Kansas and at facilities in Independence, Missouri. Multiple programs are offered for adult students who have some college credit and want to complete their degrees while maintaining full-time employment. The University also offers a program for working adults who want to complete the first two years of college. Friends University is accredited by the Higher Learning Commission, a commission of the North Central Association of Colleges and Schools.

The bond proceeds will be used, to finance the costs of acquiring, constructing, furnishing and equipping a new student housing facility located at 644 South Hiram. The facility consists of 49 units and will house approximately 81 students. It is a three story complex with approximately 40,000 square feet.

Under federal law, the governing body of the political jurisdiction in which the project is to be located must approve the issuance of the bonds following a public hearing. A notice of the hearing must be published at least 14 days in advance of the hearing.

Financial Considerations: There is no financial impact to the City by approving the issuance of the KICFA bonds.

Goal Impact: Economic Vitality and Affordable Living. Supporting the growth of higher education institutions encourages economic growth and quality of life for the City of Wichita and Sedgwick County.

Legal Considerations: The notice of the hearing was published in the Wichita Eagle on June 1, 2009. The notice of public hearing and attached approving resolution were prepared by Triplett, Wolf and Garretson, LLC, bond counsel to Friends University, for this transaction. It has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the Resolution approving the issuance of KICFA bonds for Friends University and authorize necessary signatures.

Attachments: Resolution

TRIPLETT, WOOLF & GARRETSON, L.L.C.

RESOLUTION NO. 09-173

OF THE
CITY OF WICHITA, KANSAS

APPROVING THE ISSUANCE BY THE
KANSAS INDEPENDENT COLLEGE FINANCE AUTHORITY
OF NOT TO EXCEED $4,000,000
EDUCATIONAL FACILITIES REVENUE BONDS
(FRIENDS UNIVERSITY)

RESOLUTION NO. 09-173

A RESOLUTION APPROVING THE ISSUANCE BY THE KANSAS INDEPENDENT COLLEGE FINANCE AUTHORITY OF NOT TO EXCEED $4,000,000 OF EDUCATIONAL FACILITIES REVENUE BONDS (FRIENDS UNIVERSITY) FOR THE PURPOSES OF ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING A NEW STUDENT HOUSING FACILITY LOCATED ON THE CAMPUS OF FRIENDS UNIVERSITY.

WHEREAS, the Kansas Independent College Finance Authority (the "Authority") is created and organized as a separate legal entity by its member cities pursuant to Article 12, Section 5 of the Kansas Constitution and the Kansas Interlocal Cooperation Act, K.S.A. 12-2901 *et seq.*, as amended (the "Act"), and is authorized to issue bonds or notes for the purpose of making loans to independent colleges and universities within its member cities to finance, refinance and reimburse the costs of educational facilities and working capital funds and related costs of such financings, said bonds or notes to be secured by a pledge of payments made to the Authority by the participating educational institutions; and

WHEREAS, the Authority has established a capital projects and working capital loan program (the "Program") under which the Authority will issue its Educational Facilities Revenue Bonds (Friends University), in the aggregate principal amount not to exceed $4,000,000 (the "Bonds"), for the purpose of providing funds to make a capital project loan (the "Loan") to Friends University, Inc., a Kansas not-for-profit corporation (the "Institution"), the proceeds of which will be used (a) to pay a portion of the costs of issuing the Bonds and (b) to acquire, construct, furnish and equip a new student housing facility located at 644 S. Hiram St. in the City of Wichita, Kansas (the "Project"); and

WHEREAS, the governing body of the City of Wichita (the "City") has conducted a public hearing following at least 14 days published notice, and finds and determines that it is necessary and desirable to approve the issuance of the Bonds by the Authority.

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

Section 1. Approval of Issuance of Bonds. The City hereby approves the issuance of the Bonds by the Authority.

Section 2. Execution of Agreements. The Mayor or Vice Mayor are hereby further authorized and directed to execute and deliver such documents, certificates and instruments for and on behalf of and as the act and deed of the City in substantially the form presented today with such minor corrections or amendments thereto as the Mayor or Vice Mayor shall approve, which approval shall be evidenced by his execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and give effect to the purposes and intent of this Resolution. The City Clerk or any Deputy City Clerk of the City are hereby

authorized and directed to attest the execution of such documents, certificates and instruments as may be necessary or desirable to carry out and give effect to the intent of this Resolution.

Section 3. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Resolution and to carry out, comply with and perform the duties of the City with respect to the Bonds, all as necessary to carry out and give effect to the transactions contemplated hereby and thereby.

Section 4. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas this 16th day of June, 2009.

CITY OF WICHITA, KANSAS

[seal]

By_____
Carl Brewer, Mayor

ATTEST:

By_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By_____
Gary E. Rebenstorf, City Attorney

EXCERPT OF MINUTES

The governing body of the City of Wichita, Kansas, met in regular session at the usual meeting place in the City on June 16, 2009, at 9:00 a.m. The Mayor Carl Brewer presided, and members of the governing body were present as follows:

and the following members of the governing body were absent:

Thereupon, and among other business, there was presented to the governing body a Resolution entitled:

> A RESOLUTION APPROVING THE ISSUANCE BY THE KANSAS INDEPENDENT COLLEGE FINANCE AUTHORITY OF NOT TO EXCEED $4,000,000 OF EDUCATIONAL FACILITIES REVENUE BONDS (FRIENDS UNIVERSITY) FOR THE PURPOSES OF ACQUIRING, CONSTRUCTING, FURNISHING AND EQUIPPING A NEW STUDENT HOUSING FACILITY LOCATED ON THE CAMPUS OF FRIENDS UNIVERSITY.

Thereupon, the Resolution was considered and discussed; and on motion of _____, seconded by _____, the Resolution was adopted by a majority vote of all members present.

Thereupon, the Resolution having been adopted by a majority vote of the members of the governing body, it was given No. 09-173, and was directed to be signed by the Mayor and attested by the City Clerk.

****

CITY CLERK'S
CERTIFICATION OF EXCERPT OF MINUTES

I hereby certify that the foregoing is a true and correct Excerpt of Minutes of the June 16, 2009 meeting of the governing body of the City of Wichita, Kansas.

[seal]

_____
Karen Sublett, City Clerk

City of Wichita
City Council Meeting
June 16, 2009

TO:	Mayor and City Council Members
SUBJECT:	Public Hearing for Renovation of a Building Facade at 579 West Douglas (District VI)
INITIATED BY:	Office of Urban Development
AGENDA:	New Business

Recommendation: Close the public hearing, declare an emergency and approve the ordinance on first reading.

Background: Since 2001, the City has provided a Facade Improvement Program available to properties in defined areas, including the City's core area. On June 2, 2009, City Council approved a petition and adopted a resolution authorizing façade improvements for a building located at 579 West Douglas as part of a private renovation project. A maximum assessment ordinance is needed to proceed with the project; this requires a public hearing to be held not less than 10 days following adoption of a resolution.

Analysis: The existing building is a one story commercial building originally used as a gasoline filling station. The building has recently served as a tavern and the new owner, Delano Barbeque Partners, LLC, plans to completely renovate the property for service as a restaurant and bar. The façade project includes new doors and windows and the return of the storefront to its original appearance. Delano Barbeque Partners, LLC has agreed to abide by pending modifications of the Façade Improvement Program. The total cost of the redevelopment project is approximately $440,000 of which $360,000 is proposed to be from private investment.

The program modifications require the property owner to provide financial information that shows, through a gap analysis, that the façade improvements are part of a larger redevelopment of the property in which the private investment is at least as great as the public financing and that the overall project could not be completed without special assessment financing, based on the owner's ability to raise private capital assuming a market-based Return on Investment (ROI). The Office of Urban Development has reviewed financial information provided by the property owner, including a lender commitment and an "as-built" appraisal of the property, and has determined that the project would not be financially feasible, assuming a reasonable ROI, without using the City's Facade Improvement Program.

The special benefit district has been established; State law requires a formal public hearing to levy assessments for each special assessment benefit district. A maximum assessment ordinance protects the special assessments from a protest petition should the building change ownership during the assessment period.

Financial Considerations: The proposed maximum assessment amount is $60,000, along with $20,000 as a grant by the City, for a façade project budget of $80,000. The City Council has allocated $761,000 for the grant component of the Facade Improvement Program. With the approval of this project plus previous projects, $400,393 will be available for future projects. The actual amount to be assessed to the property, not to exceed $60,000, will be based on a final statement of costs following completion of construction and will be financed with 15-year special assessment General Obligation bonds.

Goal Impact: Economic Vitality and Affordable Living is advanced through the use of special assessment financing to partner with and leverage investment from property owners to create commercial and residential economic value within the City. This program addresses the Dynamic Core Area and Vibrant Neighborhoods goal by facilitating improvements to privately owned buildings.

Legal Considerations: State statutes provide the City Council authority to use special assessment funding for the project. A formal public hearing is required as part of the approval process. The petition was approved and the resolution was adopted (June 2, 2009) establishing the maximum amount for the special assessment district. The actual amount to be special assessed at the completion of construction may be less, but they may not exceed the amounts included in the petition, resolution and ordinance.

Ordinances allow a 31-day window for prepayment of the assessment from the date of adoption. In the event actual costs are less than the amounts assessed, rebates will be calculated and distributed to any property owner that has elected to prepay assessments at that time.

Representatives from Delano Barbeque Partners, LLC have requested the City exercise emergency adoption of the ordinance on first reading to allow construction to commence immediately. In as much as the petition submitted represents 100% of the property ownership, a challenge or protest of the Council's action is unlikely.

The authorizing ordinance and the Declaration of Emergency have been reviewed and approved as to form by the Law Department

Recommendation/Action: It is recommended that the City Council close the public hearing; find and declare upon request of the Mayor that a public emergency exists requiring the final passage of the ordinance on the date of its introduction; and adopt the maximum assessment ordinance for the 579 West Douglas commercial building facade improvements and authorize the publication of the ordinance.

Attachments: Maximum Assessment Ordinance
Request for Declaration of Emergency

ORDINANCE NO. 48-350 028001

AN ORDINANCE LEVYING AND ASSESSING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN LOTS, PIECES AND PARCELS OF LAND LIABLE FOR SUCH SPECIAL ASSESSMENTS TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF WICHITA, KANSAS, AS AUTHORIZED BY RESOLUTION NO. 09-151 OF THE CITY (579 WEST DOUGLAS FACADE IMPROVEMENT DISTRICT).

WHEREAS, pursuant to Resolution No. 09-151 of the City of Wichita, Kansas (the "City") adopted on June 2, 2009, the Governing Body has authorized the creation of an improvement district and the construction of the following improvements (the " Improvements"):

Facade Improvements at 579 N. Douglas abutting public ways, including Douglas Avenue and Sycamore Street.

WHEREAS, prior to commencement of construction of the Improvements, the City has determined the maximum amount of assessment against each lot, piece or parcel of land deemed to be benefited by the Improvements based on the approved estimate of cost of the Improvements and has held a public hearing on the proposed maximum special assessments to be levied against property in the improvement district for the cost of construction of the Improvements after providing notice of such hearing as required by K.S.A. 12-6a09; and

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

SECTION 1. Pursuant to K.S.A. 12-6a01 *et seq*., special assessments to pay the costs of the Improvements are hereby levied and assessed against the lots, pieces and parcels of land liable therefore as described on Exhibit A to this Ordinance, which is incorporated herein by reference, and in the amounts set forth on Exhibit A following the description of each lot, piece or parcel of land; provided, however, that if the final cost of the completed Improvements is less than the maximum amount of the assessments set forth on Exhibit A, the Governing Body of the City shall adjust the assessments to reflect the cost of the completed Improvements. If any property owner elects to prepay the maximum assessment as provided in Section 2 and the final cost of the completed Improvements as determined by the Governing Body is less than the estimated cost of the Improvements used to determine the maximum assessments, the City Clerk shall mail a check to the then current owner of the property for the difference.

SECTION 2. The amounts so levied and assessed shall be due and payable from and after the date of publication of this Ordinance; and the City Clerk shall notify the owners of the affected properties of the amounts of their assessments, that unless the assessments are paid by the Prepayment Date (as defined herein), bonds will be issued therefore and such assessments will be levied concurrently with general taxes and be payable in 15 annual installments. The

"Prepayment Date" shall be July 17, 2009, unless the Prepayment Date is extended by a motion, resolution or ordinance of the City, following which notice of the extended Prepayment Date shall be mailed to the owners of record of all property in the improvement district.

SECTION 3. The City Clerk shall certify to the County Clerk, in the same manner and at the same time as other taxes are certified, for a period of 15 years, all of the assessments which have not been paid by the Prepayment Date, together with interest on such amount thereof at a rate not exceeding the maximum rate as prescribed by the laws of the state of Kansas; and such amounts shall be placed on the tax rolls and collected as other taxes are collected, the levy for each year being a portion of the principal amount of the assessment plus one year's interest on the amount remaining unpaid.

SECTION 4. This Ordinance shall take effect and be in force from and after its publication once in the official City newspaper. The City Clerk is directed to file this Ordinance with the Register of Deeds of Sedgwick County, Kansas.

PASSED by the Governing Body of the City of Wichita, Kansas, and approved by the Mayor on June 16, 2009.

(Seal)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, City Attorney

EXHIBIT A

Building Facade Improvement 579 W. Douglas

Property Subject to Assessment	Proposed Maximum Assessment
LOTS 102, 104 and the west 16.3 feet of Lot 106, adjacent to Chicago now Douglas, West Wichita Addition	
Tax Key #D-00224	$60,000.00

REQUEST FOR DECLARATION OF EMERGENCY

REQUEST OF THE MAYOR OF THE CITY OF WICHITA, KANSAS, FOR THE DECLARATION BY THE CITY COUNCIL OF SAID CITY OF THE EXISTENCE OF A PUBLIC EMERGENCY REQUIRING THE FINAL ADOPTION OF AN ORDINANCE AS DESIGNATED BELOW.

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit,* June 16, 2009, of an ordinance entitled:

AN ORDINANCE LEVYING AND ASSESSING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN LOTS, PIECES AND PARCELS OF LAND LIABLE FOR SUCH SPECIAL ASSESSMENTS TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF WICHITA, KANSAS, AS AUTHORIZED BY RESOLUTION NO. 09-151 OF THE CITY.

The general nature of such emergency is to enable the immediate commencement of facade improvements within the benefit district.

It is, therefore, expedient at this time that the City Council find and declare that a public emergency exists by reason of the foregoing, and that the above entitled Ordinance be finally adopted on the date of its introduction.

EXECUTED at Wichita, Kansas, on June 16, 2009.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: Water and Sewer Utility Revenue Bonds, Series 2009A and 2009B

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendation: Approve the award of the sale.

Background: In anticipation of the issuance of revenue bonds, the Water Utilities have drawn down cash reserves to fund the costs of improvement projects that were previously authorized for bond financing. On May 19, 2009, the City Council authorized the issuance of tax-exempt revenue bonds in the approximate amount of $125 million (Series 2009A) to permanently finance a portion of project costs and reimburse prior cash reserve expenditures through negotiated sale. The ASR project is a $250 million project designed to ensure adequate water supplies for the region through the year 2050. Approximately $50 million is being financed for the ASR project at this time based on a 30-year term to provide intergenerational equity. The remaining projects, including sanitary sewer reconstruction, mains for future development, replacement of distribution mains and other water and sewer improvements are being financed over 25 years.

On May 19, 2009, the City Council also authorized the issuance of taxable revenue bonds (Series 2009B) through a negotiated sale in the approximate amount of $12.1 million to fund the debt service reserve requirements of prior bond issues in accordance with the bond covenants. Additionally, the City Council authorized Springsted Incorporated to perform financial advisory services for the City and authorized the use and selection of an underwriter for the purpose of assisting with and facilitating the negotiated sale of the revenue bonds. Since that date, staff has worked to distribute the Preliminary Official Statement and negotiate the details of the sale with the financial advisor and designated lead underwriter.

Analysis: The plan of financing for the negotiated sale requires the use of an underwriter for the marketing of the Series 2009A and Series 2009B Water and Sewer Utility Revenue Bonds in the estimated principal amounts of $121,765,000 and $12,790,000, respectively. With the assistance of the financial advisor, Springsted Incorporated, an RFP for Senior Managing Underwriter services was distributed to eleven regional and national firms with a history of underwriting major utility issues and Kansas transactions. Eight responses to the RFP were received. The criteria used in evaluating the responses to the proposals included the firm's experience in structuring similar obligations, experience of the firm's primary staff representative in structuring and marketing comparable obligations, the firm's experience in underwriting comparable obligations and finally, cost. Based on these criteria, Citigroup Global Marketing Inc. was selected to serve as the senior managing underwriter for this issuance, with George K. Baum, a local firm, serving as the co-manager. The marketing of the bonds will occur with the underwriters taking orders for the bonds from syndicate members and other brokerage houses.

Financial Considerations: The proceeds from the bond sale will provide project funding, reimburse prior cash reserve expenditures and fully fund bond reserves. The debt service payments associated with the bonds will be funded entirely from net revenues derived from operations of the City's Water Utilities. Underwriters fees are based on the total par amount of the bonds issued.

These costs, as well as the cost of the financial advisory services and other expenses such as rating fees, paying agent fees, Bond Counsel fees and other expenses are included in the principal amount of the bonds as issuance costs.

Goal Impact: The permanent financing of capital costs helps to ensure efficient infrastructure through construction efforts providing reliable, compliant and secure utilities. The Internal Perspective is also impacted as a result of the permanent financing of capital improvements and by offering these debt obligations through negotiated sale.

Legal Considerations: The City's Bond Counsel, Kutak Rock, LLP, has drafted the Bond Ordinance and Resolution pertaining to the issuance of the bonds. The Bond Purchase Agreement has been drafted by Underwriter's Bond Counsel, Gilmore & Bell, P.C., and has been reviewed by the City's Bond Counsel. These financing documents have been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council: (1) approve the Bond Purchase Agreement; (2) adopt the Bond Ordinance and Resolution; (3) authorize the Mayor to execute the Request for Declaration of Emergency; and (4) authorize preparation and distribution of the final Official Statement upon completion.

Attachments: Bond Purchase Agreement
Bond Ordinance
Bond Resolution
Declaration of Emergency

Gilmore & Bell, P.C.
06/04/2009

BOND PURCHASE AGREEMENT

BETWEEN

CITY OF WICHITA, KANSAS

AND

CITIGROUP GLOBAL MARKETS INC.
GEORGE K. BAUM & COMPANY

$121,765,000*
WATER AND SEWER UTILITY REVENUE BONDS
SERIES 2009A

$12,790,000*
WATER AND SEWER UTILITY REVENUE BONDS
SERIES 2009B (TAXABLE UNDER FEDERAL LAW)

DATED JUNE 16, 2009

CITY OF WICHITA, KANSAS

$121,765,000*	**$12,790,000***
WATER AND SEWER UTILITY REVENUE BONDS	**WATER AND SEWER UTILITY REVENUE BONDS**
SERIES 2009A	**SERIES 2009B**
	(TAXABLE UNDER FEDERAL LAW)

June 16, 2009

Mayor and City Council
City of Wichita, Kansas

BOND PURCHASE AGREEMENT

On the basis of the representations, warranties and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Citigroup Global Markets Inc., as representative (the "Representative") and George K. Baum & Company (collectively the "Underwriter" or "Underwriters"), hereby jointly and severally offer to purchase the following bonds to be issued by the City of Wichita, Kansas (the "City") under and pursuant to an Ordinance and Resolution to be passed and adopted, respectively, by the governing body of the City this date (collectively, the "Bond Ordinance"): $121,765,000* aggregate principal amount of Water and Sewer Utility Revenue Bonds, Series 2009A (the "Series 2009A Bonds"), and $12,790,000* aggregate principal amount of Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable under Federal Law) (the "Series 2009B Bonds") (the Series 2009A Bonds and Series 2009B Bonds are referred to collectively herein as the "Bonds"). All capitalized terms not specifically defined herein shall have the same meaning as defined in the Bond Ordinance, unless some other meaning is plainly indicated.

This offer is made subject to acceptance of this Bond Purchase Agreement by the governing body of the City on or before 5:00 p.m., applicable Central time, on this date.

SECTION 1. PURCHASE, SALE, OFFERING AND DELIVERY OF THE BONDS

On the basis of the representations, warranties and covenants contained herein and in the other agreements and documents referred to herein, and subject to the terms and conditions herein set forth, the Underwriter agrees to purchase from the City and the City agrees to sell to the Underwriter the Bonds not later than 12:00 Noon, applicable Central time (the "Closing Time") on June 30, 2009, or such other place, time or date as shall be mutually agreed upon by the City and the Underwriter (the "Closing Date") at the purchase price set forth on ***Exhibit A*** attached hereto, plus accrued interest from the date of the Bonds to the Closing Time, if any.

The Bonds shall be issued under and secured as provided in the Bond Ordinance and the Bonds shall have the maturities and interest rates as set forth therein and on ***Exhibit A*** attached hereto which also contains a summary of the redemption provisions of the Bonds.

Payment for each series of the Bonds shall be made by federal wire transfer or certified or official bank check or draft in immediately available federal funds payable to the order of a financial institution to be designated by the City for the account of the City. Upon such payment and subject to the conditions set forth within the Bond Purchase Agreement, the Bonds shall be delivered and released upon the instructions of the Underwriter to The Depository Trust Company, New York, New York. The transactions to be accomplished for delivery of the Bonds on the Closing Date shall be herein called the "Closing."

The delivery of the Bonds shall be made in "book-entry-only" fully registered form duly executed and authenticated and bearing CUSIP numbers (provided neither the printing of a wrong number on any Bond nor the failure to print a number thereon shall constitute cause to refuse delivery of any Bond); provided, however, that the Bonds may be delivered in temporary form. The Bonds shall be placed by the City in the custody of DTC at least 24 hours prior to the Closing Time, in order to enable examination and packaging by the Underwriter prior to the Closing Time.

The Underwriter agrees to offer the Bonds to the public initially at the offering prices or yields set forth in ***Exhibit A*** attached hereto and incorporated herein by reference, but may subsequently change such offering price; the Underwriter agrees to notify the City of such changes, if such changes occur prior to the Closing Time, but failure so to notify shall not invalidate such changes. The Underwriter may offer and sell the Bonds to certain dealers (including dealers depositing the Bonds into investment trusts) at prices lower than the public offering prices.

SECTION 2. USE OF OFFICIAL STATEMENT

The City has previously furnished to the Underwriter the Preliminary Official Statement, dated June 4, 2009 relating to the Bonds, including all appendices thereto (the "Preliminary Official Statement"). The City consents to and ratifies the lawful use and dissemination in connection with the sale of the Bonds in hard copy and by electronic means by the Underwriter prior to the date of this Bond Purchase Agreement of the Preliminary Official Statement and of the final Official Statement and the information contained therein (subject to the right of the City to withdraw consent to such use and dissemination by written notice to the Underwriter). The City has deemed the Preliminary Official Statement final as of its date within the meaning of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended ("Rule 15c2-12").

The City shall deliver to the Underwriter, as soon as practicable and to such addresses as the Underwriter shall specify, but within seven business days after the execution of this Bond Purchase Agreement and in sufficient time to accompany any confirmation that requests payment from any customer, copies of the final Official Statement relating to the Bonds, in sufficient reasonable quantity as the Underwriter shall reasonably request as necessary to enable the Underwriters to comply with Rule 15c2-12 and the rules of the Municipal Securities Rulemaking Board (the "MSRB"). The final Official Statement, including the cover page and all exhibits, appendices, reports and statements included with or attached thereto and any amendments and supplements that may be authorized by the City and to which the Underwriters do not reasonably object, and any amendments and supplements which may be reasonably required by the Underwriters for use with respect to the Bonds, are herein referred to collectively as the "Official Statement."

The City shall promptly notify the Underwriter of any material change of which the City has knowledge in the affairs or financial condition of the City or the City's Water and Sewer Utility (the "Utility") that may occur prior to the Closing. After such notification, if, in the opinion of the City or the

Representative, a change would be required in the Official Statement in order to make the statements therein true and not misleading or incomplete in any material respect, then such change shall be made by amendment or supplement, and the Official Statement as so amended or supplemented shall be prepared and furnished to the Underwriter, at the reasonable administrative expense of the City, in reasonable quantities for distribution.

The Representative shall acknowledge receipt of the Official Statement from the City and the sufficiency of the number of copies received. The Underwriters shall send a copy of the Official Statement to each purchaser of Bonds in compliance with Rule 15c2-12 and the rules of the MSRB, to the MSRB via the Electronic Municipal Market Access system for municipal securities disclosures ("EMMA").

The City will not amend or supplement the Official Statement without prior notice to the Underwriter; from the day of the Closing to the end of the underwriting period (as described herein), the City will not amend or supplement the Official Statement without the prior consent of the Underwriter, which consent shall not be unreasonably withheld or delayed.

SECTION 3. CITY'S REPRESENTATIONS AND WARRANTIES

By the City's acceptance hereof the City hereby represents and warrants to, and agrees with, the Underwriter that as of the date hereof and at the Closing Time:

(a) The City is a municipal corporation duly organized under the laws of the State of Kansas.

(b) The City has complied with all provisions of the Constitution and laws of the State of Kansas and has full power and authority to consummate all transactions contemplated by the Bond Ordinance and this Bond Purchase Agreement, and all other agreements relating thereto.

(c) The City has duly authorized by all necessary action to be taken by the City (1) the adoption and performance of the Bond Ordinance; (2) the execution, delivery and performance of this Bond Purchase Agreement; (3) the approval of the Official Statement; (4) the execution and performance of any and all such other agreements and documents as may be required to be executed, delivered and performed by the City in order to carry out, give effect to and consummate the transactions contemplated by the Bond Ordinance and this Bond Purchase Agreement; and (5) the carrying out, giving effect to and consummation of the transactions contemplated by the Bond Ordinance and this Bond Purchase Agreement. Executed counterparts of the Bond Ordinance and all documents specified herein will be available for delivery in electronic format to the Underwriter by the City at the Closing Time and a customary transcript of proceedings for the Bonds shall be delivered by Kutak Rock LLP, Bond Counsel, to the Underwriters after closing.

(d) The Bond Ordinance and this Bond Purchase Agreement, when executed and delivered by the City, will be the legal, valid and binding obligations of the City enforceable in accordance with their terms, except to the extent that enforcement thereof may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors' rights generally or against entities such as the City and further subject to the availability of equitable remedies.

(e) The Bonds have been duly authorized by the City, and when issued, delivered and paid for as provided for herein and in the Bond Ordinance, will have been duly executed, authenticated, issued and delivered and will constitute valid and binding special obligations of the City enforceable in

accordance with their terms and entitled to the benefits and security of the Bond Ordinance (subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors' rights generally or against entities such as the City and further subject to the availability of equitable remedies). The Bonds will not pledge the full faith and credit of the State or any political subdivision thereof, including the City, nor shall they be secured by a lien against any of their respective properties, except as provided for in the Bond Ordinance. The Bonds shall be limited obligations of the City payable solely out of the Net Revenues derived from the operation of the Utility on a parity of lien with the Parity Bonds (except to the extent paid out of moneys attributable to Bond proceeds or the income from the temporary investment thereof). The Bonds shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision, limitation or restriction.

(f) The execution and delivery of the Bond Ordinance, this Bond Purchase Agreement, the Bonds and the Official Statement and compliance with the provisions thereof, will not conflict with or constitute on the part of the City a violation or breach of, or a default under, any existing law, regulation, court or administrative decree or order, or any agreement, ordinance, mortgage, lease or other instrument to which it is subject or by which it is or may be bound;

(g) The City is not, or with the giving of notice or lapse of time or both would not be, in violation of or in default under its organizational documents or any indenture, mortgage, deed of trust, loan agreement, bonds or other agreement or instrument to which the City is a party or by which it is or may be bound, except for violations and defaults which individually and in the aggregate are not material to the City and will not be material to the beneficial owners of the Bonds. As of the Closing Time, no event will have occurred and be continuing which with the lapse of time or the giving of notice, or both, would constitute an event of default under the Bond Ordinance or the Bonds.

(h) The information contained in the Official Statement and in any amendment or supplement thereto that may be authorized for use by the City with respect to the Bonds, relating to: (1) the City and the Utility, including the organization, operations, structure, and financial and other affairs of the foregoing; (2) the financial statements including income statements and balance sheets referred to in subsection (j) hereof; (3) application by the City of the proceeds to be received by it from the sale of the Bonds and other funds, if any, of the City to be applied in accordance with the Bond Ordinance; and (4) the City's participation in the transactions contemplated by the Bond Ordinance and this Bond Purchase Agreement is, and as of the Closing Time will be, true, correct and complete in all material respects and does not omit and will not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(i) The financial statements of the City and the Utility contained in or attached to the Official Statement, except as noted therein, present fairly and accurately the financial condition of the City and the Utility as of the dates indicated and the results of its operations for the periods specified, and such financial statements are prepared in conformity with generally accepted accounting principles consistently applied in all material respects for the periods involved.

(j) Neither the City nor the Utility has, since the date of such financial statements, incurred any material liabilities and there has been no material adverse change in the condition of the City or the Utility, financial or otherwise, other than as set forth in the Official Statement.

(k) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the City, threatened against

or affecting the City or the Utility (or, to its knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or by the Bond Ordinance or the validity of the Bonds, the Bond Ordinance, this Bond Purchase Agreement or any agreement or instrument to which the City is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or by the Bond Ordinance.

(l) The City agrees to provide the annual financial information, operating data and event notices to information repositories and the MSRB in the manner and to the extent set forth in the Continuing Disclosure Certificate of the City. Except to the extent disclosed in the Official Statement, at no time in the last five years has the City failed to comply in any material respect with any of the informational reporting undertakings contained in Rule 15c2-12.

Any certificate signed by any of the authorized officials of the City and delivered to the Underwriter in connection with the Closing shall be deemed a representation and warranty by the City to the Underwriter as to the statements made therein.

SECTION 4. COVENANTS AND AGREEMENTS OF THE CITY

The City covenants and agrees with the Underwriter for the time period specified, and if no period is specified, for so long as any of the Bonds remain Outstanding, as follows:

(a) The proceeds of the Bonds will be used as provided in the Bond Ordinance for purposes authorized by the Act. The proceeds of the Series 2009A Bonds shall not be used in a manner which would jeopardize the tax exempt status of interest on the Series 2009A Bonds under the provisions of Section 103 of the Code, as long as any of the Series 2009A Bonds are Outstanding.

(b) To cooperate with the Underwriter and its counsel in any reasonable endeavor to qualify the Bonds for offering and sale under the securities or "Blue Sky" laws of such jurisdictions of the United States as the Underwriter may reasonably request; provided, however, the City shall not agree to file written consents to suit and file written consents to service of process in any jurisdiction in which such consent may be required by law or regulation so that the Bonds may be offered or sold. The City consents to the use of drafts of the Preliminary Official Statement, the Preliminary Official Statement and drafts of the Official Statement prior to the availability of the Official Statement by the Underwriter in obtaining such qualification. The Underwriter shall pay all expenses and costs (including legal, registration and filing fees) incurred in connection therewith.

(c) If, prior to the earlier of (1) 90 days after the "end of the underwriting period" (as defined in Rule 15c2-12) or (2) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository, but in no case earlier than 25 days after the end of the underwriting period, any event shall occur relating to or affecting the City or the Utility, as a result of which it is necessary to amend or supplement the Official Statement in order to make the statements therein, in the light of the circumstances existing when the Official Statement is delivered to a purchaser, not materially misleading, or the Official Statement is required to be amended or supplemented to comply with law, the City shall promptly prepare and furnish, at the expense of the City, to the Underwriter and to the dealers (whose names and addresses the Underwriter will furnish to the City) to which Bonds may have been sold by the Underwriter and to any other dealers upon request, such amendments or supplements to the Official Statement as may be necessary so that the statements in the Official Statement as so amended or supplemented will not, in the light of the circumstances existing when the Official Statement is delivered to a purchaser of the Bonds, be misleading or so that the Official

Statement will comply with law. For purposes of this subsection, the "end of the underwriting period" shall mean 30 days after the Closing Date unless the Underwriter notifies the City to the contrary and establishes another "end of the underwriting period" within the parameters of Rule 15c2-12.

SECTION 5. CONDITIONS TO THE UNDERWRITER'S OBLIGATIONS

The Underwriter's obligations hereunder shall be subject to the due performance by the City of the City's obligations and agreements to be performed hereunder at or prior to the Closing Time and to the accuracy of and compliance with the City's representations and warranties contained herein, as of the date hereof and as of the Closing Time, and are also subject to the following conditions:

(a) The Bond Ordinance and the Bonds shall have been duly authorized, executed and delivered in the form heretofore approved by the Underwriter with only such changes therein as shall be mutually agreed upon by the City and the Underwriter.

(b) The Underwriters shall have received, no later than seven business days after the date hereof, signed or conformed copies of the Official Statement, complete in all respects and in sufficient quantity as reasonably requested by the Underwriters to comply with Rule 15c2-12 and rules of the MSRB. Subsequent to the respective dates of the Preliminary Official Statement and the Official Statement, up to and including the Closing, there shall not have been any material adverse change relating to the City or the Utility, except as described in the Official Statement.

(c) At the Closing Time, the Underwriter(s) shall receive:

(1) Approving opinions dated as of the Closing Date, of Kutak Rock LLP, Bond Counsel, substantially in the forms attached as ***Exhibit E*** to the Preliminary Official Statement***;***

(2) A supplemental opinion dated as of the Closing Date, of Kutak Rock LLP, Bond Counsel, substantially in the form attached hereto as ***Exhibit B;***

(3) An opinion dated as of the Closing Date, of the City Attorney, substantially in the form attached hereto as ***Exhibit C;***

(4) An opinion dated as of the Closing Date, of Gilmore & Bell, P.C., substantially in the form attached hereto as ***Exhibit D;***

(5) A completed form 8038-G (Information Return for Tax-Exempt Governmental Bond Issuers) with respect to the issuance of the Series 2009A Bonds;

(6) A certificate of the City, satisfactory in form and substance to the Underwriter(s), dated as of the Closing Date, to the effect that (i) since the date of the Official Statement there has not been any material adverse change in the business, properties, financial condition or results of operations of the City or the Utility, whether or not arising from transactions in the ordinary course of business, from that set forth in the Official Statement, and except in the ordinary course of business or as set forth in the Official Statement, the City has not incurred any material liability with respect to the Utility; (ii) there is no action, suit, proceeding or, to the knowledge of the City, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the knowledge of the City, threatened against or affecting the City or the Utility, its officers or its property or, to the best of the

knowledge of the City, any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the City or the Utility, the transactions contemplated hereby or by the Bond Ordinance or the Official Statement or the validity or enforceability of the Bonds or the Bond Purchase Agreement, which are not disclosed in the Official Statement; (iii) to the best of the City's knowledge, the information contained in the Official Statement, other than the sections entitled "The Depository Trust Company," "Bond Rating," "Legal Matters and Tax Exemption" and ***Appendices C***, ***E***, and ***G***, for which the City expresses no opinion, is true in all material respects and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; (iv) the City has duly authorized, by all necessary action, the execution, delivery and due performance by the City of this Bond Purchase Agreement; and (v) the representations and warranties of the City set forth herein were accurate and complete as of the date hereof and are accurate and complete as of the Closing Time;

(7) An executed copy of the Continuing Disclosure Certificate, which will constitute an "undertaking" by the City to provide the annual financial information, operating data and event notices to information repositories in the manner and to the extent required by Rule 15c2-12, in the form and substance acceptable to the Underwriter and its counsel;

(8) Receipt of municipal bond rating by Standard & Poor's, a Division of The McGraw-Hill Companies, Inc., of at least "AA-";

(9) Such additional certificates, legal and other documents, listed on a closing agenda to be approved by Bond Counsel and counsel to the Underwriter, as the Underwriter may reasonably request to evidence performance or compliance with the provisions hereof and the transactions contemplated hereby and by the Bond Ordinance, or as Bond Counsel shall require in order to render its opinion, all such certificates and other documents to be satisfactory in form and substance to the Underwriter.

SECTION 6. CONDITIONS TO THE CITY'S OBLIGATIONS

The obligations of the City hereunder are subject to the Underwriter's performance of its obligations hereunder.

SECTION 7. THE UNDERWRITER'S RIGHT TO CANCEL

The Underwriter shall have the right to cancel the obligation hereunder to purchase the Bonds (such cancellation shall not constitute a default for purposes of ***Section 1*** hereof) by notifying the City in writing or by facsimile of their election to make such cancellation prior to the Closing Time, if at any time hereafter and prior to the Closing Time:

(a) A committee of the House of Representatives or the Senate of the Congress of the United States shall have pending before it legislation which, if enacted in its form as introduced or as amended, would have the purpose or effect of imposing federal income taxation upon revenues or other income of the general character to be derived by the City or by any similar body or upon interest received on obligations of the general character of the Series 2009A Bonds, or the Series 2009A Bonds, which, in the Underwriter's opinion, materially adversely affects the market price of the Series 2009A Bonds.

(b) A tentative decision with respect to legislation shall be reached by a committee of the House of Representatives or the Senate of the Congress of the United States, or legislation shall be favorably reported by such a committee or be introduced, by amendment or otherwise, in or be passed by the House of Representatives or the Senate, or be recommended to the Congress of the United States for passage by the President of the United States, or be enacted by the Congress of the United States, or a decision by a court established under Article III of the Constitution of the United States or the Tax Court of the United States shall be rendered, or a ruling, regulation or order of the Treasury Department of the United States or the Internal Revenue Service shall be made or proposed having the purpose or effect of imposing federal income taxation, or any other event shall have occurred which results in the imposition of federal income taxation, upon revenues or other income of the general character to be derived by the City or by any similar body or upon interest received on obligations of the general character of the Series 2009A Bonds, or the Series 2009A Bonds, which, in the Underwriter's opinion, materially and adversely affects the market price of the Bonds.

(c) Any legislation, ordinance, rule or regulation shall be introduced in or be enacted by the Legislature of the State or by any other governmental body, department or agency of the State, or a decision by any court of competent jurisdiction within the State shall be rendered which, in the Underwriter's opinion, materially and adversely affects the market price of the Bonds, or litigation challenging the law under which the Bonds are to be issued shall be filed in any court in the State.

(d) A stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all underlying obligations, as contemplated hereby or by the Official Statement, is in violation or would be in violation of any provision of the Securities Act of 1933, as amended (the "1933 Act"), the 1934 Act or the Trust Indenture Act of 1939, as amended (the “1939 Act”).

(e) Legislation shall be enacted by the Congress of the United States of America, or a decision by a court of the United States of America shall be rendered, to the effect that obligations of the general character of the Bonds, or the Bonds, including all the underlying obligations, are not exempt from registration under or from other requirements of the 1933 Act or the 1934 Act.

(f) Any event shall have occurred, or information become known, which, in the Underwriter's opinion, makes untrue in any material respect any statement or information contained in the Preliminary Official Statement as originally circulated, or has the effect that the Preliminary Official Statement as originally circulated contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(g) Additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange.

(h) The New York Stock Exchange or any other national securities exchange, or any governmental authority, shall impose, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter.

(i) Any general banking moratorium shall have been established by Federal, New York or Kansas authorities.

(j) A material default has occurred with respect to the obligations of, or proceedings have been instituted under the Federal bankruptcy laws or any similar state laws by or against, any state of the United States or any city located in the United States having a population in excess of one million persons or any entity issuing obligations on behalf of such a city or state which, in the reasonable judgment of the Underwriter, materially adversely affects the market price of the Bonds.

(k) Any proceeding shall be pending or threatened by the Securities and Exchange Commission against the City.

(l) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the reasonable judgment of the Representative, impractical or inadvisable to proceed with the offering or delivery of the Bonds as contemplated by the final Official Statement (exclusive of any amendment or supplement thereto).

(m) The Preliminary Official Statement deemed by the City to be "final" is thereafter amended or supplemented in a manner that may, in the reasonable judgment of the Underwriter, have a material adverse effect on the marketability of the Bonds.

(n) The Official Statement is not executed, approved and delivered in accordance with the terms hereof.

(o) Any financial rating assigned to the Bonds shall have been downgraded or withdrawn and such action, in the opinion of the Underwriter, materially affects the market for the Bonds.

(p) In the reasonable judgment of the Underwriter, the market price of the Bonds, or the market price generally of obligations of the general character of the Bonds, would be adversely affected because: (i) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, or (ii) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, Underwriter.

(o) Any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance, sale or delivery of the Bonds or in any way contesting or affecting any authority for or the validity of the Bonds, this Bond Purchase Agreement, the Bond Ordinance or the existence or powers of the City or any of the transactions described herein or in the Official Statement.

SECTION 8. PAYMENT OF EXPENSES

(a) Whether or not the Bonds are sold by the City to the Underwriter (unless such sale be prevented at the Closing Time by the Underwriter's default), the Underwriter, unless otherwise contracted for, shall be under no obligation to pay any expenses incident to the performance of the obligations of the City hereunder; nor shall the City, unless otherwise contracted for, be under any obligation to pay any expenses incident to the performance of the obligations of the Underwriter hereunder (unless such sale be prevented at the Closing Time by the City's default).

(b) If the Bonds are sold by the City to the Underwriter, all expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds, other than the fees and expenses of the Underwriter set forth below, shall be paid by the City out of the proceeds of the Bonds. Such expenses and costs shall include, but not be limited to: (1) the fees and disbursements of Kutak Rock LLP, Bond Counsel; (2) the fees and disbursements of the City's legal counsel; (3) costs associated with obtaining bond ratings relating to the Bonds; (4) the expenses and costs for the preparation, printing, photocopying, execution and delivery of the Bonds, the Official Statement and all other agreements and documents contemplated hereby; (5) the fees of the Bond Registrar and Paying Agent designated by the City pursuant to the Bond Ordinance; (6) the fees and expenses of the City's financial advisor; and (7) all costs and expenses of the City relating to the issuance of the Bonds

The following expenses are agreed to be the responsibility of the Underwriter: fees for filings under the Blue Sky laws of any jurisdiction, Underwriter's' travel expenses, computer services, TBMA and MSRB fees, CUSIP fees, federal funds charges, the fees and expenses of Gilmore & Bell, P.C., Underwriter's Counsel, including preparation of the Bond Purchase Agreement and Continuing Disclosure Certificate, and Underwriter's reproduction costs (other than printing of the Preliminary Official Statement and Official Statement).

SECTION 9. NOTICE

Any notice or other communication to be given under this Bond Purchase Agreement may be given by mailing or delivering the same in writing to the applicable person, as follows:

(a) If to the City at: City of Wichita, Kansas, City Hall, 455 N. Main, Wichita, Kansas, 67202, Attention: Director of Finance; and

(b) If to the Underwriter at: Citigroup Global Markets Inc., 8500 Sears Tower, 233 South Wacker Drive, Chicago, IL 60606, Attention: Manager, Public Finance Department.

SECTION 10. INDEMNIFICATION.

Notwithstanding any provision herein to the contrary, and solely to the extent that sufficient funds are available and properly appropriated and budgeted for such purposes, the City (in the limited respect described below) hereby indemnifies and holds harmless the Underwriter from and against any and all claims, damages, losses, liabilities, costs or expenses whatsoever which the Underwriter may incur (or which may be claimed against the Underwriter by any person or entity whatsoever) except liability which resulted from the Underwriter's negligence or bad faith, by reason of or in connection with any untrue statement of a material fact in the Official Statement (only with respect to the information contained under the captions "Introduction," "The Wichita Water and Sewer Utility," "Absence of Litigation" and "Approval of Official Statement," and in ***Appendices D*** and ***F*** to the Official Statement),

or any failure to state in the Official Statement a material fact necessary in order to make such statements made therein, in light of the circumstances under which they were made, not misleading (including but not limited to any liability under the 1933 Act, the 1934 Act, the 1939 Act, or any liability under any state securities or Blue Sky law).

Notwithstanding any provision herein to the contrary, the Underwriter hereby indemnifies and holds harmless the City and its councilmembers, officers, directors and employees from and against any and all claims, damages, losses, liabilities, costs or expenses whatsoever arising out of (a) any state securities or Blue Sky law, or (b) any statement, representation or information under the caption "Underwriting" in the Official Statement or made or supplied by the Underwriter in connection with the offer or sale of the Bonds other than pursuant to the Official Statement, which was not provided to the Underwriter by the City and which includes an untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made not misleading, which the City may incur (or which may be claimed against the City by any person or entity whatsoever), except liability which resulted from the negligence or bad faith of the City, by reason of or in connection with the Underwriter's use of the Official Statement in the sale or marketing of the Bonds.

SECTION 11. MISCELLANEOUS

(a) This Bond Purchase Agreement shall be binding upon the Underwriter, the City, and their respective successors. This Bond Purchase Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that: (i) the representations, warranties, indemnities and agreements of the City contained in this Bond Purchase Agreement shall also be deemed to be for the benefit of the person or persons, if any, who control the Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act; and (ii) the indemnification contained in ***Section 10*** hereof shall also be for the benefit of any governing body member, officer or employee of the City described in said section. Nothing in this Bond Purchase Agreement is intended or shall be construed to give any person, other than the persons referred to in this Paragraph, any legal or equitable right, remedy or claim under or in respect of this Bond Purchase Agreement or any provision contained herein. All of the representations, warranties and agreements of the City contained herein shall remain in full force and effect, regardless of (i) any investigation made by or on behalf of the Underwriter, (ii) delivery of and payment for the Bonds of (iii) any termination of this Bond Purchase Agreement.

(b) For purposes of this Bond Purchase Agreement, "business day" means any day on which the New York Stock Exchange is open for trading.

(c) This Bond Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

(d) This Bond Purchase Agreement may be executed in one or more counterparts, and if executed in more than one counterpart, the executed counterparts shall together constitute a single instrument.

(e) This Bond Purchase Agreement may not be assigned by either party without the express written consent of the other party.

(f) The Representative is authorized to act hereunder on behalf of the other underwriters which are a party to this Bond Purchase Agreement.

SECTION 12. EFFECTIVE DATE

This Bond Purchase Agreement shall become effective upon acceptance hereof by the City.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

Upon your acceptance of the offer, the foregoing agreement will be binding upon you and the Underwriter. Please acknowledge your agreement with the foregoing by executing the enclosed copy of this Bond Purchase Agreement prior to the date and time specified on page 1 hereof and returning it to the undersigned.

CITIGROUP GLOBAL MARKETS INC.
GEORGE K. BAUM & COMPANY

By: **CITIGROUP GLOBAL MARKETS INC.,**
as Representative for the Underwriter

By: _____
Robert A. Mellinger, Vice President

Accepted and agreed to as of
the date first above written.

CITY OF WICHITA, KANSAS

By: _____
Carl Brewer, Mayor

ATTEST: (Seal)

By_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

JLN\600809.018\BPA (6-4-09)

(Signature Page to Bond Purchase Agreement)

EXHIBIT A

CITY OF WICHITA, KANSAS

$121,765,000*	**$12,790,000***
WATER AND SEWER UTILITY REVENUE BONDS	**WATER AND SEWER UTILITY REVENUE BONDS**
SERIES 2009A	**SERIES 2009B**
	(TAXABLE UNDER FEDERAL LAW)

CALCULATION OF PURCHASE PRICE

	Series 2009A	***Series 2009B***
Principal Amount	$121,765,000*.00	$12,790,000*.00
Less Underwriter's Discount		
Plus Original Issue Premium		
Total Purchase Price		

MATURITY SCHEDULES

SERIES 2009A
[SERIAL BONDS]

Stated Maturity October 1	**Principal Amount**	**Annual Rate of Interest**	**Price**	**Stated Maturity October 1**	**Principal Amount**	**Annual Rate of Interest**	**Price**
2010	$				$		

2039

[TERM BONDS

Stated Maturity October 1	**Principal Amount**	**Annual Rate of Interest**	**Price**
	$		
2039			]

JLN\600809.018\BPA (6-4-09)

SERIES 2009B
[SERIAL BONDS]

Stated Maturity October 1	Principal Amount	Annual Rate of Interest	Price	Stated Maturity October 1	Principal Amount	Annual Rate of Interest	Price
2010	$				$		
				2019			

[TERM BONDS

Stated Maturity October 1	Principal Amount	Annual Rate of Interest	Price
	$		
2019			]

REDEMPTION OF BONDS

Series 2009A

Optional Redemption **–**The Series 2009A Bonds maturing 2010 through 20__, inclusive, shall become due on their respective maturities without the option of prior payment. At the option of the City, the Series 2009A Bonds maturing October 1, 20__, and thereafter, may be called for redemption and payment prior to their respective maturities on and after October 1, 20__. The Series 2009A Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid, at a redemption price (expressed as a percentage of the principal amount) as follows, plus accrued interest thereon to the date established for such redemption and payment:

Redemption Dates	Redemption Prices
10/01/20__ thru 09/30/20__	[____]%
10/01/20__ thru 09/30/20__	[____]%
10/01/20__ and thereafter	[____]%

[Mandatory Redemption. The 2009A Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements hereinafter set forth a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The City shall redeem on October 1 in each year, the following principal amounts of such 2009A Term Bonds:

Principal Amount	Year

*Final Maturity]

Series 2009B

Optional Redemption The Series 2009B Bonds maturing 2010 through 20__, inclusive, shall become due on their respective maturities without the option of prior payment. At the option of the City, the Series 2009B Bonds maturing October 1, 20__, and thereafter, may be called for redemption and payment prior to their respective maturities on and after October 1, 20__. The Series 2009B Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid, at a redemption price (expressed as a percentage of the principal amount) as follows, plus accrued interest thereon to the date established for such redemption and payment:

Redemption Dates	Redemption Prices
10/01/20__ thru 09/30/20__	[____]%
10/01/20__ thru 09/30/20__	[____]%
10/01/20__ and thereafter	[____]%

[Mandatory Redemption. The 2009B Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements hereinafter set forth a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The City shall redeem on October 1 in each year, the following principal amounts of such 2009B Term Bonds:

Principal Amount	Year

*Final Maturity]

EXHIBIT B

FORM OF BOND COUNSEL SUPPLEMENTAL OPINION

Governing Body
City of Wichita, Kansas

Citigroup Global Markets Inc.,
as representative of the Underwriters
Chicago, Illinois

Re: $121,765,000* Water and Sewer Utility Revenue Bonds, Series 2009A and $12,790,000* Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), of the City of Wichita, Kansas

Ladies and Gentlemen:

Reference is made to our approving opinions of this date relating to the issuance by the City of Wichita, Kansas, of the referenced bonds (collectively the "Series 2009 Bonds") All capitalized terms used herein shall have the meanings set forth in Ordinance No. [____] and Resolution No. [____] authorizing and securing the Series 2009 Bonds (collectively, the "Bond Ordinance").

In such connection, we have reviewed the Bond Ordinance, the Official Statement relating to the Series 2009 Bonds (the "Official Statement") and such other documents, certificates and opinions as we deem necessary to render this opinion. We have not undertaken to verify independently, and have assumed, the genuineness of such documents, certificates and opinions presented to us (whether as originals or as copies) and the accuracy of the factual matters represented, warranted or certified therein.

Based upon the foregoing, we are of the opinion, as of the date hereof, that the statements contained in the Official Statement under the captions "THE SERIES 2009 BONDS," "SECURITY FOR THE SERIES 2009 BONDS," "LEGAL MATTERS AND TAX EXEMPTION," and in "APPENDIX C - SUMMARY OF FINANCING DOCUMENTS" and "APPENDIX E - FORM OF BOND COUNSEL'S OPINIONS," reasonably and fairly summarize the principal provisions of the Bond Ordinance and other agreements and matters of law addressed therein and do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

This opinion is delivered to you for your use only and may not be used or relied upon by, or published or communicated to, any third party for any purpose whatsoever, without our prior written approval in each instance.

KUTAK ROCK LLP

EXHIBIT C

FORM OF CITY ATTORNEY OPINION

Governing Body
City of Wichita, Kansas

Kutak Rock LLP
Kansas City, Missouri

Citigroup Global Markets Inc.,
as representative of the Underwriters
Chicago, Illinois

Gilmore & Bell, P.C.
Wichita, Kansas

Re: $121,765,000* Water and Sewer Utility Revenue Bonds, Series 2009A and $12,790,000* Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), of the City of Wichita, Kansas

Ladies and Gentlemen:

This is to certify that I am Director of Law and City Attorney for the City of Wichita, Kansas (the "City"), and acting as such I have advised the City in connection with Ordinance No. [____] and Resolution No. [____], passed and adopted, respectively, by the governing body of the City on June 16, 2009 (collectively, the "Bond Ordinance"); and certain other certificates and proceedings of the City relating to the issuance of the above-referenced bonds (the "Series 2009 Bonds"). Capitalized terms contained herein shall have the meanings ascribed thereto in the Bond Ordinance.

I have become acquainted with the affairs of the City, and I have examined such documents, certificates and records, and have made such investigations as I have deemed necessary or appropriate in order to give the opinions expressed herein.

You are advised that, in my opinion:

1. The City is a city of the first class duly organized and existing under the laws of the State of Kansas.

2. The City by and through its governing body, did adopt the Bond Ordinance, and the Bond Ordinance is in full force and effect.

3. The City has authorized the execution and delivery of the Series 2009 Bonds, the Bond Purchase Agreement, and all other documents authorized by the Bond Ordinance to be executed on the part of the City in connection with the execution and delivery of the Series 2009 Bonds (the "City Documents") and such City documents have been duly executed and delivered by the City in the manner authorized; the execution, delivery and performance of the City Documents will not conflict with any applicable law or constitute on the part of the City a breach or default under any agreement, indenture or instrument known to me to which the City is a party or by which it is bound.

4. There is no civil controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the City or (except for any pending or future annexation or deannexation proceedings) its boundaries, the right or title of its officers to their respective offices, the legality of any official act or other proceedings of the City had in relation to the authorization, issuance, sale and delivery of the Series 2009 Bonds, the constitutionality or validity of the indebtedness represented by the Series 2009

Bonds, the validity of the Series 2009 Bonds, or the imposition and collection of Net Revenues of the Utility pledged to the repayment of the Series 2009 Bonds.

5. No facts have come to my attention which cause me to believe that the information contained in the Official Statement relating to the issuance of the Series 2009 Bonds, under the caption entitled "THE WICHITA WATER AND SEWER UTILITY" contains as of the date hereof any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made therein, in the light of the circumstances in which they were made, not misleading. No opinion is rendered with respect to other information or statements contained in the Official Statement, nor do I express an opinion as to the financial, technical or statistical data or any estimates, projections, assumptions or expressions of opinions included in the Official Statement or any appendix thereto.

I express no opinion regarding the tax-exempt status, present or future, of the Series 2009 Bonds.

Very truly yours,

Gary E. Rebenstorf
City Attorney

EXHIBIT D

FORM OF OPINION OF COUNSEL TO UNDERWRITER

Governing Body
City of Wichita, Kansas

Citigroup Global Markets Inc.,
as representative of the Underwriters
Chicago, Illinois

Re: $121,765,000* Water and Sewer Utility Revenue Bonds, Series 2009A and $12,790,000* Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), of the City of Wichita, Kansas

We have acted as counsel to Citigroup Global Markets Inc., as representative of the underwriters listed in the hereinafter defined Bond Purchase Agreement (collectively, the "Underwriter") in connection with their purchase of the above-referenced bonds (collectively, the "Series 2009 Bonds") issued by the City of Wichita, Kansas (the "City") pursuant to the Bond Purchase Agreement dated June 16, 2009 (the "Bond Purchase Agreement"), between the City and the Underwriter. The Series 2009 Bonds are issued pursuant to K.S.A. 10-1201 *et seq.*, as amended and supplemented from time to time (collectively, the "Act") and Ordinance No. [____] and Resolution No. [____], (collectively, the "Bond Ordinance"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Bond Purchase Agreement.

In that connection, we have reviewed certain portions of (a) the Bond Ordinance; (b) the Official Statement dated June [__], 2009, with respect to the Series 2009 Bonds (the "Official Statement"); (c) the Bond Purchase Agreement; (d) the opinions referred to in the Bond Purchase Agreement; (e) the Continuing Disclosure Certificate of the City, dated as of June 30, 2009 (the "Disclosure Undertaking"); and (f) such other records, opinions and documents, as we have deemed appropriate as a basis for the conclusions hereinafter expressed.

In arriving at the conclusions hereinafter expressed, we are not expressing any opinion or view on, and with your permission are assuming and relying on, the validity, accuracy and sufficiency of the records, documents, certificates and opinions referred to above (including the accuracy of all factual matters represented and legal representations and legal conclusions regarding the due authorization, issuance, delivery, validity and enforceability of the Series 2009 Bonds). We have assumed that all records, documents, certificates, and opinions that we have reviewed, and the signatures thereto, are genuine.

Based on and subject to the foregoing, and in reliance thereon, we are of the opinion that:

(1) the Series 2009 Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended;

(2) the Bond Ordinance is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended;

(3) the Disclosure Undertaking provides a suitable basis for the Underwriter, in connection

with the Offering of the Series 2009 Bonds (as defined in Rule 15c2-12 as promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Rule")), to make the determination required by paragraph (b)(5) of the Rule; and

(4) the Bond Purchase Agreement has been duly authorized, executed and delivered by the representative of the Underwriter.

We are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of any of the statements contained in the Official Statement and make no representation that we have independently verified the accuracy, completeness or fairness of any such statements. However, in our capacity as counsel to the Underwriter, we have had discussions with representatives of the Underwriter and representatives of the City, counsel to the City, Bond Counsel, and others, with respect to the preparation of the Official Statement. In the course of our participation in such discussions and our review of the Official Statement and the documents referred to therein, nothing came to our attention that leads us to believe that the Official Statement (except for the financial and statistical data assumptions, conclusions, expectations and opinions included in the Official Statement, as to which we do not express any opinion), as of its date, contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

This letter, and the legal opinions and other statements herein, are intended for the information solely of the addressees hereof and solely for the purposes of the transactions contemplated by the Bond Resolution and are not to be relied upon by any other person or entity, or for any other purpose, or quoted in whole or in part, or otherwise referred to, in any document, or to be filed with any governmental or other administrative agency or other person or entity for any purpose without our prior written consent.

We bring to your attention the fact that our legal opinions and conclusions are an expression of professional judgment and are not a guarantee of a result.

We do not undertake to advise you of matters which may come to our attention subsequent to the date hereof which may affect our legal opinions and conclusions expressed herein.

GILMORE & BELL, P.C.

REQUEST FOR DECLARATION OF EMERGENCY

REQUEST OF THE MAYOR OF THE CITY OF WICHITA, KANSAS, FOR THE DECLARATION BY THE CITY COUNCIL OF SAID CITY OF THE EXISTENCE OF A PUBLIC EMERGENCY REQUIRING THE FINAL ADOPTION OF AN ORDINANCE AS DESIGNATED BELOW.

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit,* June 16, 2009, of an ordinance entitled:

"AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, AUTHORIZING AND PROVIDING FOR CONSTRUCTING, RECONSTRUCTING, ALTERING, REPAIRING, IMPROVING, EXTENDING OR ENLARGING OF THE MUNICIPAL WATER AND SEWER UTILITY AND FOR FUNDING OF REQUIRED RESERVES FOR OUTSTANDING WATER AND SEWER REVENUE BONDS OF THE CITY OF WICHITA, KANSAS; AUTHORIZING THE ISSUANCE OF THE CITY'S $121,765,000 AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2009A, AND $12,790,000 AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2009B (TAXABLE UNDER FEDERAL LAW) TO PAY A PORTION OF THE COST THEREOF; MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS AND SUPPORTING DOCUMENTS."

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Bonds occur in a timely manner after the underwriters have received orders for the sale of the Bonds and to enable the City to deliver the Bonds authorized by said Ordinance on June 30, 2009.

It is, therefore, expedient at this time that the City Council find and declare that a public emergency exists by reason of the foregoing, and that the above entitled Ordinance be finally adopted on the date of its introduction.

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EXECUTED at Wichita, Kansas, on June 16, 2009.

(Seal)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(Published in *The Wichita Eagle* on June 19, 2009)

ORDINANCE NO. 48-351

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, AUTHORIZING AND PROVIDING FOR CONSTRUCTING, RECONSTRUCTING, ALTERING, REPAIRING, IMPROVING, EXTENDING OR ENLARGING OF THE MUNICIPAL WATER AND SEWER UTILITY AND FOR FUNDING OF REQUIRED RESERVES FOR OUTSTANDING WATER AND SEWER REVENUE BONDS OF THE CITY OF WICHITA, KANSAS; AUTHORIZING THE ISSUANCE OF THE CITY'S $121,765,000 AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2009A, AND $12,790,000 AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2009B (TAXABLE UNDER FEDERAL LAW) TO PAY A PORTION OF THE COST THEREOF; MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS AND SUPPORTING DOCUMENTS.

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

WHEREAS, the City is authorized under the laws of the State to issue general obligation bonds to construct, reconstruct, alter, repair, improve, extend or enlarge its municipal utilities; and

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

WHEREAS, pursuant to the provisions of the Act (as such term is defined herein) and Ordinance No. 41-934 of the City, adopted January 26, 1993 (the "Series 1993 Ordinance"), the City issued $76,320,000 original principal amount of Water and Sewer Utility Refunding and Improvement Revenue Bonds, Series 1993, dated February 1, 1993 (the "Series 1993 Bonds"), which Series 1993 Bonds were payable from and had a first and prior lien on the Net Revenues (as such term is defined herein) derived by the City from the operation of the Utility; and

WHEREAS, pursuant to the provisions of the Act, the Series 1993 Ordinance and various ordinances and resolutions of the City, the City has heretofore issued $64,930,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 1997 (the "Series 1997 Bonds"); $29,135,000 original principal amount of Water and Sewer Utility Refunding

Revenue Bonds, Series 1998 (the "Series 1998 Bonds"); $48,950,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 1999 (the "Series 1999 Bonds"); $7,220,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 2000 (the "Series 2000 Bonds"); $16,325,000 original principal amount of Water and Sewer Utility Refunding Revenue Bonds, Series 2001 (the "Series 2001 Bonds"); $120,365,000 original principal amount of Water and Sewer Utility Revenue Bonds, Series 2003 (the "Series 2003 Bonds"); $45,535,000 original principal amount of Water and Sewer Utility Refunding Revenue Bonds, Series 2005A (the "Series 2005A Bonds"); $26,695,000 Water and Sewer Utility Refunding Revenue Bonds, Series 2005B (the "Series 2005B Bonds"); $46,975,000 Water and Sewer Utility Revenue Bonds, Series 2005C (the "Series 2005C Bonds"); $51,140,000 Water and Sewer Utility Revenue Bonds, Series 2006 (the "Series 2006 Bonds"); and $29,460,000 Water and Sewer Utility Revenue Bonds, Series 2008A (the "Series 2008A Bonds"); and

WHEREAS, the Series 1993 Bonds and Series 1997 Bonds are no longer Outstanding; and

WHEREAS, the Outstanding Series 1998 Bonds, Series 1999 Bonds, Series 2000 Bonds, Series 2001 Bonds, Series 2003 Bonds, Series 2005A Bonds, Series 2005B Bonds, Series 2005C Bonds, Series 2006 Bonds and Series 2008A Bonds (collectively, the "Outstanding Parity Bonds") are payable from and have a co-equal first and prior lien on the Net Revenues (as such term is defined herein) derived by the City from the operation of the Utility; and

WHEREAS, pursuant to the provisions of the ordinances of the City authorizing such existing revenue bond indebtedness of the Utility, the City is authorized to issue additional revenue bonds for extensions, enlargements and improvements to the Utility, and such additional revenue bonds may be on a parity with and co-equal in priority and lien to the existing revenue bond indebtedness of the Utility, provided that certain conditions are satisfied; and

WHEREAS, the Governing Body has heretofore by various resolutions, duly adopted, found and determined it to be necessary and advisable to (a) construct, reconstruct, alter, repair, improve, extend or enlarge the Utility ("Projects"), and (b) fund necessary reserves for the Outstanding Parity Bonds ("Reserve Funding") and has found and determined it to be necessary and advisable to issue revenue bonds pursuant to the provisions of K.S.A. 10-1201 *et seq.*, as amended and supplemented (the "Act"), in order to pay the costs thereof; and

WHEREAS, the Governing Body caused to be published in the City's official newspaper, notices of the City's intention to construct the Projects, provide the Reserve Funding and issue such revenue bonds determined necessary by the aforesaid resolutions; and within the 15-day period after the publication of each such notice as required by the Act, no written protest was filed in the Office of the City Clerk against the Projects, the Reserve Funding and the issuance of such revenue bonds, and the City is, therefore, now authorized to construct the Projects, proceed with the Reserve Funding and to issue said revenue bonds; and

WHEREAS, the Governing Body hereby finds and determines that each and all of the conditions precedent to the issuance of additional revenue bonds on a parity with and co-equal

in priority and lien to the existing revenue bond indebtedness of the Utility have, or can and will be satisfied prior to or upon the issuance of such additional revenue bonds; and

WHEREAS, the Governing Body hereby finds it necessary and desirable to provide for the issuance and delivery of the Series 2009 Bonds payable from Net Revenues of the Utility and to authorize and provide for the execution and delivery of certain agreements and supporting documents;

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

Section 1. Definitions. All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Resolution herein referenced.

Section 2. Authorization of and Security for Series 2009 Bonds; Pledge of Net Revenues. Pursuant to the Bond Ordinance, the Governing Body hereby authorizes, orders and directs that there shall be issued and delivered the following series of revenue bonds (referred to collectively, as the "Series 2009 Bonds"): (a) "City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009A," in the aggregate total principal amount of $121,765,000, as provided by and under the authority of the Act, for the purpose of providing the necessary funds to pay the Project Costs, fund a reasonable reserve for the Series 2009A Bonds, and pay Costs of Issuance associated with the Series 2009A Bonds; and (b) "City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law)," in the aggregate total principal amount of $12,790,000, as provided by and under the authority of the Act, for the purpose of providing the necessary funds to pay the Reserve Funding, fund a reasonable reserve for the Series 2009B Bonds, and pay Costs of Issuance associated with the Series 2009B Bonds.

The principal amount of the Series 2009 Bonds, premium, if any, and the interest thereon are secured by and shall be paid by the City solely from the Net Revenues derived from the operation of the Utility, and the rates, fees and charges collected for the use thereof or service therefrom, and not from any other fund or source; and the Series 2009A Bonds and Series 2009B Bonds are hereby made a first and prior lien on the Net Revenues produced from the Utility, which lien is on a parity with and co-equal to each other and to the lien on the Net Revenues of the Series 1998 Bonds, the Series 1999 Bonds, the Series 2000 Bonds, the Series 2001 Bonds, the Series 2003 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds and the Series 2008A Bonds; and the City hereby irrevocably pledges the Net Revenues derived from the operation of the Utility to the payment of the Series 2009 Bonds.

The Series 2009A Bonds and Series 2009B Bonds shall not have any priority with respect to the payment of principal or interest over each other or over any revenue bonds of the City hereafter issued in accordance with the provisions of the Resolution (as hereinafter defined) which are on a parity with the Series 2009 Bonds, nor shall any other revenue bonds of the City heretofore or hereafter issued have any priority over the payment from the Net Revenues of the principal of or the interest on the Series 2009 Bonds.

The Series 2009 Bonds shall not be nor constitute general obligations of the City nor shall they constitute an indebtedness of the City within the meaning of any constitutional or statutory provision, and the City shall be under no obligation to levy any taxes to pay any of the principal of or the interest on the Series 2009 Bonds.

Section 3. Terms, Details and Conditions of the Bonds. Each series of Series 2009 Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such form, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Series 2009 Bonds, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

Section 4. Rate Covenant. While any of the Series 2009 Bonds remain Outstanding, the rates, fees and charges for the use of the services rendered by the Utility shall be reasonable and just and subject to the conditions and limitations in this Ordinance and the Resolution, provided, and it is hereby covenanted and agreed that, such rates, fees and charges, after payment of the costs of operating and maintaining the Utility, shall be sufficient to produce Net Revenues Available for Debt Service each year equal to not less than one hundred twenty percent (120%) of the current year's Debt Service Requirements for all revenue bond indebtedness of the Utility; shall be sufficient to comply with the conditions of this Ordinance and the Resolution and the terms of the Series 2009 Bonds and provide adequate reserves; and shall provide for at least one hundred percent (100%) coverage of the City's obligations with respect to the Payment to the City and to the repayment of Policy Costs then due and owing to the Initial Provider; provided that, in determining the Net Revenues Available for Debt Service, estimated additional net income to be derived from rate increases in effect and being charged prior to the end of the applicable year, as determined by the Consulting Engineers, may be taken into account, and that, without giving effect to any such adjustments from rate increases, Net Revenues Available for Debt Service shall be equal to at least one hundred percent (100%) of the current year's Debt Service Requirements for all revenue bond indebtedness of the Utility.

In providing for compliance with the covenants and provisions contained herein and the Resolution, it shall be the policy of the City that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues Available for Debt Service with respect to revenue bonds issued for improvements to each such component of the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

Section 5. Maintenance of Utility; Collection, Segregation and Disposition of Revenues. The City hereby covenants to operate and maintain the Utility in accordance with the requirements set forth in the Resolution. The City hereby further covenants and agrees that from and after the date of passage of this Ordinance, the Gross Revenues derived by the City from the operation of the Utility, including the Gross Revenues from all extensions and improvements to the Utility hereafter constructed or acquired by the City, will be deposited into the Water and Sewer Utility Revenue Fund created and currently maintained by the City, and

shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the City, all as more specifically provided in the Resolution.

Section 6. Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Series 2009A Bonds remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Series 2009A Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Series 2009A Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Series 2009A Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Series 2009A Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Series 2009A Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Series 2009A Bonds for so long as any of the Series 2009A Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Series 2009A Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Series 2009A Bonds and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Ordinance and the Resolution, the Rebate Amount as described in the Tax Compliance Certificate.

Section 7. **Designation.** Pursuant to K.S.A. 10-620 *et seq.*, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State of Kansas, Topeka, Kansas, is hereby designated as the initial Paying Agent and Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days' written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

Section 8. Further Authority. The Governing Body hereby authorizes, orders and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Series 2009 Bonds, a Bond Purchase Agreement between the City and Citigroup Global Markets Inc. and George K. Baum & Company, as co-underwriters for the Series 2009

Bonds, and the Series 2009 Bonds in accordance with the provisions of the Resolution. The Governing Body hereby further authorizes, orders and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Series 2009 Bonds, final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Series 2009 Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement, the Bond Purchase Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Series 2009 Bonds and the Official Statement.

Section 9. Effective Date. This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

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PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on June 16, 2009.

(Seal)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

RESOLUTION NO. _____

OF

THE CITY OF WICHITA, KANSAS

ADOPTED JUNE 16, 2009

PROVIDING FOR THE ISSUANCE OF

$121,765,000
WATER AND SEWER UTILITY
REVENUE BONDS
SERIES 2009A

AND

$12,790,000
WATER AND SEWER UTILITY
REVENUE BONDS
SERIES 2009B (TAXABLE UNDER FEDERAL LAW)

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EXHIBIT A THE PROJECTS
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RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, AUTHORIZING AND PROVIDING FOR CONSTRUCTING, RECONSTRUCTING, ALTERING, REPAIRING, IMPROVING, EXTENDING OR ENLARGING OF THE MUNICIPAL WATER AND SEWER UTILITY AND FOR FUNDING OF REQUIRED RESERVES FOR OUTSTANDING WATER AND SEWER REVENUE BONDS OF THE CITY OF WICHITA, KANSAS; PRESCRIBING THE FORM AND DETAILS OF $121,765,000 AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2009A, AND $12,790,000 AGGREGATE PRINCIPAL AMOUNT OF WATER AND SEWER UTILITY REVENUE BONDS, SERIES 2009B (TAXABLE UNDER FEDERAL LAW) PREVIOUSLY AUTHORIZED TO PAY A PORTION OF THE COST THEREOF; PROVIDING FOR THE COLLECTION, SEGREGATION AND APPLICATION OF THE REVENUES OF THE UTILITY FOR THE PURPOSES AUTHORIZED BY LAW, AND MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS AND SUPPORTING DOCUMENTS.

WHEREAS, the Governing Body the City of Wichita, Kansas (the "City"), pursuant to the Bond Ordinance (as herein defined), has authorized the issuance of the Series 2009A Bonds (as herein defined) in the aggregate principal amount of $121,765,000 and the Series 2009B Bonds (as herein defined) in the aggregate principal amount of $12,790,000, to provide for the issuance and delivery of revenue bonds payable from the Net Revenues (as herein defined) of the Utility (as herein defined); and

WHEREAS, the Bond Ordinance authorized the Governing Body of the City to adopt a resolution prescribing certain details and conditions and making certain covenants with respect to the issuance of the Series 2009A Bonds and the Series 2009B Bonds (collectively, the "Series 2009 Bonds"), the operation and maintenance of the Utility and the disposition of moneys deposited in the Water and Sewer Utility Revenue Fund (as herein defined);

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

ARTICLE I

DEFINITIONS; THE PROJECTS

Section 101. Definitions of Words and Terms. In addition to the words and terms defined elsewhere in this Resolution, the following words and terms as used in this Resolution shall have the following meanings:

"Act" shall mean the Constitution and Statutes of the State, including K.S.A. 10-101 *et seq.*, as amended and supplemented, and K.S.A. 10-1201 *et seq.*, as amended and supplemented.

"Additional Bonds" shall mean any additional revenue bonds issued pursuant to and in accordance with Article IX hereof.

"Annual Budget" shall mean with respect to the Utility, the City's budget of estimated receipts and expenditures on account of all Funds and Accounts created under the provisions of this Resolution, including a budget of Current Expenses, for any Fiscal Year and adopted pursuant to the provisions of Section 1004 of this Resolution.

"Authentication Date" shall mean the date on which a Bond is registered and authenticated by the Fiscal Agent as shown on the Certificate of Authentication which is on the Bond.

"Authorized Investments" shall mean any of the following securities, and to the extent the same are at the time permitted for investment of funds held by the City pursuant to the Bond Ordinance and this Resolution:

(A) For all purposes, including as defeasance investments in refunding escrow accounts:

(1) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following paragraph (2)), or

(2) Direct non-callable obligations of (including obligations issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America; and

(B) For all purposes other than defeasance investments in refunding escrow accounts:

(1) obligations of any of the following Federal agencies which obligations represent the full faith and credit of the United States of America, including:

-- Export - Import Bank
-- Farmers Home Administration General
-- General Services Administration
-- U.S. Maritime Administration
-- Small Business Administration
-- Government National Mortgage Association (GNMA)
-- U.S. Department of Housing & Urban Development (PHA's)
-- Federal Housing Administration;

(2) bonds, notes or other evidences of indebtedness rated "*AAA*" by Standard & Poor's Rating Services, a division of the McGraw-Hill Companies ("S&P") and "*Aaa*" by Moody's Investors Services, Inc. ("Moody's") issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;

(3) investments in shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation;

(4) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of the State or of any agency, instrumentality or local governmental unit of such State which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (A) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P and Moody's, or any successors thereto; or (B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (1) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;

(5) investment agreements with or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or S&P;

(6) Repurchase agreements secured by direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation; and

(7) Receipts evidencing ownership interests in securities or portions thereof in direct obligations of the United States Government or any agency thereof or obligations of the Federal National Mortgage Association, Federal Home Loan Banks or Federal Home Loan Mortgage Corporation;

Provided, however, that after the defeasance of the Pre-2008 Bonds, Authorized Investments for all purposes other than defeasance investments in refunding escrow accounts shall include all investments permitted under the laws of the State.

(C) The value of the above investments shall be determined as of the end of each month. (See the definition of "Value" herein).

"Bond Counsel" shall mean Kutak Rock LLP, Kansas City, Missouri, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

"Bond Insurer" shall mean the issuer, if any, of a Municipal Bond Insurance Policy described on **Exhibit C** to this Resolution.

"Bond Ordinance" shall mean the ordinance of the City authorizing the issuance of the Series 2009 Bonds as further described on **Exhibit C** to this Resolution.

"Bond Purchase Agreement" means the Bond Purchase Agreement dated as of June 16, 2009, between the City and the Underwriters.

"Bond Registrar" shall mean the Treasurer of the State, Topeka, Kansas, and its successors and assigns.

"Bond Reserve Account" shall mean the Water and Sewer Utility Bond Reserve Account initially created by the Series 1993 Ordinance.

"Bond Reserve Requirement" shall mean, collectively, the 1998 Bond Reserve Requirement as established by the Series 1998 Ordinance, the 1999 Bond Reserve Requirement as established by the Series 1999 Ordinance, the 2000 Bond Reserve Requirement as established by the Series 2000 Ordinance, the 2001 Bond Reserve Requirement as established by the Series 2001 Ordinance, the 2003 Bond Reserve Requirement as established by the Series 2003 Ordinance, the 2005A Bond Reserve Requirement as established by the Series 2005A Ordinance, the 2005B Bond Reserve Requirement as established by the Series 2005B Ordinance, the 2005C Bond Reserve Requirement as established by the Series 2005C Ordinance, the 2006 Bond Reserve Requirement as established by the Series 2006 Ordinance, the 2008A Bond Reserve Requirement as established by the Series 2008A Ordinance, and the 2009A Bond Reserve Requirement and 2009B Bond Reserve Requirement as established by this Resolution, and any bond reserve requirement established for any subsequent series of Parity Bonds.

"Bonds" shall mean the Series 1998 Bonds, the Series 1999 Bonds, the Series 2000 Bonds, the Series 2001 Bonds, the Series 2003 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds, the Series 2008A Bonds, the Series 2009A Bonds and the Series 2009B Bonds authorized by the Bond Ordinance and this Resolution, and any Additional Bonds issued pursuant to and in accordance with Article IX hereof.

"Bondowner(s)" shall mean the Owner(s) of the Bonds.

"Business Day" shall mean a day which is not a Saturday, Sunday or a day designated as a holiday by the Congress of the United States or by the legislature of the State and on which banks in the State are not authorized to be closed.

"City" shall mean the City of Wichita, Kansas.

"City Clerk" shall mean the duly appointed and acting City Clerk of the City, or in the absence thereof, any duly appointed Deputy City Clerk or Acting City Clerk of the City.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or such other general Federal tax code as shall be adopted by the United States Congress in substitution therefor, together with Regulations promulgated thereunder by the United States Department of the Treasury.

"Costs of Issuance" shall mean all costs of issuing the Series 2009 Bonds, and may include but are not limited to, all publication, printing, signing and mailing expenses in connection therewith, registration fees, all legal fees and expenses of Bond Counsel and other legal counsel, accounting expenses incurred in connection with the determination of Yield or Rebate Amount, all expenses incurred in connection with receiving ratings on the Series 2009 Bonds, and, if applicable, premiums or expenses incurred in obtaining municipal bond insurance.

"Consulting Engineers" shall mean the engineer or engineering firm or corporation at the time employed under the provisions of Section 1005 of this Resolution.

"Current Expenses" shall mean, as applied to either component of the Utility, the City's reasonable and necessary current expenses of operation, repair and maintenance, and shall include, without limiting the generality of the foregoing, (i) all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, (ii) all administrative expenses, (iii) any reasonable payments to pension or retirement funds properly chargeable to each component of the Utility, (iv) insurance premiums, (v) engineering expenses relating to operation, repair and maintenance, (vi) legal expenses, (vii) any lawful fiscal agency commissions and expenses in connection with the payment of the principal of and the interest and any redemption premium on Outstanding Bonds, (viii) any taxes which may be lawfully imposed on either component of the Utility or the income therefrom and reserves for such taxes, (ix) the expenses of collecting rates, fees and charges for the use of and for the services

furnished or to be furnished by the Utility, (x) if required by law, the payment of the principal of and the interest on outstanding bonds and other obligations heretofore issued by the City or by improvement districts heretofore annexed by the City to pay the cost of any portion of the Utility to the extent that the special assessments and taxes pledged for the payment of such principal and interest shall be insufficient for such purposes and to the extent that such payment shall not be made from the Improvement Account, and (xi) any other expenses required to be paid by the City under the provisions of this Resolution or by law. "Current Expenses" shall not include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, or any deposits or transfers to the credit of the Principal and Interest Account, the Bond Reserve Account, the Depreciation and Replacement Account or the Improvement Account.

"Date of Issuance" shall mean the date on which the applicable series of Series 2009 Bonds are delivered to the Underwriters and the City receives from the Underwriters the full purchase price therefor.

"Dated Date" shall mean the dated date of the Bonds. The Dated Date of the Series 2009 Bonds is the Date of Issuance.

"Debt Service" shall mean the scheduled amount of interest and maturing principal payable for that Bond Year, as described in the Code.

"Debt Service Requirements" shall mean the required payments of the principal of, premium, if any, and the interest on the Bonds and any Policy Costs owing by the City, all in accordance with the terms and provisions of this Resolution or any Parity Bond Ordinance.

"Depreciation and Replacement Account" shall mean the Water and Sewer Utility Depreciation and Replacement Account initially created by the Series 1993 Ordinance.

"Direct Participants" shall have the meaning set forth in and defined by the Letter of Representations.

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the absence thereof, any duly appointed Deputy, Assistant or Acting Director of Finance of the City.

"Director of Water and Sewer" shall mean the duly appointed or acting Director of the Wichita Water Utilities or Assistant Director of the Wichita Water Utilities, or the officer succeeding to the principal functions of the Director of the Wichita Water Utilities.

"DTC" shall mean The Depository Trust Company.

"Existing Bond Ordinances" shall mean, collectively, the Series 1998 Ordinance, the Series 1999 Ordinance, the Series 2000 Ordinance, the Series 2001 Ordinance, the Series 2003 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance and the Series 2008A Ordinance.

"Existing Bonds" shall mean, collectively, the Series 1998 Bonds, the Series 1999 Bonds, the Series 2000 Bonds, the Series 2001 Bonds, the Series 2003 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds, the Series 2006 Bonds and the Series 2008A Bonds.

"Fiscal Agent" shall mean the Bond Registrar and/or the Paying Agent.

"Fiscal Year" shall mean the Fiscal Year of the City, currently being the 12 months ending each December 31.

"Funds and Accounts" shall mean the Funds and Accounts created or ratified, continued and confirmed by Article V of this Resolution.

"Governing Body" shall mean the duly elected and/or appointed and acting persons comprising the City Council of the City.

"Government Obligations" means (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following phrase (ii)), or (ii) direct non-callable obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

"Gross Revenues" shall mean all receipts and revenues, including interest earnings, but excluding non-cash capital contributions, derived by the City from the Utility.

"Indirect Participants" shall have the meaning set forth in and defined by the Letter of Representations.

"Interest Payment Date" shall mean any date on which interest on the Bonds is due and payable. The Interest Payment Dates for the Series 2009 Bonds is April 1 and October 1 of each year, commencing April 1, 2010, and ending on the final maturity date of the applicable series of Series 2009 Bonds, or at such other time as such series of Series 2009 Bonds are paid or provision is made for the payment thereof.

"Letter of Representations" shall mean that certain Blanket Letter of Representations between the City and DTC.

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

"Municipal Bond Insurance Policy" shall mean, if applicable, the municipal bond insurance policy issued by Bond Insurer insuring the payment when due of the principal of and interest on a series of Series 2009 Bonds when due as described on **Exhibit C** to this Resolution.

"Net Proceeds" shall mean any insurance proceeds or condemnation awards, paid with respect to the Utility, remaining after the payment therefrom of all expenses incurred in the collection thereof.

"Net Revenues" shall mean for any period the amount of the excess of Gross Revenues of the Utility including investment income deposited to the credit of the Revenue Fund, respectively, over the Current Expenses of the respective components of the Utility paid from the Revenue Fund during such period; such amount specifically excluding debt service payments, depreciation, amortization and capital expenditures for improvements to the Utility.

"Net Revenues Available for Debt Service" shall mean the Net Revenues.

"Operating Revenues" shall mean the Gross Revenues of the Utility less investment income and less costs and expenses of operation, maintenance and repair of the Utility.

"Original Proceeds" shall mean all proceeds, including accrued interest, derived from the sale of the Bonds.

"Outstanding" shall mean, as of a particular date, all Bonds theretofore issued, authenticated and delivered under the provisions of this Resolution or any Parity Bond Ordinance, except (i) Bonds theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation pursuant to this Resolution or any Parity Bond Ordinance, (ii) Bonds for the payment or redemption of which moneys or investments have been deposited in accordance with Article XIII of this Resolution or any Parity Bond Ordinance, and (iii) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Resolution or any Parity Bond Ordinance.

"Owner(s)" or "Registered Owner(s)" shall mean, when used with respect to any Bond, the person or entity in whose name the Bond is registered as shown on the Registration Books maintained by the Fiscal Agent.

"Parity Bonds" shall mean Additional Bonds issued pursuant to Section 902 of this Resolution.

"Parity Bond Ordinance" shall mean, collectively, the Series 1998 Ordinance, the Series 1999 Ordinance, the Series 2000 Ordinance, the Series 2001 Ordinance, the Series 2003 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance, the Series 2008A Ordinance, the Bond Ordinance and this Resolution authorizing the Series 2009 Bonds, and any subsequent ordinance of the City authorizing the issuance of Parity Bonds.

"Participants" shall have the meaning set forth in and defined by the Letter of Representations.

"Paying Agent" shall mean the Treasurer of the State, Topeka, Kansas, its successors and assigns.

"Payment to the City" shall mean the payment to the City's general fund as a payment for operation of the Utility. So long as any Series 1998 Bonds or Series 1999 Bonds remain Outstanding, the amount of the annual Payment to the City shall be not more than five percent (5%) of the Gross Revenues of the Utility for the preceding year to the extent available after other obligations of the Utility have been met. At such time as the Series 1998 Bonds and Series 1999 Bonds are no longer Outstanding, the amount of the annual Payment to the City shall be governed by the terms of such ordinances of the City which are then in effect with respect to the then outstanding Utility revenue bonds, subject to the approval of the provider of the bond insurance policy for the Series 1998 Bonds and the Series 1999 Bonds.

"Pre-2008 Bonds" shall mean, collectively, the Series 1998 Bonds, the Series 1999 Bonds, the Series 2000 Bonds, the Series 2001 Bonds, the Series 2003 Bonds, the Series 2005A Bonds, the Series 2005B Bonds, the Series 2005C Bonds and the Series 2006 Bonds.

"Principal and Interest Account" shall mean the Water and Sewer Utility Principal and Interest Account created by the Series 1993 Ordinance.

"Principal Payment Date" shall mean any date on which the principal of the Bonds is due and payable. The Principal Payment Dates for the Series 2009 Bonds are October 1 of each year, commencing October 1, 2010, and continuing annually thereafter until such time as the aggregate principal amount of the applicable series of Series 2009 Bonds has been paid or provision is made for the payment thereof.

"Projects," for purposes of this Resolution, shall mean the constructions, reconstructions, alterations, repairs, improvements, extensions or enlargements of the Utility authorized and provided for by this Resolution and described on **Exhibit A** to this Resolution and any Substitute Project.

"Project Costs" shall mean, as applied to the Projects, any and all costs and expenses incurred in connection with the acquisition or construction of the Projects, and shall include, without intending thereby to limit or restrict any proper definition of such words under the provisions of the Act, the following:

(A) Obligations incurred for labor and to contractors, builders and materialmen in connection with the construction of the Projects, for machinery and equipment, and for the restoration of property damaged or destroyed in connection with such construction;

(B) Taxes or other municipal or governmental charges lawfully levied or assessed during construction upon the Projects or any property acquired therefor, and premiums on insurance (if any) in connection with the Projects during the construction thereof;

(C) Fees and expenses of engineers, including the Consulting Engineers, for studies, surveys and estimates, engineering, and the preparation of plans

and supervision of construction, as well as for the performance of all other duties of engineers in relation to the acquisition and construction of the Projects or the issuance of financing therefor;

(D) Expenses of administration properly chargeable to the Projects, legal expenses and fees, financing charges, costs of audits and of preparing and issuing the Series 2009 Bonds, and all other items of expense not elsewhere in this definition specified but incident to the acquisition and construction of the Projects and the placing of the same in operation and to the acquisition of real estate, franchises and rights-of-way therefor, including abstracts of title and title insurance, and the financing thereof, including specifically the Costs of Issuance;

(E) The costs of acquiring by purchase, if such purchase shall be deemed expedient, and the amount of award or final judgment in or any settlement or compromise of any proceedings to acquire by condemnation, such property, lands, property rights, rights-of-way, franchises, easements and other interests in land as may be deemed necessary or convenient for the acquisition or construction of the Projects, or the operation thereof, options and partial payments thereon, and the amount of any damages incident to or consequent upon the acquisition or construction of the Projects; and

(F) Any obligation or expense heretofore or hereafter incurred by the City and any amounts heretofore or hereafter advanced by the City or by any agency of the State or the Federal Government for any of the foregoing purposes, specifically including the payment and retirement of any temporary financing which may have previously been issued for any individual Project.

"Project Funds", for purposes of this Resolution, shall mean, collectively, the 2009A Sewer Project Fund and the 2009A Water Project Fund created by this Resolution.

"Purchase Price" shall mean the original purchase price of the Series 2009A Bonds and the Series 2009B Bonds described on **Exhibit C** to this Resolution.

"Rating Agency" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., the rating agency assigning a rating to the Series 2009A Bonds.

"Rebate Account" shall mean the Water and Sewer Utility Revenue Bonds, Series 2009A, Rebate Account created by this Resolution.

"Record Date" shall mean the fifteenth (15th) day of the month next preceding an Interest Payment Date.

"Registration Books" shall mean the books maintained on behalf of the City by the Fiscal Agent for the registration and transfer from time to time of the ownership of the Bonds.

"Reserve Funding" shall mean the amount of cash required under the Existing Bond Ordinances to fund the Bond Reserve Requirement for the Existing Bonds, taking into account any funds on deposit in each subaccount within the Bond Reserve Account related to each series of Existing Bonds as described on **Exhibit B** to this Resolution.

"Resolution" shall mean this Resolution adopted by the Governing Body of the City on June 16, 2009, prescribing the terms and details of the Series 2009 Bonds.

"Revenue Fund" shall mean the City's existing Water and Sewer Utility Revenue Fund.

"Series 1993 Bonds" shall mean the City's combined Series A, 1993 Bonds and Series B, 1993 Bonds.

"Series A, 1993 Bonds" shall mean the City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series A, 1993, authorized by the Series 1993 Ordinance, issued in the original principal amount of $26,455,000, and dated February 1, 1993, none of which remain Outstanding.

"Series B, 1993 Bonds" shall mean the City of Wichita, Kansas Water and Sewer Utility Refunding and Improvement Revenue Bonds, Series B, 1993, authorized by the Series 1993 Ordinance, issued in the original principal amount of $49,865,000, and dated February 1, 1993, none of which remain Outstanding.

"Series 1998 Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 1998, authorized by the Series 1998 Ordinance, in the original principal amount of $29,135,000, and dated September 1, 1998.

"Series 1999 Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 1999, authorized by the Series 1999 Ordinance, in the original principal amount of $48,950,000, and dated July 1, 1999.

"Series 2000 Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2000, authorized by the Series 2000 Bond Ordinance, in the original principal amount of $7,220,000, and dated June 1, 2000.

"Series 2001 Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 2001, authorized by the Series 2001 Ordinance, in the principal amount of $16,325,000, and dated December 1, 2001.

"Series 2003 Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2003, authorized by the Series 2003 Ordinance, in the principal amount of $120,365,000 and dated February 1, 2003.

"Series 2005A Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 2005A, authorized by the Series 2005A Ordinance, in the principal amount of $45,535,000 and dated the date of issuance thereof.

"Series 2005B Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Refunding Revenue Bonds, Series 2005B, authorized by the Series 2005B Ordinance, in the principal amount of $26,695,000 and dated the date of issuance thereof.

"Series 2005C Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2005C, authorized by the Series 2005C Ordinance, in the principal amount of $46,975,000 and dated October 1, 2005.

"Series 2006 Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2006, authorized by the Series 2006 Ordinance, in the principal amount of $51,140,000 and dated December 1, 2006.

"Series 2008A Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2008A, authorized by the Series 2008A Ordinance, in the principal amount of $29,460,000 and dated April 1, 2008.

"Series 2009 Bonds" shall mean, collectively, the Series 2009A Bonds and the Series 2009 B Bonds.

"Series 2009A Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009A, authorized by the Bond Ordinance and this Resolution, in the principal amount of $121,765,000 and dated the Date of Issuance.

"Series 2009B Bonds" shall mean the outstanding City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law), authorized by the Bond Ordinance and this Resolution, in the principal amount of $12,790,000 and dated the Date of Issuance.

"Series 1993 Ordinance" shall mean Ordinance No. 41-934 of the City, adopted January 26, 1993, which authorized issuance of the Series 1993 Bonds.

"Series 1998 Ordinance" shall mean Ordinance No. 43-954 of the City, adopted September 1, 1998, which authorized issuance of the Series 1998 Bonds.

"Series 1999 Ordinance" shall mean Ordinance No. 44-257 of the City, adopted June 8, 1999, which authorized issuance of the Series 1999 Bonds.

"Series 2000 Ordinance" shall mean Ordinance No. 44-663 of the City, adopted June 13, 2000, which authorized issuance of the Series 2000 Bonds.

"Series 2001 Ordinance" shall mean Ordinance No. 45-144 of the City, adopted November 20, 2001, which authorized issuance of the Series 2001 Bonds.

"Series 2003 Ordinance" shall mean Ordinance No. 45-547 of the City, adopted February 4, 2003, which authorized issuance of the Series 2003 Bonds.

"Series 2005A Ordinance" means, collectively, Ordinance No. 46-581 and Resolution No. 05-228 of the City, passed and adopted, respectively, on April 26, 2005, which authorized the issuance of the Series 2005A Bonds.

"Series 2005B Ordinance" means, collectively, Ordinance No. 46-634 and Resolution No. 05-406 of the City, passed and adopted, respectively, on August 2, 2005, which authorized the issuance of the Series 2005B Bonds.

"Series 2005C Ordinance" means, collectively, Ordinance No. 46-670 and Resolution No. 05-502 of the City, passed and adopted, respectively, on October 4, 2005, which authorized the issuance of the Series 2005C Bonds.

"Series 2006 Ordinance" means, collectively, Ordinance No. 47-300 and Resolution No. 06-609 of the City, passed and adopted, respectively, on November 14, 2006, which authorized the issuance of the Series 2006 Bonds.

"Series 2008A Ordinance" means, collectively, Ordinance No. 47-866 and Resolution No. 81-170 of the City, passed and adopted, respectively, on April 1, 2008, which authorized the issuance of the Series 2008A Bonds.

"Sewer Utility" shall mean and include the sanitary sewer system now owned and operated by the City, and consisting of sewage disposal works, sewers, drains, pumping plants, force mains, service connections, canals, ponds, machinery, equipment and other property appurtenant thereto and any improvements, extensions and enlargements to the Sewer Utility hereafter constructed or acquired.

"State" shall mean the State of Kansas.

"Substitute Project" shall mean the substitute or additional projects authorized pursuant to Section 603 of this Resolution.

"Tax Compliance Agreement" shall mean the Certificate Relating to Arbitrage and Related Tax Matters, executed by the City, dated as of and delivered on the Date of Issuance, relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

"Term Bonds" shall means the Term Bonds, if any, described on **Exhibit C** to this Resolution.

"Underwriters" shall mean the Citigroup Global Markets Inc., Chicago, Illinois, and George K. Baum & Company, Wichita, Kansas, as co-underwriters of the Series 2009 Bonds.

"Utility" shall mean the combined City of Wichita, Kansas Water Utility and Sewer Utility, and any improvements, extensions and enlargements thereto hereafter constructed or acquired.

"Value," for purposes of complying with the requirements of this Resolution shall mean the value of the Authorized Investments (which Value shall be determined as of the end of each month), calculated as follows:

(A) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times)* -- the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(B) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or in *The New York Times* -- the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the City in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; and

(C) as to certificates of deposit and bankers acceptances -- the face amount thereof, plus accrued interest.

Should the value of the Authorized Investments be required for any other legal purpose, the Value shall be calculated in accordance with the applicable laws and regulations.

"Water Utility" shall mean and include the waterworks system now owned and operated by the City and consisting of real estate, water rights, purification and pumping plants, reservoirs, mains, wells, pipelines, meters, hydrants, service connections, machinery, equipment and other property appurtenant thereto, and any improvements, extensions and enlargements to the Water Utility hereafter constructed or acquired.

"2009A Bond Reserve Requirement" shall mean a sum equal to the amount of interest which shall become due and payable on the Series 2009A Bonds during the next Fiscal Year (determined in each year), except that, in no event shall the amount of the 2009A Bond Reserve Requirement ever exceed the amount which is the lesser of ten percent (10%) of the original principal amount of the Series 2009A Bonds (determined as of the date of issuance of the Series 2009A Bonds), the maximum annual principal and interest requirements on the Series 2009A Bonds (determined as of the date of issuance of the Series 2009A Bonds), or one hundred twenty-five percent (125%) of the average annual debt service on the Series 2009A Bonds (determined as of the date of issuance of the Series 2009A Bonds).

"2009A Bond Reserve Subaccount" shall mean the Water and Sewer Utility Revenue Bonds, Series 2009A, Bond Reserve Subaccount created by this Resolution within the Bond Reserve Account.

"2009A Costs of Issuance Account" shall mean the Water and Sewer Utility Revenue Bonds, Series 2009A, Costs of Issuance Account created by this Resolution.

"2009A Principal and Interest Subaccount" shall mean the Water and Sewer Utility Revenue Bonds, Series 2009A, Principal and Interest Subaccount created by this Resolution within the Principal and Interest Account.

"2009B Bond Reserve Requirement" shall mean a sum equal to the amount of interest which shall become due and payable on the Series 2009B Bonds during the next Fiscal Year (determined in each year), except that, in no event shall the amount of the 2009B Bond Reserve Requirement ever exceed the amount which is the lesser of ten percent (10%) of the original principal amount of the Series 2009B Bonds (determined as of the date of issuance of the Series 2009B Bonds), the maximum annual principal and interest requirements on the Series 2009B Bonds (determined as of the date of issuance of the Series 2009B Bonds), or one hundred twenty-five percent (125%) of the average annual debt service on the Series 2009B Bonds (determined as of the date of issuance of the Series 2009B Bonds).

"2009B Bond Reserve Subaccount" shall mean the Water and Sewer Utility Revenue Bonds, Series 2009B, Bond Reserve Subaccount created by this Resolution within the Bond Reserve Account.

"2009B Costs of Issuance Account" shall mean the Water and Sewer Utility Revenue Bonds, Series 2009B, Costs of Issuance Account created by this Resolution.

"2009B Principal and Interest Subaccount" shall mean the Water and Sewer Utility Revenue Bonds, Series 2009B, Principal and Interest Subaccount created by this Resolution within the Principal and Interest Account.

Section 102. Rules of Interpretation.

(A) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(B) Wherever in this Resolution it is provided that any party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(C) All references in this Resolution to designated "Articles", "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this Resolution as originally executed. The words "herein", "hereof",

"hereunder" and other words of similar import refer to this Resolution as a whole and not to any particular Article, Section or subdivision.

(D) The Table of Contents and the Article and Section headings of this Resolution shall not be treated as a part of this Resolution or as affecting the true meaning of the provisions hereof.

ARTICLE II

THE BONDS

Section 201. Authorization of and Security for Series 2009 Bonds; Pledge of Net Revenues. Pursuant to the Bond Ordinance, the Governing Body hereby authorizes, orders and directs that there shall be issued and delivered the following series of revenue bonds (referred to collectively, as the "Series 2009 Bonds"): (a) "City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009A," in the aggregate total principal amount of $121,765,000, as provided by and under the authority of the Act, for the purpose of providing the necessary funds to pay the Project Costs, fund the 2009A Bond Reserve Requirement, and pay Costs of Issuance associated with the Series 2009A Bonds; and (b) "City of Wichita, Kansas Water and Sewer Utility Revenue Bonds, Series 2009B (Taxable Under Federal Law)," in the aggregate total principal amount of $12,790,000, as provided by and under the authority of the Act, for the purpose of providing the necessary funds to pay the Reserve Funding, fund the 2009B Bond Reserve Requirement, and pay Costs of Issuance associated with the Series 2009B Bonds.

The principal amount of the Series 2009 Bonds, premium, if any, and the interest thereon are secured by and shall be paid by the City solely from the Net Revenues derived from the operation of the Utility, and the rates, fees and charges collected for the use thereof or service therefrom, and not from any other fund or source. The Series 2009A Bonds and the Series 2009B Bonds are hereby made a first and prior lien on the Net Revenues produced from the Utility, which lien is on a parity with and co-equal to each other and to the lien on the Net Revenues of the Existing Bonds; and the City hereby irrevocably pledges the Net Revenues derived from the operation of the Utility to the payment of the Series 2009 Bonds.

The Series 2009A Bonds and the Series 2009B Bonds shall not have any priority with respect to the payment of principal or interest over each other or over any revenue bonds of the City hereafter issued in accordance with the provisions of Section 902 of this Resolution which are on a parity with the Series 2009 Bonds, nor shall any other revenue bonds of the City heretofore or hereafter issued have any priority over the payment from the Net Revenues of the principal of or the interest on the Series 2009 Bonds.

The Series 2009 Bonds shall not be nor constitute general obligations of the City nor shall they constitute an indebtedness of the City within the meaning of any constitutional or statutory provision, and the City shall be under no obligation to levy any taxes to pay any of the principal of or the interest on the Series 2009 Bonds.

Section 202. Description of Series 2009 Bonds. The Series 2009 Bonds shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount thereof maturing on any Principal Payment Date, and shall be numbered in such manner as the Bond Registrar shall determine. The Series 2009 Bonds shall be dated the Date of Issuance. The Series 2009 Bonds shall mature and become due and payable in the amounts and on the respective Principal Payment Dates, and shall bear interest at the rates per annum from the date thereof, at the rates per annum set forth on **Exhibit C** to this Resolution.

Interest on the Series 2009 Bonds at the rates described on **Exhibit C** to this Resolution (computed on the basis of a 360-day year of twelve 30-day months) from the most recent Interest Payment Date to which interest has been paid or duly provided for, shall be payable on the Interest Payment Dates, to the Owners as their names appear on the Registration Books at the close of business on the Record Dates.

Each series of Series 2009 Bonds will be issued and distributed in book-entry-only form through DTC, by depositing with DTC one certificate for each maturity in fully registered form, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Series 2009 Bonds maturing on the respective Principal Payment Dates as authorized herein. The manner of payment of the principal of and the interest on the Series 2009 Bonds to DTC, and other matters relating to the distribution of the Series 2009 Bonds in book-entry-only form through DTC, shall be governed by the Letter of Representations.

In the event, subject to the operational rules of DTC, (i) DTC determines not to continue to act as securities depository for one or both series of Series 2009 Bonds, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of one or both series of Series 2009 Bonds would adversely affect the interests of the beneficial owners of such Series 2009 Bonds, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement Series 2009 Bonds in the form of fully registered certificates in denominations of $5,000, or integral multiples thereof not exceeding the principal amount thereof maturing on any Principal Payment Date, to be authenticated and delivered to the beneficial owners. If issued in certificated form, the certificates representing the Series 2009 Bonds shall be numbered in such manner as the Series 2009 Bond Registrar shall determine.

Section 203. Designation of Paying Agent and Bond Registrar. Pursuant to K.S.A. 10-620 *et seq.*, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State, Topeka, Kansas, is hereby designated as the initial Paying Agent and Bond Registrar for the Series 2009 Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are hereby authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the Series 2009 Bonds; and DTC will remit such principal and interest to

its Direct Participants for distribution to the beneficial owners in the manner set forth in the following Section 204(A) and as governed by the terms of the Letter of Representations.

In the event that one or both series of Series 2009 Bonds should be issued and delivered in certificated form at anytime after the initial delivery of such series of Series 2009 Bonds, the Fiscal Agent shall maintain Registration Books for the ownership of such Series 2009 Bonds on behalf of the City; and the Paying Agent will make payment for such Series 2009 Bonds directly to the Owners as shown by said Registration Books in the manner set forth in the following Section 204(B).

Section 204. Method and Place of Payment of Series 2009 Bonds.

(A) Series 2009 Bonds Issued and Delivered in Book-Entry-Only Form. One certificate per maturity registered in the name of DTC's nominee, Cede & Co., for the total principal amount of each series of Series 2009 Bonds maturing on the respective Principal Payment Dates will be issued to DTC in New York, New York; and such certificates will be immobilized in its custody. Purchases of the Series 2009 Bonds in denominations permitted by Section 202 hereof must be made by or through Direct Participants of DTC, which will receive a credit for the applicable series of Series 2009 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2009 Bond (the "beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Transfers of ownership will be effected on the records of DTC and its Participants pursuant to the rules and procedures established by DTC and its Participants. Payment of principal and interest on the Series 2009 Bonds will be made in same day funds directly to DTC. The transfer of principal and interest to Participants of DTC will be the responsibility of DTC; the transfer of principal and interest to beneficial owners by Participants of DTC will be the responsibility of such Participants. Neither the City nor the Paying Agent and Bond Registrar will be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its Participants or persons acting through such Participants.

(B) In the Event Certificated Series 2009 Bonds are Subsequently Issued. The principal of, premium, if any, and the interest on the Series 2009 Bonds shall be payable in lawful money of the United States of America by check or draft of the Paying Agent. The principal of and any premium, if any, on the Series 2009 Bonds shall be paid to the Owner of each Series 2009 Bond upon presentation and surrender of the Series 2009 Bond to the Paying Agent for payment and cancellation on the maturity date, or the redemption date, as the case may be, of the Series 2009 Bond. The interest on the Series 2009 Bonds shall be mailed by the Paying Agent to the Owner of each Series 2009 Bond at the Owner's address as it appears on the Registration Books on the Record Dates, or at such other address as is provided in writing by such Owner to the Bond Registrar.

Section 205. Method of Execution and Authentication of Series 2009 Bonds. The Series 2009 Bonds shall be executed for and on behalf of the City by the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the City Clerk, and the seal of the City shall be affixed or imprinted thereon. The Series 2009 Bonds shall be registered in the office of the City Clerk, which registration shall be evidenced by the manual or facsimile

signature of the City Clerk with the seal of the City affixed or imprinted thereon. The Series 2009 Bonds shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed or imprinted thereon. In the event that any of the aforementioned officers shall cease to hold such offices before the Series 2009 Bonds are issued and delivered, the Series 2009 Bonds may be issued and transferred to other owners as though said officers had not ceased to hold office, and such signatures appearing on the Series 2009 Bonds shall be valid and sufficient for all purposes as if they had remained in office until such issuance or transfer.

The Series 2009 Bonds shall not be valid obligations under the provisions of the Bond Ordinance and this Resolution until authenticated by a duly authorized representative of the Bond Registrar by the manual execution of the Certificate of Authentication appearing on each Series 2009 Bond. It shall not be necessary that the same representative of the Bond Registrar execute the Certificate of Authentication on all of the Series 2009 Bonds.

Section 206. Payment of Costs of Bonds. The City shall pay all fees and expenses incurred in connection with the printing, issuance, transfer, exchange, registration, redemption and payment of the Bonds, including the fees and expenses of the Fiscal Agent, except (i) reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed, or (ii) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds, or (iii) any additional costs or fees that might be incurred in the secondary market.

Section 207. Registration, Transfer and Exchange of Bonds. In the event one or both series of Series 2009 Bonds are subsequently issued in certificated form, the City shall cause books evidencing the registration and transfer of the ownership of the Bonds as provided in this Resolution to be kept by the Bond Registrar (the "Registration Books"), and the Bonds may be transferred only upon the Registration Books and upon the surrender thereof to the Bond Registrar duly endorsed for transfer or accompanied by an assignment duly executed by the Owner thereof, or his agent, in such form as shall be satisfactory to the Bond Registrar. Upon the surrender for transfer of any certificated Bond at its office, the Bond Registrar shall authenticate and deliver in the name of the transferee or transferees a new certificated Bond or Bonds of authorized denominations in the aggregate principal amount of the surrendered certificated Bond. The Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such transfer or exchange.

Upon the presentation of the necessary documents as hereinbefore described at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange any Bond(s) for new Bond(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Bond(s) presented for transfer or exchange. All Bonds presented for transfer or exchange shall be surrendered to the Bond Registrar for cancellation. Prior to delivery of any new Bond(s) to the transferee, the Bond Registrar shall register the same in the Registration Books and shall authenticate each such new Bond.

The City and the Bond Registrar shall not be required to issue, register, transfer or exchange any Bonds during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date.

Bonds delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Bonds surrendered, shall be secured by the Bond Ordinance and this Resolution and shall be entitled to all of the security and benefits hereof and pledges made herein to the same extent as the Bonds surrendered. The person(s) in whose name any Bond is registered as shown on the Registration Books shall be deemed and regarded as the absolute Owner thereof for all purposes. Payment of, or on account of the principal of and the interest on any Bond shall be made only to or upon the order of the Owner or his duly authorized agent; except that, so long as a series of the Series 2009 Bonds remains issued in book-entry-only form, DTC shall be considered to be the Owner of such series of Series 2009 Bonds, and such payments shall be made only to DTC in accordance with Section 204(A) of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such series of Series 2009 Bonds, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Surrender and Cancellation of Bonds. Whenever any Outstanding Bond shall be delivered to the Bond Registrar for cancellation pursuant to this Resolution, upon payment of the principal amount thereof and the interest thereon or for replacement pursuant to this Resolution, such Bond shall be canceled by the Bond Registrar and the canceled Bond shall be returned to the City Clerk, or such canceled Bond shall be destroyed by the Bond Registrar and a certificate evidencing such destruction shall be furnished to the City.

Section 209. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any certificate representing a Bond is mutilated, lost, stolen or destroyed, the City may execute and the Bond Registrar may authenticate a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated certificate, such mutilated certificate shall first be surrendered to the City or the Bond Registrar, and, in the case of any lost, stolen or destroyed certificate, there shall first be furnished to the Bond Registrar and the City evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Bond Registrar. In the event any such certificate shall have matured, then and in such event instead of issuing a duplicate certificate, the City and the Bond Registrar may pay the same without the physical surrender of such certificate. The City and the Bond Registrar may charge to the Owner of such certificate their reasonable fees and expenses in connection with replacing a mutilated, stolen, lost or destroyed certificate.

Section 210. Execution and Delivery of Series 2009 Bonds. The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Series 2009 Bonds without unnecessary delay in the form and manner herein specified, including a reasonable quantity of replacement bond certificates for use in accordance with the provisions of this Resolution; and when executed the Series 2009 Bonds shall be registered in the Office of the City Clerk and in the Office of the State Treasurer, as required by law and as hereinbefore provided, and shall thereupon be deposited with the Fiscal Agent for authentication. When a

series of the Series 2009 Bonds shall have been executed, registered and authenticated as required by this Resolution, such Series 2009 Bonds shall be delivered at one time to or upon the order of the Underwriters, but only upon receipt by the City of the full Purchase Price therefor; and the proceeds of such series of the Series 2009 Bonds shall immediately be applied by the City as in the Bond Ordinance and this Resolution provided.

Upon the issuance of a series of the Series 2009 Bonds, there shall be filed with the Fiscal Agent and with the Treasurer of the State, the following:

(A) an executed original or certified copies of the Bond Ordinance and this Resolution, together with an affidavit of publication of the Bond Ordinance;

(B) an opinion of Bond Counsel to the effect that the applicable series of Series 2009 Bonds constitute valid and legally binding special obligations of the City and that the interest on the Series 2009A Bonds is not includable in gross income for purposes of Federal income taxation and is exempt from Kansas income taxation, subject to such restrictions and limitations as shall be described therein; and

(C) such other certificates, opinions, statements, receipts and documents as are required by the Act or as Bond Counsel shall reasonably require for delivery of such series of the Series 2009 Bonds.

Section 211. Official Statement. The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared in the initial offering and sale of the Series 2009 Bonds, and the subsequent insertion of interest rates, yields and related information for the Series 2009 Bonds. The lawful use of the final Official Statement in the reoffering of the Series 2009 Bonds by the Underwriters is hereby approved and authorized.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Optional Redemption.

(A) ***Series 2009A Bonds.*** The Series 2009A Bonds maturing 2010 through 20__, inclusive, shall become due on their respective maturities without the option of prior payment. At the option of the City, the Series 2009A Bonds maturing October 1, 20__, and thereafter, may be called for redemption and payment prior to their respective maturities on and after October 1, 20__. The Series 2009A Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid, at a redemption price (expressed as a percentage of the principal amount) as follows, plus accrued interest thereon to the date established for such redemption and payment:

Redemption Dates	Redemption Prices
October 1, 20__, through September 30, 20__	_____%
October 1, 20__, through September 30, 20__	_____%
October 1, 20__, and thereafter	_____%

(B) ***Series 2009B Bonds.*** The Series 2009B Bonds maturing 2010 through 20__, inclusive, shall become due on their respective maturities without the option of prior payment. At the option of the City, the Series 2009B Bonds maturing October 1, 20__, and thereafter, may be called for redemption and payment prior to their respective maturities on and after October 1, 20__. The Series 2009B Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid, at a redemption price (expressed as a percentage of the principal amount) as follows, plus accrued interest thereon to the date established for such redemption and payment:

Redemption Dates	Redemption Prices
October 1, 20__, through September 30, 20__	_____%
October 1, 20__, through September 30, 20__	_____%
October 1, 20__, and thereafter	_____%

Section 302. Sinking Fund Redemption. Any Term Bonds shall also be subject to mandatory redemption and payment as described on **Exhibit C** to this Resolution.

Section 303. Selection of Bonds to be Redeemed.

(A) The Series 2009 Bonds shall be redeemed only in the principal amount of $5,000, or integral multiples thereof. When less than all of the Outstanding Series 2009 Bonds of a series are to be redeemed and paid prior to maturity, such Series 2009 Bonds shall be redeemed in such manner as the City shall determine, with Series 2009 Bonds of less than a full maturity to be selected by lot in units of $5,000.

(B) In the case of a partial redemption of Series 2009 Bonds by lot when Series 2009 Bonds of denominations greater than $5,000 are then Outstanding, then for all purposes in connection with such redemption each $5,000 of face value shall be treated as though it were a separate Series 2009 Bond in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Series 2009 Bond is selected for redemption, then upon notice of intention to redeem such $5,000 unit or units, the Owner or the Owner's duly authorized agent shall forthwith present and surrender such Series 2009 Bond to the Bond Registrar and Paying Agent (i) for payment of the redemption price (including the redemption premium, if any, and interest to the date fixed for redemption) of the $5,000 unit or units of face value called for redemption, and (ii) for exchange, without charge to the Owner thereof, for a new Series 2009 Bond of the aggregate principal amount of the unredeemed portion of the principal amount of such Series 2009 Bond. If the Owner of any Series 2009 Bond of a denomination greater than $5,000 shall fail to present such Series 2009 Bond as

aforesaid, such Series 2009 Bond shall, nevertheless, become due and payable on the redemption date to the extent of the amount called for redemption.

Section 304. Notice of Redemption. If the City elects to call any Series 2009 Bond for redemption and payment prior to the maturity thereof, it shall give written notice of such intention to the Paying Agent not less than sixty (60) days (or such lesser period of time acceptable to the Paying Agent) prior to the date selected for payment of the Series 2009 Bonds to be so called. The Paying Agent shall, upon receipt of any such written notice from the City, mail a written notice of redemption which notice shall specify the date selected for redemption and describe the Series 2009 Bonds to be so called (such description to include the series, principal amount, maturities and CUSIP numbers, if any, of the Series 2009 Bonds to be so called). Such written notice to be given by the Paying Agent shall be mailed by United States first class mail on a date which is not less than thirty (30) days prior to the date fixed for redemption to the Owners of the Series 2009 Bonds subject to the call as shown by the Registration Books, unless any Owner has waived such written notice of redemption, and, if applicable, to the Bond Insurer. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice. A second notice of redemption shall be given by the Paying Agent by first class United States mail to the Owners of any Series 2009 Bonds which have been called for redemption (in whole or in part), but which Series 2009 Bonds have not been presented and surrendered to the Paying Agent within one hundred twenty (120) days following the date of the redemption. However, failure to give any notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of the Series 2009 Bonds. Any notice of redemption shall state the date of the redemption, the place or places at which Series 2009 Bonds shall be presented for payment, the series, maturities and numbers of the Series 2009 Bonds or portions thereof to be redeemed and the principal amount thereof being redeemed, the price to be paid for the Series 2009 Bonds to be redeemed, shall state that interest on the Series 2009 Bonds described in the notice will cease to accrue from and after the date established for redemption, and shall state that the redemption is conditioned upon there being on deposit on the date of redemption, sufficient money to pay the full redemption price of the Series 2009 Bonds to be redeemed.

Section 305. Effect of Call for Redemption. On or before the redemption date, funds or Government Obligations shall be deposited with the Paying Agent in an amount sufficient to provide for the payment of the redemption price of the Series 2009 Bonds called for redemption on the date established for redemption. Upon the deposit of such funds or Government Obligations, and notice having been given as provided in Section 304 above, the Series 2009 Bonds or portions thereof thus called for redemption shall cease to bear interest on the specified redemption date and shall no longer be entitled to the protection, benefit or security of the Bond Ordinance and this Resolution and shall not be deemed to be Outstanding under the provisions hereof.

ARTICLE IV

FORM OF BONDS

Section 401. Form of Bonds Generally. The definitive typewritten or printed form of the certificates representing Bonds issued under the Bond Ordinance and this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act.

Section 402. Form of Series 2009 Bonds. The definitive typewritten or printed form of the certificates representing the Series 2009 Bonds issued under the Bond Ordinance and this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act. The Governing Body hereby approves the form and text of the certificates to be prepared for the Series 2009 Bonds, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Series 2009 Bonds; and hereby further authorizes, orders and directs Bond Counsel, in the event the Series 2009 Bonds are issued in certificated form at any time after the initial issuance and delivery of the Series 2009 Bonds, to prepare the form of and cause such certificated Series 2009 Bonds to be printed.

ARTICLE V

FUNDS AND ACCOUNTS

Section 501. Ratification of Existing Funds and Accounts of the Utility; Administration. Simultaneously with the issuance of the Series 1993 Bonds, and as directed by the Series 1993 Ordinance, there were created within the Treasury of the City the following separate Funds and Accounts of the Utility:

(A) Water and Sewer Utility Principal and Interest Account (the "Principal and Interest Account");

(B) Water and Sewer Utility Bond Reserve Account (the "Bond Reserve Account");

(C) Water and Sewer Utility Depreciation and Replacement Account (the "Depreciation and Replacement Account"); and

(D) Water and Sewer Utility Improvement Account (the "Improvement Account"), and within the Improvement Account, the following subaccounts:

(1) Improvement Account Subaccount for Water Utility Improvements (the "Water Improvement Account"), and

(2) Improvement Account Subaccount for Sewer Utility Improvements (the "Sewer Improvement Account").

The foregoing Funds and Accounts originally created by the Series 1993 Ordinance, and the subaccounts thereof ratified, confirmed and continued by the Series 1998 Ordinance, the Series 1999 Ordinance, the Series 2000 Ordinance, the Series 2001 Ordinance, the Series 2003 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance and the Series 2008A Ordinance are hereby ratified, confirmed and continued for the security and benefit of the Owners of the Bonds; and the City consents and agrees that so long as any of the Bonds remain outstanding and unpaid, the City will maintain and administer said funds and accounts in accordance with the provisions of the Series 1998 Ordinance, the Series 1999 Ordinance, the Series 2000 Ordinance, the Series 2001 Ordinance, the Series 2003 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance, the Series 2008A Ordinance, the Bond Ordinance and this Resolution.

Section 502. Creation of Additional Funds and Accounts of the Utility; Administration. Simultaneously with the issuance of the Series 2009 Bonds, there shall be created within the Treasury of the City the following additional separate Funds and Accounts of the Utility:

(A) Within the Principal and Interest Account, the following additional subaccount:

(1) Principal and Interest Subaccount for Water and Sewer Utility Revenue Bonds, Series 2009A (the "2009A Principal and Interest Subaccount");

(2) Principal and Interest Subaccount for Water and Sewer Utility Revenue Bonds, Series 2009B (the "2009B Principal and Interest Subaccount");

(B) Within the Bond Reserve Account, the following additional subaccount:

(1) Bond Reserve Subaccount for Water and Sewer Utility Revenue Bonds, Series 2009A (the "2009A Bond Reserve Subaccount");

(2) Bond Reserve Subaccount for Water and Sewer Utility Revenue Bonds, Series 2009B (the "2009B Bond Reserve Subaccount");

(C) Costs of Issuance Account for Water and Sewer Utility Revenue Bonds, Series 2009A (the "2009A Costs of Issuance Account");

(D) Costs of Issuance Account for Water and Sewer Utility Revenue Bonds, Series 2009B (the "2009B Costs of Issuance Account");

(E) 2009A Sewer Utility Projects Fund (the "2009A Sewer Projects Fund");

(F) 2009A Water Utility Projects Fund (the "2009A Water Projects Fund");

(G) Rebate Account for Water and Sewer Utility Revenue Bonds, Series 2009A (the "Rebate Account").

The Governing Body hereby covenants and agrees that the Funds and Accounts created by this Section, shall be maintained and administered by the City in accordance with the provisions of this Resolution; and the Governing Body hereby covenants and agrees that the City shall make deposits into, disbursements from, and shall invest moneys in, each and all of said Funds and Accounts as hereinafter in this Resolution provided. The Governing Body hereby further covenants and agrees that (i) the Accounts referred to in subsections (A)(1) and (B)(1), and each of them, shall be continued for the security and benefit of the Owners of the Series 2009A Bonds for so long as any of the Series 2009A Bonds remain Outstanding and unpaid; (ii) the Accounts referred to in subsections (A)(2) and (B)(2), and each of them, shall be continued for the security and benefit of the Owners of the Series 2009B Bonds for so long as any of the Series 2009B Bonds remain Outstanding and unpaid; (iii) that the Costs of Issuance Accounts referred to in subsections (C) and (D) shall be administered and terminated as provided by Section 503 hereof; (iv) that the Project Funds referred to in subsections (E) and (F) shall be administered and terminated as provided by Section 602 hereof; and (v) that the Rebate Account referred to in subsection (G) shall be administered and terminated as provided by Section 704 hereof and the Tax Compliance Agreement.

The City shall maintain a practice of keeping separate and distinct accounts and subaccounts within the Funds and Accounts herein referred to and as created by this Resolution for the separate operations of the Water Utility and the Sewer Utility for budget and accounting purposes; provided, however, such segregation of the Funds and Accounts, and any subaccounts thereof, for such purpose shall have no effect upon the pledge and lien of the Bonds on the Net Revenues of the Utility.

Section 503. Costs of Issuance Accounts. The Governing Body hereby further covenants and agrees that the moneys deposited to the 2009A Costs of Issuance Account shall be immediately expended, to the extent possible, to pay the Costs of Issuance of the Series 2009A Bonds, and, that any moneys remaining in the 2009A Costs of Issuance Account on the date which is thirty (30) days prior to the first Principal Payment Date of the Series 2009A Bonds shall all be transferred to the 2009A Principal and Interest Subaccount to pay a portion of the first principal due on the Series 2009A Bonds; and that the 2009A Costs of Issuance Account shall thereafter be terminated. The Governing Body hereby further covenants and agrees that the moneys deposited to the 2009B Costs of Issuance Account shall be immediately expended, to the extent possible, to pay the Costs of Issuance of the Series 2009B Bonds, and, that any moneys remaining in the 2009B Costs of Issuance Account on the date which is thirty (30) days prior to the first Principal Payment Date of the Series 2009B Bonds shall all be

transferred to the 2009B Principal and Interest Subaccount to pay a portion of the first principal due on the Series 2009B Bonds; and that the 2009B Costs of Issuance Account shall thereafter be terminated.

ARTICLE VI

DISPOSITION OF BOND PROCEEDS AND OTHER MONEYS

Section 601. Disposition of Series 2009 Bond Proceeds.

(A) ***Series 2009A Bonds.*** The proceeds of the Series 2009A Bonds (*i.e.*, the Purchase Price), upon receipt shall be immediately deposited and credited as follows:

(1) to the credit of the 2009A Costs of Issuance Account, the sum of $_____;

(2) to the credit of the 2009A Principal and Interest Subaccount, the amount of accrued interest received as a portion of the Purchase Price in the amount of $_____ to be applied to the first interest payment on the Series 2009A Bonds;

(3) to the credit of the 2009A Bond Reserve Subaccount, the sum of $_____, the 2009A Bond Reserve Requirement;

(4) to the credit of the 2009A Water Projects Fund, the sum of $_____; and

(5) to the credit of the 2009A Sewer Projects Fund, the sum of $_____.

(B) ***Series 2009B Bonds.*** The proceeds of the Series 2009B Bonds (*i.e.*, the Purchase Price), upon receipt shall be immediately deposited and credited as follows:

(1) to the credit of the 2009B Costs of Issuance Account, the sum of $_____;

(2) to the credit of the 2009B Principal and Interest Subaccount, the amount of accrued interest received as a portion of the Purchase Price in the amount of $_____ to be applied to the first interest payment on the Series 2009B Bonds;

(3) to the credit of the 2009B Bond Reserve Subaccount, the sum of $_____, the 2009B Bond Reserve Requirement; and

(4) to the credit of each Bond Reserve Subaccount for the Existing Bonds, the sum of $_____; and

Section 602. Project Funds; Construction of Projects. The City covenants that in constructing the Projects it will perform all duties and obligations relative thereto as are now or may hereafter be imposed by the Act and the provisions of this Resolution. Withdrawals from the Project Funds, or either of them, shall be made only upon duly authorized and executed warrants which are accompanied by a statement of the Director of Finance to the effect that such payment is being made for a purpose within the scope of this Resolution. Any moneys remaining in the Project Funds upon the full and final completion of the Projects and the payment of all Project Costs shall be transferred to the 2009A Principal and Interest Subaccount and shall be used for the payment of the principal of and the interest on the Series 2009A Bonds, and the Project Funds shall thereafter be terminated. To the extent no other available funds are held under this Resolution, any moneys remaining in the Project Funds upon an event of default with respect to the Series 2009A Bonds as set forth in Section 1101 (A) or (B) hereof shall be transferred to the 2009A Principal and Interest Subaccount and shall be used for the payment of the principal and interest on the Series 2009A Bonds.

Section 603. Substitute Projects. The City may elect to substitute or add other projects pursuant to this Section provided the following conditions are met: (a) the Substitute Project and the issuance of bonds, the principal of and interest on which are payable from Net Revenues of the Utility, to pay the cost of the Substitute Project has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Series 2009A Bonds to include the Substitute Project and (c) the City has received an opinion of Bond Counsel to the effect that the Substitute Project will not adversely affect the tax-exempt status of the Series 2009A Bonds under State or federal law and the Substitute Project has been authorized pursuant to this Section and the laws of the State.

Section 604. Reserve Funding. Moneys described in Section 601(B)(4) shall be deposited in the Bond Reserve Subaccounts for the Existing Bonds in the amounts set forth on **Exhibit B** to this Resolution and invested and disbursed in accordance with the applicable Existing Bond Ordinance.

ARTICLE VII

COLLECTION AND APPLICATION OF REVENUES; INSUFFICIENT FUNDS; REBATE ACCOUNT

Section 701. Collection, Segregation and Disposition of Revenues. The City covenants and agrees that from and after the date of adoption of the Bond Ordinance and this Resolution, the Gross Revenues derived by the City from the operation of the Utility, including the Gross Revenues from all extensions and improvements to the Utility hereafter constructed or acquired by the City, will be deposited into the Water and Sewer Utility Revenue Fund (the "Revenue Fund") heretofore created and currently maintained by the City, and shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the City. From and after the adoption of this Resolution, the City will allocate all of the moneys held in the Revenue Fund to the Funds and Accounts of the Utility as follows:

(A) The cost of operating and maintaining the Utility shall be paid currently as bills accrue. Such amount as may be necessary in the opinion of the Governing Body to pay the reasonable and proper expenses of operation and maintenance for the ensuing sixty (60) days may be retained and accumulated in the Revenue Fund before making transfers to other Funds and Accounts.

(B) There shall next, on the first (1st) day of each month, be transferred from the Revenue Fund and deposited to the Principal and Interest Account, for credit to the respective Subaccounts thereof, the following amounts:

(1) an equal pro rata portion of the amount of interest which will become due on the Outstanding Bonds on the next succeeding Interest Payment Date; plus

(2) an equal pro rata portion of the amount of principal that will become due on the Outstanding Bonds on the next succeeding Principal Payment Date;

to the end that at all times thirty (30) days prior to each Interest Payment Date and Principal Payment Date, or to any date of redemption, if applicable, there shall be sufficient moneys in the Principal and Interest Account to transmit the amount of maturing interest and principal on the Outstanding Bonds to the Paying Agent for payment to the Owners when due.

All amounts paid and credited to the 2009A Principal and Interest Subaccount shall be used for the sole purpose of paying the interest on and the principal of the Series 2009A Bonds as and when the same become due, and may also be used for paying any fees of the Bond Registrar and Paying Agent in connection with the Series 2009A Bonds.

All amounts paid and credited to the 2009B Principal and Interest Subaccount shall be used for the sole purpose of paying the interest on and the principal of the Series 2009B Bonds as and when the same become due, and may also be used for paying any fees of the Bond Registrar and Paying Agent in connection with the Series 2009B Bonds.

(C) There shall next, on the first (1st) day of each month, be transferred from the Revenue Fund and deposited to the Bond Reserve Account, for the credit of the respective subaccounts thereof as appropriate, the amount, if any, required to restore the Bond Reserve Account to the Bond Reserve Requirement.

Simultaneously with the issuance of the Series 2009A Bonds, the City shall deposit in the 2009A Bond Reserve Subaccount proceeds of the Series 2009A Bonds in an amount equal to the 2009A Bond Reserve

Requirement. All earnings on investments from the 2009A Bond Reserve Subaccount (other than any required deposits to the Rebate Account) shall accrue to and become a part of the 2009A Bond Reserve Subaccount until it achieves and is being maintained at the 2009A Bond Reserve Requirement at which time such investment earnings shall be transferred to the 2009A Principal and Interest Subaccount. The 2009A Bond Reserve Subaccount shall be used solely for the payment of principal and interest on the Series 2009A Bonds for which funds might not otherwise be available, or to pay a like amount of final maturing Series 2009A Bonds. Should the City expend any portion of the 2009A Bond Reserve Subaccount and thereby reduce it below the 2009A Bond Reserve Requirement (except for the purpose of retiring all Outstanding Series 2009A Bonds), or should a valuation of the 2009A Bond Reserve Subaccount indicate that it is below the 2009A Bond Reserve Requirement, the City shall resume the monthly transfers to the 2009A Bond Reserve Subaccount as set forth above such that the 2009A Bond Reserve Subaccount will accumulate to the 2009A Bond Reserve Requirement within twelve (12) months of the date of the related deficiency.

Simultaneously with the issuance of the Series 2009B Bonds, the City shall deposit in the 2009B Bond Reserve Subaccount proceeds of the Series 2009B Bonds in an amount equal to the 2009B Bond Reserve Requirement. All earnings on investments from the 2009B Bond Reserve Subaccount shall accrue to and become a part of the 2009B Bond Reserve Subaccount until it achieves and is being maintained at the 2009B Bond Reserve Requirement at which time such investment earnings shall be transferred to the 2009B Principal and Interest Subaccount. The 2009B Bond Reserve Subaccount shall be used solely for the payment of principal and interest on the Series 2009B Bonds for which funds might not otherwise be available, or to pay a like amount of final maturing Series 2009B Bonds. Should the City expend any portion of the 2009B Bond Reserve Subaccount and thereby reduce it below the 2009B Bond Reserve Requirement (except for the purpose of retiring all Outstanding Series 2009B Bonds), or should a valuation of the 2009B Bond Reserve Subaccount indicate that it is below the 2009B Bond Reserve Requirement, the City shall resume the monthly transfers to the 2009B Bond Reserve Subaccount as set forth above such that the 2009B Bond Reserve Subaccount will accumulate to the 2009B Bond Reserve Requirement within twelve (12) months of the date of the related deficiency.

(D) After providing for the payments and transfers set forth in and required by the preceding subsections, there shall next be transferred from the Revenue Fund proportionate monthly amounts equal to the next required Payment to the City.

(E) The Required Status of the Depreciation and Replacement Account shall be fifteen percent (15%) of the Operating Revenues of the Utility for the preceding year. The City shall, after providing for the payments and transfers set forth in and required by the preceding subsections, next set aside and transfer monthly from the Revenue Fund, minimum monthly amounts to the end that the Depreciation and Replacement Account will reach its Required Status within a period of thirty (30) months from the first such transfer. All earnings on investments from the Depreciation and Replacement Account shall accrue to and become a part of the Depreciation and Replacement Account until it achieves its Required Status, and thereafter shall be transferred to the Improvement Account.

Except as hereinafter provided, all amounts credited to the Depreciation and Replacement Account shall be used by the City for the purpose of (i) extraordinary maintenance and repairs to the Utility, (ii) capital improvements in and to the Utility, and (iii) keeping the Utility in good repair and working order so that it may continue in effective and efficient operation. If no other funds are available therefor, moneys in the Depreciation and Replacement Account may be used to pay the costs of operating and maintaining the Utility.

If the City shall ever be compelled to use and expend any part of the Depreciation and Replacement Account for the purposes specified above, and such use shall reduce the amount of the Depreciation and Replacement Account below its Required Status, then the City covenants and agrees that after making all payments or credits at the time required to be made by the City under the provisions of the foregoing subsections, it will thereafter resume the minimum monthly payments and credits from the Revenue Fund into the Depreciation and Replacement Account to the end that it shall have again attained its Required Status within a period of eighteen (18) months.

(F) In addition to the monthly transfers set forth in and required by the preceding subsections, the provisions of the Series 1998 Ordinance, the Series 1999 Ordinance, the Series 2000 Ordinance, the Series 2001 Ordinance, the Series 2003 Ordinance, the Series 2005A Ordinance, the Series 2005B Ordinance, the Series 2005C Ordinance, the Series 2006 Ordinance and the Series 2008A Ordinance, all moneys remaining in the Revenue Fund on each January 1, which shall not be required for the operation and maintenance of the Utility or for the transfers required by the preceding subsections for a period of ninety (90) days, shall be

credited to the Improvement Account. Moneys in the Improvement Account may be used for the following purposes:

(1) to pay operational and maintenance expenses of the Utility;

(2) to make payments into or increase the amounts in any of the Funds and Accounts referred to in the preceding subsections to cover potential deficiencies in or to anticipate future requirements of those Funds and Accounts;

(3) to pay the costs of making repairs to or extending, enlarging or improving the Utility;

(4) to pay and redeem at or prior to maturity, or to purchase, Bonds or other outstanding indebtedness of the Utility at the fair market price thereof, or to transfer moneys to the Improvement Account to be used to pay debt service on general obligation bonds of the City which were issued to pay the costs of extensions, enlargements or improvements to the Utility; or

(5) to make transfers to the Revenue Fund.

The Improvement Account shall be continued and maintained until all Series 2009 Bonds authorized by the Bond Ordinance and this Resolution are no longer Outstanding.

Section 702. Insufficient Moneys in Funds and Accounts. Should there be at any time insufficient moneys in any or all of the Funds and Accounts described in the preceding subsections to pay any deficiencies in principal or interest payments required by the terms of any Outstanding Bonds, then such principal and interest shall be payable out of the first available Net Revenues received thereafter by the City from the operation of the Utility, including transfers from the Depreciation and Replacement Account and the Improvement Account, after providing only for immediately necessary operation and maintenance expense of the Utility.

Section 703. Transfer of Funds to Paying Agent. The Director of Finance is hereby authorized and directed to withdraw from the Principal and Interest Account and forward to the Paying Agent sums sufficient to pay both the principal of and premium, if any, and the interest on the Outstanding Bonds as and when the same become due, and also to pay the charges of the Paying Agent for acting in such capacity in the payment of the principal of and the interest on the Bonds, and said charges shall be forwarded to the Paying Agent over and above the amount for the payment of the principal of and the interest on the Bonds.

Section 704. Deposits into and Application of Moneys in Rebate Account.

(A) The City shall deposit into the Rebate Account such amounts as are required to be deposited therein pursuant to the Tax Compliance Agreement. All earnings on

investments of moneys held in the Rebate Account shall be retained in the Rebate Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Rebate Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Tax Compliance Agreement), for payment to the United States of America, and neither the City nor the Owner of any Series 2009A Bond shall have any right in or claim to such money. All amounts held in the Rebate Account shall be governed by this Section and by the Tax Compliance Agreement.

(B) The City shall remit part or all of the balance in the Rebate Account to the United States of America in accordance with the Tax Compliance Agreement (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Rebate Account after redemption and payment of all of the Series 2009A Bonds and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Rebate Account and shall be deposited into the Revenue Fund and be used only for Utility purposes.

(C) Notwithstanding any other provision of this Resolution, including in particular the provisions of this Section, the City's obligation to remit the Rebate Amount to the United States of America and to comply with all other requirements of this Section and the Tax Compliance Agreement shall survive the defeasance or payment in full of the Series 2009A Bonds.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Tax Compliance Agreement for at least six (6) years after the date on which no Series 2009A Bonds shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Rebate Account and any Rebate Amount are set forth in a "Tax Compliance Agreement", dated as of the Date of Issuance of the Series 2009A Bonds. The form and text of the Tax Compliance Agreement is hereby approved and accepted by the Governing Body, and all of the covenants, duties and responsibilities therein contained which are to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and the City Clerk or the Director of Finance are hereby authorized to execute and deliver the Tax Compliance Agreement for and on behalf of the City.

ARTICLE VIII

DEPOSIT AND INVESTMENT OF MONEYS; TAX COVENANTS

Section 801. Deposits. Cash moneys in each of the funds and accounts herein created and established shall be deposited in accordance with the laws of the State.

Section 802. Investments. Moneys held in the funds and accounts herein created or established may be invested by the City in Authorized Investments in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided that, such moneys shall not be invested in such manner as will violate the provisions of the Tax Compliance Agreement. Interest on any obligations held in any fund or account shall (except the amounts which are required to be deposited into the Rebate Account in accordance with the Tax Compliance Agreement) accrue to and become a part of said fund or account, except as might hereafter or elsewhere in this Resolution be required. The Value of the investments held in the funds and accounts as provided by this Article shall be determined as of the end of each calendar month. Except as otherwise provided herein, in the event that the amount held in any fund or account is in excess of the amount required to be held in such fund or account, such excess shall be transferred to the Revenue Fund. Authorized Investments in the 2009A Bond Reserve Subaccount and the 2009B Bond Reserve Subaccount shall mature within five (5) years of the investment therein.

All investments made pursuant hereto shall be made in accordance with the Tax Compliance Agreement.

Section 803. Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Series 2009A Bonds remain Outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Series 2009A Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same be amended, and any applicable Rules and Regulations of the United States Treasury Department thereunder, to the extent applicable to the Series 2009A Bonds.

The Governing Body of the City hereby further covenants that it will use and expend the proceeds of the Series 2009A Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Series 2009A Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, to have caused the Series 2009A Bonds to be "arbitrage bonds" within the meaning of the Code; and to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Series 2009A Bonds for so long as any of the Series 2009A Bonds remain Outstanding and unpaid.

Without limiting the generality of the foregoing, the City agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury Regulations as may be applicable to the Series 2009A Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Series 2009A Bonds; and the City specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Resolution, the Rebate Amounts as described in the Tax Compliance Agreement.

ARTICLE IX

ADDITIONAL BONDS

Section 901. Prior Lien Bonds. The City covenants that it will not hereafter issue any revenue bonds which would in any way be superior to the Bonds or have any prior claim to the Net Revenues of the Utility.

Section 902. Parity Lien Bonds. The City may issue additional revenue bonds for Utility extensions, enlargements and improvements, which additional bonds shall be co-equal with the Bonds in stature and priority, but only under the following conditions:

(A) When the issuance of additional revenue bonds payable from Net Revenues of the Utility of equal stature and priority is permitted by the statutes of the State.

(B) When the average annual Net Revenues Available for Debt Service derived by the City from the operation of the Utility for the two (2) years next preceding the issuance of such additional bonds, together with estimated additional net income from rate increases in existence at the time of such new issue, which would have been generated for the two (2) years preceding issuance of such additional bonds, shall be in an amount equal to at least one hundred twenty percent (120%) of the maximum annual Debt Service Requirements (expressly including the City's obligations with respect to the repayment of amounts then due and owing under the terms of any Bond Reserve Insurance Policy) for any ensuing year of all then outstanding revenue indebtedness of the Utility when added to the Debt Service Requirements of such proposed additional bonds. Whenever it is provided in this Section that an estimate shall be obtained of the income which would have been derived from rate increases, such estimates shall be prepared by the Consulting Engineers.

(C) When the City shall not be in default in the making of any payments at the time required to be made by it into the respective Funds and Accounts of the Utility and shall not be in default in any covenants or procedures established in any ordinance or resolution of the City authorizing existing indebtedness of the Utility.

(D) When all reductions in the Bond Reserve Account shall be restored thereto.

(E) When provision is made for a deposit to the Bond Reserve Account in such amount as will be required, following such deposit, to maintain in the Bond Reserve Account an amount which has the same relationship to the total amount of Outstanding Bonds as the 2009A Bond Reserve

Requirement bears to the Series 2009A Bonds and as the 2009B Bond Reserve Requirement bears to the Series 2009B Bonds.

(F) When the Resolution authorizing such additional bonds shall contain substantially the same terms, conditions, covenants and procedures as established in this Resolution.

As an alternative to the foregoing, the City may issue additional revenue bonds for the purpose of refunding Outstanding Bonds, which additional revenue refunding bonds shall be on a parity with and co-equal with the Bonds.

Section 903. Subordinate Lien Bonds. In addition to the authority to issue parity lien bonds as set forth in the preceding Section, the City may issue revenue bonds which shall be junior and subordinate to the Bonds. If at any time the City shall be in default in paying any of the interest on or the principal of the Bonds or in making any of the transfers required to any of the Accounts or Funds herein specified, then the City shall make no payment of either the principal of or the interest on such subordinate bonds until all conditions of default shall be cured.

ARTICLE X

COVENANTS OF THE CITY

Section 1001. Rate Covenant. While any of the Bonds remain Outstanding, the rates, fees and charges for the use of the services rendered by the Utility shall be reasonable and just and subject to the conditions and limitations in the Bond Ordinance and this Resolution provided; and it is hereby covenanted and agreed that such rates, fees and charges, after payment of the costs of operating and maintaining the Utility, shall be sufficient to produce Net Revenues Available for Debt Service each year equal to not less than one hundred twenty percent (120%) of the current year's Debt Service Requirements for all revenue bond indebtedness of the Utility; shall be sufficient to comply with the conditions of the Bond Ordinance and this Resolution and the terms of the Bonds and provide adequate reserves; and shall provide for at least one hundred percent (100%) coverage of the City's obligations with respect to the Payment to the City; provided that, in determining the Net Revenues Available for Debt Service, estimated additional net income to be derived from rate increases in effect and being charged prior to the end of the applicable year, as determined by the Consulting Engineers, may be taken into account, and that, without giving effect to any such adjustments from rate increases, Net Revenues Available for Debt Service shall be equal to at least one hundred percent (100%) of the current year's Debt Service Requirements for all revenue bond indebtedness of the Utility.

In providing for compliance with the covenants and provisions contained in this Section 1001, it shall be the policy of the City that the rates, fees and charges established for the Water Utility and the Sewer Utility shall each be sufficient to provide Net Revenues Available for Debt Service with respect to revenue bonds issued for improvements to each such component of

the Utility which meet the coverage requirements set forth herein to the extent reasonably practical.

Section 1002. Maintenance of Utility. The City covenants and agrees that it will faithfully and punctually perform all duties with respect to the Utility required by the Act, by the applicable rate ordinances and by this Resolution, including the fixing and collecting of rates, fees and charges for the use of the Utility and the deposit of the same in the special Funds and Accounts created by this Resolution; and the City covenants and binds itself not to sell, mortgage, lease or rent or in anyway dispose of the Utility or any substantial part thereof, until the principal of and all of the interest on all Outstanding Bonds shall have been paid in full, or unless and until provision shall have been made for the payment of the full amount of said principal of and interest then remaining outstanding and unpaid; and the City, will continuously maintain the Utility in good repair and working order, and will operate its Utility in a business like and efficient manner.

Section 1003. Insurance. The City will carry and maintain such reasonable amount of all risk insurance on all properties and all operations of the Utility as would be carried by a privately owned utility with similar property and performing similar functions, insofar as the properties are of an insurable nature; and in the event of loss or damage, the City will use the proceeds of such insurance to reconstruct or replace the damaged or destroyed property, or if such reconstruction or replacement be unnecessary, then such proceeds shall be used in redeeming or paying off Outstanding Bonds of the Utility, in accordance with their call provisions. The City also will carry general liability insurance in amounts not less than the then maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the State's tort claims act or other similar future law (currently $500,000.00 per occurrence). In lieu of the foregoing, the City may establish a self-insurance program which will provide substantially the same protection for the Owners.

Section 1004. Financial Reports. As long as any Bonds are Outstanding, the City shall keep proper and separate books of records and accounts in which complete and correct entries shall be made showing the Gross Revenues collected for services by the Utility and all sums expended in the operation thereof and all sums deposited in the Funds and Accounts above mentioned and all disbursements, transfers and transactions relating to the Utility as a whole, and to the several components of the Utility separately.

The Utility shall make comparative quarterly reports to the Office of the City Manager relative to Utility incomes, Utility expenses and net income from operations. If any such quarterly report shall disclose that the City will not have available the necessary funds for carrying out and complying with all of the requirements of this Resolution, then the City shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for the use and services of the Utility which will provide adequate funds to meet such requirements.

The City shall annually cause an audit to be made by a certified public accountants' firm of the operation of the Utility, which audit shall be open to public inspection and shall be completed within one hundred eighty (180) days after the completion of the City's Fiscal Year. If the audit shall disclose that proper provision has not been made for carrying out and

complying with all of the requirements of this Resolution, then the City shall within sixty (60) days proceed to cause to be charged and collected rates, fees and charges for the use of services of the Utility which will provide adequate funds to meet all such requirements. The City shall also prepare an Annual Budget in its customary form estimating anticipated expenditures and income and containing a statement relative to the amounts of insurance being carried and to be carried. The books and accounts shall be kept in accordance with generally accepted accounting principles.

As long as the Existing Bonds are Outstanding, the audit shall include the following information:

(A) A classified statement of the Gross Revenues received, the expenditures for operation and maintenance, the expenditures for all other purposes, the net Operating Revenues and the amount of any capital expenditures made from such Operating Revenues during the year.

(B) A complete balance sheet of the Fiscal Year's operations, particularly indicating the amount of moneys set aside for the various Funds and Accounts as herein provided for.

(C) A statement showing all Outstanding Bonds which have been called, purchased, matured or paid during the year and a statement of all interest thereon paid during the year.

(D) A statement of the number of customers served by the Utility at the end of the year.

(E) A statement of the gross amount of insurance carried on the Utility's properties, showing the names of the insurers, the expiration dates of the policies and the premiums thereon.

(F) A statement by the auditor of any recommendations suggested as to financial procedures and accounting practices employed by the City.

(G) A statement of the Net Revenues Available for Debt Service of the Utility.

(H) A statement of any amounts to be deposited in the Rebate Account.

As long as the Existing Bonds are Outstanding, the Annual Budget shall contain normal budgetary items, including:

(A) An estimate of the receipts from the Utility during the next ensuing Fiscal Year.

(B) A statement of the estimated cost of operating the Utility during the next ensuing Fiscal Year.

(C) A statement of any anticipated unusual expenses for the Utility during the next Fiscal Year.

(D) A statement of any necessary replacements to the Utility which may be anticipated during the next Fiscal Year.

(E) A statement of the amount of principal and interest to be paid on Outstanding Bonds and any general obligation bonds to be paid from Gross Revenues of the Utility during the next Fiscal Year.

(F) A statement of the total estimated expenditures to be made from the Gross Revenues of the Utility during the next Fiscal Year.

(G) A statement of the estimated Net Revenues Available for Debt Service during the next Fiscal Year.

As long as the Existing Bonds are Outstanding, copies of such audit and such budget shall be mailed to the Underwriters, to the Bond Insurer, if any, and to the Kansas Bank Commissioner within thirty (30) days after the same are received by the City.

The Owner of any Bond or such Owner's duly authorized attorney, accountant or investment counselor and, the Bond Insurer, if any, shall have the right at all reasonable times during normal business hours to inspect the any records, accounts or data relating thereto in accordance with State law.

Section 1005. Consulting Engineers; Consulting Engineers' Report. The City covenants that it will, for the purpose of performing and carrying out the duties imposed on the Consulting Engineers by this Resolution, employ an independent engineer or engineering firm or corporation having a nationwide and favorable reputation for skill and experience in such work.

Not less than every three (3) years, the City will cause the Consulting Engineers to make an examination and written report on the condition and operation of the Utility, such report to include recommendations as to any changes in such operation deemed desirable. Such report shall also make references to any unusual or extraordinary items of maintenance and repair and any extensions, enlargements or improvements that may be needed in the period prior to the preparation of the next consultant's report required by this Section. A copy of such report will be filed in the Office of the City Clerk, and duplicate copies thereof shall be mailed promptly to the Underwriters and to the Bond Insurer, if any.

ARTICLE XI

DEFAULT AND REMEDIES

Section 1101. Default. Each of the following occurrences is hereby declared to be an "Event of Default" under this Resolution:

(A) Payment of the principal and of the redemption premium, if any, of any Outstanding Bond shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or

(B) Payment of any installment of interest on any Outstanding Bond shall not be made when the same shall become due and payable; or

(C) The City shall for any reason be rendered incapable of fulfilling its obligations hereunder; or

(D) Any substantial part of the Utility shall be destroyed or damaged to the extent of impairing its efficient operation or adversely affecting its Gross Revenues and the City shall not within a reasonable time commence the repair, replacement or reconstruction thereof and proceed thereafter to complete with reasonable dispatch the repair, replacement or reconstruction thereof; or

(E) Final judgment for the payment of money shall be rendered against the City as a result of the ownership, control or operation of the Utility and any such judgment shall not be discharged within one hundred twenty (120) days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to stay the execution of or levy under such judgment, order, decree or process or the enforcement thereof, or

(F) An order or decree shall be entered, with the consent or acquiescence of the City, appointing a receiver or receivers of the Utility or any part thereof or of the Gross Revenues thereof, or if such order or decree, having been entered without the consent or acquiescence of the City, shall not be vacated or discharged or stayed on appeal within sixty (60) days after the entry thereof; or

(G) Any proceeding shall be instituted, with the consent or acquiescence of the City, for the purpose of effecting a composition between the City and its creditors or for the purpose of adjusting the claims of such creditors pursuant to any Federal or State statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from the Net Revenues Available For Debt Service of the Utility; or

(H) The City shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Outstanding Bonds, the Bond Ordinance or in this Resolution on the part of the City to be performed, and such default shall continue for thirty (30)

days after written notice specifying such default and requiring same to be remedied shall have been given to the City by the Bond Insurer, if any, or the Owner of any Outstanding Bond.

In determining whether an Event of Default shall have occurred with respect to the due and prompt payment of the principal of and/or the interest on any Series 2009 Bonds or whether a payment on the Series 2009 Bonds has otherwise been made under the terms and provisions of this Resolution, no effect shall be given to payments made under any Municipal Bond Insurance Policy.

If an Event of Default shall have occurred and be continuing, the City shall request the Paying Agent to promptly notify the Bond Insurer, if any, and the Owners of such default.

Section 1102. Remedies. The Bond Ordinance and this Resolution and all of the provisions thereof and hereof shall constitute a contract between the City, the Bond Insurer, if any, and each of the Owners of Series 2009 Bonds issued under the Bond Ordinance and this Resolution, and any such Owner of any one or more of the Series 2009 Bonds may by suit, action, mandamus, injunction or other proceeding, either at law or in equity, enforce and compel performance of all duties, obligations and conditions determined and required by this Resolution, subject to the limitations of Section 1103 hereof.

Upon the happening and continuance of any Event of Default, then and in every such case any Owner may proceed, subject to the provisions of this Section and of Section 1103 hereof, to protect and enforce the rights of the Owners by a suit, action or special proceeding in equity, or at law, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy as such Owner shall deem most effectual to protect and enforce such rights.

Anything in this Resolution to the contrary notwithstanding, if at any time moneys in the Principal and Interest Account shall not be sufficient to pay the interest on or the principal of the Bonds as the same shall become due and payable, such moneys, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Section or otherwise, shall be applied as follows:

(A) If the principal of all the Bonds shall not have become due and payable, all such moneys shall be applied:

first: to the payment of the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installments, then to the payment, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

second: to the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Resolution), in the order of their due dates, with interest on the principal amount of such Bonds at the respective rates specified therein from the respective dates upon which such Bonds became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Bonds due and payable on any particular date, together with such interest, then to the payment first of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and

third: to the payment of the interest on and the principal of the Bonds, to the purchase and retirement of the Bonds and to the redemption of the Bonds, all in accordance with the provisions of this Resolution.

(B) If the principal of all of the Bonds shall have become due and payable, all such moneys shall be applied:

first: to the payment to the persons entitled thereto of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds, and then to the payment of any interest due and payable after maturity on the Bonds, ratably, to the person entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds; and

second: to the payment of the principal of the Bonds, ratably, to the persons entitled thereto, without preference or priority of any Bond over any other Bond.

Whenever moneys are to be applied by the City pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Director of Finance in her sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Paying Agent in trust for the proper purpose shall constitute proper application by the City; and the City shall incur no liability whatsoever to any Owner or to any other person for any delay in applying any such moneys, so long as the City acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the

same in accordance with such provisions of this Resolution as may be applicable at the time of application by the Director of Finance. Whenever the Director of Finance shall exercise such discretion in applying such moneys, she shall fix the date (which shall be an Interest Payment Date unless she shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Director of Finance shall give such notice as she may deem appropriate of the fixing of any such date, and shall not be required to make payment to the Owner of any unpaid Bond until such Bond shall be surrendered to the Paying Agent for appropriate endorsement, or for cancellation if fully paid.

In case any proceeding taken by any Owner on account of any default shall have been discontinued or abandoned for any reason, then and in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights and remedies of the Owners shall continue as though no such proceedings had been taken.

No Owner of any of the Bonds shall have any right in any manner whatever to affect, disturb or prejudice the security of this Resolution or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners.

No remedy herein conferred on the Owners is intended to be exclusive of any other remedy or remedies, and each and every remedy conferred shall be cumulative and shall be in addition to every other remedy given hereunder and under the Act or now or hereafter existing at law or in equity or by statute.

No delay or omission of any Owner to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Owners may be exercised from time to time and as often as may be deemed expedient.

Section 1103. Limitation on Exercise of Remedies by Owners. No Owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Bond Ordinance or this Resolution or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (i) an Event of Default shall have occurred, (ii) the Owners of twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding shall have made written request to the City, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and (iii) the City shall thereafter fail or refuse to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case, at the option of the City, to be conditions precedent to the execution of the powers and trusts of the Bond Ordinance and this Resolution, and to any action or cause of action for the enforcement of the Bond Ordinance and this Resolution, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the Bond

Ordinance or this Resolution by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of the Bonds then Outstanding. Nothing in the Bond Ordinance or this Resolution contained shall, however, affect or impair the right of any Owner to payment of the principal of and the interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of, premium, if any, and the interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 1104. Remedies Cumulative. No remedy herein conferred on the City, the Bond Insurer, if any, or the Owners is intended to be exclusive of any other remedy or remedies, but each and every such remedy conferred shall be cumulative and shall be in addition to every other remedy given hereunder and under the Act or now or hereafter existing at law or in equity or by statute.

No delay or omission of any Owner to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Owners may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the City, the Bond Insurer, if any, or by the Owners, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 1105. No Obligation to Levy Taxes. Nothing contained in the Bond Ordinance or this Resolution shall be construed as imposing on the City any duty or obligation to levy any taxes either to meet any obligation incurred herein or to pay the principal of or the interest on the Bonds.

ARTICLE XII

AMENDMENTS

Section 1201. Amendments. Except as set forth herein, the provisions of the Bonds authorized by the Bond Ordinance and this Resolution, and the provisions of the Bond Ordinance or this Resolution may be modified or amended at any time by the City with the prior written consent of the Bond Insurer, if any, and the Owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds herein authorized at the time Outstanding; provided, however, that no such modification or amendment shall permit or be construed as permitting (i) the extension of the maturity of the principal of any of the Bonds issued hereunder, or the extension of the maturity of any interest on any Bonds issued hereunder, or (ii) a reduction in the principal amount of any Bonds or the rate of interest thereon, or (iii) a reduction in the aggregate principal amount of Bonds, the consent of one hundred percent (100%) of the Owners of which, together with the prior written consent of any Bond Insurer, if any, is required for any such amendment or modification.

The City may from time to time, without the consent of or notice to any of the Owners, but with fifteen (15) days written notice to any rating agency which has assigned a rating to the Series 2009 Bonds, provide for amendments to the Bonds, the Bond Ordinance or this Resolution, for any one or more of the following purposes:

(A) to cure any ambiguity or formal defect or omission in the Bond Ordinance or this Resolution or to make any other change not prejudicial to the Owners;

(B) to grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners;

(C) to provide for the issuance of coupon bonds and the exchange of fully registered Series 2009 Bonds for coupon bonds upon such terms and conditions as the City shall determine; provided, however, that no such amendments shall become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon bonds or the exchange of the Series 2009 Bonds for such coupon bonds will not cause the interest on the Series 2009A Bonds to be includable in the gross income of the recipients thereof under the provisions of applicable Federal law; or

(D) to conform this Resolution to the Code or future applicable Federal law concerning tax exempt obligations.

Any provision of this Resolution expressly recognizing or granting rights in or to any Bond Insurer may not be amended in any manner which affects the rights of such Bond Insurer hereunder without the prior written consent of such Bond Insurer.

Section 1202. Written Evidence of Amendments. Every amendment or modification of a provision of the Bonds, the Bond Ordinance or of this Resolution to which the prior written consent of the Owners and/or of any Bond Insurer is given as above provided shall be expressed in an ordinance or resolution of the City, as applicable, amending or supplementing the provisions of the Bond Ordinance or this Resolution and shall be deemed to be a part of the Bond Ordinance or this Resolution, as applicable. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification, if any. Prior to the adoption of such ordinance or resolution, the City shall receive an opinion from Bond Counsel to the effect that the proposed amendment is in compliance with the requirements of the preceding Section and that the passage of the ordinance or resolution authorizing such amendment will not adversely affect the tax-exempt status of the interest on the Bonds. At least fifteen (15) days prior to the execution of any such amendment or modification of the Bond Ordinance or this Resolution, the City shall furnish the Bond Insurer, if any, and any rating agency which has assigned a rating on the Series 2009 Bonds with a copy of the amendment, change or modification proposed to be made. A certified copy of every such amendatory or supplemental

ordinance or resolution, if any, and a certified copy of the Bond Ordinance and this Resolution shall always be kept on file in the Office of the City Clerk and shall be made available for inspection by the Owners of any Bond or prospective purchaser or Owners of any Bond authorized by the Bond Ordinance and this Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental ordinance or resolution will be sent by the City Clerk to any such Owner or prospective Owner. A certified copy of all proceedings relating to the execution of every such amendatory or supplemental ordinance or resolution, if any, shall be furnished to any Bond Insurer.

Section 1203. Consent Required in Addition to Owner Consent. Unless otherwise provided in this Section, if any series of Series 2009 Bonds are insured under a Municipal Bond Insurance Policy, the Bond Insurer's consent shall be required in addition to Owner consent, when required, for the following purposes (i) the execution and delivery of any supplemental Ordinance or Resolution; (ii) removal of the Paying Agent and selection and appointment of any successor paying agent; and (iii) the initiation or approval of any action not described in the foregoing clause (i) or (ii) which requires Owner consent.

ARTICLE XIII

DEFEASANCE

Section 1301. Defeasance. When the principal of all of the Series 2009 Bonds and any Parity Bonds, the premium thereon, if any, and the interest thereon shall have been paid and discharged, then the requirements contained herein and the pledge of Net Revenues made hereunder and all other rights granted hereby shall cease and determine. Bonds shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Paying Agent or a bank located in the State and having full trust powers, at or prior to the maturity or redemption date of the Bonds, as the case may be, in trust for and irrevocably appropriated thereto, cash moneys and/or non-callable direct obligations of the United States of America, or obligations the principal of and interest on which are guaranteed by the United States of America (if approved by any applicable Bond Insurer), or other investments allowed by State law (if approved by any applicable Bond Insurer) which, together with the interest to be earned on such investments, will be sufficient for the payment of the principal of the Bonds, the premium thereon, if any, and the interest accrued to the date of maturity or redemption, as the case may be, or if default in such payment shall have occurred on such date, then to the date of the tender of such payments, provided always that if any such Bonds shall be redeemed prior to the maturity thereof, the City shall have elected to redeem such Bonds and notice of such redemption shall have been given as provided in this Resolution. Any moneys which at any time shall be deposited with the Paying Agent or said bank in the State by or on behalf of the City for the purpose of paying and discharging any of the Bonds shall be and are hereby assigned, transferred and set over to the Paying Agent or such bank in the State in trust for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys deposited with the Paying Agent or said bank in the State shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution. At such time as a Bond shall be deemed to be paid,

it shall no longer be secured by or entitled to the benefits of this Resolution, except for the purposes of any such payment from such moneys or Government Securities.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Parties Interested Herein. Nothing in the Bond Ordinance or this Resolution expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the City, the Bond Insurer, if any, the Bond Registrar and Paying Agent and the Owners of the Series 2009 Bonds, any right, remedy or claim under or by reason of the Bond Ordinance or this Resolution, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in the Bond Ordinance or this Resolution contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Bond Insurer, if any, the Bond Registrar and Paying Agent and the Owners of the Series 2009 Bonds.

Section 1402. Severability. In case any one or more of the provisions of the Bond Ordinance, this Resolution or of the Bonds issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Bond Ordinance, this Resolution, or of the Bonds appertaining thereto, but the Bond Ordinance, this Resolution and said Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained herein. In case any covenant, stipulation, obligation or agreement contained in the Bonds, the Bond Ordinance or in this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 1403. Continuing Disclosure Certificate. To assist the Underwriters in complying with Rule 15c2-12 of the Securities and Exchange Commission, the City is hereby authorized to execute and deliver certain Continuing Disclosure Certificate dated as of the Date of Issuance of the applicable series of Series 2009 Bonds (the "Continuing Disclosure Certificate"), under which the City will provide certain annual financial information and notice of the occurrence of certain material events, all as more particularly set forth therein.

Section 1404. Further Authority. The Mayor, the City Clerk, the City Manager, the Director of Finance, and other City officials as necessary or required, are hereby authorized, ordered and directed to execute any and all documents and agreements required to be executed pursuant to this Resolution or in connection with the issuance, sale and delivery of the Series 2009 Bonds, including, but not limited to, this Resolution, the Official Statement, the Bond Purchase Agreement, the Continuing Disclosure Certificate, together with any and all supporting documents and certificates required in the issuance of the Series 2009 Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Series 2009 Bonds, all for and on behalf of, and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body concurrently with

adoption of this Resolution, with such minor corrections or amendments thereto as the Mayor or other signatory shall approve, which approval shall be evidenced by his execution thereof; and the Mayor, the City Clerk, the City Manager, the Director of Finance, and other City officials as necessary or required, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby; and further, to furnish and provide any and all notices and documents at the times indicated to the various parties as required in the several Articles of this Resolution, including, but not limited to, the Underwriters and the Bond Insurer, if any.

The execution and attestation of this Resolution, the Official Statement, the Bond Purchase Agreement, the Continuing Disclosure Certificate and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Resolution, shall be conclusive as to the approval, correctness and completeness of said documents and each of them.

The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of this Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Series 2009 Bonds, the Official Statement, the Bond Purchase Agreement, the Continuing Disclosure Certificate, and the Utility, all as necessary to carry out, give effect to and comply with the transactions contemplated hereby and thereby.

Section 1405. Previous Ordinances Controlling. To the extent any provision of this Resolution is in conflict with the Series 1998 Ordinance, the Series 1998 Ordinance shall control so long as any Series 1998 Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 1999 Ordinance, the Series 1999 Ordinance shall control so long as any Series 1999 Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2000 Ordinance, the Series 2000 Ordinance shall control so long as any Series 2000 Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2001 Ordinance, the Series 2001 Ordinance shall control so long as any Series 2001 Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2003 Ordinance, the Series 2003 Ordinance shall control so long as any Series 2003 Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2005A Ordinance, the Series 2005A Ordinance shall control so long as any Series 2005A Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2005B Ordinance, the Series 2005B Ordinance shall control so long as any Series 2005B Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2005C Ordinance, the Series 2005C Ordinance shall control so long as any Series 2005C Bonds remain outstanding; to the extent any provision of this Resolution is in conflict with the Series 2006 Ordinance, the Series 2006 Ordinance shall control so long as any Series 2006 Bonds remain outstanding; and to the extent any provision of this Resolution is in conflict with the Series 2008A Ordinance, the Series 2008A Ordinance shall control so long as any Series 2008A Bonds remain outstanding.

Section 1406. Governing Law. The Bond Ordinance, this Resolution and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1407. Effective Date. This Resolution shall take effect and be in full force from and after its passage by the Governing Body.

[Remainder of page intentionally left blank]

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on June 16, 2009.

(Seal)

_____
Carl Brewer, Mayor

ATTEST:

By_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

THE PROJECTS

EXHIBIT B

RESERVE FUNDING

EXHIBIT C

ADDITIONAL TERMS OF THE SERIES 2009 BONDS

Definitions. The following terms defined in the Resolution shall have the meanings ascribed below:

"Bond Ordinance" means Ordinance No. _____ of the City passed by the Governing Body on June 16, 2009, and authorizing and providing for the issuance of the Series 2009 Bonds.

"Purchase Price" for the Series 2009A Bonds shall be the par value of the Series 2009A Bonds plus accrued interest to the date of delivery, less an underwriter's discount of $_____, and for the Series 2009B Bonds shall be the par value of the Series 2009B Bonds plus accrued interest to the date of delivery, less an underwriter's discount of $_____.

"Term Bonds" shall mean, with respect to the Series 2009A Bonds, the 2034 Term Bonds and the 2039 Term Bonds.

"2034 Term Bonds" shall mean the Series 2009A Bonds maturing in the year 2034.

"2039 Term Bonds" shall mean the 2009A Bonds maturing in the year 2039.

Maturity Schedule. All of the Series 2009 Bonds shall be become due on the Principal Payment Dates, and shall bear interest at the rates per annum as follows:

[Remainder of page intentionally left blank]

SERIES 2009A SERIAL BONDS

Principal Payment Date	Amount of Principal Payment	Interest Rate Per Annum
October 1, 2010	$,000	_____%
October 1, 2011	,000	
October 1, 2012	,000	
October 1, 2013	,000	
October 1, 2014	,000	
October 1, 2015	,000	
October 1, 2016	,000	
October 1, 2017	,000	
October 1, 2018	,000	
October 1, 2019	,000	
October 1, 2020	,000	
October 1, 2021	,000	
October 1, 2022	,000	
October 1, 2023	,000	
October 1, 2024	,000	
October 1, 2025	,000	
October 1, 2026	,000	
October 1, 2027	,000	
October 1, 2028	,000	
October 1, 2029	,000	

SERIES 2009A TERM BONDS

Principal Payment Date	Amount of Principal Payment	Interest Rate Per Annum	Principal Payment Date	Amount of Principal Payment	Interest Rate Per Annum
October 1, 2034	$	%	October 1, 2039	$	%

Mandatory Redemption. Each of the 2034 Term Bonds shall also be subject to mandatory redemption and payment on October 1, 2030, or on any Principal Payment Date thereafter, pursuant to the redemption schedule set out below, at the principal amount, plus accrued interest to date fixed for redemption and payment, without premium. The City agrees to redeem the following principal amounts of the 2034 Term Bonds in each of the following years:

Year	Principal Amount
2030	$,000
2031	,000
2032	,000
2033	,000
2034*	,000

* Final maturity

Each of the 2039 Term Bonds shall also be subject to mandatory redemption and payment on October 1, 2035, or on any Principal Payment Date thereafter, pursuant to the redemption schedule set out below, at the principal amount, plus accrued interest to date fixed for redemption and payment, without premium. The City agrees to redeem the following principal amounts of the 2039 Term Bonds in each of the following years:

Year	Principal Amount
2035	$,000
2036	,000
2037	,000
2038	,000
2039*	,000

* Final maturity

SERIES 2009B SERIAL BONDS

Principal Payment Date	Amount of Principal Payment	Interest Rate Per Annum
October 1, 2010	$,000	_____%
October 1, 2011	,000	
October 1, 2012	,000	
October 1, 2013	,000	
October 1, 2014	,000	
October 1, 2015	,000	
October 1, 2016	,000	
October 1, 2017	,000	
October 1, 2018	,000	
October 1, 2019	,000	

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Water and Sewer Monthly Base Charge Increases

INITIATED BY: Water Utilities

AGENDA: New Business

Recommendation: Approve the Ordinances to increase per meter base charges for all water and sewer accounts.

Background: The City's water rate structure relies heavily on normal irrigation patterns during the summer months to produce adequate revenue to recover the full cost of service. In 2008, the water utility experienced an $8.8 million dollar shortfall in projected revenues. This was due to the record amount of rainfall received during the year – and more importantly, the amount of rain received during the revenue critical period of the summer months. The impact of the large amount of rainfall not only caused a significant decrease in revenues but also made it difficult to maintain the debt service coverage ratio (DSCR) of 1.2. If the DSCR falls below 1.2, the Utility cannot borrow additional money for necessary capital improvements. Due to prior reallocation of cost of service recovery in the block rate structure, lower than normal revenues and large capital expenditures, the DSCR has been steadily declining. This decline has resulted in the Utilities receiving a negative outlook on its current bond rating. If the DSCR does not show a rebound, the Utilities will likely have its current bond rating lowered which in turn would lead to higher borrowing rates.

In July 2008, the City Council approved the increase of $1 on all water meter base charges to be effective beginning with the August 2008 billing. Further, Council approved the restructuring of the block rates to recover all costs of service as originally designed and an 8 percent across-the-board increase in sewer rates in August 2008, to be effective January 1, 2009.

Analysis: Revenue productivity has been complicated not only by weather conditions but also by large expenditures in capital projects. Like the financing of other City capital projects, the Utility pays expenses associated with its capital projects with revenues derived from the collection of rates and charges. The Utility then reimburses its cash through the issuance of debt. However, if revenues are down, the Utility does not have the ability to fund those capital projects. Capital expenses are significantly higher now than in the past due to several large projects including the Aquifer Storage and Recovery project and the Mid-Continent sewage treatment plant.

Increasing rates by an across-the-board percentage does not assure receiving projected revenues, as weather outside of average conditions impact revenue productivity. Because base charges are not impacted by weather conditions, increases to base charges produce a guaranteed revenue stream. The Water Utilities has approximately 140,000 water accounts and 130,000 sewer accounts. An increase in both water and sewer base charges of $1 (and $1.60 for outside City accounts) would generate at the least $270,000 per month in additional revenue that is insulated from adverse weather conditions.

Staff will present for further consideration an across-the-board rate increase for both the water and sewer utility when the City Council considers the 2010 budget. Originally, an 8 percent across-the-board increase in both water and sewer rates would have been necessary in order to meet the DSCR of 1.2 in 2010. However, by incorporating a $1 increase in both water and sewer base rate charges at this time, the

across-the-board rate increases for 2010 can be lessened to 5 percent. Further, because the base rate charges are not static or weather dependent, it allows for a more accelerated growth in the DSCR than strictly an across-the-board rate increase. In an effort to further reduce expenditures, staff is evaluating other departmental operations for reductions in operational costs.

Financial Considerations: Wichita's utilities are true enterprises. All revenue for the operation, maintenance and capital improvements of the system is derived from the sale of services. Wichita's revenue bond covenants require a debt service coverage ratio of 1.2 or higher in order to borrow additional money. The proposed increase in the water and sewer base charges will produce approximately $3.24 million in additional revenue annually.

Goal Impact: Increasing water and sewer rates helps provide reliable and secure infrastructure.

Legal Considerations: Water rates and charges are established by Ordinances adopted by the City Council. The Law Department has reviewed and approved the Ordinances as to form.

Recommendations/Actions: It is recommended that the City Council: 1) approve the Ordinances; 2) place the Ordinances on first reading; and 3) authorize the necessary signatures.

Attachments: Rate Ordinances (16.14.040 &17.12.090)

ORDINANCE NO. 48-358

183004

AN ORDINANCE AMENDING SECTION 16.14.040 OF THE CODE OF THE CITY OF WICHITA, KANSAS, RELATING TO THE SCHEDULE OF RATES FOR USERS OF THE SANITARY SEWER SYSTEM, AND REPEALING THE ORIGINAL OF SAID SECTION.

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

SECTION 1. Section 16.14.040 of the Code of the City of Wichita is amended to read as follows:

Schedule of Use Charges: Each user of the sewerage system of the City shall pay, for the use of such system, sewer charges at no less than monthly intervals based where possible upon the consumption of water by such user as recorded by the water meter or sewer meter serving the premises according to the classifications and schedule set forth in this section.

Where any commercial or industrial premises are connected with the City's sewerage system but are not served by the City's water utility system, the owner or occupant of such premises shall, at their own expense, install and maintain on such premises a water meter or meters of a type and at a location acceptable to the Director of Utilities of the City, which shall measure all water received on said premises from all sources, and the sewer services charge of said premises as prescribed in this section shall be based upon such meter recording. The City shall install equipment to automate the reading of said meters. The City shall charge a one time installation fee based upon meter size for the purpose of administrative and replacement costs. A sewage meter, as set forth in the following sub-section of this section, may be substituted for the water meter requirement.

SEWER SERVICE VOLUME BASE:

If a commercial or industrial user desires to establish eligibility for a sewer service volume base of less than one hundred percent (100%) of water consumption, said user must submit an application in writing to the Wichita Water Utility. Upon approval the customer shall authorize the City to install the following at the Customer's expense:

(a) A sewage meter acceptable to the Director of Utilities to measure the volume of liquid actually discharged into the sewerage system from their premises. The City may install devices to automate the reading process. The City will be responsible for calibration and maintenance to ensure the accuracy of the measurements. Selected meters shall be capable of measuring flows with a maximum deviation of less than ten percent from true discharge rates throughout the range of expected discharges. The City shall arrange for certified calibrations of the flow measurement devices at least once a year. Calibration records shall be maintained by the City for a period of five years. No meter shall be installed on wastewater discharged until approval has been obtained from the Director of Utilities or their duly authorized representative. Tampering with, injuring, or removing meters without written permission from the Director of Utilities or their duly authorized representative is prohibited. In the event a sewage meter is installed, the rate schedule

as set forth in this chapter shall be applied to the volume of sewage entering the sanitary sewer as measured by the meter. In the event of a meter malfunction, the City shall be responsible for repairs.

(b) In lieu of sewage meter(s), the user may request installation of auxiliary water meter(s) to measure the portion of water consumed which is diverted from entering the sanitary sewer. In the event an auxiliary water meter is installed, the volume of water metered by such meter(s) shall be deducted from the total volume of water consumed before the sewer service charge rate schedule is applied. The City may install meters and charge the customer for the meter, installation fees, and a monthly fee based on the size of the meter.

No credits for sewer use shall be given until the type and location of meters installed have been approved by the Director of Utilities or their duly authorized representative.

Sewer volume credits established in accordance with the provisions of this Section for commercial and industrial users shall be prospective only.

EXTRA STRENGTH CHARGE:

Sewage discharged to the sanitary sewer system from each industrial or commercial user shall be subject to an extra strength charge when the biochemical oxygen demand (BOD) concentration exceeds two hundred fifty milligrams per liter, the suspended solids (SS) exceeds a concentration of three hundred milligrams per liter, or the oil and grease concentration exceeds one hundred milligrams per liter, as determined by Environmental Protection Agency Methodology stipulated in 40 CFR Part 136 analysis procedures. Sample collection methodology will be as specified by the Director of Utilities. Extra strength charges shall be calculated according to the formula:

$$S = V\,(0.00832)\,(X(BOD-250) + Y(SS-300) + Z(O\&G-100)$$

Where:

S = Extra strength charge in dollars

V = Sewage volume in thousands of gallons

0.00832 = Conversion factor for thousands of gallons to million pounds

X = Applicable unit charge for BOD in dollars per pound from the schedule below

BOD = BOD strength index in parts per million by weight or mg/l

250 = Allowable BOD strength under normal volume charges in parts per million by weight or mg/l

Y = Applicable unit charge for suspended solids in dollars per pound from the schedule below

SS = Suspended solids strength index in parts per million by weight or mg/l

300 = Allowable suspended solids strength under normal volume charges in parts per million by weight or mg/l

Z = Applicable unit charge for oil and grease in dollars per pound from the schedule below

O&G = Oil and grease index in parts per million by weight or mg/l

100 = Allowable oil and grease under normal volume charges in parts per million by weight or mg/l

EXTRA STRENGTH UNIT CHARGES ESTABLISHED AS SHOWN IN SCHEDULE BELOW:

Inside City	Charge Per Pound 2009 & Beyond
BOD	$0.1304
Suspended Solids	0.0868
Grease	1.6926

Outside City	
BOD	$0.2085
Suspended Solids	0.1389
Grease	2.7080

TOXIC POLLUTANT CHARGE:

Discharging of any toxic pollutants is prohibited under City Code Section 17.20.060. If any such waters or wastes enter into the municipal sewer system which cause an increase in the cost of managing the effluent or the sludge from the City's treatment plants and/or collection system, the discharger shall pay for the increased costs, and will be subject to the penalties ascribed in Chapter 17.20.

WASTEWATER ANALYSIS:

Samples and measurements will be taken by the City, as required by the Director of Utilities or their authorized representative. The strength of the sewage discharge by the industrial or commercial user will be determined by the analyses of said samples.

The user, at their expense, may be required at the sole discretion of the Director of Utilities to provide monitoring and flow measurement facilities which coincide at the point at which effluent limits apply. Sampling locations must be safe, convenient, and accessible to the industrial user and Wichita Water Utilities personnel.

If any industrial or commercial user chooses not to accept the analytical determination made by the City for a billing period, such user shall, prior to the date on which payment of the charges for such billing is due, notify the Director of Utilities in writing and, at their sole expense, employ an independent laboratory which is certified by the Kansas Department of Health and Environment and acceptable to the Director of Utilities, to conduct sampling and analysis of their sewage.

The time period, location, and method for the collection of the samples shall be designated by the City. The City and the independent laboratory shall both preside over the collection of the samples and shall equally divide the samples so that duplicate analysis may be performed.

If results of the analysis of the sewage sample made by both the City and the independent laboratory are not comparable, the Director of Utilities may appoint a second independent laboratory certified by the Kansas Department of Health and Environment to analyze the sewage. The sampling procedures used will be the same as those outlined above. The results of these analyses, together with the

previous results, shall be used to determine the actual extra strength charges for the subject billing period. The fee for the second independent laboratory analyses shall be paid for by the user.

MONITORING CHARGE:

When regulations, Federal, State or City, require monitoring of the waste from an industry, that industry shall pay a monitoring charge.

The monitoring charge shall consist of all costs for personnel, material and equipment used to collect and analyze samples from the user's wastewater. The exact charge shall be based on actual costs and shall be determined by the Director of Utilities.

REVIEW OF USER CHARGE RATE STRUCTURE:

The user charge rate schedule of the City shall be reviewed and adjusted at least biennially to:

(a) Maintain the proportional distribution of operation, maintenance and replacement costs among user classes.

(b) Provide adequate revenues to cover operation, maintenance and replacement and debt service costs.

SEWER RATES AND CHARGES

On and after July 1, 2009, the schedule of rates and charges as set forth below shall apply to all categories of sewer customers.

Inside City Rates

A. Base Service Charges
Monthly charges based on water meter size

Size	2009 & Beyond
5/8 inch	$ 5.11
3/4 inch	5.50
1 inch	6.70
1 1/2 inch	8.39
2 inch	12.87
3 inch	46.05
4 inch	58.30
6 inch	86.99
8 inch	119.72
10 inch	140.21
12 inch	185.25

B. Volume Charges (per 1,000 gallons of metered water consumption)

Rate/thousand gallons 2009 & Beyond
$1.98

Outside City Rate

A. Base Service Charges
Monthly charges based on water meter size

Size	2009 & Beyond
5/8 inch	$8.18
3/4 inch	8.79
1 inch	10.73
1 1/2 inch	13.43
2 inch	20.60
3 inch	73.67
4 inch	93.28
6 inch	139.18
8 inch	191.56
10 inch	224.34
12 inch	296.41

B. Volume Charges (per 1,000 gallons of metered water consumption)

	Rate/thousand gallons 2009 & Beyond
	$3.16

C. Flat Rate Charges

Inside City

Monthly rates as at set forth below shall apply to all customers without water or sewer meters.	$17.91

Outside City

Monthly rates as at set forth below shall apply to all customers without water or sewer meters.	$28.64

D. WHOLESALE RATES

Monthly, per 1,000 gallons	$1.45

All users subject to sewer charges shall be subject to the provisions of this chapter.

GOVERNMENT MILITARY FACILITIES LOCATED OUTSIDE THE CITY: Government military facilities located outside the city of Wichita shall be charged inside city rates for sewer service.

SECTION 2. The original of Section 16.14.040 is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force on and after July 1, 2009, and upon publication once in the official City paper.

ADOPTED at Wichita, Kansas, this 23rd day of June, 2009.

_____
Carl Brewer, Mayor
City of Wichita

ATTEST:

_____
Karen Sublett,
City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf,
Director of Law

183004

ORDINANCE NO. 48-359

AN ORDINANCE AMENDING SECTION 17.12.090 AS AMENDED BY ORDINANCE NO. 48-324 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO SCHEDULE OF RATES AND CHARGES FOR WATER SERVICE, AND REPEALING THE ORIGINAL OF SAID SECTION.

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

SECTION 1. Section 17.12.090, as amended by Ordinance No. 48-324, of the Code of the City of Wichita is hereby amended to read as follows:

WATER RATES AND CHARGES. On and after July 1, 2009, the schedule of rates and charges as set forth below shall apply to all categories of water customers with metered, flat rate or fire protection services:

I. MINIMUM WATER SERVICE CHARGES

Minimum water service charges per monthly billing period, based on water service sizes, shall be assessed to all customers who have service availability at any time during a billing period as shown below. An individual is deemed to have service available if the private water service system, at the individual's residence or business, has been connected to the City of Wichita's water system at any time during a billing period. The minimum charge is to be applied regardless of whether or not any water volume passed from the City to private water systems during a billing period. Water service connections deemed inactive by the Director of Water & Sewer shall not be assessed minimum water service charges.

A. METERED WATER SERVICES

INSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** 8.27
3/4 inch	8.32

1 inch	8.52
1 1/2 inch	8.79
2 inch	9.50
3 inch	14.87
4 inch	16.86
6 inch	21.49
8 inch	26.78
10 inch	30.10
12 inch	37.38

OUTSIDE CITY & WHOLESALE METERED WATER SERVICES

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** 13.23
3/4 inch	13.31
1 inch	13.63
1 1/2 inch	14.06
2 inch	15.20
3 inch	23.79
4 inch	26.98
6 inch	34.38
8 inch	42.85
10 inch	48.16
12 inch	59.81
16 inch	159.78

B. FLAT RATE/UNMETERED MONTHLY CHARGES

	2009 & Beyond
	$ 14.74

C. FIRE PROTECTION MONTHLY CHARGES

INSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** 1.91
3/4 inch	1.94
1 inch	2.05
1 1/2 inch	2.25
2 inch	2.74

3 inch	6.29
4 inch	7.62
6 inch	10.70
8 inch	14.21
10 inch	16.40
12 inch	21.25

OUTSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009& Beyond
5/8 inch	**$** 3.05
3/4 inch	3.10
1 inch	3.28
1 1/2 inch	3.61
2 inch	4.39
3 inch	10.07
4 inch	12.19
6 inch	17.13
8 inch	22.74
10 inch	26.25
12 inch	34.01

II. WATER VOLUME CHARGES

Charges for any volume of water passing from the City of Wichita water system to a private water system shall be billed to the individual residing at the residence or business. Volume charges shall not apply to flat rate services which have been properly established with the Wichita Water Utilities.

A. AVERAGE WINTER CONSUMPTION

Average winter consumption (AWC) shall be defined as the arithmetic mean of monthly consumption computed by adding the metered consumption on bills rendered during the months of December, January, February, and March and then dividing this sum by the number of billings rendered during these same months. Each customer's AWC shall be recalculated in April of each year. Metered consumption charges for the ensuing twelve months shall be computed utilizing the AWC as calculated each April, apportioning usage among the applicable rate blocks as designated below. In those instances where no consumption data exists for the calculation of an AWC for particular customers, the Director of Utilities shall determine the most appropriate method of establishing average winter consumptions for such circumstances. The minimum monthly AWC for any metered service sized one (1) inch or less shall be 6,000 gallons. If a

billing period of greater than one month (defined as days of service within twenty eight to thirty one days) is used, the actual or minimum AWC shall be adjusted accordingly on a daily basis.

B. RETAIL VOLUME CHARGES

INSIDE CITY

	Rates Per 1,000 Gallons 2009 & Beyond
Block 1: Metered Consumption Through 110% of AWC	**$** 1.17
Block 2: Metered Consumption Between 111% and 310% of AWC and from Fire Services	**$** 4.45
Block 3: Metered Consumption Above 310% of AWC	**$** 6.69

OUTSIDE CITY

	Rates Per 1,000 Gallons 2009 & Beyond
Block 1: Metered Consumption Through 110% of AWC	**$** 1.87
Block 2: Metered Consumption Between 111% and 310% of AWC and from Fire Services	**$** 7.12
Block 3: Metered Consumption Above 310% of AWC	**$** 10.69

C. RETAIL VOLUME CONSERVATION CONTRACT RATES

In order to obtain significant reductions in customers' annual water use, through more efficient use of Wichita's water resources, the Director of Utilities is empowered to negotiate and execute contracts with retail customers which provides for a significant annual water savings by customers in return for charging all water use at the retail volume conservation contact rate. The Director of Utilities is further empowered to establish such rules and regulations in contract

terms as may be necessary to most equitably carry out the intent of this section. Rules and regulations shall be promulgated based on the needs of the City of Wichita as demonstrated in its water conservation plan and programs to address the requirements of the State of Kansas. In all circumstances, customers seeking to qualify for the conservation contract rate must make written application to the Director of Utilities, detailing methods to be employed to conserve water, the time frame for implementing such conservation methods and the expected annual water savings in gallons per year to be derived from implementing such conservation plans. Each January, customers who have entered into conservation contract rate agreements shall report the results of their conservation initiatives to the Director of Utilities. If the Director of Utilities determines that any customer did not meet the goal, then a billing will be rendered to the customer to reconcile charges for the proportion of the customer's prior year total annual consumption volume that did not qualify for the retail conservation contract rate as determined by the formula below:

(PRIOR YEAR'S RETAIL VOLUME CHARGE BLOCK 2 RATE - PRIOR YEAR'S RETAIL VOLUME CONSERVATION CONTRACT RATE) x ((PRIOR YEAR'S ANNUAL WATER USE/1,000) x (1 - (PRIOR YEAR'S ACTUAL ANNUAL GALLONS OF WATER SAVED / PRIOR YEAR'S PROJECTED ANNUAL GALLONS OF WATER SAVED)))

Customers exceeding their water conservation goals may use such excess savings in gallons as a credit toward the next year's water savings goal. This rate shall only be made available to customers who can demonstrate potential water savings that would be considered economically significant to the City of Wichita as determined by the Director of Utilities.

INSIDE CITY CONSERVATION CONTRACT RATE

	Rates Per 1,000 Gallons 2009 & Beyond
Block 1: All Metered Consumption	**$** 2.25

OUTSIDE CITY CONSERVATION CONTRACT RATE

	Rates Per 1,000 Gallons 2009 & Beyond
Block 1: All Metered Consumption	**$** 3.60

D. WHOLESALE VOLUME RATES

	Rates Per 1,000 Gallons 2009 & Beyond
Block 1: Metered Consumption Through 110% of AWC	**$** 1.26
Block 2: Metered Consumption Between 111% and 310% of AWC and from Fire Services	**$** 6.51
Block 3: Metered Consumption Above 310% of AWC.	**$** 9.73

E. UNIFORM WHOLESALE VOLUME RATES

	Rates Per 1,000 Gallons 2009 & Beyond
All Metered Consumption	**$** 1.65

F. NON POTABLE VOLUME RATES

	Rates Per 1,000 Gallons 2009 & Beyond
All Metered Consumption	**$** .81

III. ASSOCIATION OF LAWN SERVICES

In all cases where practical and appropriate, lawn service accounts shall be associated with the primary service account at a particular service location. The individual consumption amounts for the primary service account and the lawn service accounts shall be added together and the total consumption for the billing period shall be allocated to the appropriate water volume charge rate blocks and volume charges calculated therefor. The consumption as recorded on billings rendered in the months of December, January, February and March for both the primary and lawn service accounts shall be used to calculate the average winter consumption used in apportioning water usage among the volume rate blocks whenever lawn service accounts are associated with primary service accounts.

IV. LATE CHARGES

An amount equal to one and one-half percent of the unpaid balance will be added to all bills not paid within twenty-five (25) days of the date of issuance.

V. MISCELLANEOUS CHARGES

When termination of water service has been ordered by the department for any cause, the customer shall be charged the sum of thirteen ($13.00) dollars to cover costs of arranging such termination. In instances where the service is actually terminated and later reinstated, the customer shall be charged an additional thirteen ($13.00) dollars to cover costs of reinstating the service.

If a customer requests inspection and testing of a meter a testing fee shall be paid. If upon such examination and test conducted in the presence of the customer, or the customer's representative, the meter is found to be inaccurate according to the standards of the American Water Works Association, a meter will be substituted and the adjustment of the water bill for the preceding billing period shall include a credit for the testing fee.

Where water service is turned on and shut off in a period of less than one billing period, the billing shall be computed as if service was rendered for an entire billing period. Any customer desiring to discontinue water service temporarily must make request therefor at the office of the department not less than two working days prior to the date on which the service is desired to be discontinued. After the effective date of such discontinuance, all charges for such water and water service shall cease for the period during which the service shall be shut off; provided, that the period of such discontinuance shall not be less than thirty days.

A fee of thirteen ($13.00) dollars shall be required for the disconnection of a lawn service when the customer of record requests disconnection without concurrently requesting disconnection of the associated service account at the service location. An additional fee of thirteen ($13.00) dollars shall be required for the reconnection of the lawn service at the same location.

Other charges and billing for special services, such as but not limited to account origination fees, damages and/or vandalism to Utility infrastructure and appurtenances, etc., shall be determined by the Director of Utilities and subject to review and change at any time.

VI. GOVERNMENT MILITARY FACILITIES LOCATED OUTSIDE THE CITY

Government military facilities located outside the City of Wichita shall be charged inside city rates for water service.

SECTION 2. The original of Section 17.12.090, as amended by Ordinance No. 48-324, is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force on and after July 1, 2009, and upon publication once in the official City paper.

ADOPTED at Wichita, Kansas, this ___ day of _____, 2009.

_____
Carl Brewer, Mayor
City of Wichita

ATTEST:

_____
Karen Sublett,
City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf,
Director of Law

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 16.14.040 OF THE CODE OF THE CITY OF WICHITA, KANSAS, RELATING TO THE SCHEDULE OF RATES FOR USERS OF THE SANITARY SEWER SYSTEM, AND REPEALING THE ORIGINAL OF SAID SECTION.

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

SECTION 1. Section 16.14.040 of the Code of the City of Wichita is amended to read as follows:

Schedule of Use Charges: Each user of the sewerage system of the City shall pay, for the use of such system, sewer charges at no less than monthly intervals based where possible upon the consumption of water by such user as recorded by the water meter or sewer meter serving the premises according to the classifications and schedule set forth in this section.

Where any commercial or industrial premises are connected with the City's sewerage system but are not served by the City's water utility system, the owner or occupant of such premises shall, at their own expense, install and maintain on such premises a water meter or meters of a type and at a location acceptable to the Director of Utilities of the City, which shall measure all water received on said premises from all sources, and the sewer services charge of said premises as prescribed in this section shall be based upon such meter recording. The City shall install equipment to automate the reading of said meters. The City shall charge a one time installation fee based upon meter size for the purpose of administrative and replacement costs. A sewage meter, as set forth in the following sub-section of this section, may be substituted for the water meter requirement.

SEWER SERVICE VOLUME BASE:

If a commercial or industrial user desires to establish eligibility for a sewer service volume base of less than one hundred percent (100%) of water consumption, said user must submit an application in writing to the Wichita Water Utility. Upon approval the customer shall authorize the City to install the following at the Customer's expense:

(a) A sewage meter acceptable to the Director of Utilities to measure the volume of liquid actually discharged into the sewerage system from their premises. The City may install devices to automate the reading process. The City will be responsible for calibration and maintenance to ensure the accuracy of the measurements. Selected meters shall be capable of measuring flows with a maximum deviation of less than ten percent from true discharge rates throughout the range of expected discharges. The City shall arrange for certified calibrations of the flow measurement devices at least once a year. Calibration records shall be maintained by the City for a period of five years. No meter shall be installed on wastewater discharged until approval has been obtained from the Director of Utilities or their duly authorized representative. Tampering with, injuring, or removing meters without written permission from the Director of Utilities or their duly authorized representative is prohibited. In the event a sewage meter is installed, the rate schedule

as set forth in this chapter shall be applied to the volume of sewage entering the sanitary sewer as measured by the meter. In the event of a meter malfunction, the City shall be responsible for repairs.

(b) In lieu of sewage meter(s), the user may request installation of auxiliary water meter(s) to measure the portion of water consumed which is diverted from entering the sanitary sewer. In the event an auxiliary water meter is installed, the volume of water metered by such meter(s) shall be deducted from the total volume of water consumed before the sewer service charge rate schedule is applied. The City may install meters and charge the customer for the meter, installation fees, and a monthly fee based on the size of the meter.

No credits for sewer use shall be given until the type and location of meters installed have been approved by the Director of Utilities or their duly authorized representative.

Sewer volume credits established in accordance with the provisions of this Section for commercial and industrial users shall be prospective only.

EXTRA STRENGTH CHARGE:

Sewage discharged to the sanitary sewer system from each industrial or commercial user shall be subject to an extra strength charge when the biochemical oxygen demand (BOD) concentration exceeds two hundred fifty milligrams per liter, the suspended solids (SS) exceeds a concentration of three hundred milligrams per liter, or the oil and grease concentration exceeds one hundred milligrams per liter, as determined by Environmental Protection Agency Methodology stipulated in 40 CFR Part 136 analysis procedures. Sample collection methodology will be as specified by the Director of Utilities. Extra strength charges shall be calculated according to the formula:

$$S = V\,(0.00832)\,(X(BOD-250) + Y(SS-300) + Z(O\&G-100)$$

Where:

S = Extra strength charge in dollars

V = Sewage volume in thousands of gallons

0.00832 = Conversion factor for thousands of gallons to million pounds

X = Applicable unit charge for BOD in dollars per pound from the schedule below

BOD = BOD strength index in parts per million by weight or mg/l

250 = Allowable BOD strength under normal volume charges in parts per million by weight or mg/l

Y = Applicable unit charge for suspended solids in dollars per pound from the schedule below

SS = Suspended solids strength index in parts per million by weight or mg/l

300 = Allowable suspended solids strength under normal volume charges in parts per million by weight or mg/l

Z = Applicable unit charge for oil and grease in dollars per pound from the schedule below

O&G = Oil and grease index in parts per million by weight or mg/l

100 = Allowable oil and grease under normal volume charges in parts per million by weight or mg/l

EXTRA STRENGTH UNIT CHARGES ESTABLISHED AS SHOWN IN SCHEDULE BELOW:

Inside City	Charge Per Pound 2009 & Beyond
BOD	$0.1304
Suspended Solids	0.0868
Grease	1.6926

Outside City	
BOD	$0.2085
Suspended Solids	0.1389
Grease	2.7080

TOXIC POLLUTANT CHARGE:

Discharging of any toxic pollutants is prohibited under City Code Section 17.20.060. If any such waters or wastes enter into the municipal sewer system which cause an increase in the cost of managing the effluent or the sludge from the City's treatment plants and/or collection system, the discharger shall pay for the increased costs, and will be subject to the penalties ascribed in Chapter 17.20.

WASTEWATER ANALYSIS:

Samples and measurements will be taken by the City, as required by the Director of Utilities or their authorized representative. The strength of the sewage discharge by the industrial or commercial user will be determined by the analyses of said samples.

The user, at their expense, may be required at the sole discretion of the Director of Utilities to provide monitoring and flow measurement facilities which coincide at the point at which effluent limits apply. Sampling locations must be safe, convenient, and accessible to the industrial user and Wichita Water Utilities personnel.

If any industrial or commercial user chooses not to accept the analytical determination made by the City for a billing period, such user shall, prior to the date on which payment of the charges for such billing is due, notify the Director of Utilities in writing and, at their sole expense, employ an independent laboratory which is certified by the Kansas Department of Health and Environment and acceptable to the Director of Utilities, to conduct sampling and analysis of their sewage.

The time period, location, and method for the collection of the samples shall be designated by the City. The City and the independent laboratory shall both preside over the collection of the samples and shall equally divide the samples so that duplicate analysis may be performed.

If results of the analysis of the sewage sample made by both the City and the independent laboratory are not comparable, the Director of Utilities may appoint a second independent laboratory certified by the Kansas Department of Health and Environment to analyze the sewage. The sampling procedures used will be the same as those outlined above. The results of these analyses, together with the

previous results, shall be used to determine the actual extra strength charges for the subject billing period. The fee for the second independent laboratory analyses shall be paid for by the user.

MONITORING CHARGE:

When regulations, Federal, State or City, require monitoring of the waste from an industry, that industry shall pay a monitoring charge.

The monitoring charge shall consist of all costs for personnel, material and equipment used to collect and analyze samples from the user's wastewater. The exact charge shall be based on actual costs and shall be determined by the Director of Utilities.

REVIEW OF USER CHARGE RATE STRUCTURE:

The user charge rate schedule of the City shall be reviewed and adjusted at least biennially to:

(a) Maintain the proportional distribution of operation, maintenance and replacement costs among user classes.

(b) Provide adequate revenues to cover operation, maintenance and replacement and debt service costs.

SEWER RATES AND CHARGES

On and after ~~January~~ July 1, 2009, the schedule of rates and charges as set forth below shall apply to all categories of sewer customers.

Inside City Rates

A. Base Service Charges
Monthly charges based on water meter size

Size	2009 & Beyond
5/8 inch	$ ~~4~~5.11
3/4 inch	~~4~~5.50
1 inch	~~5~~6.70
1 1/2 inch	~~7~~8.39
2 inch	~~11~~12.87
3 inch	~~45~~46.05
4 inch	~~57~~58.30
6 inch	~~85~~86.99
8 inch	~~118~~119.72
10 inch	~~139~~140.21
12 inch	~~184~~185.25

B. Volume Charges (per 1,000 gallons of metered water consumption)

Rate/thousand gallons 2009 & Beyond
$1.98

Outside City Rate

A. Base Service Charges
Monthly charges based on water meter size

Size	2009 & Beyond
5/8 inch	$~~6.58~~8.18
3/4 inch	~~7.19~~8.79
1 inch	~~9.13~~10.73
1 1/2 inch	~~11.83~~13.43
2 inch	~~19.00~~20.60
3 inch	~~72.07~~73.67
4 inch	~~91.68~~93.28
6 inch	~~137.58~~139.18
8 inch	~~189.96~~191.56
10 inch	~~222.74~~224.34
12 inch	~~294.81~~296.41

B. Volume Charges (per 1,000 gallons of metered water consumption)

	Rate/thousand gallons 2009 & Beyond
	$3.16

C. Flat Rate Charges

Inside City

Monthly rates as at set forth below shall apply to all customers without water or sewer meters.	$17.91

Outside City

Monthly rates as at set forth below shall apply to all customers without water or sewer meters.	$28.64

D. WHOLESALE RATES

Monthly, per 1,000 gallons	$1.45

All users subject to sewer charges shall be subject to the provisions of this chapter.

GOVERNMENT MILITARY FACILITIES LOCATED OUTSIDE THE CITY: Government military facilities located outside the city of Wichita shall be charged inside city rates for sewer service.

SECTION 2. The original of Section 16.14.040 is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force on and after ~~January~~ July 1, 2009, and upon publication once in the official City paper.

ADOPTED at Wichita, Kansas, this _____ day of _____, ~~2008~~ 2009.

_____
Carl Brewer, Mayor
City of Wichita

ATTEST:

_____
Karen Sublett,
City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf,
Director of Law

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTION 17.12.090 AS AMENDED BY ORDINANCE NO. 48-324 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO SCHEDULE OF RATES AND CHARGES FOR WATER SERVICE, AND REPEALING THE ORIGINAL OF SAID SECTION.

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

SECTION 1. Section 17.12.090, as amended by Ordinance No. 48-324, of the Code of the City of Wichita is hereby amended to read as follows:

WATER RATES AND CHARGES. On and after ~~January~~ July 1, 2009, the schedule of rates and charges as set forth below shall apply to all categories of water customers with metered, flat rate or fire protection services:

I. MINIMUM WATER SERVICE CHARGES

Minimum water service charges per monthly billing period, based on water service sizes, shall be assessed to all customers who have service availability at any time during a billing period as shown below. An individual is deemed to have service available if the private water service system, at the individual's residence or business, has been connected to the City of Wichita's water system at any time during a billing period. The minimum charge is to be applied regardless of whether or not any water volume passed from the City to private water systems during a billing period. Water service connections deemed inactive by the Director of Water & Sewer shall not be assessed minimum water service charges.

A. METERED WATER SERVICES

INSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** ~~7~~8.27
3/4 inch	~~7~~8.32
1 inch	~~7~~8.52
1 1/2 inch	~~7~~8.79

2 inch	~~8~~9.50
3 inch	~~13~~14.87
4 inch	~~15~~16.86
6 inch	~~20~~21.49
8 inch	~~25~~26.78
10 inch	~~29~~30.10
12 inch	~~36~~37.38

OUTSIDE CITY & WHOLESALE METERED WATER SERVICES

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** ~~11.63~~13.23
3/4 inch	~~11.71~~13.31
1 inch	~~12.03~~13.63
1 1/2 inch	~~12.46~~14.06
2 inch	~~13.60~~15.20
3 inch	~~22.19~~23.79
4 inch	~~25.38~~26.98
6 inch	~~32.78~~34.38
8 inch	~~41.25~~42.85
10 inch	~~46.56~~48.16
12 inch	~~58.21~~59.81
16 inch	~~158.18~~159.78

B. FLAT RATE/UNMETERED MONTHLY CHARGES

	2009 & Beyond
	$ 14.74

C. FIRE PROTECTION MONTHLY CHARGES

INSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** 1.91~~.91~~
3/4 inch	1.94~~.94~~
1 inch	~~1~~2.05
1 1/2 inch	~~1~~2.25
2 inch	~~1~~2.74
3 inch	~~5~~6.29
4 inch	~~6~~7.62

6 inch	~~9~~10.70
8 inch	~~13~~14.21
10 inch	~~15~~16.40
12 inch	~~20~~21.25

OUTSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009& Beyond
5/8 inch	**$** 3.05~~1.45~~
3/4 inch	3.10~~1.50~~
1 inch	3.28~~1.68~~
1 1/2 inch	3.61~~2.01~~
2 inch	4.39~~2.79~~
3 inch	10.07~~8.47~~
4 inch	12.19~~10.59~~
6 inch	17.13~~15.53~~
8 inch	22.74~~21.14~~
10 inch	26.25~~24.65~~
12 inch	34.01~~32.41~~

II. WATER VOLUME CHARGES

Charges for any volume of water passing from the City of Wichita water system to a private water system shall be billed to the individual residing at the residence or business. Volume charges shall not apply to flat rate services which have been properly established with the Wichita Water Utilities.

A. AVERAGE WINTER CONSUMPTION

Average winter consumption (AWC) shall be defined as the arithmetic mean of monthly consumption computed by adding the metered consumption on bills rendered during the months of December, January, February, and March and then dividing this sum by the number of billings rendered during these same months. Each customer's AWC shall be recalculated in April of each year. Metered consumption charges for the ensuing twelve months shall be computed utilizing the AWC as calculated each April, apportioning usage among the applicable rate blocks as designated below. In those instances where no consumption data exists for the calculation of an AWC for particular customers, the Director of Utilities shall determine the most appropriate method of establishing average winter consumptions for such circumstances. The minimum monthly AWC for any metered service sized one (1) inch or less shall be 6,000 gallons. If a billing period of greater than one month (defined as days of service within twenty eight to thirty

one days) is used, the actual or minimum AWC shall be adjusted accordingly on a daily basis.

B. RETAIL VOLUME CHARGES

INSIDE CITY

	Rates Per 1,000 Gallons 2009 & Beyond
Block 1: Metered Consumption Through 110% of AWC	**$** 1.17
Block 2: Metered Consumption Between 111% and 310% of AWC and from Fire Services	**$** 4.45
Block 3: Metered Consumption Above 310% of AWC	**$** 6.69

OUTSIDE CITY

	Rates Per 1,000 Gallons 2009 & Beyond
Block 1: Metered Consumption Through 110% of AWC	**$** 1.87
Block 2: Metered Consumption Between 111% and 310% of AWC and from Fire Services	**$** 7.12
Block 3: Metered Consumption Above 310% of AWC	**$** 10.69

C. RETAIL VOLUME CONSERVATION CONTRACT RATES

In order to obtain significant reductions in customers' annual water use, through more efficient use of Wichita's water resources, the Director of Utilities is empowered to negotiate and execute contracts with retail customers which provides for a significant annual water savings by customers in return for charging all water use at the retail volume conservation contact rate. The Director of Utilities is further empowered to establish such rules and regulations in contract terms as may be necessary to most equitably carry out the intent of this section. Rules and

regulations shall be promulgated based on the needs of the City of Wichita as demonstrated in its water conservation plan and programs to address the requirements of the State of Kansas. In all circumstances, customers seeking to qualify for the conservation contract rate must make written application to the Director of Utilities, detailing methods to be employed to conserve water, the time frame for implementing such conservation methods and the expected annual water savings in gallons per year to be derived from implementing such conservation plans. Each January, customers who have entered into conservation contract rate agreements shall report the results of their conservation initiatives to the Director of Utilities. If the Director of Utilities determines that any customer did not meet the goal, then a billing will be rendered to the customer to reconcile charges for the proportion of the customer's prior year total annual consumption volume that did not qualify for the retail conservation contract rate as determined by the formula below:

(PRIOR YEAR'S RETAIL VOLUME CHARGE BLOCK 2 RATE - PRIOR YEAR'S RETAIL VOLUME CONSERVATION CONTRACT RATE) x ((PRIOR YEAR'S ANNUAL WATER USE/1,000) x (1 - (PRIOR YEAR'S ACTUAL ANNUAL GALLONS OF WATER SAVED / PRIOR YEAR'S PROJECTED ANNUAL GALLONS OF WATER SAVED)))

Customers exceeding their water conservation goals may use such excess savings in gallons as a credit toward the next year's water savings goal. This rate shall only be made available to customers who can demonstrate potential water savings that would be considered economically significant to the City of Wichita as determined by the Director of Utilities.

INSIDE CITY CONSERVATION CONTRACT RATE

	Rates Per 1,000 Gallons 2009 & Beyond
Block 1: All Metered Consumption	**$** 2.25

OUTSIDE CITY CONSERVATION CONTRACT RATE

	Rates Per 1,000 Gallons 2009 & Beyond
Block 1: All Metered Consumption	**$** 3.60

D. WHOLESALE VOLUME RATES

	Rates Per 1,000 Gallons 2009 & Beyond
Block 1: Metered Consumption Through 110% of AWC	**$** 1.26
Block 2: Metered Consumption Between 111% and 310% of AWC and from Fire Services	**$** 6.51
Block 3: Metered Consumption Above 310% of AWC.	**$** 9.73

E. UNIFORM WHOLESALE VOLUME RATES

	Rates Per 1,000 Gallons 2009 & Beyond
All Metered Consumption	**$** 1.65

F. NON POTABLE VOLUME RATES

	Rates Per 1,000 Gallons 2009 & Beyond
All Metered Consumption	**$** .81

III. ASSOCIATION OF LAWN SERVICES

In all cases where practical and appropriate, lawn service accounts shall be associated with the primary service account at a particular service location. The individual consumption amounts for the primary service account and the lawn service accounts shall be added together and the total consumption for the billing period shall be allocated to the appropriate water volume charge rate blocks and volume charges calculated therefor. The consumption as recorded on billings rendered in the months of December, January, February and March for both the primary and lawn service accounts shall be used to calculate the average winter consumption used in apportioning water usage among the volume rate blocks whenever lawn service accounts

are associated with primary service accounts.

IV. LATE CHARGES

An amount equal to one and one-half percent of the unpaid balance will be added to all bills not paid within twenty-five (25) days of the date of issuance.

V. MISCELLANEOUS CHARGES

When termination of water service has been ordered by the department for any cause, the customer shall be charged the sum of thirteen ($13.00) dollars to cover costs of arranging such termination. In instances where the service is actually terminated and later reinstated, the customer shall be charged an additional thirteen ($13.00) dollars to cover costs of reinstating the service.

If a customer requests inspection and testing of a meter a testing fee shall be paid. If upon such examination and test conducted in the presence of the customer, or the customer's representative, the meter is found to be inaccurate according to the standards of the American Water Works Association, a meter will be substituted and the adjustment of the water bill for the preceding billing period shall include a credit for the testing fee.

Where water service is turned on and shut off in a period of less than one billing period, the billing shall be computed as if service was rendered for an entire billing period. Any customer desiring to discontinue water service temporarily must make request therefor at the office of the department not less than two working days prior to the date on which the service is desired to be discontinued. After the effective date of such discontinuance, all charges for such water and water service shall cease for the period during which the service shall be shut off; provided, that the period of such discontinuance shall not be less than thirty days.

A fee of thirteen ($13.00) dollars shall be required for the disconnection of a lawn service when the customer of record requests disconnection without concurrently requesting disconnection of the associated service account at the service location. An additional fee of thirteen ($13.00) dollars shall be required for the reconnection of the lawn service at the same location.

Other charges and billing for special services, such as but not limited to account origination fees, damages and/or vandalism to Utility infrastructure and appurtenances, etc., shall

be determined by the Director of Utilities and subject to review and change at any time.

VI. GOVERNMENT MILITARY FACILITIES LOCATED OUTSIDE THE CITY

Government military facilities located outside the City of Wichita shall be charged inside city rates for water service.

SECTION 2. The original of Section 17.12.090, as amended by Ordinance No. 48-324, is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force on and after ~~April~~ July ___, 2009, and upon publication once in the official City paper.

ADOPTED at Wichita, Kansas, this ___ day of _____, 2009.

_____
Carl Brewer, Mayor
City of Wichita

ATTEST:

_____
Karen Sublett,
City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf,
Director of Law

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Proposed amendments to Chapters 3.11, 3.28, 4.04, 4.12, and 4.16 of the city code regarding Entertainment Establishments, Drinking Establishments and Community Events

INITIATED BY: Wichita Police Department and Arts and Cultural Services

AGENDA: New Business

Recommendation: Approve ordinance amendments dealing with establishments that sell cereal malt beverage or alcoholic liquor. Adopt ordinances to regulate Entertainment Establishments. Approve amendments relating to the sale of alcoholic beverages at Community Events. Direct staff to initiate process to implement required changes to the Sedgwick County Unified Zoning Code in order to achieve consistency between the City Code and Zoning Code.

Background: During 2008, the Wichita Police Department observed an increase in violence in and around cabarets (live entertainment) and dance halls, as well as businesses which sell alcohol and are licensed as drinking establishments or drinking establishment/restaurants. In addition, some of these establishments are located in close proximity to residential neighborhoods. As a result the Department received many complaints related to disturbances, intoxicated individuals, loud noise, and urinating in public involving patrons of these establishments. Community concern peaked when acts of violence involving deadly weapons were associated with some of these venues. Significant police resources have been expended in dealing with these types of complaints.

As a result, the Police Department formed an internal and external focus group that examined these problems and made recommendations to executive staff pertaining to dance halls and cabarets, as well as establishments selling cereal malt beverage and alcoholic liquor. Those focus groups completed their work in August of 2008.

Analysis: As a result of the work of the focus groups and staff recommendations, several issues were identified. They include:

- Closing times varied for businesses selling alcoholic liquor as opposed to those that provide entertainment only.
- Ordinances were in several different chapters throughout the City Code and were subsequently difficult to locate and apply.
- Current ordinances provide few enforcement options for private parties.
- Management personnel of entertainment establishments are sometimes difficult to identify.
- The City Code sets forth different food sale percentages used to determine a Drinking Establishment-Restaurant, one in the Unified Zoning Code and another in the licensing ordinances.
- Under the current code, distance requirements allow these establishments to exist too close to neighborhoods, whose residents must live with any problems that arise.
- Enforcement of ordinances against nightclubs is difficult as the code currently provides for audits by the Police Department to determine food sale percentages only after an establishment has been in operation for a minimum of six months.

Looking at all the issues, staff is recommending several changes to the current licensing scheme for these types of establishments. The proposed amendments include:

- Creation of a single license for an Entertainment Establishment as opposed to separate dance hall and/or cabaret licensing.
- Licensing of event centers where the premises are rented on a continual basis as an Entertainment Establishment.
- Increased licensing fees for Entertainment Establishments.
- Requiring Entertainment Establishments to provide and post the names of all on site managers.
- Requiring Entertainment Establishments to maintain an adequate security plan.
- Requiring that Entertainment Establishment managers maintain the peace and appropriate control of patrons and/or invitees on the licensed premises including parking areas under their control.
- Requiring that Entertainment Establishments control their litter.
- Requiring Entertainment Establishments to provide unrestricted, immediate access to City inspectors.
- Restricting patrons over 21 from being on the premises of any Teen Club.
- Requiring a distance of at least 300 feet between residential zoning and all newly licensed Entertainment Establishments that sell alcoholic liquor or cereal malt beverage for consumption on the premises.

In addition, amendments to the Drinking Establishment ordinances:

- Define a Drinking Establishment/Restaurant as a business that derives 50% or more of its gross revenue from sales of food within two months of opening.
- Require that newly licensed Drinking Establishment/Restaurants submit initial audit information to the City licensing section that documents food sales percentages within fifteen days after the end of the second month of operation.
- Require that Drinking Establishment/Restaurants failing to meet the 50% food sale requirement will be reclassified as a drinking establishment.
- Expand the distance between any newly licensed Tavern and any church, school, or residential zoning district to be at least 300 feet.
- Require establishments selling alcoholic liquor or cereal malt beverage to provide parking as required by the Wichita/Sedgwick County Unified Zoning Code.
- Require new Drinking Establishments or Drinking Establishment/Restaurants to submit a business plan and receive Crime Prevention Through Environmental Design/ CPTED inspection.
- Require all on-sight managers of new Drinking Establishments or Drinking Establishment/Restaurants to attend a four hour Safe Bar class.
- Require both Drinking Establishments and Entertainment Establishments to close at the same time, which is 2:00 a. m.
- Enhance grounds for revocation or suspension of a liquor license by the City Council when a licensee or the licensed premises are in violation of local, state or federal law; also clarifies the standard of proof required at any hearing conducted by the Council either to take direct action on a liquor license or to review the suspension of a liquor license recommended by the Chief of Police.

If the proposed amendments set forth above are approved, in order to effectively implement all staff recommendations, the corresponding revisions to the Unified Zoning Code will be required:

- Increasing the distance requirement between Drinking Establishment/Restaurants and residential zoning districts to 300 feet, and implementing the same distance requirement for Taverns and residential zoning districts.
- Adding a definition for “Event Center,” and allowing such establishments in the same districts as Taverns, Drinking Establishments, Drinking Establishment/Restaurants and Nightclubs in the City.

During the last legislative session, amendments were made to the State statutes regarding laws pertaining to the consumption of alcoholic liquor on the public streets and sidewalks at community events.

Amendments are proposed to the Community Event Ordinances, Chapter 3.11 to allow the sale and consumption of alcoholic liquor at events where the streets have been closed to vehicular traffic, a temporary permit for the sale of such alcoholic liquor has been properly issued and the event/consumption of the alcoholic liquor has been approved by the City Council.

Financial Considerations: Costs will be incurred for police staffing required to conduct CPTED inspections and provide Safe Bar training.

Goal Impact: Provide safe and secure neighborhoods by improved licensing and enforcement of City Ordinances pertaining to alcoholic liquor and cereal malt beverage licenses, Drinking Establishments and entertainment venues. The amendments will also improve quality of life by promoting community events.

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

Recommendation/Action: It is recommended that the City Council approved the ordinances and place amendments on first reading.

Attachments: Delineated copies of each ordinance.

First Published in The Wichita Eagle on _____

DELINEATED 6/04/09

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 3.08.030 AND 3.28.020 OF THE CODE OF THE CITY OF WICHITA PERTAINING TO CABARETS AND DANCE HALLS, CREATING SECTIONS 3.30.010, 3.30.020, 3.30.030, 3.30.040, 3.30.050, 3.30.060, 3.30.070, 3.30.080, 3.30.090, 3.30.100, 3.30,110, 3.30,120, 3.30.130, 3.30.140, 3.30.150, 3.30.160, 3.30.170, 3.30.180 AND 3.30.190 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TOENTERTAINMENT ESTABLISHMENTS AND REPEALING THE ORIGINALS OF SECTIONS 3.08.030 AND 3.28.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita has received numerous complaints from neighbors concerning dance halls, entertainment establishments and commercial establishments that serve alcoholic beverages on site and provide entertainment regarding excessive noise and disorderly conduct, including assault and battery; and

WHEREAS, the City has observed violations of the established occupancy load in cabarets, dance halls and commercial drinking establishments; and

WHEREAS, the City has a duty and desire to enforce laws regarding criminal and nuisance acts which occur at such clubs, cabarets and drinking establishments, the City Council, therefore, adopts the following ordinances regarding Entertainment Establishments.

WHEREAS, those entities or persons holding a valid dance hall or cabaret license issued by the City of Wichita shall not be subject to this entertainment ordinance, until such cabaret or dance hall license expires, is renewed or is revoked.

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

SECTION 1. Section 3.08.030 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

"**Cabarets, etc.** (a) A cabaret license shall be required for any person to operate any cafe, cafeteria, restaurant, tearoom, dining room, coffee house, private club, tavern, drinking establishment or any other place having a floor show, specialty act or other live entertainment for guests. Any license issued pursuant to this section shall be issued for one particular premise which shall be stated in the application and on the license.

(b) A cabaret license does not permit and shall not be issued to any person for the operation of such an establishment as defined in subsection (a) if such establishment:

(1) Is licensed or permitted to sell or serve alcoholic liquor or cereal malt beverages, and

(2) Intends to provide or does provide live entertainment in the form of dancing, and

(3) Is located within two hundred feet of any church, public park, public or parochial school, or residential zoning district.

The distance is to be measured from the nearest property line of the residential zoning district, church, or public or parochial school to the nearest property line of the premises on which the establishment is located or of any parking lot designated to be used by the patrons of such establishment. As used in the section 'dancing' means dancing performed live by any person for

consideration, monetary or otherwise, including payment of gratuities by patrons. Such prohibition on dancing does not include the incidental movement or choreography of singers or musicians which are made in connection with their singing or playing of a musical instrument, or dancing staged as part of a legitimate play, but does include, for example, without limitation, exotic dancing, go-go dancing, strip dancing and strip tease dancing.

Renewal of cabaret licenses otherwise subject to this subsection may be made for all establishments presently licensed and located within two hundred feet of any church, public park, public or parochial school, residential or zoning district, so long as the premises are used or held for use as a place in which a cabaret license and one of the following licenses is held:

(1) Class A private club;

(2) Class B private club;

(3) Drinking establishment; or

(4) A license to sell cereal malt beverages for consumption on the premises; provided, however, that should such an establishment cease to be used for such purposes for a period of ninety days or more, then and in that event, no new cabaret license shall be issued for the establishment. Periods of time during which such establishment is being remodeled or is being repaired because of damage caused by fire or natural disasters such as floods or wind-storms, shall not be included in computing the above ninety-day period; provided, however, that any remodeling or repair must be commenced within ninety days after closure of any given structure and completed within a reasonable time thereafter.

Additionally, the ~~vice section~~ Special Investigations Bureau of the Wichita police department shall be notified within thirty days of closing of such establishment for remodeling or repair, such notice to state the date of commencement and completion of remodeling or repair.

(c) A license fee shall be charged for engaging in the operation of cabarets, either with or without a cover charge. The license fees for one day shall be twenty dollars, for three months shall be fifty dollars, for six months shall be seventy-five dollars and for one year shall be one hundred dollars.

(d) No cabaret license shall be issued by the City Treasurer following the City's adoption and publication of Chapter 3.30 of the Code of the City of Wichita.

(e) The provisions of this section shall apply to any license, issued pursuant to this section, until such time as the license expires, is revoked or the licensee is properly licensed pursuant to Chapter 3.30 as an entertainment establishment."

SECTION 2. Section 3.28.020 of the Code of the City of Wichita is hereby amended to read as follows:

"License required. (a) It is unlawful for any person either as principal, officer, agent, servant or employee, to conduct any public dance, public dance hall or restaurant dance without having first obtained a license from the license collector. Provided, further, fraternal, social, school, church or other nonprofit organizations that hold dances at any location other than their own

respective locations shall be required to obtain a license from the license collector.

(b) No dance hall license shall be issued by the City Treasurer following the City's adoption and publication of Chapter 3.30 of the Code of the City of Wichita.

(c) The provisions of this section shall apply to any license, issued pursuant to this chapter, until such time as the license expires, is revoked or the licensee is properly licensed pursuant to Chapter 3.30 as an entertainment establishment."

SECTION 3. Section 3.30.010 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Purpose.** The City of Wichita encourages the development of Arts and Culture and recognizes that having entertainment establishments provide a means for such activity. The City of Wichita further recognizes that having a variety of entertainment in the City promotes a rich and diverse cultural experience.

The City of Wichita also recognizes that entertainment establishments serving alcohol have demonstrated the potential for creating an environment where various types of disturbances, excessive noise and disorderly conduct by inebriated patrons may occur. These negative effects are adverse to the public safety and the quality of life in the community.

The purpose of this Chapter is to regulate the operation of all entertainment establishments so as to minimize the negative effects and to preserve the public

safety, health and welfare. It is not the City's intent to regulate or restrict the type or content of entertainment provided in these establishments. All licensees will be responsible for controlling patron conduct on the premises of such establishments, making adequate provisions for security and crowd control to minimize disturbances caused by the operation of such entertainment establishments."

SECTION 4. Section 3.30.020 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Definitions.** The following words, as used in this Chapter, have the meanings set forth below:

'Ambient music' means low-level, background music, which is inaudible from any portion of the exterior of the premises. Ambient music does not include music played by a disc jockey, 'DJ' or music that is used for karaoke or other live performances. Ambient music may include music played by a jukebox, when such music is inaudible from any portion of the exterior of the premises.

'Chief of Police' means the Chief of the Wichita Police Department or his/her designee.

'Entertainment' means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the public is invited or allowed to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing patrons, including, but not limited to any of the following:

(a) Dancing by patron(s) to live or recorded music.

(b) The presentation of music played on sound equipment operated by an agent or contractor of the establishment, commonly known as 'disc jockey' or 'DJ, or

(c) The presentation of live music whether amplified or un-amplified, or

(d) The presentation of music videos, music concerts or other similar forms of musical entertainment from any source, or

(e) Any amusement or event such as live music or other live performance which is knowingly permitted by any Entertainment Establishment, including, but not limited to, presentations by single or multiple performers, such as hypnotists, pantomimes, comedians, dance acts, concerts, dances, live bands, karaoke or other live music.

'Entertainment Establishment(s)' means any event center or any person or entity which provides entertainment as defined by this chapter, or any person or entity which provides a venue for any such entertainment. Such term shall not include book readings, storytelling, the playing of ambient music, or other similar activities for which no fee is charged.

'Entertainment License' means a license obtained from the City, pursuant to the provisions of this Chapter, for the purposes of operating an Entertainment Establishment.

‘Event Center’ means premises which are frequently rented out for public or private activities that are not repeated on a weekly basis, and which are not open to the public on a daily basis at times other than when an event is scheduled.

‘Health Officer’ means the Director of Environmental Services or his/her designee.

‘License’ means the authority to conduct the business of an entertainment establishment within the city limits.

‘Licensee’ means any person to whom a current license has been issued under this Chapter authorizing such person to conduct the business of an entertainment establishment within the city limits.

‘Loitering’ means remaining idle in essentially one location, to be dilatory, to tarry, to dawdle and shall include, but not be limited to, standing around, hanging out, sitting, kneeling, sauntering or prowling.

‘Manager’ means a person, regardless of the job title or description, who is operating the establishment or who has discretionary powers to organize, direct, carry on, or control the operations of an Entertainment Establishment or teen club. Authority to engage in one or more of the following functions is prima facie evidence that a person is a Manager of the Entertainment Establishment or teen club:

(a) Hire or terminate employees; or

(b) Contract for the purchase of furniture, equipment, or supplies, except for the occasional replenishment of stock; or

(c) Disburse funds of the business, except for the receipt of regularly replaced items of stock; or

(d) Make or participate in making policy decisions regarding operations of the Establishment.

'Music' as used in this Chapter shall not apply to radios or ambient music.

"Nonprofit dance" means any dance held by a fraternal, social, school, church or other nonprofit organization which is merely incidental to its principal purpose and where the general public is not solicited or permitted.

'Non-profit organization' means an organization or institution organized under Internal Revenue Code Section 501(c)(3) and recognized as a public charity or private foundation established for a religious, charitable, scientific, literary or public safety purpose.

'Person' means any individual, owner, operator, corporation, partnership, or association.

'Photo identification' means a valid driver's license, non-driver identification card, government issued identification card or a current school identification card which contains the individual's photograph.

'Premises' means any place where an entertainment establishment is operated or maintained and includes all hallways, bathrooms, parking areas, and other adjacent portions of the premises, which are under the control of the licensee or which are utilized by the licensee and are accessible to the public during operating hours .

'Responsible Person' means any person who is any of the following:

A. The person who owns the Entertainment Establishment or teen club; or

B. The person in charge of the Entertainment Establishment or teen club; or

C. The person using the Entertainment Establishment or teen club under a special arrangement, contract or rental agreement; or

D. The Entertainment Establishment's manager, on-site supervisor, or other employee who is responsible for the operation of the establishment;

'Superintendent' means the Superintendent of the Office of Central Inspection or his or her designee.

'Teen Club' is any building or part or other enclosed place where a teen dance is held or teen dancing is permitted, not including:

a. an accredited public or private school or college;

b. property owned or controlled by the federal, state, or local government;

c. a facility operated by an organization which has been recognized as exempt from federal income taxation when teen dancing is but an occasional activity incidental to the facility's primary purposes.

SECTION 5. Section 3.30.030 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**License required.** A. It is unlawful for any person either as the owner, principal, officer, agent, servant, responsible person or employee, to own, lease, manage, maintain or operate a teen club or entertainment establishment without having first obtained a license from the City Treasurer.

B. A teen club or entertainment establishment license expires one year after date of issue.

C. A license under this section is not transferable to another person or location. A change in ownership shall require the new owner to pay a new application fee and secure a new entertainment establishment or teen club license."

SECTION 6. Section 3.30.040 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**License Continuance.** Any person holding a valid cabaret or dance hall license, issued prior to the publication of this ordinance, may continue with the operation of that business until such time that the cabaret or dance hall license expires, or is revoked. Upon expiration or revocation of such license, an application for an Entertainment Establishment License shall be submitted to the City Treasurer if the business or individual is to continue operation of such business."

SECTION 7. Section 3.30.050 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**License--Exceptions.** Nothing in this Chapter shall be construed to require any license for the following activities:

(a) entertainment in private residences where no admission is charged;

(b) entertainment conducted by any public or parochial school under direct faculty supervision or by any church when the dance or live entertainment is directly supervised by the church authorities;

(c) entertainment conducted for service men or women or both, under the direct supervision of United Service Organizations;

(d) entertainment officially sanctioned by or conducted in a fraternity or sorority house, occupied by bona fide students of a school or college, in which the public is not invited;

(e) dance lessons, theatrical and performing arts lessons;

(f) any entertainment sponsored by the City of Wichita;

(g) entertainment by any nonprofit organizations when all proceeds, arising from such entertainment are used exclusively for the benevolent purposes of such organization;

(h) any non-profit dance as defined in this chapter;

(i) assemblies, music concerts, live performances or re-enactments which are sponsored by or which occur on the property of public or parochial schools, or City of Wichita public libraries;

(j) entertainment, dances, live performances, or other events for which a community event permit has been issued by the City of Wichita;

(k) the use of a radio, juke box, television, or video games, which is incidental to the primary function of serving food;

(l) motion picture theaters;

(m) book readings, book signings, poetry recitations and any other similar entertainment consisting of the spoken word, including plays;

(n) entertainment consisting of ambient or incidental music provided for the guests by musicians such as a piano player, harpist, strolling violinist, mariachi band, or guitarist. If there is an admission charge required to observe such entertainment, it will not be considered incidental.

(o) pool hall, billiard hall or bowling alley that does not provide space for dancing;

(p) theaters where patrons sit in parallel rows of fixed seats or dinner theaters;

(q) entertainment conducted in connection with a regularly established recreation or theme park."

SECTION 8. Section 3.30.060 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**License--Fees.** For any entertainment establishment or teen club the following license fees shall be paid:

For one day . . . . . $ 25.00

For one month or less $100.00

For six months or less $275.00

For one year or less . . . . . $400.00"

SECTION 9. Section 3.30.070 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Hours of operation.** A. It is unlawful for any licensee, owner, manager, or responsible person of a teen club to permit or allow entertainment between the hours of midnight and noon. All outdoor entertainment at any such teen club shall cease between the hours of eleven p.m. and noon Sunday through Thursday and midnight and noon on Friday and Saturday. No person, except an employee, shall be on the licensed premises of a teen club after 12:30 a.m.

B. It shall be unlawful for any licensee, owner, manager or responsible party of an entertainment establishment to permit or allow entertainment between the hours of two a.m. and noon. All outdoor entertainment at any such establishment shall cease between the hours of eleven p.m. and noon Sunday through Thursday and midnight and noon on Friday and Saturday. No person, except an employee, shall be on the licensed premises of an entertainment establishment after 2:30 a.m."

SECTION 10. Section 3.30.080 of the Code of the City of Wichita, Kansas is created to read as follows:

"**Application--Contents.** A. Before any license is granted or issued for a teen club or entertainment establishment, an application shall be filed with the City Treasurer, setting forth the following facts:

(1) The name, address, social security number, date of birth of the applicant and telephone number where the applicant can be reached between the hours of eight a.m. and five p.m.;

(2) Location of the teen club or entertainment establishment;

(3) Date for which the license is desired;

(4) Hours and days the teen club or entertainment establishment is to be open and closed;

(5) A statement as to whether or not cereal malt beverages or alcoholic liquor will be sold to patrons at the location of the entertainment establishment;

(6) A statement that the applicant is familiar with the conditions imposed by the terms of this Chapter.

(7) Maximum occupant load of the building, facility or area;

(8) A description of the nature of entertainment to be provided.

B. In addition the applicant must furnish:

(1) The names and addresses of the owner of the premises which such establishment is located.

(2) The manager or operator and, if a corporation or partnership, all the names and addresses of the officers of such corporation or partnership and any individual who owns twenty five or more percent of the stock of such corporation. If the license is to be held by a corporation, the resident agent and registered office of said corporation;

(3) The name, address, social security number, and date of birth of the applicant, owner, manager and other responsible person of the establishment. If a corporation, all the names, addresses, social security numbers and date of birth of the officers, managers or directors of such corporation and any individual who owns twenty five or more percent of the stock of such corporation. If the license is to be held by a corporation, the resident agent and registered office of said corporation. If the applicant is a partnership, all the names, addresses, social security numbers, and date of birth of all partners of the partnership.

(3) A plan to insure that adequate traffic control, crowd protection and security will be maintained and that ages of patrons admitted to the establishment will be maintained;

(4) An emergency management plan, consisting of, but not limited to: fire evacuation, storm shelter provisions, patron crowd control, and emergency access for police, fire and ambulance;

(5) The name of the private security agency, if any, to be employed to provide security for the club or entertainment establishment;

(6) Detailed plans and drawing of the teen club or entertainment establishment and adjoining areas indicating the dance floor, the waiting area for persons seeking admission, the parking areas, all restrooms, coat rooms, game rooms and all other spaces accessible by

patrons and all interior and exterior doors and windows, and all sources of exterior lighting.

(7) A statement as to whether the applicant has ever had any license denied, revoked or suspended by the City of Wichita or the State of Kansas or any other governmental entity, the reason therefor and the business activity or occupation of the individual subsequent to such suspension, revocation or denial.

(8) A statement that the applicant consents and agrees that any member of the Police Department or Fire Department as well as other code enforcement or health officers of the City may, at any time, enter and inspect any part of such premises.

C. A license shall be denied if one or more of the following conditions exist:

(1) Any applicant, owner, establishment manager, officer, manager or director of a corporate applicant, any person owning more than twenty five percent or more of the stock of a corporate applicant, or any partner of a partnership applicant of the teen club or entertainment establishment has, within the preceding ten years, been convicted of or placed on diversion for a:

a. felony; or

b. for any conviction or diversion of a misdemeanor within the last three years involving:

i. laws pertaining to any controlled substance(s) prohibited by the Uniform Controlled Substance Act, K.S.A. 65-4101, et seq. and amendments thereto;

ii. laws pertaining to alcohol or cereal malt beverage;

iii. prostitution;

iv. public indecency;

v. a sex crime or other person crime as defined by Chapter 21 of the Kansas Statutes Annotated;

vi. any crime of violence or physical force; or

vii. any weapons charge.

viii. violations of this chapter, or Sections 3.08.030 or Chapter 3.28 of the Code of the City.

(2) An applicant is less than twenty-one (21) years of age.

(3) The premises do not comply with the health, housing, fire and zoning codes of the City of Wichita.

(4) The applicant has knowingly made a false, misleading or fraudulent statement of fact to the City in the application process.

(5) The application is incomplete or if it contains any material misrepresentation;

(6) The application does not propose measures for the protection of the pubic health, safety and welfare in terms of traffic control, crowd protection and security, the monitoring of the ages of patrons or an emergency management plan.

D. The application is filed with, and the license fee is paid to, the City Treasurer. The license will not be issued until the application has been reviewed and approved by the Chief of Police, the Office of Central Inspection and the Fire Chief."

SECTION 11. Section 3.30.090 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Administrative Procedures.** A. A teen club or entertainment establishment license may be suspended, revoked, or denied if:

(1) Any data furnished on the application is incomplete, false or is not updated as required by this Chapter;

(2) Failure to comply with any condition of the teen club or entertainment establishment license; or

(3) The licensee or a manager has become ineligible to hold a license.

(4) The owner, manager, partner, director or other person owning twenty-five percent or more of the stock of a corporate licensee or a partner of a partnership licensee is convicted of any violation, which

would make them ineligible to obtain an entertainment establishment or teen club license.

(5) The premises are in violation of the health, housing, fire, zoning or building codes of the City of Wichita, or the State of Kansas.

(6) Evidence of a material variance in the actual plan and design of the premises from the plans submitted pursuant to this Chapter, or from the original design of the premises when initially licensed, with the concurrence of the Office of Central Inspection.

(7) Any Police Officer, Fire Department Official, Office of Central Inspection, or Environmental Services Inspector is refused access to inspect the premises during normal business hours.

(8) The premises are in violation of the maximum occupant load of such building.

(9) The licensee or any employee, agent or responsible person is found to be in violation of the provisions of this chapter or any other ordinance, rule or regulation by the city council of the City of Wichita.

(10) The licensee fails to comply with additional security requirements imposed by the Chief of Police, pursuant to the provisions of subsection (C) set forth below.

B. The Chief of Police shall provide written notice of the intent to revoke, suspend or deny an entertainment establishment or teen club license by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the licensee on file with the City Treasurer. The

notice shall provide the effective date of the revocation or suspension of the license. Such notice shall detail the reasons or basis for the revocation, denial, or suspension of the license. No revocation or suspension shall be imposed on less than five days notice to the licensee, and shall specify the rights of the licensee to appeal any such denial, revocation or suspension.

C. In lieu of suspension or revocation, the Chief of Police may impose additional conditions on the license to protect the public health, safety and welfare. The imposition of such additional conditions shall be based on violations occurring on the premises by the licensee, his/her employees, patrons, agents or responsible person of the provisions of this chapter, the laws of the City of Wichita, or state or federal laws. Conditions shall be based upon specific and articulable facts reasonably related to insuring public health and safety, including but not limited to: the protection of minors from alcohol, protection of patrons from criminal activity, including but not limited to homicide, aggravated assault, weapon offenses, drug offenses and disorderly conduct, prevention of public nuisances, enhancement of fire protection, traffic control, crowd control, security lighting and emergency access.

D. The Chief of Police shall notify the licensee in writing of any additional conditions imposed on the licensee. Such notice shall specify the additional conditions, set forth facts which support the basis for the addition of such conditions and a time frame for completion of such additional conditions. Such conditions may include, but are not limited to the following:

(1) Prohibiting the establishment from alcohol sales of any kind;

(2) Restrictions upon the hours of operation of the establishment;

(3) Restrictions upon the maximum occupancy within the establishment;

(4) Requiring the owner, licensee or responsible person to identify individuals that are prohibited from entering onto the premises;

(5) Completion of improvements upon the licensed premises that have an impact of mitigating crime such as fences, lights, security cameras or other devices;

(6) Increased presence of security personnel;

(7) Other conditions which may be appropriate to remedy violations of this chapter by the licensee."

SECTION 12. Section 3.30.100 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Appeal Procedure.** A. Any applicant or licensee aggrieved by the denial, suspension, modification, revocation or imposition of additional conditions, of an entertainment establishment or teen club license may file with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the decision by the Chief of Police or his/her designee. The Notice of Appeal shall specify:

(1) the name and address of the appellant;

(2) the date of application;

(3) the date of the denial, suspension, modification, revocation or imposition of additional conditions of the license or application;

(4) the factual basis for the appeal.

B. Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than thirty days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension, modification or revocation of the license until the matter is heard by the City Council.

C. The City Council may approve the denial, suspension, modification, revocation, or imposition of additional conditions, overrule the denial, suspension, modification, revocation or imposition of additional conditions or modify the decision of the Chief of Police.

D. In any hearing before the city council pursuant to this section, a certified copy of a conviction from any local, state, or federal court for any violation, is prima facia evidence of such violation. For the purposes of this section, 'conviction' shall include being placed on diversion or being adjudged guilty upon entering a plea of no contest.

E. The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any

amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the license by the City Council."

SECTION 13. Section 3.30.110 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**List of Managers.** If, at any time after the filing of the application or during the term of a license, a new manager is hired who has not been identified to the Wichita Police Department, the applicant or licensee is required to furnish, within ten business days, the name, address and date of birth of such manager or responsible person to the City Treasurer. Similarly, the licensee is required to notify the City Treasurer whenever a person listed on the application or supplemental list is discharged. The Chief of Police or his/her designee shall investigate the criminal history of all such managers or responsible persons and may revoke or decline to renew a license when any such person has the disqualifying history described in Section 3.30.080."

SECTION 14. Section 3.30.120 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Security Personnel and Control of Premises.** A. It is the obligation of the owner, manager, licensee or responsible person and a condition of the license to maintain, at all times when the teen club or entertainment establishment is open for business, adequate security personnel for the premises of such business.

B. It is the obligation of the owner, manager, licensee or responsible person of a teen club or entertainment establishment where

dancing occurs, to maintain illumination in such entertainment establishment at a minimum level of one candle feet at a plane three feet above the dance floor.

C. The owner, licensee, manager or responsible person shall provide for the orderly dispersal of patrons from the premises of the teen club or entertainment establishment at closing time, and shall prevent patrons from congregating or loitering on the premises of the teen club or entertainment establishment.

D. The owner, licensee, manager or other responsible person shall be responsible to insure that an adequate number of security personnel are employed and in attendance before, during and following each entertainment event as is necessary in order to maintain order and insure compliance with all applicable federal, state and city laws and ordinances.

E. There must be a person in charge of and responsible for security on duty at all times when the teen club or entertainment establishment is open to the public or when patrons are leaving the premises at closing time. Security personnel will remain on the premises for a period of not less than thirty minutes after the closing time of such establishment to direct the orderly dispersal of patrons from the premises of the establishment.

F. The owner, licensee, manager or responsible party of a teen club or entertainment establishment is responsible to exercise appropriate control over its invitees on the premises for such purposes as preventing unnecessary noise, litter,

trespass, loitering, property damage, traffic obstruction and similar activities which may constitute a nuisance.

G. If the history of operation of a teen club or entertainment establishment shows inadequate control of litter, the health officer may impose appropriate regulations, including the posting of a bond, to ensure litter prevention or clean-up as a condition of continued validity of the existing license or of the issuance of a future license. Such decision may be appealed pursuant to the procedures set forth in Section 3.30.100.

H. One of the purposes of the security personnel requirement is to maintain the public peace and order on the premises of the teen club or entertainment establishment. The licensee is under a continuing obligation to take reasonable measures, including to call the police department, to curtail any conduct which is or threatens to be violative of state or local laws or offensive to public health, decency and morality, or peace and order, including, without limitation, minors in possession of liquor or tobacco products, use or possession of controlled substances, crimes of violence and disorderly conduct."

SECTION 15. Section 3.30.130 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Right of Access.** During any hours in which any person is present on the premises, all teen clubs and entertainment establishments shall be open to inspection by City Health, Fire, Zoning, Building and license inspectors and Wichita Police Officers or other law enforcement agencies."

SECTION 16. Section 3.30.140 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Restrictions on Admission to Teen Clubs.** A. There may not be admitted into a teen club any person nineteen years of age or older or less than thirteen years of age except:

(1) a manager or employee of the club; or

(2) a parent or legal guardian accompanying his or her child or ward; or

(3) a spouse of a person who can legally be admitted to the club.

B. The licensee, manager or responsible person of an entertainment establishment or teen club may not admit or allow the admittance of any person who does not possess and display satisfactory photo identification, as defined by Section 3.30.020. A school identification card with satisfactory photo identification indicating that the individual is in eighth grade or high school may be accepted by the licensee, manager or responsible person of a teen club."

SECTION 17. Section 3.30.150 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Additional Regulations and Observation Thereof Required.**

A. No licensee, owner, principal, officer, manager, responsible person or other employee of a teen club or entertainment establishment coming in contact

with members of the public may knowingly, or in circumstances when he or she should have known, allow or permit the following to occur on the premises:

(1) CONTROLLED SUBSTANCES: Controlled substances may not be possessed, offered for sale or consumed on the premises of the teen club or entertainment establishment.

(2) EMPLOYMENT OF MINORS UNDER EIGHTEEN. Persons under eighteen years of age may not be employed in, about or on the premises of an entertainment establishment where cereal malt liquor or alcoholic liquor is dispensed or consumed.

(3) ILLEGAL CONSUMPTION OF ALCOHOL. Alcoholic liquor or cereal malt beverages may not be consumed or possessed by any person under the age of twenty-one years. Any such minor shall be requested by the owner, licensee, manager or responsible person to immediately leave the premises.

(4) LOITERING: No patron of the establishment, while on the premises of such establishment, shall be allowed to loiter, create a public nuisances or breach of the peace.

(5) MAXIMUM NOISE LEVELS. Noise may not exceed the maximum allowable noise levels set forth in Chapter 7.41 of the Code of the City of Wichita. Noise shall not be of such volume, intensity or duration as to disturb a person of reasonable sensibilities. The owner, manager or responsible person shall be strictly liable for all noise produced within the entertainment establishment or teen club.

(6) TEEN CLUBS: No patron over eighteen may enter into or remain upon the premises of a teen club."

SECTION 18. Section 3.30.160 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Premises capacity.** It shall be the duty of the Fire Chief and the Superintendent of Central Inspection to determine the number of persons who can safely be accommodated at any one time in any building, premises or location where any teen club or entertainment establishment is located. The Fire Chief and the Superintendent of Central Inspection shall rate and limit the occupancy of the building, premises or location and furnish a certificate thereof to the owner or operator of such teen club or entertainment establishment, which owner shall be required to post such certificate near the main exit in the building. Such owner, operator, licensee or responsible person is hereby required to limit the attendance at such teen club or entertainment establishment to such capacity as has been determined by the Fire Chief and Superintendent of Central Inspection. It shall be unlawful to post a certificate of occupancy showing a greater capacity than that shown by the Office of Central Inspection and Fire Chief."

SECTION 19. Section 3.30.170 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**False statement of age unlawful.** It is unlawful for any person to make any false statement as to his or her age for the purpose of gaining admission to, or remaining in any teen club or entertainment establishment, or for the purpose

of enabling any other person to gain admission to or remain in any teen club or entertainment establishment where cereal malt beverage or alcoholic liquor is dispensed or consumed."

SECTION 20. Section 3.28.180 of the Code of the City of Wichita, Kansas is created to read as follows:

"**Distance Requirements.** An entertainment establishment license does not permit and shall not be issued to any person for the operation of an entertainment establishment if such establishment:

A. is licensed to sell alcoholic liquor or cereal malt beverage or if alcoholic liquor or cereal malt beverage will be offered, consumed or served on the premises; and

B. the location is within 300 feet of any church, public park, public or parochial school or residential zoning district.

The distance is to be measured from the nearest property line of the residential zoning district, church or public or parochial school to the nearest line of the premises on which the establishment is located or on any parking lot designated to be used by the patrons of such establishment.

Renewal of entertainment establishment licenses, otherwise subject to this subsection, may be made for all establishments presently licensed and located within three hundred feet of any church, public park, public or parochial school, residential or zoning district, so long as the premises are used or held for use as a place in which a entertainment establishment license and one of the following licenses is held:

(1) Class A private club;

(2) Class B private club;

(3) Drinking establishment; or

(4) A license to sell cereal malt beverages for consumption on the premises; provided, however, that should such an establishment cease to be used for such purposes for a period of ninety days or more, then and in that event, no new entertainment establishment license shall be issued for the establishment. Periods of time during which such establishment is being remodeled or is being repaired because of damage caused by fire or natural disasters such as floods or wind-storms, shall not be included in computing the above ninety-day period; provided, however, that any remodeling or repair must be commenced within ninety days after closure of any given structure and completed within a period not to exceed six months. Additionally, the special investigations bureau of the Wichita Police Department shall be notified within thirty days of closing of such establishment for remodeling or repair, such notice to state the date of commencement and completion of remodeling or repair."

SECTION 21. Section 3.28.190 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Penalties.** A. Any person who violates any of the provisions of this chapter within the corporate limits of the city shall be deemed guilty of a misdemeanor and upon conviction hereof shall be punished by the following fines:

(1) Upon a first conviction, a fine of not more than two thousand five hundred dollars:

(2) Upon a second conviction, a fine of not less than two hundred fifty dollars nor more than two thousand five hundred dollars;

(3) Upon a third conviction, a fine of not less than five hundred dollars nor more than two thousand five hundred dollars;

(4) Upon a fourth or subsequent conviction, a fine of not less than one thousand dollars nor more than two thousand five hundred dollars;

B. The imposition of the fines established in subparagraphs (a)(2) through (4) herein shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof except that the court may order that the defendant perform community service specified by the court but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.

C. For the purposes of determining whether a conviction is a first or subsequent conviction for sentencing, conviction includes being convicted of a violation of this chapter. It is irrelevant whether an offense occurred before or after conviction for a previous offense or whether the offense occurred at or upon the same licensed premises."

SECTION 22. The originals of Section 3.08.030 and 3.28.020 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 23. 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 _____, 2009.

_____
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 06/04/2009

ORDINANCE NO._____

AN ORDINANCE CREATING SECTIONS 3.11.065, 4.16.075, 4.16.085, AND 4.16.087, AMENDING SECTIONS 3.11.020, 3.11.150, 4.04.010, 4.04.040, 4.04.045, 4.12.050, 4.12.140, 4.12.150, 4.16.070, 4.16.090, 4.16.100, 4.16.120, 4.16.130 AND 4.16.135 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ALCOHOLIC LIQUOR AND REPEALING THE ORIGINALS OF SECTIONS 4.04.010, 4.04.040, 4.04.045, 4.12.050, 4.12.140, 4.16.070, 4.16.100, 4.16.120, 4.16.130 AND 4.16.135 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 3.11.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** (a) *'Community event'* means:

(1) an outdoor event on City-owned property with an expected attendance of fifty (50) or more persons, organized for a particular and limited purpose and time;

(2) outdoor events on private property or which occur in City of Wichita parks with an expected attendance of two hundred fifty (250) or more people, organized for a particular and limited purpose and time.

Such events shall include, but not be limited to: fun runs, roadway foot races, fundraising walks, bikeathons, carnivals, festivals, community celebrations,

shows, exhibitions, circuses and fairs. Such term shall not include events, other than fun runs or races, occurring solely on sidewalks or public rights-of-way immediately adjacent to public streets.

(b) *Exceptions.* The provisions of this chapter shall not apply to:

1. Community events conducted by the City of Wichita.

2. Events consisting only of a parade, whether regulated or exempted by the provisions of Section 3.13.020 of the Code of the City of Wichita.

3. Funeral processions as regulated by Chapter 3.74 of the Code of the City of Wichita.

4. Outdoor events occurring at amusement parks licensed pursuant to Chapter 3.20 of the Code of the City of Wichita.

5. Social or political protests, rallies, gatherings, assemblies, or vigils occurring on public property, which consist solely of the displaying of signs or banners, singing and the delivering of speeches.

6. Outdoor events conducted entirely on the property of a museum, educational or religious institution

7. Outdoor events held at a members-only facility where no extraordinary police services are required.

8. Events held entirely inside the Lawrence-Dumont Stadium.

9. Farmers Markets licensed pursuant to Chapter 3.94 of the Code of the City of Wichita.

10. Auctions as regulated by Chapter 3.36 of the Code of the City of Wichita.

11. Garage or Miscellaneous sales as regulated by Chapter 3.44 of the Code of the City of Wichita.

12. Performances of Street Performers as defined and regulated by Chapter 10.36 of the Code of the City of Wichita.

13. Sporting events, contests, practices or tournaments occurring at sport complexes or playing fields where the scope of the event is limited to the sporting event for which the property is designed to be utilized.

14. Events held at a private residence or in a residential neighborhood where no admission is charged, and no extraordinary police services are required.

15. Outdoor events conducted entirely on the property of public or private schools, colleges or universities, where no extraordinary police services are required.

(c) *'Community Event Coordinator'* means the Manager of Arts and Cultural Services or his or her designee.

(d) *'Community Event Promoter'* means the person who is directly responsible for organizing and/or conducting the event.

(e) *'Extraordinary police services'* means responsive police services which are in addition to and in excess of the normal police services provided to the location or off-site as a direct result of the event.

(f) *'Person'* shall mean a natural person or a legal entity such as, but not limited to an individual, firm, association, joint stock company, partnership or corporation.

(g) *'Street' or highway'* means the entire width between property lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic. Where the word 'highway' or the word 'street' is used in this title, it means street, avenue, boulevard, thoroughfare, trafficway, alley and any other public way for vehicular travel by whatever name unless the context clearly indicates otherwise."

SECTION 2. Section 3.11.065 of the Code of the City of Wichita, Kansas, is created to read as follows:

"Regulations for Alcohol Consumption or Sale at Community Events.

(a) Any community event organizer, who desires to sell or allow the consumption of alcoholic liquor or cereal malt beverage at a community event, shall submit an application to the Community Event Coordinator for the sale or consumption of such alcoholic liquor or cereal malt beverages at such community event.

(b) Such written application must be made on a form provided by the Community Event Coordinator. The application must be submitted to the

Community Event Coordinator not less than forty –five (45) days before the date of the proposed community event.

(c) The written application shall contain the following information:

(1) The name and address of the event promoter;

(2) The dates and times when alcoholic liquor or cereal malt beverages will be served at such event;

(3) For events occurring on the city's streets or sidewalks, a copy of the temporary permit issued by the State of Kansas, pursuant to K.S.A. 41-2645 and the City of Wichita, pursuant to Section 4.16.170 of the Code of the City of Wichita for the sale of alcoholic liquor at such event, or written documentation that an application is pending for such temporary permit;

(4) A copy of the caterer's license issued by the State of Kansas for any individual responsible for the sale of alcoholic liquor at such event;

(5) A detailed security plan;

(6) A plan as to how event organizers will prevent the off-premises consumption of alcohol and the consumption of alcohol by minors;

(7) A detailed site map indicating:

(a) Entry and exit points to the event venue(s);

(b) Description of the signage, barriers or maps which will be used to designate the area in which alcoholic liquor or cereal malt beverages may be consumed;

(c) The number and exact locations of all alcoholic liquor or cereal malt beverage sale/distribution booths;

(d) The location of any licensed drinking establishments that desire to participate in an event, and a designation of the area of the licensed premises of such drinking establishment(s) which have been extended into the event area.

(8) Whether entry to the event is restricted to invited guests or open to the public.

(9) The type of alcoholic liquor or cereal malt beverage to be sold or dispensed and the means or method which will be used to sell, dispense or distribute the alcohol to event attendees;

(10) The identity of the on-site supervisor of the alcoholic liquor or cereal malt beverage service;

(11) The name, address and licensee of any drinking establishment, which is adjacent to the event and which has extended its licensed premises into the event area if such event is occurring on the public streets and sidewalks of the City of Wichita;

(12) The name and address of any adjacent businesses which are to be included in the event area;

(13) A list of streets and or street right of ways to be closed to motor vehicle traffic for such event and the dates and times for such street closures;

(14) If signs are to be used to designate areas were alcoholic liquor or cereal malt beverage may be consumed, a diagram showing the number, size and location of such signs.

(d) The City Council shall review written applications for the sale and/or consumption of alcoholic liquor on the streets and sidewalks of the city of Wichita and may, by resolution, authorize the sale and/or consumption of alcoholic liquor on streets which have been closed to motor vehicle traffic and sidewalks in the event area. In determining if approval should be given, the City Council shall consider those factors set forth in Section 3.11.080 of the Code of the City of Wichita, Kansas.

(e) Approval by the City Council, pursuant to this section, shall not be required for community events held on locations exempted from the prohibitions of consuming alcohol in public, as designated by Section 4.04.045 of the Code of the City of Wichita or those events which occur on private property.

(f) Alcoholic liquor and cereal malt beverages served at a community event are to be served in distinctively different containers than those in which non-alcoholic drinks are served.

(g) Alcoholic liquor and cereal malt beverages served at a community event are not to be sold or served in pitchers, buckets or carafes and no person is to be served or allowed to purchase more than two alcoholic drinks at the same time.

(h) If multiple alcoholic liquor or cereal malt beverage vendors or licensees are participating in a community event, each vendor or licensee must serve their alcoholic liquor or cereal malt beverage in distinctive containers which identify such vendor or licensee.

(i) It shall be unlawful for any person to distribute, sell or allow the consumption of any alcoholic liquor on the streets or sidewalks within any community event without obtaining the approval of the City Council and any and all necessary state and local permits for the sale of such alcoholic liquor."

SECTION 3. Section 3.11.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Street closures.** (a) Any street closures requested by a licensee or which are necessary as part of a community event permit application must be approved by the City Council prior to the issuance of the Community Event Permit by the Community Events Coordinator.

(b) The following requirements must be met before a street closure is approved:

1. The applicant must submit to the community events coordinator a written request for the street closure at least ~~twenty-four (24)~~ forty-five (45) days prior to the date of the proposed street closure.

2. The applicant is responsible for attempting to secure the cooperation of all property owners/residents affected by the street closing and will provide proof that all property owners/residents have been notified by attaching to the application a statement signed by all affected property owners/resident listing the name, address and telephone number of the person contacted expressing their approval or disapproval of the street closure. Failure to notify any property owners/residents may result in the denial of the application or require a change in the scheduled closing date.

3. The applicant must be the responsible party for the event.

4. The applicant will provide a sketch of the street area indicating the area to be closed and the location of all properties adjacent to the area being closed.

5. The closure of the street affected by the event must not cause a significant hardship to pedestrian or vehicular traffic. Alternative routes must be available for public and emergency vehicles.

6. The street closure shall be for a period less than twenty-four (24) hours.

7. The applicant is responsible for obtaining and placing barricades for the street closure, and for removing the barricades promptly after the event is concluded.

8. The applicant must, promptly after the conclusion of the event, clean the right-of-way to its condition prior to the street closure.

9. The applicant must allow city personnel, emergency vehicles and police officers to lawfully enter the area. Orders or directions given by police or fire officials in the lawful discharge of their duties must be obeyed."

SECTION 4. Section 3.11.155 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Hours of Operation for Community Events.** Outdoor entertainment for events licensed, pursuant to this Chapter, shall cease between the hours of eleven p.m. to 8:00 a.m. Sunday through Thursday and midnight to 8:00 a.m. on Friday and Saturday."

SECTION 5. Section 4.04.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Definitions. Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this title, have the meanings indicated in this section.

(a) 'Alcohol' means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) 'Alcoholic liquor' means alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include

any ~~beer or~~ cereal malt beverage ~~containing not more than three and two-tenths percent alcohol by weight~~.

(c) 'Barrier' means any natural or manmade obstruction which precludes direct traffic, between a church or school and a private club, drinking establishment or a place of business at which cereal malt beverages are sold and is of such a character that it completely separates such establishments, including parking facilities. Barriers include, but are not limited to~~,~~: rivers, railroad tracks, levees, and drainage ditches.

(d) 'Beer' modified, or limited by other words, means a beverage, containing more than three and two-tenths percent alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and hops in water and includes beer, ale, stout, lager beer, porter, and similar beverages having such alcoholic content.

(e) 'Beneficial interest' shall not include any interest a person may have as owner, operator, lessee or franchise holder of licensed hotel or motel on the premises of which a club or drinking establishment is located.

(f) 'Bus' means every motor vehicle designed for carrying more than ten passengers and used for transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(g) 'Caterer' means an individual, partnership or corporation which sells alcoholic liquor by the individual drink or domestic beer, and provides services related to the serving thereof, on unlicensed premises which may be open

to the public, but does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

(h) ‘Cereal malt beverage’ means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than three and two-tenths percent alcohol by weight.

(i) ‘Cereal malt beverage retailer’ means any person who sells or offers for sale any cereal malt beverage for use or compensation and not for resale in any form.

(j) ‘Class A club’ means a premises which is owned or leased by a corporation, partnership, business trust or association, and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the director, for the exclusive use of the corporation stockholders, partners, trust beneficiaries or associates (hereinafter referred to as "members"), and their families and guests accompanying them.

(k) ‘Class B club’ means a premises operated for profit by a corporation, partnership or individual to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(l) ‘Club’ means a Class A or Class B club.

(m) ‘Crime of moral turpitude’ means a crime involving dishonesty.

(n) ‘Director’ means the Director of Alcoholic Beverage Controls of the Kansas State Department of Revenue.

(o) 'Distributor' shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.

(p) 'Domestic beer' means beer which contains not more than eight percent alcohol by weight and which is manufactured ~~from agricultural products grown~~ in this state.

(q) 'Drink of alcoholic liquor' means one individual serving of any beverage containing alcoholic liquor.

(r) 'Drink of cereal malt beverage' means one individual serving of any cereal malt beverage not to exceed twelve ounces.

(s) 'Drinking establishment' means premises which may be open to the general public over twenty-one years of age, where alcoholic liquor by the individual drink is sold.

(t) 'Drinking establishment/restaurant' means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold and which derive not less than ~~thirty~~ fifty percent of its gross revenues from sales of food and beverages for consumption on such premises in a ~~six~~ two month period ~~and have not less than seventy percent of the public assembly area of the licensed premises devoted to designated seating according to the floor plan and the service of food for consumption on the licensed premises; or derive not less than fifty percent of its gross revenues from sales of food and beverages for consumption on such premises in a six-month period~~. ~~In determining the seventy percent floor space requirement those areas designated on the floor plan for~~

~~bowling lanes, ball storage, pool tables and other amusement and recreational-related uses, except dancing, shall not be included.~~ Failure on the part of the licensee to meet ~~either of~~ the fifty percent food sales criteria ~~listed above~~, or conviction of the licensee or any owner, officer, or employee of the licensee of any ~~three~~ two violations of Section 4.16.130 of the City Code occurring on the licensed premises within ~~twenty-four months~~, one year shall result in the premises being reclassified as a drinking establishment as provided in Section 4.16.095(c) and any amendments thereto.

(u) 'Drinking establishment/restaurant/event center' means premises which may or may not be open to the public, are frequently rented out for public or private activities which are not repeated on a weekly basis, are not open to the public on a daily basis at times other than when an event is scheduled, and which derive at least thirty percent of its gross revenue from sales of food and beverages for consumption on the premises in a six-month period.

(v) 'Employee' means any person employed in the business of selling cereal malt beverages or alcoholic liquor by a licensee.

(w) ~~'Exposing to view' or 'expose to view' means the showing of those portions of the human anatomy prohibited by ordinance with less than a full opaque covering.~~

~~(x)~~ 'Food' means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used or intended for use or for sale, in whole or in part, for human consumption.

~~(y)~~ (x) 'Gross revenues' means only that income derived from cereal malt beverages, alcoholic liquor, and other food consumables.

~~(z)~~ (y) 'Hotel' has the meaning ascribed to it by K.S.A. 36-501 and amendments thereto.

~~(aa)~~ (z) 'Legal age for consumption of cereal malt beverage' means twenty-one years of age.

~~(bb)~~ (aa) 'Licensee' means any person to whom a current cereal malt beverages license has been issued by the city council, authorizing sale of cereal malt beverages and/or any person to whom a current club, drinking establishment, drinking establishment/restaurant, drinking establishment hotel, or caterer's license or temporary permit has been issued pursuant to this title and/or any person to whom a current club, drinking establishment, drinking establishment hotel, or caterer's license, or temporary permit has been issued by the director of alcoholic beverage control pursuant to the Kansas Liquor Control Act, K.S.A. 41-101 et seq., and amendments thereto.

(bb) 'Manager' means the manager or assistant manager, or both, of any establishment licensed under this Title who is in charge of the daily operations of the establishment. A manager shall be deemed to be employed in connection with the dispensing, selling, mixing or serving of alcoholic liquor.

(cc) 'Manufacture' means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer or cereal malt beverage.

(dd) 'Manufacturer' shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.

(ee) 'Minor' means any person under twenty-one years of age.

(ff) 'Morals charge' means a charge involving prostitution or sodomy; pimping or promoting prostitution or sodomy; procuring any person; soliciting a child under eighteen year of age for any immoral act involving sex; ~~possession or sale of a narcotic, marijuana, amphetamines or barbiturates;~~ rape; incest; indecent liberties with a child; gambling; illegal cohabitation; adultery; bigamy; a crime against nature; ~~or~~ lewd and lascivious behavior; any violation of Chapter 5.26 of the Code of the City of Wichita and amendments thereto; or any violation of the Uniform Controlled Substances Act as set forth in K.S.A. 65-4101 *et seq.* and amendments thereto.

(gg) 'Off-premises business' means a business establishment which sells cereal malt beverages or alcoholic liquor in original unopened containers for consumption off of the licensed premises.

(hh) 'Original package' means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked, or capped, sealed and labeled by the manufacturer of alcoholic liquor or cereal malt beverage to contain and to convey any alcoholic liquor or cereal malt beverage.

(ii) 'Person' means any natural person, corporation, partnership, trust or association.

(jj) 'Place of business' means any place, except a tavern, at which cereal malt beverages and/or alcoholic liquor are sold.

(kk) 'Premises' means the specific area described in the license application and approved as the location upon which the cereal malt beverages and/or alcoholic liquor may be sold and/or consumed under the license.

(ll) 'Public assembly area' means the area of the licensed premises to which the general public has access for purposes including, but not limited to, food and drink consumption, entertainment, recreation, social functions or awaiting transportation.

(mm) 'Public place' means any place to which the general public has access and a right to resort for business, entertainment, or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

(nn) 'Sale' means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration; and includes all sales made by any person, whether principal, proprietor, agent, servant or employee.

(oo) 'School' means the use of a site for instructional purposes on an elementary or secondary level, including both public schools as well as private schools that have curriculums similar to those in public schools.

~~(oo)~~ (pp) (1) 'Sell at retail' and 'sale at retail' ~~shall have the meanings ascribed to them by K.S.A. 41-102 and amendments thereto~~ refer to and mean

sales for use or consumption and not for resale in any form and sales to clubs, licensed drinking establishments, licenses caterers or holders of temporary permits.

(2) 'Sell at retail' and 'sale at retail' do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.

~~(pp)~~ (qq) 'Special event' means a picnic, bazaar, fair, festival or similar gatherings or events which have been issued a community event license pursuant to Chapter 3.11 of the Code of the City of Wichita, where a temporary permit for the sale of cereal malt beverages or alcoholic liquor is issued pursuant to regulations established by this title, and the Kansas Club and Drinking Establishment Act and amendments thereto.

~~(qq)~~ (rr) 'Spirits' means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

~~(rr)~~ (ss) 'Tavern' means any business establishment licensed to sell cereal malt beverages for consumption on the premises that derives in any one month of the calendar year less than fifty percent of its gross revenues from the sale of food for consumption on the premises.

~~(ss)~~ (tt) 'Temporary permit' shall have the meaning ascribed to it by K.S.A. 41-2601 and amendments thereto.

~~(tt)~~ (uu) 'To sell' includes to solicit or receive an order for, to keep or expose for sale and keep with intent to sell.

~~(uu)~~ (vv) 'Wine' means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

~~(vv)~~ (ww) 'Wholesaler' means a distributor as defined by K.S.A. 41-2701 and amendments thereto."

SECTION 6. Section 4.04.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Consumption in public places prohibited. (a) (1) Except as otherwise provided herein, ~~I~~it is unlawful for any person within the corporate limits of the city to drink or consume alcoholic liquor upon the public streets, alleys, roads or highways, or inside vehicles while upon the public streets, alleys, roads or highways.

(2) Alcoholic liquor may be sold and/or consumed at a special event held on public streets, alleys, roads, sidewalks or highways, provided that such streets, alleys, roads, sidewalks or highways have been closed to motor vehicle traffic by the City Council and when a temporary permit has been issued pursuant to K.S.A. 41-2645 and amendments thereto, for such event and the consumption of such alcoholic liquor at

such event has been approved by the City Council pursuant to Section 3.11.065.

(3) No alcoholic liquor may be consumed inside or on motor vehicles while on public streets, alleys, roads or highways at such special event.

(4) No person shall remove any alcoholic liquor from inside the boundaries of a special event as designated by the City Council pursuant to Section 3.11.065. The boundaries of such event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such event.

(5) No person shall possess or consume alcoholic liquor inside the premises, licensed as a special event, that was not sold or provided by the licensee holding the temporary permit for such special event or an adjacent drinking establishment which has extended its licensed premises into and made a part of the licensed premises for such special event pursuant to K.S.A. 41-2645(e)(2) and amendments thereto.

(6) It shall be unlawful for any person to distribute, sell or allow the consumption of any alcoholic liquor on the streets or sidewalks within any special event without obtaining the approval of the City Council and any and all necessary state and local permits for the sale or consumption of such alcoholic liquor.

(7) Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

(b) No person shall drink or consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by this title and by the Club and Drinking Establishment Act of the State of Kansas pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated;

(2) Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803 and amendments takes place;

(3) In a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of such alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto take place;

(4) In private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803 and amendments takes place; or

(5) ~~On or after January 1, 1988, o~~On the premises of a microbrewery or farm winery, if authorized by this title and by K.S.A. 41-308a or Section 138, of House Substitute for Substitute Senate Bill 141 and amendments thereto.

(c) No person shall drink or consume alcoholic liquor on public property except:

(1) On real property leased by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes incidental thereto.

(2) In any state-owned or operated building or structure and on the surrounding premises, which is furnished to and occupied by any state officer or employee as residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by the Wichita Airport Authority.

(d) On property which has been specifically exempted by ordinance the title of which is vested in the City of Wichita.

(e) Any property located within the corporate limits of the City of Wichita that is under the control of the Kansas State Board of Regents and the Kansas State Board of Regents has exempted said property from the provisions of K.S.A. 41-719(c) and amendments thereto and said property is not used for classroom instruction.

(f) On the premises of any Kansas national guard regional training center or armory, and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.

(g) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than fifty dollars nor more than two hundred dollars or by imprisonment for not more than six months, or both."

SECTION 7. Section 4.04.045 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Exemptions. The city, by virtue of the authority contained in K.S.A. 41-719, exempts the following properties from any prohibition against consumption of alcoholic liquor on public property contained in K.S.A. 41-719, and in Sections 4.04.040, 4.16.020 and 4.16.030 of this Code: CityArts, the education building of the Wichita Area treatment Education and Remediation (WATER) Center, Sports Hall of Fame, Lionel Alford Regional Library, Wichita-Sedgwick County Historical Museum, Century II, the Wichita Mid-Continent Airport, Colonel James Jabara Airport, Cowtown, the Wichita Art

Museum, ~~Omnisphere Earth-Space Center~~, Mid-America All-Indian Center, Lawrence-Dumont Stadium, ~~Old City Building~~, the Central Branch Wichita Public Library, ~~the Rock Island Depot Union Station Complex, the Downtown Inn,~~ the Kansas Aviation Museum (Historic Wichita Municipal Airport), the Old Town Farm and Art Market, ~~the Wichita Community Art Center, the building at 458 N. Waco,~~ Botanica -- the Wichita Gardens, the Hyatt Regency Wichita Hotel and Conference Center, Exploration Place, the Ice Sports Center of Wichita, the Wichita Boathouse, the open area bounded on the north by the Hyatt Regency Hotel and Conference Center, on the south by Lewis Street, on the east by Wichita Street, and on the west by the Arkansas River, ~~the historic residence known as "Wellington Place" located at 1847 Wellington Place, and~~ the La Familia Senior Community Center, Inc. located at 841 W. 21st St. North, ~~and~~ the Old Town Cinema Plaza, from any prohibition against consumption of alcoholic liquor on public property contained in K.S.A. 41-719, and in Sections 4.04.040, 4.16.020 and 4.16.030 of this Code."

SECTION 8. Section 4.12.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Examination of applicant by the city council; issuance or denial of license. If the application for a license is in proper form and accompanied by the license fee the city council shall examine the application and, after examination of the application, the city council, if they approve the same, shall issue a license to the applicant; provided

(a) That no license shall be issued to:

(1) A person who is not a resident of the city or county in which the premises covered by the license are located, and who has not been a resident in good faith of the state at least one year prior to the application and a resident of the county in which such place of business is to be operated for at least six months, prior to the filing of the application;

(2) A person who is not of good character and reputation in the community in which he resides;

(3) A person who is not a citizen of the United States.

(4) A person who, within two years immediately preceding the date of making application, has been convicted of a felony or of any crime involving moral turpitude, or been adjudged guilty of driving a motor vehicle while under the influence of intoxicating liquor or drugs, or of the violation of any other intoxicating liquor law of any city, state or of the United States; provided that the terms "conviction" and "adjudged guilty" shall include being placed on diversion.

(5) A partnership, unless all members of such partnership shall otherwise be qualified to obtain a license.

(6) A corporation, if any manager, officer or director thereof, and/or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than the citizenship or residency requirements;

(7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than twenty-five percent of the stock, of a corporation which: (A) Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.

(8) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(9) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license.

(b) A license shall not be issued for ~~the sale of cereal malt beverages~~ a tavern on premises located within three hundred feet of any church or ~~public or parochial~~ school or ~~for a tavern, within one hundred fifty feet of~~ a residential zoning district, the distance to be measured as set forth in the Wichita/Sedgwick County Unified Zoning Code. ~~from the nearest property line of the residential zoning district, church or public or parochial school to the nearest portion of the exterior of the specific portion of the building in which cereal malt beverages are~~

~~sold or in the event that the licensed premises are located on or include the exterior of a building or an outdoor area, the distance shall be measured to the nearest boundary line of such licensed area; provided, however, that where the premises to be licensed is separated from a church or school by expressway or arterial street as designated, or as may be designated in the future, in the official Transportation Plan Proposal 1965-1985, adopted February 3, 1966, as amended February 24, 1972, or where the premises to be licensed is separated from a church or school by a barrier as defined herein, then the above distance requirements shall not apply. These exceptions to the distance requirement of three hundred feet from a church or school shall not apply to premises which are to be used as taverns. For purposes of this chapter, whether a barrier exists or not shall be determined by the superintendent of central inspection and any person aggrieved by the decision of the superintendent of central inspection may, within thirty days thereafter, appeal from any order of the city council to the Sedgwick County district court as provided by law.~~

Renewal of licenses may be made for all establishments presently licensed within three hundred feet of any church or ~~public or parochial~~ school or ~~within one hundred fifty feet of~~ a residential zoning district, so long as the premises are used or held for use as a tavern or building in which cereal malt beverages are sold; provided, however, that should an establishment located within three hundred feet of the property line of any church or ~~public or parochial~~ school or ~~within one hundred fifty feet of~~ a residential zoning district cease to be used as a tavern or building in which cereal malt beverages are sold

for a period of ninety days or more or said premises are used for another type of business, then, and in that event, no new license shall be issued for the sale of cereal malt beverages on the premises, provided, however, that the distance requirements set out above shall not apply to the place of business of a license selling cereal malt beverages at retail and not for consumption on the premises. Periods of time during which taverns or buildings in which cereal malt beverages are sold are being remodeled or are being repaired because of damage caused by fire or natural disasters such as floods or windstorms, shall not be included in computing the above ninety-day period; provided, however, that any remodeling or repair must be commenced within ninety days after closure of any given structure and completed within a reasonable time thereafter. Additionally, the vice section of the Wichita police department shall be notified within thirty days of closing whenever any tavern or building in which cereal malt beverages are sold for remodeling or repairs. Such notice shall state the date when remodeling will start and the date it will be completed. It is further provided that the space limitations prohibiting the licensing of cereal malt beverage retailers within three hundred feet of the property line or any church or ~~public or parochial~~ school shall not apply to colleges and universities within the city limits, and the colleges and universities are exempted from the space limitation. ~~In areas zoned other than "D" as defined in Section 28.04.110~~ Off-street parking shall be ~~required on tavern premises not previously licensed at the rate of one parking space for each three occupants, based on the maximum capacity of the place of business as determined by the superintendent of central inspection. Whenever any such place~~

~~of business or businesses are located on a property with other commercial uses and have joint use of off-street parking on the premises, compliance with the provision of this subsection shall be required only when the number of off-street parking spaces for such use exceeds the number of spaces required by the zoning ordinance for all commercial uses on the property~~ provided as required by the Wichita/Sedgwick County Unified Zoning Code.

(c) A license shall not be issued for the sale of cereal malt beverages for consumption on the premises if the place of business is also licensed for the sale of cereal malt beverages for consumption off the premises.

(d) No license shall be issued for premises wherein the use thereof would be in violation of the city zoning laws or the city building codes or fire codes.

(e) Cereal malt beverages retailers' licenses shall be issued on an annual basis, except that this provision shall not apply to special events licenses."

SECTION 9. Section 4.12.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Minors prohibited; entering or remaining in taverns, etc., prohibited.

(a) No person under the legal age for consumption of cereal malt beverage shall enter or remain on the premises of a tavern. Violation of this subsection by a person eighteen or more years of age but less than twenty-one years of age is a misdemeanor punishable by a fine of not less than one hundred

dollars and not more than two hundred fifty dollars. In addition to such fine the court may order the offender to perform forty hours of public service.

Further, any person less than eighteen years of age who violates this section is a juvenile offender under the Kansas Juvenile Offenders Code and upon adjudication thereof, shall be required as a condition of disposition to pay the fine or perform the public service, or both, specified as punishment for the offense under this subsection.

(b) No licensee, manager, employee or agent shall permit a person under the legal age for consumption of cereal malt beverages to enter or remain on the premises of a tavern. No licensee, manager, employee or agent shall permit a person under the legal age for consumption of cereal malt beverage to possess, consume or purchase any cereal malt beverage in or about a place of business, except that an employee who is not less than eighteen years of age may dispense or sell cereal malt beverage, if:

(1) The place of business is licensed only to sell cereal malt beverage at retail in original and unopened containers for consumption off the premises;

(2) The place of business is a licensed food service establishment, as defined by K.S.A. 36-601 and amendments thereto, and not less than fifty percent of the gross receipts from the place of business is derived from the sale of food for consumption on the premises of the licensed place of business; or

(3) The employee is under the on-premises supervision of the licensee or permit holder, or an employee who is twenty-one years of age or older.

(c) It shall be a defense to a prosecution under this section if:

(1) The defendant is licensed as a cereal malt beverage retailer, tavern, restaurant selling cereal malt beverage or a special event, or an employee thereof;

(2) The defendant sold the cereal malt beverage to the person with reasonable cause to believe that such person was of legal age for consumption of cereal malt beverage; and

(3) To purchase the cereal malt beverage, the person exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document ~~containing~~ that reasonably appears to contain a photograph of the minor and purporting to establish that such person was of legal age for consumption of cereal malt beverage."

SECTION 10. Section 4.12.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Revocation or suspension by city council; grounds; right of appeal. The city council, upon five days' written notice, to a person holding a license to sell cereal malt beverages shall revoke or cause to be suspended for a period of not more than thirty days such license for any of the following reasons:

(a) If the licensee has fraudulently obtained the license by giving false information in the application therefor;

(b) If the licensee, manager, employee or agent has violated any of the provisions of this chapter, Chapter 3.28, Chapter 3.30, or Section 3.08.030 of the Code of the City of Wichita or any rule or regulation by the city council of the city, or the licensed premises are in violation of the health, housing, fire, zoning, or building codes of any local, state, or federal jurisdiction, including but not limited to, occupancy exceeding licensed capacity of a premises;

(c) If the licensee has become ineligible to obtain a license under this chapter;

(d) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which said license is issued, or for a licensee, his manager or employee permitting any intoxicated person to remain in such place selling cereal malt beverages;

(e) The sale or gift of cereal malt beverages to those under the legal age for consumption of cereal malt beverages by a licensee, his manager or employee;

(f) The nonpayment of any license fees payable hereunder;

(g) For a licensee, his manager or employee to permit gambling in or upon premises selling cereal malt beverages;

(h) For a licensee, his manager or employee to permit any person to mix drinks with materials purchased in such place of business or brought in for that purpose unless currently licensed as a private club or drinking establishment;

(i) For the employment of persons under the legal age of consumption in dispensing cereal malt beverages in a tavern or under eighteen years of age in a food service establishment or for off-premises consumption;

(j) For employing a person who has been adjudged guilty of a felony, a violation of an offense involving a morals charge or a crime of moral turpitude or a violation of an intoxicating liquor or drug law; provided that the term "adjudged guilty" shall include being placed on diversion. The chief of police may require any employee to submit to fingerprinting to determine if a violation of this section has occurred, and the failure of an employee to submit to fingerprinting, if required by the chief of police, shall be prima facie evidence that the employee is ineligible for employment under the provisions of this section.

(k) For the sale or possession of or for permitting any person to use or consume upon or in said premises alcoholic liquor, as defined in Section 4.04.010 except in a place of business licensed as a private club or drinking establishment, pursuant to this title and Article 26 of Chapter 41 of the Kansas Statutes Annotated.

(l) For failure to maintain sufficient records to determine the percentage of gross revenues obtained from the selling of cereal malt beverages;

(m) For failure to permit the inspection of such records at all times during business hours by proper agents of the city;

(n) For knowingly allowing or permitting any known felon to loiter upon or about the licensed premises;

(o) For selling or providing cereal malt beverage to any person who is intoxicated who thereafter and by reason of such intoxication or where such intoxication is a contributing factor violates any ordinance of the City of Wichita, the laws of the State of Kansas or the federal government.

Provided, that if any of the grounds for revocation herein enumerated are violated by an employee or a manager, then in the absence of proof of knowledge by the licensee, there shall be no revocation, except as herein provided, but there may be a suspension of not more than thirty days; it being further provided that in the event any licensee is subjected to more than two such suspensions in any twelve-month period, this license may be revoked on the third such violation.

Within twenty days after the order of the city council revoking or suspending any license, the licensee may appeal from such order to the district court of the county in the manner as now provided by law in K.S.A. 1979 Supp. 41-2708; provided, that any appeal taken from an order revoking any such license shall not suspend the order of revocation during the pendency of any such appeal. In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any person acting for or on behalf, for a period of six months after the revocation becomes effective."

SECTION 11. Section 4.16.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"License exclusive to premises issued. (a) The license provided in this chapter shall be issued for one particular premises which shall be stated in the application and in the license. No license shall be issued for premises wherein the use thereof would be in violation of the city zoning laws or the city building codes or fire codes. Nothing in this section shall be construed to require a fixed premise for persons licensed as a caterer pursuant to article 26 of Chapter 41 of Kansas Statutes Annotated.

(b) Any licensed premises which includes the exterior of a building and/or an outdoor area must be adequately lighted during all business hours.

(c) Except as provided in subsection (e), ~~A~~any licensed premises which includes the exterior of a building must be enclosed by a fence or approved diverters in such a way as to allow access only through a single structure designated as the official gate or entrance.

(d) Any licensed premises which is an outdoor area must have its boundaries clearly marked or fenced so as to allow access only through an official gate or entrances.

(e) Any licensed premises of a special event, for which a temporary permit has been issued pursuant to K.S.A. 41-2645 and amendments thereto, shall be clearly marked by signs, a posted map or other means which reasonably

identify the area in which alcoholic liquor may be possessed or consumed at such special event.

(f) The licensed premises of drinking establishments that are immediately adjacent to, or located within the licensed premises of a special event, for which a temporary permit has been issued and the consumption of alcoholic liquor on public property has been approved, may be extended into and made a part of the licensed premises of the special event for the duration of the temporary permit issued for such special event."

SECTION 12. Section 4.16.075 of the Code of the City of Wichita, Kansas, is created to read as follows:

"Drinking establishment/restaurants currently licensed, renewal thereof, exceptions to fifty percent food sales requirement. Licensees of establishments currently licensed as drinking establishment/restaurants at the time of the passage of this ordinance shall have twelve (12) months from the date of passage of this ordinance to bring such premises into compliance with the fifty percent (50%) food sales requirement set forth in 4.04.010(t) as amended herein. Such establishments will be allowed to continue to operate under the prior definition of drinking establishment/restaurant, but must be in full compliance with 4.04.010(t), 4.16.087, and 4.16.085 herein and any amendments thereto upon the next renewal of the establishment's license or no later than twelve (12) months from the date of passage of this ordinance. Further, any establishment currently licensed as a drinking establishment/restaurant shall be immediately subject to all

other requirements set forth in this Title, including, but not limited to, those set forth in Sections 4.16.100 and 4.16.120 herein and any amendments thereto.

Any establishment currently licensed as a drinking establishment /restaurant that fails to meet the required food sales and maintain the required portion of public assembly area for seating and food service within any six month period, as required under the prior definition of drinking establishment/restaurant, or ceases to be used as a drinking establishment/restaurant for a period of ninety days or more or if said premises are used for another type of business, then, and in that event, no new license shall be issued for a drinking establishment restaurant except in compliance with Subsection 4.04.010(t) as amended herein. Periods of time during which such an establishment are being remodeled or are being repaired because of damage caused by fire or natural disasters such as floods or windstorms shall not be included in computing the above ninety-day period; provided, however, that any remodeling or repair must be commenced within ninety days after closure of any given structure and completed within a reasonable time thereafter, in any event, not to exceed six months. Any time period during which such an establishment is closed for remodeling or repair will count toward the twelve (12) month period of time provided for compliance with 4.04.010(t) and 4.16.085 as set forth herein.

Additionally, the licensee of any establishment currently licensed as drinking establishment/restaurant shall notify the Chief of Police within thirty (30) days of closing whenever any such establishment is closed for remodeling

or repairs. Such notice shall state the date when remodeling will start and the date it will be completed."

SECTION 13. Section 4.16.085 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Requirements for new licensees.** After the date of passage of this ordinance, all applicants for a drinking establishment license, or a drinking establishment/restaurant license that are not subject to Section 4.16.075 herein, shall be required to provide the following as a part of such application:

(a) A business plan which will be on a form provided by the City's licensing section and shall provide such information as set forth herein, including, but not limited to, information as to hours of operation, proposed forms of entertainment, key personnel such as owner(s) and any on-site manager(s), insurance coverage information, a copy of any lease or purchase agreement for the licensed premises, a floor plan of the licensed premises and a site plan showing the location of parking spaces as required by the Uniform Zoning Code of the City . Failure to provide a complete business plan with the information required herein will result in denial of the requested license.

(b) In addition to the requirements set forth in subsection (a), all applicants for a drinking establishment/restaurant license that are not subject to Section 4.16.075 herein shall also be required to provide a food menu, a statement of monthly projected income and copies of vendor letters of intent as a part of such application. Failure to provide this information as part of the applicant's business plan will result in denial of the requested license.

(c) Proof that the proposed licensed premises have been subject to a CPTED (Crime Prevention Through Environmental Design) inspection by the Wichita Police Department. The recommendation of such inspection shall be attached to the application.

(d) Proof that the applicant and all listed on-sight managers of the establishment, or, if the applicant is a corporation, all listed on-site managers have attended a four-hour "safe bar" class conducted by the Wichita Police Department. Any manager subsequently hired by the licensee shall be required to show proof of attendance of the "safe bar" class within 45 days of such manager's date of employment at said establishment. Failure to of any licensee to provide such proof shall be grounds for revocation of the license.

(e) A list of all on-sight managers for the establishment, which list shall also be updated with the City license section within 10 business days from the date any manager is no longer employed by the licensee or when any new manager is hired by the licensee.

Once the information required by this section has been provided to the City's licensing section, except for providing updates regarding any changes being made by an establishment in the required information herein, and for providing information regarding any on-sight manager(s) for the licensed premises, the provisions of this Section shall not apply to renewal applications for drinking establishments or drinking establishment/restaurants.

SECTION 14. Section 4.16.087 of the Code of the City of Wichita, Kansas, is created to read as follows:

"Enforcement of required food sales percentage; Audits. Enforcement of the food sale percentages required for drinking establishment/restaurants by the provisions of this Title shall be by both random and regularly scheduled audits of such establishments.

(a) Newly licensed establishments. Every licensee of a newly licensed drinking establishment/restaurant shall be required to provide information as required in subsection (b) herein for an initial audit, once the establishment has been in operation for a two month period. Once two months have passed from the date the drinking establishment/restaurant license was issued, the licensee shall have an additional fifteen (15) days to remit all information to the City's licensing section for the final audit.

(b) Audits of any licensed establishment. Information for any audit required by this section shall be submitted on forms approved by the City and shall be sent to the City's licensing section. Such information will then be forwarded to the Special Investigations Bureau of the Wichita Police Department who shall be responsible for conducting or overseeing the audit process. Information which must be provided shall include, but not be limited to, copies of business records sufficient to demonstrate the total gross revenue during the two months in question for food sales and alcohol sales. Sufficient business records shall be deemed to include, but shall not be limited to, a list of vendors with

verifying information, including written authorization from the licensee for any agent or agents of the City to contact vendors directly and obtain information regarding such records, a listing of monthly payments to food vendors and monthly payments to alcohol vendors. For the purposes of any audit required by this section, revenues from the sale of non-alcoholic beverages that are mixed with alcoholic liquor shall be counted as alcohol sales and not as food sales. Once an audit is requested by the police, the licensee shall have fifteen (15) days to remit all required information to the licensing section. Failure to provide the necessary business records as required herein, or the failure of the records provided to demonstrate that the required food sale percentages are being maintained by the establishment will result in the reclassification of the premises from a drinking establishment/restaurant to a drinking establishment, as provided in Section 4.16.095, and any amendments thereto.

SECTION 15. Section 4.16.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Revocation of license. (a) The city council shall immediately revoke the license of any licensee whenever the state license of the licensee is revoked by the state for any reason.

(b) The city council, upon five days written notice to a person holding a license to sell alcoholic liquor, may assess a fine not to exceed five hundred dollars, may assess such fine and/or suspension for a period not to exceed thirty days or may revoke such license for any of the following reasons:

(1) If the licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon;

(2) If the licensee, manager, employee or agent has violated any of the provisions of this title, Chapter 3.28, Chapter 3.30, or Section 3.08.030 of the Code of the City of Wichita or any rule or regulation by the city council of the city, or the licensed premises are in violation of the health, housing, fire, zoning, or building codes of the City of Wichita or the State of Kansas or of the maximum occupant load of such building;

(3) If the licensee has become ineligible to obtain a license or permit under this title;

(4) Drunkenness of a person holding such license, drunkenness of licensee's manager or employee while on the premises for which said license is issued, or for a licensee, whose manager or employee permits any intoxicated person to remain in such place selling alcoholic liquor;

(5) The sale or gift of cereal malt beverage or alcoholic liquor to a minor by a licensee, his manager or employee;

(6) The nonpayment of any license fee payable pursuant to this title;

(7) For a licensee, his manager or employee to permit gambling in or upon premises selling alcoholic liquor;

(8) If the licensee or his manager or employee has permitted any disorderly person to remain on premises where alcoholic liquor is sold by such licensee;

(9) If there has been a violation of a provision of the laws of this city or of this state or of any other state or the United States pertaining to the sale of intoxicating or alcoholic liquors or cereal malt beverages, or any crime involving a morals charge or moral turpitude on premises where alcoholic liquor is sold by such licensee;

(10) If the licensee or his managing officers or any employee, has purchased or displayed, on premises where alcoholic liquor is sold by such licensee, a federal waging occupational stamp issued by the United States Treasury Department;

(11) If the licensee or his managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal coin-operated gambling device stamp for the premises issued by the United States Treasury Department;

(12) If the licensee holds a license as a Class B Club, drinking establishment or caterer and has been found guilty of a violation of Article 10 of Chapter 44 of the Kansas Statutes Annotated under a decision or order of the Civil Rights Commission which has become final or such licensee has been found guilty of a violation of K.S.A. 21-4003 and amendments thereto;

(13) For employing a person who has been adjudged guilty of a felony, a violation of an offense involving a morals charge or a crime of moral turpitude, or a violation of intoxicating liquor or drug law; provided that the term "adjudged guilty" shall include being placed on diversion. The chief of police

may require any employee to submit to fingerprinting to determine if a violation of this section has occurred, and the failure of an employee to submit to fingerprinting if required by the chief of police shall be prima facie evidence that the employee is ineligible for employment under the provisions of this section;

(14) For failure to maintain sufficient records to determine the percentage of gross business obtained from the sale of cereal malt beverages or alcoholic liquor;

(15) For failure to permit the inspection of such records at all times during business hours by proper agents of the city;

(16) For knowingly allowing or permitting any known felon to loiter upon or about the licensed premises;

(17) For selling or providing alcoholic liquor to any person who is intoxicated who thereafter and by reason of such intoxication or where such intoxication is a contributing factor violates any ordinance of the City of Wichita, laws of the State of Kansas, or the federal government;

(18) Failure to pay a fine assessed by the city council within thirty days of the date such fine was imposed.

(c) <u>In any hearing before the city council pursuant to this section or upon appeal from a suspension or reclassification of license by the chief of police pursuant to Section 4.16.095, a certified copy of conviction from any local, state, or federal court, for any violation contained within subsection (b) of this section, is prima facia evidence of violation. For the purposes of this section, 'conviction' shall include being placed on diversion or being adjudged guilty upon entering a plea of no contest.</u>

~~(c)~~ (d) If any of the grounds for revocation enumerated in subsection (b) of this section are violated by an employee or manager, then in the absence of proof of knowledge by the licensee, there shall be no revocation, except as herein provided, but there may be a suspension of not more than thirty days; it being further provided that in the event any licensee is subject to more than two such suspensions in any twelve-month period, his license may be revoked on the third such violation.

~~(d)~~ (e) Within twenty days after the order of the city council revoking or suspending any license, the licensee may appeal from such order to the district court of the county in the manner as provided by law; provided that any appeal taken from an order revoking any such license shall not suspend the order of revocation during the pendency of such appeal. In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any person acting for or on his behalf, for a period of six months after the revocation becomes effective."

SECTION 16. Section 4.16.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Display of license. Every licensee shall cause his license to be framed and hung in plain view in a conspicuous place on the licensed premises.

In addition to display of the license, a current list of all authorized on-site managers shall be posted and made available to law enforcement upon request.

SECTION 17. Section 4.16.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Closing Hours. (a) No club or drinking establishment shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of two a.m. and nine a.m. on any day. At closing time:

(1) The lights are to be fully illuminated;

(2) The music, dancing or other live entertainment is to be stopped;

(3) All alcoholic liquor is to be removed from all tables and no patron shall be in possession of any alcoholic liquor; and

(4) Patrons are to be directed to vacate the premises.

No person other than employees of the establishment shall be allowed to remain on the licensed premises more than thirty minutes after closing time.

(b) No club or drinking establishment licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated shall be open to members and the public between the hours of two a.m. and nine a.m. on any day except that this subsection shall not apply to restaurants or hotels licensed as drinking establishments.

(c) No caterer shall allow the serving, mixing or consumption of alcoholic liquor between the hours of two a.m. and six a.m. on any day at an event catered by such caterer."

SECTION 18 Section 4.16.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Permitting consumption by minors; minors prohibited from entering or remaining in drinking establishments; exceptions; penalties.

(a) No licensee, permit holder, or any owner, officer, or employee thereof, shall knowingly or unknowingly permit the possession or consumption of alcoholic liquor on premises licensed as a drinking establishment or drinking establishment/restaurant by a person under legal age, except that a licensee's or permit holder's employee who is not less than eighteen years of age may serve alcoholic liquor under the on-premises supervision of the licensee or permit holder, or an employee who is twenty-one years of age or older.

(b) No licensee, permit holder, or any owner, officer, or employee of a drinking establishment, shall knowingly or unknowingly permit a person under the legal age for consumption of alcoholic liquor to enter or remain on the premises of a drinking establishment and no person under the legal age for consumption of alcoholic liquor shall enter or remain on the premises of a drinking establishment.

(c) ~~The defense set forth in Section 4.04.025(b) of this code, and amendments thereto, shall apply to prosecutions under subsections (a) and (b) of this section.~~ <u>It shall be a defense to a prosecution under subsection (a) or (b) if:</u>

(1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof; and

(2) The defendant sold the alcoholic liquor to the minor with reasonable cause to believe that the minor was twenty-one or more years of age; and

(3) To purchase the alcoholic liquor, the minor exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was twenty-one or more years of age.

(d) Any licensee, permit holder, or any owner, officer or employee thereof who violates any provision of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 4.16.190 and amendments thereto.

(e) Violation of this section by a person eighteen or more years of age but less than twenty-one years of age is a misdemeanor punishable by a fine of not less than two hundred dollars and not more than five hundred dollars. In addition to such fine the court may order the offender to perform forty hours of public service.

Further, any person less than eighteen years of age who violates this section is a juvenile offender under the Kansas Juvenile Offenders Code and

upon adjudication thereof, shall be required as a condition of disposition to pay the fine or perform the public service, or both, specified as punishment in this sub section for the offense.

(f) The provisions of subsection (b) of this section applies only to drinking establishments and not to drinking establishment/restaurants, as those terms are defined in Section 4.04.010 and amendments thereto. Be it provided, however, the provisions of subsection (b) of this section shall not apply to a drinking establishment when the licensed premises are leased to a bona fide religious organization for the purpose of conducting religious services, but only during the actual time when such religious services are being held. During the time when religious services are being held, all alcoholic liquor must be removed from the licensed premises, or secured behind locked cabinets, and no alcoholic liquor or cereal malt beverage shall be available to any participants in the religious services, except that nothing contained in this subsection shall prevent the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church".

SECTION 19. Section 4.16.135 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Removal of alcoholic liquor from licensed premises prohibited; exceptions.

(a) No person shall remove any drink of alcoholic liquor from premises licensed as a club or drinking establishment or from a caterer's

premises, or from premises licensed pursuant to a temporary permit. Violation of this section by a person is a misdemeanor punishable by a fine not to exceed one hundred dollars.

(b) Exceptions. Subsection (a) herein shall not apply to:

(1) ~~a~~A person who removes alcoholic liquor from premises licensed as a class A club, class B club, drinking establishment, drinking establishment/restaurant or drinking establishment/restaurant/event center as allowed in Section 4.16.155 and any amendments thereto.

(2) A person who removes alcoholic liquor from premises of a licensed drinking establishment, which is adjacent to or within the area of a special event when such drinking establishment has properly extended its premises into the special event area. A temporary permit must have been issued for the sale or consumption of alcoholic liquor at such special event and the sale and/or consumption of such liquor has been approved by the City Council."

SECTION 20. The originals of Sections 3.11.020, 3.11.150, 4.04.010, 4.04.040, 4.04.045, 4.12.050, 4.12.140, 4.12.150, 4.16.070, 4.16.090, 4.16.100, 4.16.120, 4.16.130 and 4.16.135 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 21. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective on July 1, 2009 following publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2009.

_____
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 June 26, 2009

6/04/09

ORDINANCE NO.48-352

AN ORDINANCE AMENDING SECTIONS 3.08.030 AND 3.28.020 OF THE CODE OF THE CITY OF WICHITA PERTAINING TO CABARETS AND DANCE HALLS, CREATING SECTIONS 3.30.010, 3.30.020, 3.30.030, 3.30.040, 3.30.050, 3.30.060, 3.30.070, 3.30.080, 3.30.090, 3.30.100, 3.30,110, 3.30,120, 3.30.130, 3.30.140, 3.30.150, 3.30.160, 3.30.170, 3.30.180 AND 3.30.190 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TOENTERTAINMENT ESTABLISHMENTS AND REPEALING THE ORIGINALS OF SECTIONS 3.08.030 AND 3.28.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita has received numerous complaints from neighbors concerning dance halls, entertainment establishments and commercial establishments that serve alcoholic beverages on site and provide entertainment regarding excessive noise and disorderly conduct, including assault and battery; and

WHEREAS, the City has observed violations of the established occupancy load in cabarets, dance halls and commercial drinking establishments; and

WHEREAS, the City has a duty and desire to enforce laws regarding criminal and nuisance acts which occur at such clubs, cabarets and drinking establishments, the City Council, therefore, adopts the following ordinances regarding Entertainment Establishments.

WHEREAS, those entities or persons holding a valid dance hall or cabaret license issued by the City of Wichita shall not be subject to this entertainment ordinance, until such cabaret or dance hall license expires, is renewed or is revoked.

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

SECTION 1. Section 3.08.030 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

"**Cabarets, etc.** (a) A cabaret license shall be required for any person to operate any cafe, cafeteria, restaurant, tearoom, dining room, coffee house, private club, tavern, drinking establishment or any other place having a floor show, specialty act or other live entertainment for guests. Any license issued pursuant to this section shall be issued for one particular premise which shall be stated in the application and on the license.

(b) A cabaret license does not permit and shall not be issued to any person for the operation of such an establishment as defined in subsection (a) if such establishment:

(1) Is licensed or permitted to sell or serve alcoholic liquor or cereal malt beverages, and

(2) Intends to provide or does provide live entertainment in the form of dancing, and

(3) Is located within two hundred feet of any church, public park, public or parochial school, or residential zoning district.

The distance is to be measured from the nearest property line of the residential zoning district, church, or public or parochial school to the nearest property line of the premises on which the establishment is located or of any parking lot designated to be used by the patrons of such establishment. As used in the section 'dancing' means dancing performed live by any person for

consideration, monetary or otherwise, including payment of gratuities by patrons. Such prohibition on dancing does not include the incidental movement or choreography of singers or musicians which are made in connection with their singing or playing of a musical instrument, or dancing staged as part of a legitimate play, but does include, for example, without limitation, exotic dancing, go-go dancing, strip dancing and strip tease dancing.

Renewal of cabaret licenses otherwise subject to this subsection may be made for all establishments presently licensed and located within two hundred feet of any church, public park, public or parochial school, residential or zoning district, so long as the premises are used or held for use as a place in which a cabaret license and one of the following licenses is held:

(1) Class A private club;

(2) Class B private club;

(3) Drinking establishment; or

(4) A license to sell cereal malt beverages for consumption on the premises; provided, however, that should such an establishment cease to be used for such purposes for a period of ninety days or more, then and in that event, no new cabaret license shall be issued for the establishment. Periods of time during which such establishment is being remodeled or is being repaired because of damage caused by fire or natural disasters such as floods or wind-storms, shall not be included in computing the above ninety-day period; provided, however, that any remodeling or repair must be commenced within ninety days after closure of any given structure and completed within a reasonable time thereafter.

Additionally, the Special Investigations Bureau of the Wichita police department shall be notified within thirty days of closing of such establishment for remodeling or repair, such notice to state the date of commencement and completion of remodeling or repair.

(c) A license fee shall be charged for engaging in the operation of cabarets, either with or without a cover charge. The license fees for one day shall be twenty dollars, for three months shall be fifty dollars, for six months shall be seventy-five dollars and for one year shall be one hundred dollars.

(d) No cabaret license shall be issued by the City Treasurer following the City's adoption and publication of Chapter 3.30 of the Code of the City of Wichita.

(e) The provisions of this section shall apply to any license, issued pursuant to this section, until such time as the license expires, is revoked or the licensee is properly licensed pursuant to Chapter 3.30 as an entertainment establishment."

SECTION 2. Section 3.28.020 of the Code of the City of Wichita is hereby amended to read as follows:

"License required. (a) It is unlawful for any person either as principal, officer, agent, servant or employee, to conduct any public dance, public dance hall or restaurant dance without having first obtained a license from the license collector. Provided, further, fraternal, social, school, church or other nonprofit organizations that hold dances at any location other than their own

respective locations shall be required to obtain a license from the license collector.

(b) No dance hall license shall be issued by the City Treasurer following the City's adoption and publication of Chapter 3.30 of the Code of the City of Wichita.

(c) The provisions of this section shall apply to any license, issued pursuant to this chapter, until such time as the license expires, is revoked or the licensee is properly licensed pursuant to Chapter 3.30 as an entertainment establishment."

SECTION 3. Section 3.30.010 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Purpose.** The City of Wichita encourages the development of Arts and Culture and recognizes that having entertainment establishments provide a means for such activity. The City of Wichita further recognizes that having a variety of entertainment in the City promotes a rich and diverse cultural experience.

The City of Wichita also recognizes that entertainment establishments serving alcohol have demonstrated the potential for creating an environment where various types of disturbances, excessive noise and disorderly conduct by inebriated patrons may occur. These negative effects are adverse to the public safety and the quality of life in the community.

The purpose of this Chapter is to regulate the operation of all entertainment establishments so as to minimize the negative effects and to preserve the public

safety, health and welfare. It is not the City's intent to regulate or restrict the type or content of entertainment provided in these establishments. All licensees will be responsible for controlling patron conduct on the premises of such establishments, making adequate provisions for security and crowd control to minimize disturbances caused by the operation of such entertainment establishments."

SECTION 4. Section 3.30.020 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Definitions.** The following words, as used in this Chapter, have the meanings set forth below:

'Ambient music' means low-level, background music, which is inaudible from any portion of the exterior of the premises. Ambient music does not include music played by a disc jockey, 'DJ' or music that is used for karaoke or other live performances. Ambient music may include music played by a jukebox, when such music is inaudible from any portion of the exterior of the premises.

'Chief of Police' means the Chief of the Wichita Police Department or his/her designee.

'Entertainment' means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the public is invited or allowed to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing patrons, including, but not limited to any of the following:

(a) Dancing by patron(s) to live or recorded music.

(b) The presentation of music played on sound equipment operated by an agent or contractor of the establishment, commonly known as ‘disc jockey’ or ‘DJ, or

(c) The presentation of live music whether amplified or un-amplified, or

(d) The presentation of music videos, music concerts or other similar forms of musical entertainment from any source, or

(e) Any amusement or event such as live music or other live performance which is knowingly permitted by any Entertainment Establishment, including, but not limited to, presentations by single or multiple performers, such as hypnotists, pantomimes, comedians, dance acts, concerts, dances, live bands, karaoke or other live music.

‘Entertainment Establishment(s)’ means any event center or any person or entity which provides entertainment as defined by this chapter, or any person or entity which provides a venue for any such entertainment. Such term shall not include book readings, storytelling, the playing of ambient music, or other similar activities for which no fee is charged.

‘Entertainment License’ means a license obtained from the City, pursuant to the provisions of this Chapter, for the purposes of operating an Entertainment Establishment.

‘Event Center’ means premises which are frequently rented out for public or private activities that are not repeated on a weekly basis, and which are not open to the public on a daily basis at times other than when an event is scheduled.

‘Health Officer’ means the Director of Environmental Services or his/her designee.

‘License’ means the authority to conduct the business of an entertainment establishment within the city limits.

‘Licensee’ means any person to whom a current license has been issued under this Chapter authorizing such person to conduct the business of an entertainment establishment within the city limits.

‘Loitering’ means remaining idle in essentially one location, to be dilatory, to tarry, to dawdle and shall include, but not be limited to, standing around, hanging out, sitting, kneeling, sauntering or prowling.

‘Manager’ means a person, regardless of the job title or description, who is operating the establishment or who has discretionary powers to organize, direct, carry on, or control the operations of an Entertainment Establishment or teen club. Authority to engage in one or more of the following functions is prima facie evidence that a person is a Manager of the Entertainment Establishment or teen club:

(a) Hire or terminate employees; or

(b) Contract for the purchase of furniture, equipment, or supplies, except for the occasional replenishment of stock; or

(c) Disburse funds of the business, except for the receipt of regularly replaced items of stock; or

(d) Make or participate in making policy decisions regarding operations of the Establishment.

‘Music’ as used in this Chapter shall not apply to radios or ambient music.

"Nonprofit dance" means any dance held by a fraternal, social, school, church or other nonprofit organization which is merely incidental to its principal purpose and where the general public is not solicited or permitted.

‘Non-profit organization’ means an organization or institution organized under Internal Revenue Code Section 501(c)(3) and recognized as a public charity or private foundation established for a religious, charitable, scientific, literary or public safety purpose.

‘Person’ means any individual, owner, operator, corporation, partnership, or association.

‘Photo identification’ means a valid driver’s license, non-driver identification card, government issued identification card or a current school identification card which contains the individual’s photograph.

‘Premises’ means any place where an entertainment establishment is operated or maintained and includes all hallways, bathrooms, parking areas, and other adjacent portions of the premises, which are under the control of the licensee or which are utilized by the licensee and are accessible to the public during operating hours .

‘Responsible Person’ means any person who is any of the following:

A. The person who owns the Entertainment Establishment or teen club; or

B. The person in charge of the Entertainment Establishment or teen club; or

C. The person using the Entertainment Establishment or teen club under a special arrangement, contract or rental agreement; or

D. The Entertainment Establishment’s manager, on-site supervisor, or other employee who is responsible for the operation of the establishment;

‘Superintendent’ means the Superintendent of the Office of Central Inspection or his or her designee.

‘Teen Club’ is any building or part or other enclosed place where a teen dance is held or teen dancing is permitted, not including:

a. an accredited public or private school or college;

b. property owned or controlled by the federal, state, or local government;

c. a facility operated by an organization which has been recognized as exempt from federal income taxation when teen dancing is but an occasional activity incidental to the facility’s primary purposes.

SECTION 5. Section 3.30.030 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**License required.** A. It is unlawful for any person either as the owner, principal, officer, agent, servant, responsible person or employee, to own, lease, manage, maintain or operate a teen club or entertainment establishment without having first obtained a license from the City Treasurer.

B. A teen club or entertainment establishment license expires one year after date of issue.

C. A license under this section is not transferable to another person or location. A change in ownership shall require the new owner to pay a new application fee and secure a new entertainment establishment or teen club license."

SECTION 6. Section 3.30.040 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**License Continuance.** Any person holding a valid cabaret or dance hall license, issued prior to the publication of this ordinance, may continue with the operation of that business until such time that the cabaret or dance hall license expires, or is revoked. Upon expiration or revocation of such license, an application for an Entertainment Establishment License shall be submitted to the City Treasurer if the business or individual is to continue operation of such business."

SECTION 7. Section 3.30.050 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**License--Exceptions.** Nothing in this Chapter shall be construed to require any license for the following activities:

(a) entertainment in private residences where no admission is charged;

(b) entertainment conducted by any public or parochial school under direct faculty supervision or by any church when the dance or live entertainment is directly supervised by the church authorities;

(c) entertainment conducted for service men or women or both, under the direct supervision of United Service Organizations;

(d) entertainment officially sanctioned by or conducted in a fraternity or sorority house, occupied by bona fide students of a school or college, in which the public is not invited;

(e) dance lessons, theatrical and performing arts lessons;

(f) any entertainment sponsored by the City of Wichita;

(g) entertainment by any nonprofit organization~~s~~ when all proceeds, arising from such entertainment are used exclusively for the benevolent purposes of such organization;

(h) any non-profit dance as defined in this chapter;

(i) assemblies, music concerts, live performances or re-enactments which are sponsored by or which occur on the property of public or parochial schools, or City of Wichita public libraries;

(j) entertainment, dances, live performances, or other events for which a community event permit has been issued by the City of Wichita;

(k) the use of a radio, juke box, television, or video games, which is incidental to the primary function of serving food;

(l) motion picture theaters;

(m) book readings, book signings, poetry recitations and any other similar entertainment consisting of the spoken word, including plays;

(n) entertainment consisting of ambient or incidental music provided for the guests by musicians such as a piano player, harpist, strolling violinist, mariachi band, or guitarist. If there is an admission charge required to observe such entertainment, it will not be considered incidental.

(o) pool hall, billiard hall or bowling alley that does not provide space for dancing;

(p) theaters where patrons sit in parallel rows of fixed seats or dinner theaters;

(q) entertainment conducted in connection with a regularly established recreation or theme park."

SECTION 8. Section 3.30.060 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**License--Fees.** For any entertainment establishment or teen club the following license fees shall be paid:

For one day . . . . . $ 25.00

For one month or less $100.00

For six months or less $275.00

For one year or less . . . . . $400.00"

SECTION 9. Section 3.30.070 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Hours of operation.** A. It is unlawful for any licensee, owner, manager, or responsible person of a teen club to permit or allow entertainment between the hours of midnight and noon. All outdoor entertainment at any such teen club shall cease between the hours of eleven p.m. and noon Sunday through Thursday and midnight and noon on Friday and Saturday. No person, except an employee, shall be on the licensed premises of a teen club after 12:30 a.m.

B. It shall be unlawful for any licensee, owner, manager or responsible party of an entertainment establishment to permit or allow entertainment between the hours of two a.m. and noon. All outdoor entertainment at any such establishment shall cease between the hours of eleven p.m. and noon Sunday through Thursday and midnight and noon on Friday and Saturday. No person, except an employee, shall be on the licensed premises of an entertainment establishment after 2:30 a.m."

SECTION 10. Section 3.30.080 of the Code of the City of Wichita, Kansas is created to read as follows:

"**Application--Contents.** A. Before any license is granted or issued for a teen club or entertainment establishment, an application shall be filed with the City Treasurer, setting forth the following facts:

(1) The name, address, social security number, date of birth of the applicant and telephone number where the applicant can be reached between the hours of eight a.m. and five p.m.;

(2) Location of the teen club or entertainment establishment;

(3) Date for which the license is desired;

(4) Hours and days the teen club or entertainment establishment is to be open and closed;

(5) A statement as to whether or not cereal malt beverages or alcoholic liquor will be sold to patrons at the location of the entertainment establishment;

(6) A statement that the applicant is familiar with the conditions imposed by the terms of this Chapter.

(7) Maximum occupant load of the building, facility or area;

(8) A description of the nature of entertainment to be provided.

B. In addition the applicant must furnish:

(1) The names and addresses of the owner of the premises which such establishment is located.

(2) The manager or operator and, if a corporation or partnership, all the names and addresses of the officers of such corporation or partnership and any individual who owns twenty five or more percent of the stock of such corporation. If the license is to be held by a corporation, the resident agent and registered office of said corporation;

(3) The name, address, social security number, and date of birth of the applicant, owner, manager and other responsible person of the establishment. If a corporation, all the names, addresses, social security numbers and date of birth of the officers, managers or directors of such corporation and any individual who owns twenty five or more percent of the stock of such corporation. If the license is to be held by a corporation, the resident agent and registered office of said corporation. If the applicant is a partnership, all the names, addresses, social security numbers, and date of birth of all partners of the partnership.

(3) A plan to insure that adequate traffic control, crowd protection and security will be maintained and that ages of patrons admitted to the establishment will be maintained;

(4) An emergency management plan, consisting of, but not limited to: fire evacuation, storm shelter provisions, patron crowd control, and emergency access for police, fire and ambulance;

(5) The name of the private security agency, if any, to be employed to provide security for the club or entertainment establishment;

(6) Detailed plans and drawing of the teen club or entertainment establishment and adjoining areas indicating the dance floor, the waiting area for persons seeking admission, the parking areas, all restrooms, coat rooms, game rooms and all other spaces accessible by

patrons and all interior and exterior doors and windows, and all sources of exterior lighting.

(7) A statement as to whether the applicant has ever had any license denied, revoked or suspended by the City of Wichita or the State of Kansas or any other governmental entity, the reason therefor and the business activity or occupation of the individual subsequent to such suspension, revocation or denial.

(8) A statement that the applicant consents and agrees that any member of the Police Department or Fire Department as well as other code enforcement or health officers of the City may, at any time, enter and inspect any part of such premises.

C. A license shall be denied if one or more of the following conditions exist:

(1) Any applicant, owner, establishment manager, officer, manager or director of a corporate applicant, any person owning more than twenty five percent or more of the stock of a corporate applicant, or any partner of a partnership applicant of the teen club or entertainment establishment has, within the preceding ten years, been convicted of or placed on diversion for a:

a. felony; or

b. for any conviction or diversion of a misdemeanor within the last three years involving:

i. laws pertaining to any controlled substance(s) prohibited by the Uniform Controlled Substance Act, K.S.A. 65-4101, et seq. and amendments thereto;

ii. laws pertaining to alcohol or cereal malt beverage;

iii. prostitution;

iv. public indecency;

v. a sex crime or other person crime as defined by Chapter 21 of the Kansas Statutes Annotated;

vi. any crime of violence or physical force; or

vii. any weapons charge.

viii. violations of this chapter, or Sections 3.08.030 or Chapter 3.28 of the Code of the City.

(2) An applicant is less than twenty-one (21) years of age.

(3) The premises do not comply with the health, housing, fire and zoning codes of the City of Wichita.

(4) The applicant has knowingly made a false, misleading or fraudulent statement of fact to the City in the application process.

(5) The application is incomplete or if it contains any material misrepresentation;

(6) The application does not propose measures for the protection of the pubic health, safety and welfare in terms of traffic control, crowd protection and security, the monitoring of the ages of patrons or an emergency management plan.

D. The application is filed with, and the license fee is paid to, the City Treasurer. The license will not be issued until the application has been reviewed and approved by the Chief of Police, the Office of Central Inspection and the Fire Chief."

SECTION 11. Section 3.30.090 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Administrative Procedures.** A. A teen club or entertainment establishment license may be suspended, revoked, or denied if:

(1) Any data furnished on the application is incomplete, false or is not updated as required by this Chapter;

(2) Failure to comply with any condition of the teen club or entertainment establishment license; or

(3) The licensee or a manager has become ineligible to hold a license.

(4) The owner, manager, partner, director or other person owning twenty-five percent or more of the stock of a corporate licensee or a partner of a partnership licensee is convicted of any violation, which

would make them ineligible to obtain an entertainment establishment or teen club license.

(5) The premises are in violation of the health, housing, fire, zoning or building codes of the City of Wichita, or the State of Kansas.

(6) Evidence of a material variance in the actual plan and design of the premises from the plans submitted pursuant to this Chapter, or from the original design of the premises when initially licensed, with the concurrence of the Office of Central Inspection.

(7) Any Police Officer, Fire Department Official, Office of Central Inspection, or Environmental Services Inspector is refused access to inspect the premises during normal business hours.

(8) The premises are in violation of the maximum occupant load of such building.

(9) The licensee or any employee, agent or responsible person is found to be in violation of the provisions of this chapter or any other ordinance, rule or regulation by the city council of the City of Wichita.

(10) The licensee fails to comply with additional security requirements imposed by the Chief of Police, pursuant to the provisions of subsection (C) set forth below.

For the purposes of this section, ‘conviction’ or“violation’ shall include being placed on diversion or being adjudged guilty upon entering a plea of no contest.

B. The Chief of Police shall provide written notice of the intent to revoke, suspend or deny an entertainment establishment or teen club license by personal service or by certified mail, return receipt requested. The notice shall be sent to the mailing address of the licensee on file with the City Treasurer. The notice shall provide the effective date of the revocation or suspension of the license. Such notice shall detail the reasons or basis for the revocation, denial, or suspension of the license. No revocation or suspension shall be imposed on less than five days notice to the licensee, and shall specify the rights of the licensee to appeal any such denial, revocation or suspension.

C. In lieu of suspension or revocation, the Chief of Police may impose additional conditions on the license to protect the public health, safety and welfare. The imposition of such additional conditions shall be based on violations occurring on the premises by the licensee, his/her employees, patrons, agents or responsible person of the provisions of this chapter, the laws of the City of Wichita, or state or federal laws. Conditions shall be based upon specific and articulable facts reasonably related to insuring public health and safety, including but not limited to: the protection of minors from alcohol, protection of patrons from criminal activity, including but not limited to homicide, aggravated assault, weapon offenses, drug offenses and disorderly conduct, prevention of public nuisances, enhancement of fire protection, traffic control, crowd control, security lighting and emergency access.

D. The Chief of Police shall notify the licensee in writing of any additional conditions imposed on the licensee. Such notice shall specify the

additional conditions, set forth facts which support the basis for the addition of such conditions and a time frame for completion of such additional conditions. Such conditions may include, but are not limited to the following:

(1) Prohibiting the establishment from alcohol sales of any kind;

(2) Restrictions upon the hours of operation of the establishment;

(3) Restrictions upon the maximum occupancy within the establishment;

(4) Requiring the owner, licensee or responsible person to identify individuals that are prohibited from entering onto the premises;

(5) Completion of improvements upon the licensed premises that have an impact of mitigating crime such as fences, lights, security cameras or other devices;

(6) Increased presence of security personnel;

(7) Other conditions which may be appropriate to remedy violations of this chapter by the licensee."

SECTION 12. Section 3.30.100 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Appeal Procedure.** A. Any applicant or licensee aggrieved by the denial, suspension, modification, revocation or imposition of additional conditions, of an entertainment establishment or teen club license may file with the City Clerk a written notice of appeal to the City Council within ten (10)

business days of the decision by the Chief of Police or his/her designee. The Notice of Appeal shall specify:

(1) the name and address of the appellant;

(2) the date of application;

(3) the date of the denial, suspension, modification, revocation or imposition of additional conditions of the license or application;

(4) the factual basis for the appeal.

B. Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than thirty days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension, modification or revocation of the license until the matter is heard by the City Council.

C. The City Council may approve the denial, suspension, modification, revocation, or imposition of additional conditions, overrule the denial, suspension, modification, revocation or imposition of additional conditions or modify the decision of the Chief of Police.

D. In any hearing before the City Council pursuant to this section, a certified copy of a conviction from any local, state, or federal court for any violation, is prima facia evidence of such violation of the provisions of Section 3.30.090 of the Code of the City of Wichita.

E. The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any

amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the license by the City Council."

SECTION 13. Section 3.30.110 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**List of Managers.** If, at any time after the filing of the application or during the term of a license, a new manager is hired who has not been identified to the Wichita Police Department, the applicant or licensee is required to furnish, within ten business days, the name, address and date of birth of such manager or responsible person to the City Treasurer. Similarly, the licensee is required to notify the City Treasurer whenever a person listed on the application or supplemental list is discharged. The Chief of Police or his/her designee shall investigate the criminal history of all such managers or responsible persons and may revoke or decline to renew a license when any such person has the disqualifying history described in Section 3.30.080."

SECTION 14. Section 3.30.120 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Security Personnel and Control of Premises.** A. It is the obligation of the owner, manager, licensee or responsible person and a condition of the license to maintain, at all times when the teen club or entertainment establishment is open for business, adequate security personnel for the premises of such business.

B. It is the obligation of the owner, manager, licensee or responsible person of a teen club or entertainment establishment where

dancing occurs, to maintain illumination in such entertainment establishment at a minimum level of one candle feet at a plane three feet above the dance floor.

C. The owner, licensee, manager or responsible person shall provide for the orderly dispersal of patrons from the premises of the teen club or entertainment establishment at closing time, and shall prevent patrons from congregating or loitering on the premises of the teen club or entertainment establishment.

D. The owner, licensee, manager or other responsible person shall be responsible to insure that an adequate number of security personnel are employed and in attendance before, during and following each entertainment event as is necessary in order to maintain order and insure compliance with all applicable federal, state and city laws and ordinances.

E. There must be a person in charge of and responsible for security on duty at all times when the teen club or entertainment establishment is open to the public or when patrons are leaving the premises at closing time. Security personnel will remain on the premises for a period of not less than thirty minutes after the closing time of such establishment to direct the orderly dispersal of patrons from the premises of the establishment.

F. The owner, licensee, manager or responsible party of a teen club or entertainment establishment is responsible to exercise appropriate control over its invitees on the premises for such purposes as preventing unnecessary noise, litter,

trespass, loitering, property damage, traffic obstruction and similar activities which may constitute a nuisance.

G. If the history of operation of a teen club or entertainment establishment shows inadequate control of litter, the health officer may impose appropriate regulations, including the posting of a bond, to ensure litter prevention or clean-up as a condition of continued validity of the existing license or of the issuance of a future license. Such decision may be appealed pursuant to the procedures set forth in Section 3.30.100.

H. One of the purposes of the security personnel requirement is to maintain the public peace and order on the premises of the teen club or entertainment establishment. The licensee is under a continuing obligation to take reasonable measures, including to call the police department, to curtail any conduct which is or threatens to be violative of state or local laws or offensive to public health, decency and morality, or peace and order, including, without limitation, minors in possession of liquor or tobacco products, use or possession of controlled substances, crimes of violence and disorderly conduct."

SECTION 15. Section 3.30.130 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Right of Access.** During any hours in which any person is present on the premises, all teen clubs and entertainment establishments shall be open to inspection by City Health, Fire, Zoning, Building and license inspectors and Wichita Police Officers or other law enforcement agencies."

SECTION 16. Section 3.30.140 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Restrictions on Admission to Teen Clubs.** A. There may not be admitted into a teen club any person nineteen years of age or older or less than thirteen years of age except:

(1) a manager or employee of the club; or

(2) a parent or legal guardian accompanying his or her child or ward; or

(3) a spouse of a person who can legally be admitted to the club.

B. The licensee, manager or responsible person of an entertainment establishment or teen club may not admit or allow the admittance of any person who does not possess and display satisfactory photo identification, as defined by Section 3.30.020. A school identification card with satisfactory photo identification indicating that the individual is in eighth grade or high school may be accepted by the licensee, manager or responsible person of a teen club."

SECTION 17. Section 3.30.150 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Additional Regulations and Observation Thereof Required.**

A. No licensee, owner, principal, officer, manager, responsible person or other employee of a teen club or entertainment establishment coming in contact

with members of the public may knowingly, or in circumstances when he or she should have known, allow or permit the following to occur on the premises:

(1) CONTROLLED SUBSTANCES: Controlled substances may not be possessed, offered for sale or consumed on the premises of the teen club or entertainment establishment.

(2) EMPLOYMENT OF MINORS UNDER EIGHTEEN. Persons under eighteen years of age may not be employed in, about or on the premises of an entertainment establishment where cereal malt liquor or alcoholic liquor is dispensed or consumed.

(3) ILLEGAL CONSUMPTION OF ALCOHOL. Alcoholic liquor or cereal malt beverages may not be consumed or possessed by any person under the age of twenty-one years. Any such minor shall be requested by the owner, licensee, manager or responsible person to immediately leave the premises.

(4) LOITERING: No patron of the establishment, while on the premises of such establishment, shall be allowed to loiter, create a public nuisances or breach of the peace.

(5) MAXIMUM NOISE LEVELS. Noise may not exceed the maximum allowable noise levels set forth in Chapter 7.41 of the Code of the City of Wichita. Noise shall not be of such volume, intensity or duration as to disturb a person of reasonable sensibilities. The owner, manager or responsible person shall be strictly liable for all noise produced within the entertainment establishment or teen club.

(6) TEEN CLUBS: No patron over eighteen may enter into or remain upon the premises of a teen club."

SECTION 18. Section 3.30.160 of the Code of the City of Wichita, Kansas, is created to read as follows:

"Premises capacity. It shall be the duty of the Fire Chief and the Superintendent of Central Inspection to determine the number of persons who can safely be accommodated at any one time in any building, premises or location where any teen club or entertainment establishment is located. The Fire Chief and the Superintendent of Central Inspection shall rate and limit the occupancy of the building, premises or location and furnish a certificate thereof to the owner or operator of such teen club or entertainment establishment, which owner shall be required to post such certificate near the main exit in the building. Such owner, operator, licensee or responsible person is hereby required to limit the attendance at such teen club or entertainment establishment to such capacity as has been determined by the Fire Chief and Superintendent of Central Inspection. It shall be unlawful to post a certificate of occupancy showing a greater capacity than that shown by the Office of Central Inspection and Fire Chief."

SECTION 19. Section 3.30.170 of the Code of the City of Wichita, Kansas, is created to read as follows:

"False statement of age unlawful. It is unlawful for any person to make any false statement as to his or her age for the purpose of gaining admission to, or remaining in any teen club or entertainment establishment, or for the purpose

of enabling any other person to gain admission to or remain in any teen club or entertainment establishment where cereal malt beverage or alcoholic liquor is dispensed or consumed."

SECTION 20. Section 3.28.180 of the Code of the City of Wichita, Kansas is created to read as follows:

"**Distance Requirements.** An entertainment establishment license does not permit and shall not be issued to any person for the operation of an entertainment establishment if such establishment:

A. is licensed to sell alcoholic liquor or cereal malt beverage or if alcoholic liquor or cereal malt beverage will be offered, consumed or served on the premises; and

B. the location is within 300 feet of any church, public park, public or parochial school or residential zoning district.

The distance is to be measured from the nearest property line of the residential zoning district, church or public or parochial school to the nearest line of the premises on which the establishment is located or on any parking lot designated to be used by the patrons of such establishment.

Renewal of entertainment establishment licenses, otherwise subject to this subsection, may be made for all establishments presently licensed and located within three hundred feet of any church, public park, public or parochial school, residential or zoning district, so long as the premises are used or held for use as a place in which a entertainment establishment license and one of the following licenses is held:

(1) Class A private club;

(2) Class B private club;

(3) Drinking establishment; or

(4) A license to sell cereal malt beverages for consumption on the premises; provided, however, that should such an establishment cease to be used for such purposes for a period of ninety days or more, then and in that event, no new entertainment establishment license shall be issued for the establishment. Periods of time during which such establishment is being remodeled or is being repaired because of damage caused by fire or natural disasters such as floods or wind-storms, shall not be included in computing the above ninety-day period; provided, however, that any remodeling or repair must be commenced within ninety days after closure of any given structure and completed within a period not to exceed six months. Additionally, the special investigations bureau of the Wichita Police Department shall be notified within thirty days of closing of such establishment for remodeling or repair, such notice to state the date of commencement and completion of remodeling or repair."

SECTION 21. Section 3.28.190 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Penalties.** A. Any person who violates any of the provisions of this chapter within the corporate limits of the city shall be deemed guilty of a misdemeanor and upon conviction hereof shall be punished by the following fines:

(1) Upon a first conviction, a fine of not more than two thousand five hundred dollars:

(2) Upon a second conviction, a fine of not less than two hundred fifty dollars nor more than two thousand five hundred dollars;

(3) Upon a third conviction, a fine of not less than five hundred dollars nor more than two thousand five hundred dollars;

(4) Upon a fourth or subsequent conviction, a fine of not less than one thousand dollars nor more than two thousand five hundred dollars;

B. The imposition of the fines established in subparagraphs (a)(2) through (4) herein shall be mandatory and the court shall not waive, remit, suspend, parole or otherwise excuse the payment thereof except that the court may order that the defendant perform community service specified by the court but such an order shall be entered only after the court has required the defendant to file an affidavit of such defendant's financial condition as required by Section 1.04.210(e) and amendments thereto, and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the fines imposed herein.

C. For the purposes of determining whether a conviction is a first or subsequent conviction for sentencing, conviction includes being convicted of a violation of this chapter. It is irrelevant whether an offense occurred before or after conviction for a previous offense or whether the offense occurred at or upon the same licensed premises."

SECTION 22. The originals of Section 3.08.030 and 3.28.020 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 23. 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 23 day of June, 2009.

_____
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 June 26,2009

06/04/2009

ORDINANCE NO.48-353

AN ORDINANCE CREATING SECTIONS 3.11.065, 4.16.075, 4.16.085, AND 4.16.087, AMENDING SECTIONS 3.11.020, 3.11.150, 4.04.010, 4.04.040, 4.04.045, 4.12.050, 4.12.140, 4.12.150, 4.16.070, 4.16.090, 4.16.100, 4.16.120, 4.16.130 AND 4.16.135 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO ALCOHOLIC LIQUOR AND REPEALING THE ORIGINALS OF SECTIONS 4.04.010, 4.04.040, 4.04.045, 4.12.050, 4.12.140, 4.16.070, 4.16.100, 4.16.120, 4.16.130 AND 4.16.135 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 3.11.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** (a) *'Community event'* means:

(1) an outdoor event on City-owned property with an expected attendance of fifty (50) or more persons, organized for a particular and limited purpose and time;

(2) outdoor events on private property or which occur in City of Wichita parks with an expected attendance of two hundred fifty (250) or more people, organized for a particular and limited purpose and time.

Such events shall include, but not be limited to: fun runs, roadway foot races, fundraising walks, bikeathons, carnivals, festivals, community celebrations, shows, exhibitions, circuses and fairs. Such term shall not include events, other

than fun runs or races, occurring solely on sidewalks or public rights-of-way immediately adjacent to public streets.

(b) *Exceptions.* The provisions of this chapter shall not apply to:

1. Community events conducted by the City of Wichita.

2. Events consisting only of a parade, whether regulated or exempted by the provisions of Section 3.13.020 of the Code of the City of Wichita.

3. Funeral processions as regulated by Chapter 3.74 of the Code of the City of Wichita.

4. Outdoor events occurring at amusement parks licensed pursuant to Chapter 3.20 of the Code of the City of Wichita.

5. Social or political protests, rallies, gatherings, assemblies, or vigils occurring on public property, which consist solely of the displaying of signs or banners, singing and the delivering of speeches.

6. Outdoor events conducted entirely on the property of a museum, educational or religious institution

7. Outdoor events held at a members-only facility where no extraordinary police services are required.

8. Events held entirely inside the Lawrence-Dumont Stadium.

9. Farmers Markets licensed pursuant to Chapter 3.94 of the Code of the City of Wichita.

10. Auctions as regulated by Chapter 3.36 of the Code of the City of Wichita.

11. Garage or Miscellaneous sales as regulated by Chapter 3.44 of the Code of the City of Wichita.

12. Performances of Street Performers as defined and regulated by Chapter 10.36 of the Code of the City of Wichita.

13. Sporting events, contests, practices or tournaments occurring at sport complexes or playing fields where the scope of the event is limited to the sporting event for which the property is designed to be utilized.

14. Events held at a private residence or in a residential neighborhood where no admission is charged, and no extraordinary police services are required.

15. Outdoor events conducted entirely on the property of public or private schools, colleges or universities, where no extraordinary police services are required.

(c) *'Community Event Coordinator'* means the Manager of Arts and Cultural Services or his or her designee.

(d) *'Community Event Promoter'* means the person who is directly responsible for organizing and/or conducting the event.

(e) *'Extraordinary police services'* means responsive police services which are in addition to and in excess of the normal police services provided to the location or off-site as a direct result of the event.

(f) *'Person'* shall mean a natural person or a legal entity such as, but not limited to an individual, firm, association, joint stock company, partnership or corporation.

(g) *'Street' or highway'* means the entire width between property lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic. Where the word 'highway' or the word 'street' is used in this title, it means street, avenue, boulevard, thoroughfare, trafficway, alley and any other public way for vehicular travel by whatever name unless the context clearly indicates otherwise."

SECTION 2. Section 3.11.065 of the Code of the City of Wichita, Kansas, is created to read as follows:

"Regulations for Alcohol Consumption or Sale at Community Events.

(a) Any community event organizer, who desires to sell or allow the consumption of alcoholic liquor or cereal malt beverage at a community event, shall submit an application to the Community Event Coordinator for the sale or consumption of such alcoholic liquor or cereal malt beverages at such community event.

(b) Such written application must be made on a form provided by the Community Event Coordinator. The application must be submitted to the Community Event Coordinator not less than forty –five (45) days before the date of the proposed community event.

(c) The written application shall contain the following information:

(1) The name and address of the event promoter;

(2) The dates and times when alcoholic liquor or cereal malt beverages will be served at such event;

(3) For events occurring on the city's streets or sidewalks, a copy of the temporary permit issued by the State of Kansas, pursuant to K.S.A. 41-2645 and the City of Wichita, pursuant to Section 4.16.170 of the Code of the City of Wichita for the sale of alcoholic liquor at such event, or written documentation that an application is pending for such temporary permit;

(4) A copy of the caterer's license issued by the State of Kansas for any individual responsible for the sale of alcoholic liquor at such event;

(5) A detailed security plan;

(6) A plan as to how event organizers will prevent the off-premises consumption of alcohol and the consumption of alcohol by minors;

(7) A detailed site map indicating:

(a) Entry and exit points to the event venue(s);

(b) Description of the signage, barriers or maps which will be used to designate the area in which alcoholic liquor or cereal malt beverages may be consumed;

(c) The number and exact locations of all alcoholic liquor or cereal malt beverage sale/distribution booths;

(d) The location of any licensed drinking establishments that desire to participate in an event, and a designation of the area of the licensed premises of such drinking establishment(s) which have been extended into the event area.

(8) Whether entry to the event is restricted to invited guests or open to the public.

(9) The type of alcoholic liquor or cereal malt beverage to be sold or dispensed and the means or method which will be used to sell, dispense or distribute the alcohol to event attendees;

(10) The identity of the on-site supervisor of the alcoholic liquor or cereal malt beverage service;

(11) The name, address and licensee of any drinking establishment, which is adjacent to the event and which has extended its licensed premises into the event area if such event is occurring on the public streets and sidewalks of the City of Wichita;

(12) The name and address of any adjacent businesses which are to be included in the event area;

(13) A list of streets and or street right of ways to be closed to motor vehicle traffic for such event and the dates and times for such street closures;

(14) If signs are to be used to designate areas were alcoholic liquor or cereal malt beverage may be consumed, a diagram showing the number, size and location of such signs.

(d) The City Council shall review written applications for the sale and/or consumption of alcoholic liquor on the streets and sidewalks of the city of Wichita and may, by resolution, authorize the sale and/or consumption of alcoholic liquor on streets which have been closed to motor vehicle traffic and sidewalks in the event area. In determining if approval should be given, the City Council shall consider those factors set forth in Section 3.11.080 of the Code of the City of Wichita, Kansas.

(e) Approval by the City Council, pursuant to this section, shall not be required for community events held on locations exempted from the prohibitions of consuming alcohol in public, as designated by Section 4.04.045 of the Code of the City of Wichita or those events which occur on private property.

(f) Alcoholic liquor and cereal malt beverages served at a community event are to be served in distinctively different containers than those in which non-alcoholic drinks are served.

(g) Alcoholic liquor and cereal malt beverages served at a community event are not to be sold or served in pitchers, buckets or carafes and no person is to be served or allowed to purchase more than two alcoholic drinks at the same time.

(h) If multiple alcoholic liquor or cereal malt beverage vendors or licensees are participating in a community event, each vendor or licensee must serve their alcoholic liquor or cereal malt beverage in distinctive containers which identify such vendor or licensee.

(i) It shall be unlawful for any person to distribute, sell or allow the consumption of any alcoholic liquor on the streets or sidewalks within any community event without obtaining the approval of the City Council and any and all necessary state and local permits for the sale of such alcoholic liquor."

SECTION 3. Section 3.11.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Street closures.** (a) Any street closures requested by a licensee or which are necessary as part of a community event permit application must be approved by the City Council prior to the issuance of the Community Event Permit by the Community Events Coordinator.

(b) The following requirements must be met before a street closure is approved:

1. The applicant must submit to the community events coordinator a written request for the street closure at least forty-five (45) days prior to the date of the proposed street closure.

2. The applicant is responsible for attempting to secure the cooperation of all property owners/residents affected by the street closing and will provide proof that all property owners/residents have been notified by attaching to the application a statement signed by all affected property owners/resident listing the name, address and telephone number of the person contacted expressing their approval or disapproval of the street closure. Failure to notify any property owners/residents may result in the denial of the application or require a change in the scheduled closing date.

3. The applicant must be the responsible party for the event.

4. The applicant will provide a sketch of the street area indicating the area to be closed and the location of all properties adjacent to the area being closed.

5. The closure of the street affected by the event must not cause a significant hardship to pedestrian or vehicular traffic. Alternative routes must be available for public and emergency vehicles.

6. The street closure shall be for a period less than twenty-four (24) hours.

7. The applicant is responsible for obtaining and placing barricades for the street closure, and for removing the barricades promptly after the event is concluded.

8. The applicant must, promptly after the conclusion of the event, clean the right-of-way to its condition prior to the street closure.

9. The applicant must allow city personnel, emergency vehicles and police officers to lawfully enter the area. Orders or directions given by police or fire officials in the lawful discharge of their duties must be obeyed."

SECTION 4. Section 3.11.155 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Hours of Operation for Community Events.** Outdoor entertainment for events licensed, pursuant to this Chapter, shall cease between the hours of eleven p.m. to 8:00 a.m. Sunday through Thursday and midnight to 8:00 a.m. on Friday and Saturday."

SECTION 5. Section 4.04.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Definitions. Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this title, have the meanings indicated in this section.

(a) 'Alcohol' means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) 'Alcoholic liquor' means alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

(c) 'Barrier' means any natural or manmade obstruction which precludes direct traffic, between a church or school and a private club, drinking establishment or a place of business at which cereal malt beverages are sold and is of such a character that it completely separates such establishments, including parking facilities. Barriers include, but are not limited to: rivers, railroad tracks, levees, and drainage ditches.

(d) 'Beer' modified, or limited by other words, means a beverage, containing more than three and two-tenths percent alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and hops in water and includes beer, ale, stout, lager beer, porter, and similar beverages having such alcoholic content.

(e) ‘Beneficial interest’ shall not include any interest a person may have as owner, operator, lessee or franchise holder of licensed hotel or motel on the premises of which a club or drinking establishment is located.

(f) ‘Bus’ means every motor vehicle designed for carrying more than ten passengers and used for transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(g) ‘Caterer’ means an individual, partnership or corporation which sells alcoholic liquor by the individual drink or domestic beer, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

(h) ‘Cereal malt beverage’ means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than three and two-tenths percent alcohol by weight.

(i) ‘Cereal malt beverage retailer’ means any person who sells or offers for sale any cereal malt beverage for use or compensation and not for resale in any form.

(j) ‘Class A club’ means a premises which is owned or leased by a corporation, partnership, business trust or association, and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the director, for the exclusive use of the corporation stockholders,

partners, trust beneficiaries or associates (hereinafter referred to as "members"), and their families and guests accompanying them.

(k) ‘Class B club’ means a premises operated for profit by a corporation, partnership or individual to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(l) ‘Club’ means a Class A or Class B club.

(m) ‘Crime of moral turpitude’ means a crime involving dishonesty.

(n) ‘Director’ means the Director of Alcoholic Beverage Controls of the Kansas State Department of Revenue.

(o) ‘Distributor’ shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.

(p) ‘Domestic beer’ means beer which contains not more than eight percent alcohol by weight and which is manufactured in this state.

(q) ‘Drink of alcoholic liquor’ means one individual serving of any beverage containing alcoholic liquor.

(r) ‘Drink of cereal malt beverage’ means one individual serving of any cereal malt beverage not to exceed twelve ounces.

(s) ‘Drinking establishment’ means premises which may be open to the general public over twenty-one years of age, where alcoholic liquor by the individual drink is sold.

(t) ‘Drinking establishment/restaurant’ means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold and which derive not less than fifty percent of its gross revenues from sales

of food and beverages for consumption on such premises in a two month period. Failure on the part of the licensee to meet the fifty percent food sales criteria or conviction of the licensee or any owner, officer, or employee of the licensee of any two violations of Section 4.16.130 of the City Code occurring on the licensed premises within one year shall result in the premises being reclassified as a drinking establishment as provided in Section 4.16.095(c) and any amendments thereto.

(u) 'Drinking establishment/restaurant/event center' means premises which may or may not be open to the public, are frequently rented out for public or private activities which are not repeated on a weekly basis, are not open to the public on a daily basis at times other than when an event is scheduled, and which derive at least thirty percent of its gross revenue from sales of food and beverages for consumption on the premises in a six-month period.

(v) 'Employee' means any person employed in the business of selling cereal malt beverages or alcoholic liquor by a licensee.

(w) 'Food' means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used or intended for use or for sale, in whole or in part, for human consumption.

(x) 'Gross revenues' means only that income derived from cereal malt beverages, alcoholic liquor, and other food consumables.

(y) 'Hotel' has the meaning ascribed to it by K.S.A. 36-501 and amendments thereto.

(z) ‘Legal age for consumption of cereal malt beverage’ means twenty-one years of age.

(aa) ‘Licensee’ means any person to whom a current cereal malt beverages license has been issued by the city council, authorizing sale of cereal malt beverages and/or any person to whom a current club, drinking establishment, drinking establishment/restaurant, drinking establishment hotel, or caterer's license or temporary permit has been issued pursuant to this title and/or any person to whom a current club, drinking establishment, drinking establishment hotel, or caterer's license, or temporary permit has been issued by the director of alcoholic beverage control pursuant to the Kansas Liquor Control Act, K.S.A. 41-101 et seq., and amendments thereto.

(bb) ‘Manager’ means the manager or assistant manager, or both, of any establishment licensed under this Title who is in charge of the daily operations of the establishment. A manager shall be deemed to be employed in connection with the dispensing, selling, mixing or serving of alcoholic liquor.

(cc) ‘Manufacture’ means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer or cereal malt beverage.

(dd) ‘Manufacturer’ shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.

(ee) ‘Minor’ means any person under twenty-one years of age.

(ff) 'Morals charge' means a charge involving prostitution or sodomy; pimping or promoting prostitution or sodomy; procuring any person; soliciting a child under eighteen year of age for any immoral act involving sex; rape; incest; indecent liberties with a child; gambling; illegal cohabitation; adultery; bigamy; a crime against nature; lewd and lascivious behavior; any violation of Chapter 5.26 of the Code of the City of Wichita and amendments thereto; or any violation of the Uniform Controlled Substances Act as set forth in K.S.A. 65-4101 *et seq.* and amendments thereto.

(gg) 'Off-premises business' means a business establishment which sells cereal malt beverages or alcoholic liquor in original unopened containers for consumption off of the licensed premises.

(hh) 'Original package' means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked, or capped, sealed and labeled by the manufacturer of alcoholic liquor or cereal malt beverage to contain and to convey any alcoholic liquor or cereal malt beverage.

(ii) 'Person' means any natural person, corporation, partnership, trust or association.

(jj) 'Place of business' means any place, except a tavern, at which cereal malt beverages and/or alcoholic liquor are sold.

(kk) 'Premises' means the specific area described in the license application and approved as the location upon which the cereal malt beverages and/or alcoholic liquor may be sold and/or consumed under the license.

(ll) ‘Public assembly area’ means the area of the licensed premises to which the general public has access for purposes including, but not limited to, food and drink consumption, entertainment, recreation, social functions or awaiting transportation.

(mm) ‘Public place’ means any place to which the general public has access and a right to resort for business, entertainment, or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

(nn) ‘Sale’ means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration; and includes all sales made by any person, whether principal, proprietor, agent, servant or employee.

(oo) ‘School’ means the use of a site for instructional purposes on an elementary or secondary level, including both public schools as well as private schools that have curriculums similar to those in public schools.

(pp) (1) ‘Sell at retail’ and ‘sale at retail’ refer to and mean sales for use or consumption and not for resale in any form and sales to clubs, licensed drinking establishments, licenses caterers or holders of temporary permits.

(2) ‘Sell at retail’ and ‘sale at retail’ do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.

(qq) 'Special event' means a picnic, bazaar, fair, festival or similar gatherings or events which have been issued a community event license pursuant to Chapter 3.11 of the Code of the City of Wichita, where a temporary permit for the sale of cereal malt beverages or alcoholic liquor is issued pursuant to regulations established by this title, and the Kansas Club and Drinking Establishment Act and amendments thereto.

(rr) 'Spirits' means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(ss) 'Tavern' means any business establishment licensed to sell cereal malt beverages for consumption on the premises that derives in any one month of the calendar year less than fifty percent of its gross revenues from the sale of food for consumption on the premises.

(tt) 'Temporary permit' shall have the meaning ascribed to it by K.S.A. 41-2601 and amendments thereto.

(uu) 'To sell' includes to solicit or receive an order for, to keep or expose for sale and keep with intent to sell.

(vv) 'Wine' means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries or other agricultural products, including such beverages containing added alcohol or

spirits or containing sugar added for the purpose of correcting natural deficiencies.

(ww) 'Wholesaler' means a distributor as defined by K.S.A. 41-2701 and amendments thereto."

SECTION 6. Section 4.04.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Consumption in public places prohibited. (a) (1) Except as otherwise provided herein, it is unlawful for any person within the corporate limits of the city to drink or consume alcoholic liquor upon the public streets, alleys, roads or highways, or inside vehicles while upon the public streets, alleys, roads or highways.

(2) Alcoholic liquor may be sold and/or consumed at a special event held on public streets, alleys, roads, sidewalks or highways, provided that such streets, alleys, roads, sidewalks or highways have been closed to motor vehicle traffic by the City Council and when a temporary permit has been issued pursuant to K.S.A. 41-2645 and amendments thereto, for such event and the consumption of such alcoholic liquor at such event has been approved by the City Council pursuant to Section 3.11.065.

(3) No alcoholic liquor may be consumed inside or on motor vehicles while on public streets, alleys, roads or highways at such special event.

(4) No person shall remove any alcoholic liquor from inside the boundaries of a special event as designated by the City Council pursuant to Section 3.11.065. The boundaries of such event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such event.

(5) No person shall possess or consume alcoholic liquor inside the premises, licensed as a special event, that was not sold or provided by the licensee holding the temporary permit for such special event or an adjacent drinking establishment which has extended its licensed premises into and made a part of the licensed premises for such special event pursuant to K.S.A. 41-2645(e)(2) and amendments thereto.

(6) It shall be unlawful for any person to distribute, sell or allow the consumption of any alcoholic liquor on the streets or sidewalks within any special event without obtaining the approval of the City Council and any and all necessary state and local permits for the sale or consumption of such alcoholic liquor.

(7) Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

(b) No person shall drink or consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by this title and by the Club and Drinking Establishment Act of the State of Kansas pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated;

(2) Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803 and amendments takes place;

(3) In a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of such alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto take place;

(4) In private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803 and amendments takes place; or

(5) On the premises of a microbrewery or farm winery, if authorized by this title and by K.S.A. 41-308a or Section 138, of House Substitute for Substitute Senate Bill 141 and amendments thereto.

(c) No person shall drink or consume alcoholic liquor on public property except:

(1) On real property leased by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes incidental thereto.

(2) In any state-owned or operated building or structure and on the surrounding premises, which is furnished to and occupied by any state officer or employee as residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by the Wichita Airport Authority.

(d) On property which has been specifically exempted by ordinance the title of which is vested in the City of Wichita.

(e) Any property located within the corporate limits of the City of Wichita that is under the control of the Kansas State Board of Regents and the Kansas State Board of Regents has exempted said property from the provisions of K.S.A. 41-719(c) and amendments thereto and said property is not used for classroom instruction.

(f) On the premises of any Kansas national guard regional training center or armory, and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.

(g) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than fifty dollars nor more than two hundred dollars or by imprisonment for not more than six months, or both."

SECTION 7. Section 4.04.045 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Exemptions. The city, by virtue of the authority contained in K.S.A. 41-719, exempts the following properties from any prohibition against consumption of alcoholic liquor on public property contained in K.S.A. 41-719, and in Sections 4.04.040, 4.16.020 and 4.16.030 of this Code: CityArts, the education building of the Wichita Area treatment Education and Remediation (WATER) Center, Sports Hall of Fame, Lionel Alford Regional Library, Wichita-Sedgwick County Historical Museum, Century II, the Wichita Mid-Continent Airport, Colonel James Jabara Airport, Cowtown, the Wichita Art Museum, Mid-America All-Indian Center, Lawrence-Dumont Stadium, the Central Branch Wichita Public Library, the Kansas Aviation Museum (Historic Wichita Municipal Airport), the Old Town Farm and Art Market, Botanica -- the Wichita Gardens, the Hyatt Regency Wichita Hotel and Conference Center, Exploration Place, the Ice Sports Center of Wichita, the Wichita Boathouse, the

open area bounded on the north by the Hyatt Regency Hotel and Conference Center, on the south by Lewis Street, on the east by Wichita Street, and on the west by the Arkansas River, the La Familia Senior Community Center, Inc. located at 841 W. 21st St. North, the Old Town Cinema Plaza, from any prohibition against consumption of alcoholic liquor on public property contained in K.S.A. 41-719, and in Sections 4.04.040, 4.16.020 and 4.16.030 of this Code."

SECTION 8. Section 4.12.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Examination of applicant by the city council; issuance or denial of license. If the application for a license is in proper form and accompanied by the license fee the city council shall examine the application and, after examination of the application, the city council, if they approve the same, shall issue a license to the applicant; provided

(a) That no license shall be issued to:

(1) A person who is not a resident of the city or county in which the premises covered by the license are located, and who has not been a resident in good faith of the state at least one year prior to the application and a resident of the county in which such place of business is to be operated for at least six months, prior to the filing of the application;

(2) A person who is not of good character and reputation in the community in which he resides;

(3) A person who is not a citizen of the United States.

(4) A person who, within two years immediately preceding the date of making application, has been convicted of a felony or of any crime involving moral turpitude, or been adjudged guilty of driving a motor vehicle while under the influence of intoxicating liquor or drugs, or of the violation of any other intoxicating liquor law of any city, state or of the United States; provided that the terms "conviction" and "adjudged guilty" shall include being placed on diversion.

(5) A partnership, unless all members of such partnership shall otherwise be qualified to obtain a license.

(6) A corporation, if any manager, officer or director thereof, and/or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than the citizenship or residency requirements;

(7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than twenty-five percent of the stock, of a corporation which: (A) Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.

(8) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(9) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license.

(b) A license shall not be issued for a tavern on premises located within three hundred feet of any church or school or a residential zoning district, the distance to be measured as set forth in the Wichita/Sedgwick County Unified Zoning Code.

Renewal of licenses may be made for all establishments presently licensed within three hundred feet of any church or school or a residential zoning district, so long as the premises are used or held for use as a tavern or building in which cereal malt beverages are sold; provided, however, that should an establishment located within three hundred feet of the property line of any church or school or a residential zoning district cease to be used as a tavern or building in which cereal malt beverages are sold for a period of ninety days or more or said premises are used for another type of business, then, and in that event, no new license shall be issued for the sale of cereal malt beverages on the premises, provided, however, that the distance requirements set out above shall not apply to the place of business of a license selling cereal malt beverages at retail and not for consumption on the premises. Periods of time during which

taverns or buildings in which cereal malt beverages are sold are being remodeled or are being repaired because of damage caused by fire or natural disasters such as floods or windstorms, shall not be included in computing the above ninety-day period; provided, however, that any remodeling or repair must be commenced within ninety days after closure of any given structure and completed within a reasonable time thereafter. Additionally, the vice section of the Wichita police department shall be notified within thirty days of closing whenever any tavern or building in which cereal malt beverages are sold for remodeling or repairs. Such notice shall state the date when remodeling will start and the date it will be completed. It is further provided that the space limitations prohibiting the licensing of cereal malt beverage retailers within three hundred feet of the property line or any church or school shall not apply to colleges and universities within the city limits, and the colleges and universities are exempted from the space limitation. Off-street parking shall be provided as required by the Wichita/Sedgwick County Unified Zoning Code.

(c) A license shall not be issued for the sale of cereal malt beverages for consumption on the premises if the place of business is also licensed for the sale of cereal malt beverages for consumption off the premises.

(d) No license shall be issued for premises wherein the use thereof would be in violation of the city zoning laws or the city building codes or fire codes.

(e) Cereal malt beverages retailers' licenses shall be issued on an annual basis, except that this provision shall not apply to special events licenses."

SECTION 9. Section 4.12.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Minors prohibited; entering or remaining in taverns, etc., prohibited.

(a) No person under the legal age for consumption of cereal malt beverage shall enter or remain on the premises of a tavern. Violation of this subsection by a person eighteen or more years of age but less than twenty-one years of age is a misdemeanor punishable by a fine of not less than one hundred dollars and not more than two hundred fifty dollars. In addition to such fine the court may order the offender to perform forty hours of public service.

Further, any person less than eighteen years of age who violates this section is a juvenile offender under the Kansas Juvenile Offenders Code and upon adjudication thereof, shall be required as a condition of disposition to pay the fine or perform the public service, or both, specified as punishment for the offense under this subsection.

(b) No licensee, manager, employee or agent shall permit a person under the legal age for consumption of cereal malt beverages to enter or remain on the premises of a tavern. No licensee, manager, employee or agent shall permit a person under the legal age for consumption of cereal malt beverage to possess, consume or purchase any cereal malt beverage in or about a place of business, except that an employee who is not less than eighteen years of age may dispense or sell cereal malt beverage, if:

(1) The place of business is licensed only to sell cereal malt beverage at retail in original and unopened containers for consumption off the premises;

(2) The place of business is a licensed food service establishment, as defined by K.S.A. 36-601 and amendments thereto, and not less than fifty percent of the gross receipts from the place of business is derived from the sale of food for consumption on the premises of the licensed place of business; or

(3) The employee is under the on-premises supervision of the licensee or permit holder, or an employee who is twenty-one years of age or older.

(c) It shall be a defense to a prosecution under this section if:

(1) The defendant is licensed as a cereal malt beverage retailer, tavern, restaurant selling cereal malt beverage or a special event, or an employee thereof;

(2) The defendant sold the cereal malt beverage to the person with reasonable cause to believe that such person was of legal age for consumption of cereal malt beverage; and

(3) To purchase the cereal malt beverage, the person exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document that reasonably appears to contain a photograph of the minor and purporting to establish that such person was of legal age for consumption of cereal malt beverage."

SECTION 10. Section 4.12.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Revocation or suspension by city council; grounds; right of appeal. The city council, upon five days' written notice, to a person holding a license to sell cereal malt beverages shall revoke or cause to be suspended for a period of not more than thirty days such license for any of the following reasons:

(a) If the licensee has fraudulently obtained the license by giving false information in the application therefor;

(b) If the licensee, manager, employee or agent has violated any of the provisions of this chapter, Chapter 3.28, Chapter 3.30, or Section 3.08.030 of the Code of the City of Wichita or any rule or regulation by the city council of the city, or the licensed premises are in violation of the health, housing, fire, zoning, or building codes of any local, state, or federal jurisdiction, including but not limited to, occupancy exceeding licensed capacity of a premises;

(c) If the licensee has become ineligible to obtain a license under this chapter;

(d) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which said license is issued, or for a licensee, his manager or employee permitting any intoxicated person to remain in such place selling cereal malt beverages;

(e) The sale or gift of cereal malt beverages to those under the legal age for consumption of cereal malt beverages by a licensee, his manager or employee;

(f) The nonpayment of any license fees payable hereunder;

(g) For a licensee, his manager or employee to permit gambling in or upon premises selling cereal malt beverages;

(h) For a licensee, his manager or employee to permit any person to mix drinks with materials purchased in such place of business or brought in for that purpose unless currently licensed as a private club or drinking establishment;

(i) For the employment of persons under the legal age of consumption in dispensing cereal malt beverages in a tavern or under eighteen years of age in a food service establishment or for off-premises consumption;

(j) For employing a person who has been adjudged guilty of a felony, a violation of an offense involving a morals charge or a crime of moral turpitude or a violation of an intoxicating liquor or drug law; provided that the term "adjudged guilty" shall include being placed on diversion. The chief of police may require any employee to submit to fingerprinting to determine if a violation of this section has occurred, and the failure of an employee to submit to fingerprinting, if required by the chief of police, shall be prima facie evidence that the employee is ineligible for employment under the provisions of this section.

(k) For the sale or possession of or for permitting any person to use or consume upon or in said premises alcoholic liquor, as defined in Section 4.04.010 except in a place of business licensed as a private club or drinking establishment, pursuant to this title and Article 26 of Chapter 41 of the Kansas Statutes Annotated.

(l) For failure to maintain sufficient records to determine the percentage of gross revenues obtained from the selling of cereal malt beverages;

(m) For failure to permit the inspection of such records at all times during business hours by proper agents of the city;

(n) For knowingly allowing or permitting any known felon to loiter upon or about the licensed premises;

(o) For selling or providing cereal malt beverage to any person who is intoxicated who thereafter and by reason of such intoxication or where such intoxication is a contributing factor violates any ordinance of the City of Wichita, the laws of the State of Kansas or the federal government.

Provided, that if any of the grounds for revocation herein enumerated are violated by an employee or a manager, then in the absence of proof of knowledge by the licensee, there shall be no revocation, except as herein provided, but there may be a suspension of not more than thirty days; it being further provided that in the event any licensee is subjected to more than two such suspensions in any twelve-month period, this license may be revoked on the third such violation.

Within twenty days after the order of the city council revoking or suspending any license, the licensee may appeal from such order to the district court of the county in the manner as now provided by law in K.S.A. 1979 Supp. 41-2708; provided, that any appeal taken from an order revoking any such license shall not suspend the order of revocation during the pendency of any such appeal. In case of the revocation of a license of any licensee, no new license shall be

issued to such person or to any person acting for or on behalf, for a period of six months after the revocation becomes effective."

SECTION 11. Section 4.16.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"License exclusive to premises issued. (a) The license provided in this chapter shall be issued for one particular premises which shall be stated in the application and in the license. No license shall be issued for premises wherein the use thereof would be in violation of the city zoning laws or the city building codes or fire codes. Nothing in this section shall be construed to require a fixed premise for persons licensed as a caterer pursuant to article 26 of Chapter 41 of Kansas Statutes Annotated.

(b) Any licensed premises which includes the exterior of a building and/or an outdoor area must be adequately lighted during all business hours.

(c) Except as provided in subsection (e), any licensed premises which includes the exterior of a building must be enclosed by a fence or approved diverters in such a way as to allow access only through a single structure designated as the official gate or entrance.

(d) Any licensed premises which is an outdoor area must have its boundaries clearly marked or fenced so as to allow access only through an official gate or entrances.

(e) Any licensed premises of a special event, for which a temporary permit has been issued pursuant to K.S.A. 41-2645 and amendments thereto, shall be clearly marked by signs, a posted map or other means which reasonably

identify the area in which alcoholic liquor may be possessed or consumed at such special event.

(f) The licensed premises of drinking establishments that are immediately adjacent to, or located within the licensed premises of a special event, for which a temporary permit has been issued and the consumption of alcoholic liquor on public property has been approved, may be extended into and made a part of the licensed premises of the special event for the duration of the temporary permit issued for such special event."

SECTION 12. Section 4.16.075 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Drinking establishment/restaurants currently licensed, renewal thereof, exceptions to fifty percent food sales requirement.** Licensees of establishments currently licensed as drinking establishment/restaurants at the time of the passage of this ordinance shall have twelve (12) months from the date of passage of this ordinance to bring such premises into compliance with the fifty percent (50%) food sales requirement set forth in 4.04.010(t) as amended herein. Such establishments will be allowed to continue to operate under the prior definition of drinking establishment/restaurant, but must be in full compliance with 4.04.010(t), 4.16.087, and 4.16.085 herein and any amendments thereto upon the next renewal of the establishment's license or no later than twelve (12) months from the date of passage of this ordinance. Further, any establishment currently licensed as a drinking establishment/restaurant shall be immediately subject to all other requirements set forth in this Title, including, but not

limited to, those set forth in Sections 4.16.100 and 4.16.120 herein and any amendments thereto.

Any establishment currently licensed as a drinking establishment /restaurant that fails to meet the required food sales and maintain the required portion of public assembly area for seating and food service within any six month period, as required under the prior definition of drinking establishment/restaurant, or ceases to be used as a drinking establishment/restaurant for a period of ninety days or more or if said premises are used for another type of business, then, and in that event, no new license shall be issued for a drinking establishment restaurant except in compliance with Subsection 4.04.010(t) as amended herein. Periods of time during which such an establishment are being remodeled or are being repaired because of damage caused by fire or natural disasters such as floods or windstorms shall not be included in computing the above ninety-day period; provided, however, that any remodeling or repair must be commenced within ninety days after closure of any given structure and completed within a reasonable time thereafter, in any event, not to exceed six months. Any time period during which such an establishment is closed for remodeling or repair will count toward the twelve (12) month period of time provided for compliance with 4.04.010(t) and 4.16.085 as set forth herein.

Additionally, the licensee of any establishment currently licensed as drinking establishment/restaurant shall notify the Chief of Police within thirty (30) days of closing whenever any such establishment is closed for remodeling

or repairs. Such notice shall state the date when remodeling will start and the date it will be completed."

SECTION 13. Section 4.16.085 of the Code of the City of Wichita, Kansas, is created to read as follows:

"Requirements for new licensees. After the date of passage of this ordinance, all applicants for a drinking establishment license, or a drinking establishment/restaurant license that are not subject to Section 4.16.075 herein, shall be required to provide the following as a part of such application:

(a) A business plan which will be on a form provided by the City's licensing section and shall provide such information as set forth herein, including, but not limited to, information as to hours of operation, proposed forms of entertainment, key personnel such as owner(s) and any on-site manager(s), insurance coverage information, a copy of any lease or purchase agreement for the licensed premises, a floor plan of the licensed premises and a site plan showing the location of parking spaces as required by the Uniform Zoning Code of the City . Failure to provide a complete business plan with the information required herein will result in denial of the requested license.

(b) In addition to the requirements set forth in subsection (a), all applicants for a drinking establishment/restaurant license that are not subject to Section 4.16.075 herein shall also be required to provide a food menu, a statement of monthly projected income and copies of vendor letters of intent as a part of such application. Failure to provide this information as part of the applicant's business plan will result in denial of the requested license.

(c) Proof that the proposed licensed premises have been subject to a CPTED (Crime Prevention Through Environmental Design) inspection by the Wichita Police Department. The recommendation of such inspection shall be attached to the application.

(d) Proof that the applicant and all listed on-sight managers of the establishment, or, if the applicant is a corporation, all listed on-site managers have attended a four-hour "safe bar" class conducted by the Wichita Police Department. Any manager subsequently hired by the licensee shall be required to show proof of attendance of the "safe bar" class within 45 days of such manager's date of employment at said establishment. Failure to of any licensee to provide such proof shall be grounds for revocation of the license.

(e) A list of all on-sight managers for the establishment, which list shall also be updated with the City license section within 10 business days from the date any manager is no longer employed by the licensee or when any new manager is hired by the licensee.

Once the information required by this section has been provided to the City's licensing section, except for providing updates regarding any changes being made by an establishment in the required information herein, and for providing information regarding any on-sight manager(s) for the licensed premises, the provisions of this Section shall not apply to renewal applications for drinking establishments or drinking establishment/restaurants.

SECTION 14. Section 4.16.087 of the Code of the City of Wichita, Kansas, is created to read as follows:

"Enforcement of required food sales percentage; Audits. Enforcement of the food sale percentages required for drinking establishment/restaurants by the provisions of this Title shall be by both random and regularly scheduled audits of such establishments.

(a) Newly licensed establishments. Every licensee of a newly licensed drinking establishment/restaurant shall be required to provide information as required in subsection (b) herein for an initial audit, once the establishment has been in operation for a two month period. Once two months have passed from the date the drinking establishment/restaurant license was issued, the licensee shall have an additional fifteen (15) days to remit all information to the City's licensing section for the final audit.

(b) Audits of any licensed establishment. Information for any audit required by this section shall be submitted on forms approved by the City and shall be sent to the City's licensing section. Such information will then be forwarded to the Special Investigations Bureau of the Wichita Police Department who shall be responsible for conducting or overseeing the audit process. Information which must be provided shall include, but not be limited to, copies of business records sufficient to demonstrate the total gross revenue during the two months in question for food sales and alcohol sales. Sufficient business records shall be deemed to include, but shall not be limited to, a list of vendors with verifying information, including written authorization from the licensee for any

agent or agents of the City to contact vendors directly and obtain information regarding such records, a listing of monthly payments to food vendors and monthly payments to alcohol vendors. For the purposes of any audit required by this section, revenues from the sale of non-alcoholic beverages that are mixed with alcoholic liquor shall be counted as alcohol sales and not as food sales. Once an audit is requested by the police, the licensee shall have fifteen (15) days to remit all required information to the licensing section. Failure to provide the necessary business records as required herein, or the failure of the records provided to demonstrate that the required food sale percentages are being maintained by the establishment will result in the reclassification of the premises from a drinking establishment/restaurant to a drinking establishment, as provided in Section 4.16.095, and any amendments thereto.

SECTION 15. Section 4.16.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Revocation of license. (a) The city council shall immediately revoke the license of any licensee whenever the state license of the licensee is revoked by the state for any reason.

(b) The city council, upon five days written notice to a person holding a license to sell alcoholic liquor, may assess a fine not to exceed five hundred dollars, may assess such fine and/or suspension for a period not to exceed thirty days or may revoke such license for any of the following reasons:

(1) If the licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon;

(2) If the licensee, manager, employee or agent has violated any of the provisions of this title, Chapter 3.28, Chapter 3.30, or Section 3.08.030 of the Code of the City of Wichita or any rule or regulation by the city council of the city, or the licensed premises are in violation of the health, housing, fire, zoning, or building codes of the City of Wichita or the State of Kansas or of the maximum occupant load of such building;

(3) If the licensee has become ineligible to obtain a license or permit under this title;

(4) Drunkenness of a person holding such license, drunkenness of licensee's manager or employee while on the premises for which said license is issued, or for a licensee, whose manager or employee permits any intoxicated person to remain in such place selling alcoholic liquor;

(5) The sale or gift of cereal malt beverage or alcoholic liquor to a minor by a licensee, his manager or employee;

(6) The nonpayment of any license fee payable pursuant to this title;

(7) For a licensee, his manager or employee to permit gambling in or upon premises selling alcoholic liquor;

(8) If the licensee or his manager or employee has permitted any disorderly person to remain on premises where alcoholic liquor is sold by such licensee;

(9) If there has been a violation of a provision of the laws of this city or of this state or of any other state or the United States pertaining to the sale of intoxicating or alcoholic liquors or cereal malt beverages, or any crime involving

a morals charge or moral turpitude on premises where alcoholic liquor is sold by such licensee;

(10) If the licensee or his managing officers or any employee, has purchased or displayed, on premises where alcoholic liquor is sold by such licensee, a federal waging occupational stamp issued by the United States Treasury Department;

(11) If the licensee or his managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal coin-operated gambling device stamp for the premises issued by the United States Treasury Department;

(12) If the licensee holds a license as a Class B Club, drinking establishment or caterer and has been found guilty of a violation of Article 10 of Chapter 44 of the Kansas Statutes Annotated under a decision or order of the Civil Rights Commission which has become final or such licensee has been found guilty of a violation of K.S.A. 21-4003 and amendments thereto;

(13) For employing a person who has been adjudged guilty of a felony, a violation of an offense involving a morals charge or a crime of moral turpitude, or a violation of intoxicating liquor or drug law; provided that the term "adjudged guilty" shall include being placed on diversion. The chief of police may require any employee to submit to fingerprinting to determine if a violation of this section has occurred, and the failure of an employee to submit to fingerprinting if required by the chief of police shall be prima facie evidence that the employee is ineligible for employment under the provisions of this section;

(14) For failure to maintain sufficient records to determine the percentage of gross business obtained from the sale of cereal malt beverages or alcoholic liquor;

(15) For failure to permit the inspection of such records at all times during business hours by proper agents of the city;

(16) For knowingly allowing or permitting any known felon to loiter upon or about the licensed premises;

(17) For selling or providing alcoholic liquor to any person who is intoxicated who thereafter and by reason of such intoxication or where such intoxication is a contributing factor violates any ordinance of the City of Wichita, laws of the State of Kansas, or the federal government;

(18) Failure to pay a fine assessed by the city council within thirty days of the date such fine was imposed.

(c) In any hearing before the city council pursuant to this section or upon appeal from a suspension or reclassification of license by the chief of police pursuant to Section 4.16.095, a certified copy of conviction from any local, state, or federal court, for any violation contained within subsection (b) of this section, is prima facia evidence of violation. For the purposes of this section, 'conviction' shall include being placed on diversion or being adjudged guilty upon entering a plea of no contest.

(d) If any of the grounds for revocation enumerated in subsection (b) of this section are violated by an employee or manager, then in the absence of proof of knowledge by the licensee, there shall be no revocation, except as herein provided, but there may be a suspension of not more than thirty days; it being further provided that in

the event any licensee is subject to more than two such suspensions in any twelve-month period, his license may be revoked on the third such violation.

(e) Within twenty days after the order of the city council revoking or suspending any license, the licensee may appeal from such order to the district court of the county in the manner as provided by law; provided that any appeal taken from an order revoking any such license shall not suspend the order of revocation during the pendency of such appeal. In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any person acting for or on his behalf, for a period of six months after the revocation becomes effective."

SECTION 16. Section 4.16.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Display of license. Every licensee shall cause his license to be framed and hung in plain view in a conspicuous place on the licensed premises.

In addition to display of the license, a current list of all authorized on-site managers shall be posted and made available to law enforcement upon request.

SECTION 17. Section 4.16.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Closing Hours. (a) No club or drinking establishment shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of two a.m. and nine a.m. on any day. At closing time:

(1) The lights are to be fully illuminated;

(2) The music, dancing or other live entertainment is to be stopped;

(3) All alcoholic liquor is to be removed from all tables and no patron shall be in possession of any alcoholic liquor; and

(4) Patrons are to be directed to vacate the premises.

No person other than employees of the establishment shall be allowed to remain on the licensed premises more than thirty minutes after closing time.

(b) No club or drinking establishment licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated shall be open to members and the public between the hours of two a.m. and nine a.m. on any day except that this subsection shall not apply to restaurants or hotels licensed as drinking establishments.

(c) No caterer shall allow the serving, mixing or consumption of alcoholic liquor between the hours of two a.m. and six a.m. on any day at an event catered by such caterer."

SECTION 18 Section 4.16.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Permitting consumption by minors; minors prohibited from entering or remaining in drinking establishments; exceptions; penalties.

(a) No licensee, permit holder, or any owner, officer, or employee thereof, shall knowingly or unknowingly permit the possession or consumption of alcoholic liquor on premises licensed as a drinking establishment or drinking establishment/restaurant by a person under legal age, except that a licensee's or permit holder's employee who is not less than eighteen years of age may serve

alcoholic liquor under the on-premises supervision of the licensee or permit holder, or an employee who is twenty-one years of age or older.

(b) No licensee, permit holder, or any owner, officer, or employee of a drinking establishment, shall knowingly or unknowingly permit a person under the legal age for consumption of alcoholic liquor to enter or remain on the premises of a drinking establishment and no person under the legal age for consumption of alcoholic liquor shall enter or remain on the premises of a drinking establishment.

(c) It shall be a defense to a prosecution under subsection (a) or (b) if:

(1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof; and

(2) The defendant sold the alcoholic liquor to the minor with reasonable cause to believe that the minor was twenty-one or more years of age; and

(3) To purchase the alcoholic liquor, the minor exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was twenty-one or more years of age.

(d) Any licensee, permit holder, or any owner, officer or employee thereof who violates any provision of this section is guilty of a misdemeanor and

upon conviction shall be punished as provided in Section 4.16.190 and amendments thereto.

(e) Violation of this section by a person eighteen or more years of age but less than twenty-one years of age is a misdemeanor punishable by a fine of not less than two hundred dollars and not more than five hundred dollars. In addition to such fine the court may order the offender to perform forty hours of public service.

Further, any person less than eighteen years of age who violates this section is a juvenile offender under the Kansas Juvenile Offenders Code and upon adjudication thereof, shall be required as a condition of disposition to pay the fine or perform the public service, or both, specified as punishment in this sub section for the offense.

(f) The provisions of subsection (b) of this section applies only to drinking establishments and not to drinking establishment/restaurants, as those terms are defined in Section 4.04.010 and amendments thereto. Be it provided, however, the provisions of subsection (b) of this section shall not apply to a drinking establishment when the licensed premises are leased to a bona fide religious organization for the purpose of conducting religious services, but only during the actual time when such religious services are being held. During the time when religious services are being held, all alcoholic liquor must be removed from the licensed premises, or secured behind locked cabinets, and no alcoholic liquor or cereal malt beverage shall be available to any participants in the religious services, except that nothing contained in this subsection shall prevent

the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church".

SECTION 19. Section 4.16.135 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Removal of alcoholic liquor from licensed premises prohibited; exceptions.

(a) No person shall remove any drink of alcoholic liquor from premises licensed as a club or drinking establishment or from a caterer's premises, or from premises licensed pursuant to a temporary permit. Violation of this section by a person is a misdemeanor punishable by a fine not to exceed one hundred dollars.

(b) Exceptions. Subsection (a) herein shall not apply to:

(1) A person who removes alcoholic liquor from premises licensed as a class A club, class B club, drinking establishment, drinking establishment/restaurant or drinking establishment/restaurant/event center as allowed in Section 4.16.155 and any amendments thereto.

(2) A person who removes alcoholic liquor from premises of a licensed drinking establishment, which is adjacent to or within the area of a special event when such drinking establishment has properly extended its premises into the special event area. A temporary permit must have been issued for the sale or consumption of alcoholic liquor at such special

event and the sale and/or consumption of such liquor has been approved by the City Council."

SECTION 20. The originals of Sections 3.11.020, 3.11.150, 4.04.010, 4.04.040, 4.04.045, 4.12.050, 4.12.140, 4.12.150, 4.16.070, 4.16.090, 4.16.100, 4.16.120, 4.16.130 and 4.16.135 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 21. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective on July 1, 2009 following publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 23 day of June, 2009.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Approve Resolution establishing licensing fee structure for Community Events pursuant to Chapter 3.11 of the Code of the City of Wichita.

INITIATED BY: Division of Arts & Cultural Services

AGENDA: New Business

Recommendation: Approve resolution.

Background: On June 13, 2006 the City Council passed ordinances establishing an approval process for community events. The ordinances provided that a schedule of fees was to be established by the City Manager for approval by the City Council. In 2008 revisions were proposed to create consistency for all community events within the City. The fee structure in the proposed Resolution is suggested to further simplify the community event permit process for both promoters, as well as city staff by reducing the number of licensing packages.

Analysis: The proposed Resolution maintains the current community event permit application fees, but changes the structure of the licensing packages that are available for multiple day community events requiring several different licenses. The current resolution provides for six different packages with two cost options, based upon duration of the event. The proposed Resolution simplifies the package fee structure, providing for just three options at a single cost regardless of the length of the event. The following table provides a comparison of the current and proposed fees:

CURRENT PACKAGE FEES			PROPOSED PACKAGE FEES	
Number of Licenses (Banners, Tents & Transient Merchant	1-3 days	4+ days	Number of Licenses (Banners, Tents & Transient Merchant)	
5	$200	$ 100	--	--
10	$400	$ 200	10	$ 300
30	$600	$ 300	--	--
50	$1000	$ 500	50	$ 750
100	$1500	$ 750	--	--
150	$2000	$1000	150	$1000

The proposed Resolution also clearly specifies that any additional permits or licenses not included in the package fees must be applied for and purchased as necessary, and any rental fees and/or deposits for using city-owned facilities are in addition to the package fees above.

Financial Consideration:

Goal Impact: Quality of Life. The proposed amended fee structure will provide incentives to event promoters to sponsor community events within the City.

Legal Consideration: The amended resolution has been prepared and approved as to form by the Law Department.

Recommendation/Actions: Approve the resolution.

Attachments: Resolution.

OCA111010

First Published in the Wichita Eagle on June 19, 2009

RESOLUTION NO. 09-175

A RESOLUTION BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS ESTABLISHING LICENSING FEES FOR COMMUNITY EVENTS.

WHEREAS, the City of Wichita, Kansas, recognizes that substantial community benefits may result from community events.

WHEREAS, the City has established ordinances to provide a coordinated process for managing community events occurring on public and private property.

WHEREAS, pursuant to Section 3.11.070 of the Code of the City of Wichita, the Wichita City Manager has established a schedule of fees for community events.

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

The fees set forth below are hereby approved for all community events occurring after the City's adoption and publication of Chapter 3.30 of the Code of the City of Wichita.

1. (a) Single Day Community Event Permit Fee

Events with attendance 250 or less	$ 25.00
Events with attendance 250 – 1000	$ 50.00
Events with attendance above 1,000	$100.00

(b) Multiple Day Community Event Permit Fee:

Two – Three Consecutive Days	$200.00
Four or More Consecutive Days	$500.00

2. Licensing Package for Community Events:
Such fee shall include the following permits and licenses:

(a)	10 Banner permits 10 Permits for Tents 10 Transient Merchant Licenses	$ 300.00
(b)	50 Banner permits 50 Permits for Tents 50 Transient Merchant Licenses	$ 750.00
(c)	150 Banner permits 150 Permits for Tents 150 Transient Merchant Licenses	$1,000.00

3. Any and all additional permits or licenses not included in the fee package which may be required for the community event shall require the appropriate application and payment of any additional licensing fees necessary. Multiple packages may be purchased for large events.

4. Any and all rental fees and deposits for use of city-owned facilities required for a community event shall be paid, in addition to the licensing fees set forth above.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this 16th day of June, 2009.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf

Revised 6-15-09 **Agenda Item No.**

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: Proposed Amendments to Plumbing Code (Title 21. 04) Relating to ProPress G™ Copper Fittings for Natural Gas and LP Gas Piping

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendation: The Board of Appeals of Plumbers and Gas Fitters and the Office of Central Inspection recommend that the Council approve first reading of the ordinance amending Title 21.04 of the City Code.

Background: The City's Plumbing Code (Title 21) regulates plumbing material, product and installation requirements. ~~***Given the increasing use of water conditioning equipment, in both residential and commercial applications, the Board of Appeals of Plumbers and Gas Fitters (Plumbing Board) and City staff believe regulation and oversight is necessary to ensure safe installation of water conditioning systems and/or equipment.***~~ Over several months, the ***Board of Appeals of Plumbers and Gas Fitters*** **(**Plumbing Board**)**, in conjunction with Office of Central Inspection and Law Department staff, reviewed the new ProPress G™ copper fittings product for natural gas and LP piping, manufactured by Viega, LLC. The Plumbing Board's review of the ProPress G™ product was also publicized in the Office of Central Inspection's CINCH (Construction Industry News from City Hall) newsletter.

The Plumbing Board voted unanimously to recommend Council adoption of the attached ordinance amending the Plumbing Code (Title 21) to allow use of the ProPress G™ product in Wichita.

Analysis: The proposed ordinance creates two (2) new sections in the Wichita Plumbing Code (which has adopted the Uniform Plumbing Code, with certain local amendments). Section 21.04.273 of the ordinance creates a new Section 1210.6 in the Uniform Plumbing Code approving the use of the ProPress G™ copper fittings product for natural gas and LP piping in Wichita, and outlining specific conditions and requirements for use and installation of the ProPress G™ system. Section 21.04.275 of the ordinance creates a new section 1211.95 in the Uniform Plumbing Code requiring approved termination fittings, attached to the exterior of structures, when the ProPress G™ copper system is installed.

Financial Considerations: There are no additional costs to the Office of Central Inspection or to contractors and consumers associated with the proposed ordinance amendments.

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. The proposed ordinance supports the "Provide a Safe and Secure Community" goal by ensuring that new products such as the ProPress G™ copper fittings system are safe for use and properly installed.

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

Recommendation/Actions: It is recommended that the City Council approve first reading of the ordinance adopting amendments to Title 21.04 of the Code of the City of Wichita that authorize use of ProPress G™ copper fittings for natural gas and LP gas piping.

Attachment: Delineated ordinance.

First Published in The Wichita Eagle on June 26, 2009

230100

04/16/09

ORDINANCE NO.48-355

AN ORDINANCE CREATING SECTIONS 21.04.273 AND 21.04.275 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE UNIFORM PLUMBING CODE AND REPEALING SECTION 21.04.270 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 21.04.273 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Section 1210.6 created.** Section 1210.6 of the Uniform Plumbing Code, as adopted by reference herein, is created to read as follows:

1210.6 The ProPress G™ Copper Fittings for Natural Gas and LP gas piping, manufactured by Viega, LLC are approved for use subject to the following conditions:

1. Copper alloy tubing and fittings shall not be used if the gas contains more than an average of 0.30 grains of hydrogen sulfide per 100 standard cubic feet.

2. The fittings may be used for joining Types K and L copper tubing only in accordance with the manufacturer's printed instructions and the provisions of this code.

3. The fittings are approved for both residential and commercial applications above ground with no limitations as to type or building occupancies.

4. The fittings are approved for installations with an ambient temperature range of -40 to 180 degrees in Fahrenheit and a maximum pressure of 125 psi.

5. The gas tubing shall be tested in accordance with Section 1214 of the Uniform Plumbing Code with a minimum test pressure of 10 psi for a period of not less than fifteen minutes.

6. Copper tubing utilized with this system shall be identified continuously with black letters on a yellow field to indicate the piping system conveys fuel gas.

7. Copper tubing utilized with this system shall be supported and protected in accordance with this code.

8. Copper tubing utilized with this system shall not be used as a grounding electrode for an electrical system but shall be accepted for electrical bonding in accordance with this code.

9. The fittings shall be labeled with a yellow marking for identification as gas fittings and shall be labeled with the manufacturer's name "Viega", nominal pipe sizes, and the "CSA" logo, as set forth in ANSI A13.1." The element in the gas fitting shall be HNBR (Hydrogenated Nitrile Butadiene Rubber) and yellow in color.

SECTION 2. Section 21.04.275 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

" **Section 1211.9.5 created.** Section 1211.9.5 of the Uniform Plumbing Code, as adopted by reference herein, is created to read as follows:

If the proPress G™ copper system is utilized, an approved termination fitting shall be securely attached to the exterior of all structures. Such termination fitting shall be exposed at the time of inspection."

SECTION 3. Section 21.04.270 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 4. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 23 day of June, 2009.

_____
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 04/16/09

ORDINANCE NO._____

AN ORDINANCE CREATING SECTIONS 21.04.273 AND 21.04.275 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE UNIFORM PLUMBING CODE AND REPEALING SECTION 21.04.270 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 21.04.273 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Section 1210.6 created.** Section 1210.6 of the Uniform Plumbing Code, as adopted by reference herein, is created to read as follows:

1210.6 The ProPress G™ Copper Fittings for Natural Gas and LP gas piping, manufactured by Viega, LLC are approved for use subject to the following conditions:

1. Copper alloy tubing and fittings shall not be used if the gas contains more than an average of 0.30 grains of hydrogen sulfide per 100 standard cubic feet.

2. The fittings may be used for joining Types K and L copper tubing only in accordance with the manufacturer's printed instructions and the provisions of this code.

3. The fittings are approved for both residential and commercial applications above ground with no limitations as to type or building occupancies.

4. The fittings are approved for installations with an ambient temperature range of -40 to 180 degrees in Fahrenheit and a maximum pressure of 125 psi.

5. The gas tubing shall be tested in accordance with Section 1214 of the Uniform Plumbing Code with a minimum test pressure of 10 psi for a period of not less than fifteen minutes.

6. Copper tubing utilized with this system shall be identified continuously with black letters on a yellow field to indicate the piping system conveys fuel gas.

7. Copper tubing utilized with this system shall be supported and protected in accordance with this code.

8. Copper tubing utilized with this system shall not be used as a grounding electrode for an electrical system but shall be accepted for electrical bonding in accordance with this code.

9. The fittings shall be labeled with a yellow marking for identification as gas fittings and shall be labeled with the manufacturer's name "Viega", nominal pipe sizes, and the "CSA" logo, as set forth in ANSI A13.1." The element in the gas fitting shall be HNBR (Hydrogenated Nitrile Butadiene Rubber) and yellow in color.

SECTION 2. Section 21.04.275 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

" **Section 1211.9.5 created.** Section 1211.9.5 of the Uniform Plumbing Code, as adopted by reference herein, is created to read as follows:

If the proPress G™ copper system is utilized, an approved termination fitting shall be securely attached to the exterior of all structures. Such termination fitting shall be exposed at the time of inspection."

SECTION 3. Section 21.04.270 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 4. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2009.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

Agenda Item No. III-8.

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: Supplemental Agreement No.10 for additional engineering services on East Kellogg (District II)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the supplemental agreement.

Background: On June 10, 1997, the City entered into an agreement with Cook, Flatt & Stroebel, Engineers (CF&S) to begin preliminary design for East Kellogg, from Edgemoor to 127th Street East. The original contract was for preliminary design only. Final design and construction engineering were to be added by supplemental agreements as the project progressed. The original project was broken into several phases to allow construction to continue as right-of-way was acquired. The original contract and the nine (9) supplemental agreements to the original contract approved to date are as follows:

Date	Description	Amount	Cumulative Contract Amount
June 10, 1997	Original Contract – Perform preliminary design for East Kellogg from Edgemore to 127th street East	$1,596,000.00	$1,596,000.00
January 11, 2000	Supplemental No. 1 – Final design for East Kellogg from Sylvan Lane to Governeour	$1,721,275.00	$3,317,275.00
May 14, 2000	Supplemental No. 2 – Final design for East Kellogg from Governeour to Cypress	$2,414,904.00	$5,732,179.00
September 17, 2002	Supplemental No. 3 – Construction administration for East Kellogg from Sylvan Lane to Governeour	$3,236,954.80	$8,969,133.80

Date	Description	Amount	Cumulative Contract Amount
December 2, 2003	Supplemental No 4 – RCB bridge at Armour, RCB bridge at Gypsum Creek, Storm Sewer Pump Station at Rock, North Frontage Road East of Rock, and the North Frontage Road/Armour Intersection.	$1,126,352.16	$10,095,485.96
April 9, 2005	Supplemental No. 5 – Construction Administration for East Kellogg from Governour to Cypress	$2,528,284.88	$12,623,770.84
June 6, 2006	Supplemental No. 6 – Design and construction administration A) Heather and Bonnie Brae B) Entrance from Towne East Mall, Eastgate Mall, Holliday Inn Select Motel C) Extend Rock farther North to accommodate Towne East Mall D) Underground electrical transmission E) Dividing project into 10 parts to accommodate adjacent property owners. F) Public Art Assistance with right-of-way acquisition, and utility coordination from Woodlawn to Webb Additional inspection resulting from unusual weather on Woodlawn construction Additional coordination resulting from utility, and property acquisition delays	$321,715.96	$12,945,486.80
July 10, 2007	Supplemental No. 7 – Survey of Raytheon property between Webb and Greenwich on East Kellogg	$11,298.70	$12,956,785.50
July 10, 2007	Supplemental No. 8 – Design of Drainage structure across East Kellogg between Ellson and Zelta	$146,561.05	$13,103,346.55
December 2, 2008	Supplemental No. 9 – Design for a South bound right-turn lane on Woodlawn North of Kellogg	$27,805.65	$13,131,152.20

Analysis: As the various phases of work progressed on this project, it was necessary to have CFS begin design work on some of the various elements, then continue to work with the adjacent property owners to finalize designs and construct the improvements as information was made available to us by the owners. These properties included Towne East Mall (Simon Properties), Westar Energy Transmission Line, Rusty Eck Ford, Eddie's Toyota (Orme Street), the Clear Channel Billboard on Rock Road north of Kellogg, and the LaQuinta Inn. Additionally, the engineers experienced unanticipated expenses for delays with underground fuel tanks, contaminated soils, working with the City of Eastbrough on various surveys and agreements, redesigning the Rock Road bridge railing, and constructing a project web-site for public information purposes. Additional inspection services have been required due to various project delays beyond the consultant's control.

Financial Considerations: The total fee for the additional work discussed under "Analysis" is $542,196.58. The funding source is local sales tax. This supplemental agreement will result in engineering fees at 5.8% of construction cost.

Goal Impact: This agreement addresses the Efficient Infrastructure goal by providing engineering services needed to provide a safe and efficient transportation system. It addresses the Economic and Affordable Living goal by providing a public improvement which reduces the cost of transportation. It also improves the air quality of the region whereby the goal of a Safe and Secure Community is met by improving environmental health.

Legal Considerations: The supplemental agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve Supplemental Agreement No. 10 and authorize the necessary signatures.

Attachment: Supplemental Agreement No. 10.

SUPPLEMENTAL AGREEMENT NO. 10

to the

AGREEMENT FOR ENGINEERING SERVICES DATED 10, 1997

between

THE CITY OF WICHITA, KANSAS

Party of the First Part, hereinafter called the

"CITY"

and

COOK, FLATT & STROBEL, ENGINEERS, P.A.

Party of the Second Part, hereinafter called the

"ENGINEER"

WITNESSETH:

WHEREAS, the CITY desires to proceed with the construction of the portion of the PROJECT from west of Armour Road to KTA Interchange hereinafter called the ADDITIONAL SERVICES ROCK ROAD-PART VII, and

WHEREAS, THE City desires to modify the original agreement dated June 10, 1997 to include surveying services, and provide coordination with landowners.

WHEREAS, there not exists a contract between the two parties covering Engineering Services to be provided by the ENGINEER for the improvement of East Kellogg (US 54) from Sylvan Lane to and including K-96 Interchange.

WHEREAS, paragraph IV.B of the existing contract provides that the CITY may contract for additional work on the basis of a duly entered into Supplemental Agreement.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. ARTICLE, Scope of Services-revise to read:

"…. to perform the PROJECT and supplemental services identified in Attachment 1A including:

ADDITIONAL SERVICES ROCK ROAD-PART VII-EXHIBIT B

2. ARTICLE IV, Payment Provisions-add to and revise paragraph A:

Payment to the ENGINEER for the performance of the professional services required for ADDITIONAL SERVICES ROCK ROAD-PART VII shall be based upon the ENGINEER's actual costs and may be less than the estimated amount. Payment shall be full compensation for salary costs, expenses, overhead (overhead to be applied to straight-time salary cost only with premium overtime reimbursed as cost), profit, subcontracting and all other costs required in performing the work described herein. Overhead includes fringe benefits. The test of the allowability to be applied for this agreement shall be based on the provisions of the agreement and on the reasonableness of allocation of costs under generally accepted accounting principles and practices. Overhead costs shall be computed by multiplying an Overhead Factor with actual salaries or wages paid to personnel assigned to the PROJECT. The Overhead Factor shall be 155.0 percent for the work required by this agreement.

Total payments to the ENGINEER for the preparation of the work associated with ADDITIONAL SERVICES ROCK ROAD-PART VII shall include the actual costs accruing in the performance of the professional services as outlined in this agreement which are estimated to amount to $648,790.25 plus a fixed fee for profit of $65,446.06 so that the total payments shall not exceed the sum of $71,236.31 and shall generally be in accordance with the estimated provided in ATTACHMENT 1A. Further, it is understood the payments set forth in the original Agreement and Supplemental Agreements "total not to exceed" costs will be $13,845,388.51.

3. Except as otherwise noted herein, all terms and conditions set forth in the original agreement shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement of this _____ day of _____, 2009.

CITY OF WICHITA

By: _____

SEAL:

ATTEST:

_____
City Clerk

Approved as to Form

_____

Cook, Flatt & Strobel, Engineers, P.A.

By: _____

Robert S. Chambers, Vice President

ATTEST:

_____

APPROVAL AS TO FORM

_____
Gary Rebenstorf, Director of Law

SCOPE OF SERVICES STATEMENT
SUPPLEMENTAL AGREEMENT NO. 10
TO THE
AGREEMENT FOR PROFESSIONAL SERVICE DATED JUNE 10, 1997

I. GENERAL

The objective of this agreement shall be to:

Provide Additional services for the Section of the segment of East Kellogg know as Rock Road.

ADDITIONAL SERVICES ROCK ROAD-PART VII EXHIBIT B
Cook Flatt & Strobel Engineers, P.A. (Engineer) will function as the prime consultant for the design team. The work outlined henceforth shall hereinafter be referred to as the "ADDITIONAL SERVICES ROCK ROAD-PART VII" to differentiate it from the PROJECT as defined in the original agreement.

II. SCOPE OF SERVICES

1) Additional Services

The ENGINEER shall provide engineering and technical services as required by the project.

Additional Services include the following:

a. Revisions to Plans and Coordination with Mall to incorporate Revised Mall Entrance and Ring Road.
b. Plans and Specifications along with Coordination and Construction Observation or Removal Tanks.
c. Coordination with landscaping revisions due to relocation of Billboard Sign at NE Rock Road.
d. Coordination with Landscaping Modifications in vicinity of Rusty Eck Ford (Armour Road).
e. Additional Testing Services, Coordination and Construction Observation due to Contaminated Soil.
f. Additional Work for Eastborough Land Agreements.
g. Coordination and Redesign with Westar Energy for Underground 69kv Cable Project.
h. Additional Coordination with Car Dealers, Mall, Logan Steakhouse and Others.
i. Design of Orme from Whittier to Governeour.
j. Additional Design and Detailing for Alternate Art Rail for Rock Road Bridge.
k. Additional costs for the Delay of Access to Final Field Office and Lab Site.
l. Providing Web site for Project.
m. Additional Days to Contractor as per Letter of April 7, 2006.
n. Additional Inspection Services October 2006 to January 2007 due to Schedule Delay.
o. Additional Inspection December 2009 to March 2010.

COST PROPOSAL
ADDITIONAL SERVICES FOR ROCK ROAD PROJECT

A) Revisions to Plans and Coordination with Mall to incorporate Revised Mall Entrance and Ring Road

	Manhours	Rate	Labor Cost
Project Manager	16	75.00	$1,200.00
Project Engineer	120	46.00	5,520.00
Sr. Technician	160	27.50	4,400.00
Clerical	4	18.00	72.00
Subtotal	300		$11,192.00

B) Plans and Specifications along with Coordination and Construction Observation of Removal Tanks

	Manhours	Rate	Labor Cost
Project Manager	4	$75.00	$300.00
Project Engineer	48	46.00	2,208.00
Sr. Technician	40	27.50	1,100.00
Senior Construction Project Engineer	8	42.00	336.00
Project Inspector	24	18.00	432.00
Clerical	2	18.00	36.00
Subtotal	126		$4,412.00

C) Coordination with Landscaping revisions due to relocation of Billboard Sign at NE Rock Road

	Manhours	Rate	Labor Cost
Project Manager	2	$75.00	$150.00
Project Engineer	32	46.00	1,472.00
Sr. Technician	32	27.50	880.00
Clerical	8	18.00	144.00
Subtotal	74		$2,646.00

D) Coordination with Landscaping Modifications in vicinity of Rusty Eck Ford (Armour Road)

	Manhours	Rate	Labor Cost
Project Manager	2	$75.00	$150.00
Project Engineer	24	46.00	1,104.00
Project Engineer Construction	12	42.00	504.00
Clerical	4	18.00	72.00
Subtotal	42		$1,830.00

E) Additional Testing Services, Coordination and Construction Observation due to Contaminated Soil

	Manhours	Rate	Labor Cost
Project Manager	16	$75.00	$1,200.00
Project Engineer	32	46.00	1,472.00
Project Engineer Construction	40	42.00	1,680.00
Construction Inspector	60	18.00	1,080.00
Clerical	16	18.00	288.00
Subtotal	164		$5,720.00

COST PROPOSAL
ADDITIONAL SERVICES FOR ROCK ROAD PROJECT

F) Additional Work for Eastborough Land Agreements

	Manhours	Rate	Labor Cost
Project Manager	16	$75.00	$150.00
Project Engineer	120	46.00	5,520.00
Sr. Technician	80	27.50	2,200.00
Clerical	4	18.00	1,080.00
Subtotal	206		$7,942.00

G) Coordination and Redesign with Westar Energy for Undergound 69kv Cable Project

	Manhours	Rate	Labor Cost
Project Manager	4	$75.00	$300.00
Project Engineer	32	46.00	1,472.00
Sr. Technician	48	27.50	1,320.00
Clerical	2	18.00	36.00
Subtotal	86		$3,128.00

H) Additional Coordination with Car Dealers, Mall, Logan Steakhouse and Others

	Manhours	Rate	Labor Cost
Project Manager	2	$75.00	$150.00
Project Engineer	80	46.00	3,680.00
Sr. Technician	40	27.50	1,100.00
Project Engineer Construction	80	42.00	3,360.00
Construction Inspector	24	18.00	432.00
Clerical	4	18.00	36.00
Subtotal	228		$8,758.00

I) Design of Orme from Whittier to Governeour

	Manhours	Rate	Labor Cost
Project Manager	24	$75.00	$1,800.00
Project Engineer	90	46.00	4,140.00
Sr. Technician	160	27.50	4,400.00
Jr. Technician	60	18.00	1,080.00
Survey Manager	16	27.50	440.00
2-man Survey Crew	32	50.00	1,600.00
Clerical	8	18.00	144.00
Subtotal	390		$13,604.00

COST PROPOSAL
ADDITIONAL SERVICES FOR ROCK ROAD PROJECT

J) Additional Design and Detailing for Alternate Art Rail for Rock Road Bridge

	Manhours	Rate	Labor Cost
Project Manager	16	$75.00	$1,200.00
Project Engineer	24	46.00	1,104.00
Sr. Technician	60	27.50	1,650.00
Clerical	2	18.00	36.00
Subtotal	102		$3,990.00

K) Additional Costs for the Delay of Access to Final Field Office and Lab Site

	Manhours	Rate	Labor Cost
Project Manager	2	$75.00	$150.00
Project Engineer	24	42.00	1,008.00
Construction Inspector	48	18.00	864.00
Clerical	16	18.00	288.00
Subtotal	90		$2,310.00

L) Providing Web Site for Project

	Manhours	Rate	Labor Cost
Project Manager	8	$75.00	$600.00
Project Engineer Construction	16	42.00	672.00
Clerical	24	18.00	432.00
Subtotal	48		$1,704.00

M) Additional Days to Contractor as per Letter of April 7, 2008

	Manhours	Rate	Labor Cost
Project Manager	24	$75.00	$1,800.00
Project Engineer Construction	240	42.00	10,080.00
Construction Inspector	960	18.00	17,280.00
Clerical	240	18.00	4,320.00
Subtotal	1,464		$33,480.00

COST PROPOSAL
ADDITIONAL SERVICES FOR ROCK ROAD PROJECT

N) Additional Inspection Services October 2006 to January 2007 due to Schedule Delay.

	Manhours	Rate	Labor Cost
Project Manager	40	$75.00	$3,000.00
Project Engineer Construction	700	42.00	29,400.00
Construction Inspector	360	18.00	6,480.00
Clerical	700	18.00	12,600.00
Subtotal	1,800		$51,480.00

O) Additional Inspection Services December 2009 to March 2010 due to Additional Days to Contractor

	Manhours	Rate	Labor Cost
Project Manager	32	$75.00	$2,400.00
Project Engineer	60	46.00	2,760.00
Project Engineer Construction	480	42.00	20,160.00
Construction Inspector	1540	18.00	27,720.00
Clerical	480	18.00	8,640.00
Subtotal	2,592		$61,680.00

TOTAL DIRECT LABOR	712		$213,876.00
OVERHEAD ON LABOR		155.00%	$331,507.80
TOTAL LABOR + OVERHEAD			$545,383.80
FIXED FEE		12.00%	$65,466.06

SUBCONSULTANTS

Allied Environmental Consultants, Inc.	$31,556.45
Rice & Foster – Landscape	$4,750.00
Arquan LLC (Web Support)	$1,500.00
Subtotal (Subconsultants)	$37,806.45
DIRECT EXPENSES	$65,600.00 Est.
Total Project	$714,236.31

Agenda Item No. III-9.

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: Kansas Water Pollution Control Revolving Fund – Stormwater Projects. **(**District VI)

INITIATED BY: Environmental Services
Public Works

AGENDA: New Business

Recommendation: Approve initial loan application submittals and authorize appropriate signatures. .

Background: The American Recovery and Reinvestment (ARRA) Act allocated funds to the Kansas Department of Health and Environment (KDHE) for innovative green infrastructure projects. The purpose of the ARRA is to stimulate the economy and create and retain jobs. This funding is designated for projects that naturally manage stormwater, reduces flooding risk and improves water quality.

Analysis: A staff work group was developed to evaluate and recommend funding needs for various City structures eligible for funding. The work group included representatives from Environmental Services and Public Works. The work group recommends constructing a green roof demonstration project for the Rounds and Porter Building, adjacent to City Hall. The City proposes to use the loan funds to improve the building by installing/constructing innovative environmental features including a green (vegetative) roof. Other stormwater demonstration projects include pervious parking pavement and bioswales. Green roofs provide environmental, aesthetic, and economic benefits, such as reduced storm water runoff for pollution prevention, thermal insulation, and longer life for building components. This project was discussed during the May 19, 2009 workshop. Submittal deadline for this project was May 15, 2009. Therefore, the City Manager approved the application in accordance with Administrative Regulation 2.4 prior to the workshop. On June 3, KDHE notified the City that the application had been approved. An award letter and a loan application packet will be sent to the City for additional application requirements.

Financial Considerations: KDHE has approved the City's proposal to fund the green roof project for the amount of $1,933,000. KDHE will forgive $1,494,750 (or 75%) of the principal. An interest rate of 3.10% is fixed throughout the repayment period on the remaining balance of $498,250. Public Works will be responsible for ensure that all appropriate CIP projects are properly approved.

Goal Impact: The grant supports the goals for Safe and Secure Communities, Efficient Infrastructure and Quality of Life**.**

Legal Considerations: The Law Department will review the loan application documents prior to submittal.

Recommendations/Actions: It is recommended that the City Council approve the loan appropriation when received, permit staff to complete the loan application packet, and authorize the Manager to sign necessary signatures for the additional application documents, as well as authorize appropriate signatures for award documents.

Attachments: Wichita Stormwater Projects, Kansas Water Pollution Control Revolving Fund Application and EPA Special Allocation Funding Letter

REVISED June 15, 2009

Agenda Item No. III-10.

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: Energy Efficiency and Conservation Block Grant (EECBG)
(All Districts)

INITIATED BY: Environmental Services
Public Works

AGENDA: New Business

Recommendation: Approve the application submittal to complete the EECBG grant requirements.

Background: The City of Wichita has been appropriated funding by the American Recovery and Reinvestment Act of 2009 through the Department of Energy (DOE). The purpose of the Recovery Act is to stimulate the economy and create and retain jobs. The DOE funding, the Energy Efficiency and Conservation Block Grant (EECBG), provides units of local and state government a mechanism to develop and implement projects to improve energy efficiency, reduce energy use and fossil fuel emissions in their communities. DOE requires that energy efficiency strategies are identified for this funding and are provided as part of the application.

Analysis: A City staff work group was developed to evaluate and recommend funding needs for various City structures and purposes that would meet the energy efficiency and conservation strategy as required in the grant program principals. The work group included representatives from Environmental Services, Public Works, City Manager's Office, Planning, Economic Development, Human Resources, Water Utilities, Century II, and Botanica. The work group recommends that several projects be approved for EECBG funding. These projects include several City facility energy reduction projects, improved traffic signal synchronization, community energy efficiency and air emissions reduction program, and a cardboard bailer for Century II. Two term-limited positions are created and proposed in these projects. One will be to coordinate the energy project grant reporting and recordkeeping requirements and one will be to primarily develop and implement ozone reduction strategies and environmental compliance activities. This project proposal includes a partnership with Wichita State University for continuing an annual community energy conference and technical assistance for the energy projects as part of the grant reporting requirements. These projects are all listed as eligible in grant documentation demonstrating that they meet the grant objectives. The City's current energy policy, adopted on June 26, 1979, will be used for initial guidance. One of the EECBG tasks will be to seek Council approval for a revised and updated Comprehensive Area Energy Policy. The grant deadline submittal is June 25, 2009. DOE will approval all applications prior to grant awards.

The work group also evaluated several other projects that are recommended for proposal in the DOE competitive grant process. Details on applying for competitive grants including eligibility and award criteria will be provided as a separate Funding Opportunity Announcement at a later date. This proposed project list is also attached. All project documentation, proposals and contracts must meet federal requirements.

Financial Considerations: DOE has allocated $3,519,500 for energy efficiency project implementation in the City of Wichita. This funding does not require a match. All projects must be contracted within 18 months and completed within 36 months.

Goal Impact: The grant supports the goals for Safe and Secure Communities, Efficient Infrastructure and Quality of Life**.**

Legal Considerations: The Law Department will review the documents for approval.

Recommendations/Actions: It is recommended that the City Council approve the application and ~~resolutions~~ **assurances**, authorize the Manger to sign the necessary signatures and submit supporting documents as required.

Attachments: EECBG Grant Project list; Supplemental Documentation required by the Grant; **and Grant** Application Package~~; and Resolutions for approval~~.

Energy Efficiency and Conservation Block Grant

PROJECTS LIST

EECBG Projects List		
Department	Project Name	Programmed Amount
Public Works	Energy Efficient Chiller and Cooling Tower for ES Building	$ 275,000
Public Works	Occupancy Sensors for Lighting Control for City Hall	$ 199,000
Public Works	Boiler Evaluation and Retrofit Program	$ 226,000
Public Works	Improved Traffic Signal Synchronization	$ 560,000
Planning/Public Works	McAdams Bike Pathway	$ 1,529,900
Environmental Services	Comprehensive Community Energy Efficient and Air Emissions Reduction and Grant Tracking Program*	$ 513,540
Century II	Century II Card Board Bailer	$ 15,000
ES/Various Dept.	Indirect Grant Costs	$ 201,060
		$ 3,519,500

Contingency List		
Department	Project Name	Programmed Amount
Botanica	Botanica Platinum LEED Demonstration and Education Center	$ 2,500,000
Water Utilities	Biogas Conversion at Lower Arkansas Water Quality Reclamation Facility	$ 1,500,000
Water Utilities	Solids Handling Upgrade at 4 Mile Creek Water Quality Reclamation Facility	$ 1,500,000
Public Works	Bike Pathways Projects	$ 11,989,982
		$ 17,489,982

*Community Energy Efficiency and Air Emissions Program Includes	Programmed Amount
2 staff positions, PC, telephone, and other charges and expenses for 36 months.	$ 280,240
WSU Partnership; Energy Conference; Program, promotion and material expenses.	$ 190,240
Environmental Tracking Software	$ 43,060
	$ 513,540

Rev. 6 15 2009

Wichita City Council June 16, 2009

CITY OF WICHITA

Environmental Services Department

June 11, 2009

To Whom It May Concern:

RE: Energy Efficiency and Conservation Block Grant – Assurances

In accordance with Title V, Subtitle E, Energy Efficiency and Conservation Block Grants, Sections 541 (3) (A) or 541 (3)(B) of Energy Independence and Security Act 2007, Public Law 110-140, the City of Wichita is an eligible unit of local government as a City with a population of at least 300,000.

As the duly authorized official of the City of Wichita, I certify Ms. Kay Johnson as the designated representative to receive funds and implement the Energy Efficiency and Conservation Block Grant (EECBG) Program. All subsequent contact relative to EECBG funding, implementation and reporting should be as follows:

Ms. Kay Johnson, Director
Department of Environmental Services
City of Wichita
1900 East 9th Street North
Wichita, KS 67204
Phone: (316) 268-8351
Fax: (316) 268-8390

Please let me know if you have any questions.

Sincerely,

Mayor Carl Brewer

CB/krs

Protecting People, Preserving the Environment

1900 E. Ninth Street – Wichita, Kansas 67214
Telephone (316) 268-8351 – Fax (316) 268-8390
www.wichitagov.org

City of Wichita
Davis Bacon Assurance

As a recipient of federal funding, the City of Wichita has extensive experience complying with the Davis-Bacon Act. We hereby provide assurance to the Department of Energy that funds awarded to the City of Wichita from DE-FOA-0000013 will be used in such a manner that all laborers on projects funded directly or indirectly with such funds shall be paid at rates equal to or greater than the applicable prevailing wage.
The City's Finance Department has been briefed on the requirements of the Recovery Act and Davis-Bacon. City staff involved in ARRA funding grants are being trained.

When issuing requests for proposals and bids to be funded with Recovery Act funds, the City of Wichita will include wage compliance language to ensure that all successful subcontractors and awardees will fully comply with the requirement of the Davis-Bacon Act and other Recovery Act provisions. Support and technical assistance will be provided where necessary to ensure such compliance. Compliance monitoring and review of projects have been built into our program plans and budgets to ensure compliance.

Janice K. Briggs, ACAS, CCA
City of Wichita Contract Compliance Officer
Finance Department
Purchasing Division

Project/Performance Site Location

Enter Project/Performance Site Primary Location (Required): Wichita, Kansas KS-004

Organization Name The City of Wichita, Kansas

DUNS 04-306-34-60

*Street : 455 N Main

*City : Wichita
County Sedgwick.
*State Kansas
Country United States
*Zip Code 67202.

*Project's Congressional District KS-004

City of Wichita Energy Efficiency & Conservation Strategy

Attachment D - As detailed in Part 1 of this announcement, all applicants must submit an Energy Efficiency and Conservation Strategy (EECS). Units of local government and Indian tribes have the option of submitting the EECS no later than 120 days after the effective date of the award or at the time of application. Units of local government and Indian tribes who chose to submit the EECS at the time of application shall use the format contained in Attachment D. This form should be saved in a file named "UIC-Strategy.pdf" and click on "Add Optional Other Attachment" to attach.

Grantee: City of Wichita
DUNS #: 04-306-34-60
Email: Kjohnson@wichita.gov

Date: 06/26/2009
Program Contact: Kay Johnson

1. Describe your government's proposed Energy Efficiency and Conservation Strategy. Provide a concise summary of your measureable goals and objectives, which should be aligned with the defined purposes and eligible activities of the EECBG Program. These goals and objectives should be comprehensive and maximize benefits community-wide. Provide a schedule or timetable for major milestones. If your government has an existing energy, climate, or other related strategy please describe how these strategies relate to each other.

   The City of Wichita's strategy focuses on five EECBG project activities:
   - Activity No. 5 – Energy Efficiency Retrofits
   - Activity No. 6 - Energy Efficiency and Conservation Programs for Buildings and Facilities
   - Activity No. 7 – Development & Implementation of Transportation Programs
   - Activity No. 9 – Energy Distribution
   - Activity No. 10 - Material Conservation Program

   In 1979, the City of Wichita adopted a Comprehensive Area Energy Policy which the City committed to respond to present and future energy requirements of the community and mitigate the effects of increasing energy costs and reductions through the adoption of specific action plans. The policy is Attachment 1. These action plans include:
   - Encouraging the optimum utilization of all alternate and conventional energy sources so that an adequate, flexible and reliable supply of energy for the City can be achieved.
   - Providing the public with information and education concerning the proper use of energy
   - Recognizing and accepting that impacts to the environment will be a consideration in all energy decisions.

   Due to conditions regarding certain projects, some actions were required to be initiated and implemented but are included as part of this grant application in accordance with grant instructions and guidelines. These actions were taken after February 19, 2009 as provided by the grant requirements. Indirect costs and some labor hours have also allocated and tracked and are being included in this application as part of the approved program.

Major Actions Timetable (from funding date):

Phase 1: Establish working group/committee that will provide program guidance. (This Workgroup started meeting in March 2009) Submit grant application prior to June 25, 2009.

Phase 2: Finalize package in response to any comments from DOE received after June 25, 2009, and issue Request for Project Bid Proposals for projects, if not already bid. Hire 2 staff members, and establish voluntary energy conservation and air quality programs. This includes both work with City departments and the community. Work with local university to assist tracking ozone reduction factors and other aspects of tracking projects improvements.

Phase 3: Begin program implementation within 90 days. Implement continuous monitoring, verification and inspection.

Phase 4: Ensure all EECBG funds are obligated within 18 months for authorized activities for the thirty-six (36) month period of performance.

2. Describe your government's proposed implementation plan for the use of EECBG Program funds to assist you in achieving the goals and objectives outlined in the strategy describe in question #1. Your description should include a summary of the activities submitted on your activity worksheets, and how each activity supports one or more of your strategy's goals/objectives.

Wichita's Planned Activities

Activity No. 5 - Energy Efficiency Retrofits
There are two components to this activity:

1) Occupancy Sensors - The City proposes to use funds to provide and install occupancy sensors to control lighting in spaces in city facilities that are occupied regularly but not continuously. The sensors provide convenience by turning lights on automatically when someone enters a room. They reduce lighting energy use by turning lights off soon after the last occupant has left the room.
2) Boiler evaluation and retrofit program – Wichita has up to 30 combustion boilers that need to be evaluated for efficiency and potential retrofits. Retrofits will be implemented based on contractor's recommendation and available funding.

Activity No. 7 - Development and Implementation of Transportation Programs:
There are two main components to this activity:

1) Traffic Light Synchronization - This project will synchronize 227 arterial intersections to provide smooth movement of traffic with minimal stops. The reduction of large numbers of vehicles sitting idle at an intersection leads to a reduction in vehicle

emissions due to reduced vehicle stops/starts and idling and a reduction in pavement wear due to a decrease in decelerations at intersections. The environmental benefits include a reduction of 66,340 tons of carbon dioxide annually.

2) McAdams Bike Pathway - This project will develop the McAdams Pathway, a ten-foot wide concrete bike path planned for approximately 2.6 miles. The bike path will connect two existing segments of Wichita's pathways network. The north end of the McAdams Pathway will connect to the 13.74-mile K-96 bike path. The south end of the McAdams Pathway will connect to a 21.5 network of connected pathways including the Canal Route and Gypsum pathways. The development of the McAdams Pathway will result in more than 35 miles of continuous bicycle specific infrastructure. City staff estimates that the development of the McAdams pathway could reduce the number of vehicle trips by approximately 160 one-way trips daily. This would reduce the amount of CO_2 in the air by approximately 5.6 million pounds over the estimated 25 year lifespan of the project. Additionally, the McAdams Pathway project results in approximately 36 FTEs over the lifetime of the project.

Activity No. 9 - Energy Distribution

The City proposes to use funds to replace a thirty (30) year old chiller at a City facility with a more efficient unit, significantly increasing energy efficiencies.

Activity No. 10 - Material Conservation Program

The City will purchase a cardboard baler to be used at Century II Performing Arts & Convention Center, a unique municipal facility due to its dramatic architectural style, its importance to the downtown area, and the economic impact it has on the community. The many conventions that are held at this facility generate significant quantities of cardboard. This will enable to facility to effectively collect and transport the cardboard to a recycling center.

Activity No. 6 - Comprehensive Community Energy Efficiency & Air Emissions Reduction Program

The City will develop and implement a voluntary energy conservation and air quality program which focuses on public education and forming partners to address ozone reduction. This program will support the following objectives:

- *Energy Efficiency and Conservation Program* which will include identifying effective methods for achieving maximum participation and efficiency rates, provide public education, and utilize measurement and verification protocols.
- *Development and Implementation of the Transportation Program* which supports measures that will conserve energy, reduce harmful air pollutants, and greenhouse gas emissions. In November 2008, the Wichita MSA was deemed in

attainment per the State of Kansas as the three year (2006–2008) averages of the fourth highest 8-hour ozone level at each monitor were within acceptable EPA ozone levels – all levels were below the national standard of 0.075 parts per million (ppm) . Cool and damp weather conditions this were key factors in reaching 2008 attainment, maintaining ozone compliance levels for the second summer in a row. However, the weather conditions cannot be depended on as a mechanism for compliance. The City will use funds to include public education for ozone reduction and develop documented partnerships with local agencies and businesses to address ozone reduction and green house gas emissions in the community.

3. Describe how your government is taking into account the proposed implementation plans and activities for use of funds by adjacent units of local government that are grant recipients under the Program (response not mandatory for Indian Tribes).

   The EECBG working group committee will coordinate with Sedgwick County and other neighboring municipalities to coordinate contractor outreach, training, funding, project protocols, monitoring procedures and marketing in an effort to streamline services and provide a consistent approach and best practices to area homeowners and businesses. The City will also work closely with the Chamber of Commerce to encourage area businesses o implement measures to address ozone reductions and reduce energy consumption.

4. Describe how your government will coordinate and share information with the state in which you are located regarding activities carried out with grant funds to maximize energy efficiency and conservation benefits (response not mandatory for Indian Tribes).

   We will enable our local government and business leaders to serve as speakers at regional and statewide workshops for local officials and businesses, participate in information sharing networks and databases, and generally contribute to the body of collective knowledge among local and state agency officials in this area. The State of Kansas has provided Wichita with a statement and is Attachment 2.

5. Describe how this plan has been designed to ensure that it sustains benefits beyond the EECBG funding period.

   Energy conservation measures continue throughout their lifetime to provide cost and energy savings and emissions reductions to homes and businesses. The results will be continually evaluated to track performance and program implementation, and the program will be modified as necessary to meet project goals and reporting requirements. Data collected will consist of but not limited to the energy savings in kWh and CCF by building type, energy cost savings, number of buildings, dollars spent and leveraged, building square footage, and audits performed and jobs created.

   Energy reduction due to signal synchronization will be estimated using Trafficware's Synchro software program (http://www.trafficware.com). The pre-optimization signal

timings will be inputted and compared to the optimized timings as to effects of vehicle stops and starts as well as wait times.

The City of Wichita will develop the McAdams Pathway with sensors to record the bicycle traffic along the pathway. The traffic use of the pathway will be used to track the energy saved. Tracking the amount of traffic on the pathway per hour will also assist with improving bicycle infrastructure throughout the City by providing information about the time of day and year when bicycles are most often utilized for transportation.

6. The President has made it clear that every taxpayer dollar spent on our economic recovery must be subject to unprecedented levels of transparency and accountability. Describe the auditing or monitoring procedures currently in place or that will be in place (by what date), to ensure funds are used for authorized purposes and every step is taken to prevent instances of fraud, waste, error, and abuse.

   The project will be managed by the City's Environmental Services (ES) Department with indirect oversight by Finance Department and Office of Controller. ES is responsible for developing and implementing sustainability programs and practices targeted at city departments, employees, the business community and the general public. The Department Director will be responsible for the plan development and implementation, and will regularly present budget and performance measures to the city manager and city council. The Department Director will work with the City's EECBG working committee of city, utility, and public stakeholders to review plans and documents for public input. Project highlights and results will be posted on the city's EECBG website. City funds for the project will be managed by the city manager and Finance Department. Measures project metrics will be developed and tracked in coordination with Public Works department. City's building inspection department will ensure installations are completed per project procedures.

ATTACHMENT 1

Policy 26
June 26, 1979

Subject: A Comprehensive Area Energy Policy
Section E-1, Conservation Principles and Practices
Section E-2, Alternate and Renewable Resources; Environmental Issues
Section E-3, Transportation and Fossil Fuel Needs

It is the policy of the City Commission of the City of Wichita to respond in a positive manner to the present and future energy requirements of this community and act to ameliorate the effects of increasing energy costs and energy shortages through adoption of specific energy plans of action.

Objectives

The City of Wichita will:

1) Develop and promote the effective use of energy in the city and discourage all forms of energy waste.

2) Maintain an active role in developing and instituting energy management programs aimed at promoting energy conservation; include energy considerations in all planning and properly utilize and manage energy resources used within City departments.

3) Include the full participation of citizens in the development and implementation of energy programs.

4) Consider in its decisions the energy needs of all classifications of users of each economic sector, including residential and commercial, industrial, transportation and electrical generation facilities, and governmental uses.

5) Promote energy education and the public dissemination of information on energy and its environmental, economic and social impacts.

6) Encourage the research, development, demonstration and application of alternate energy resources, particularly renewable resources.

7) Consider in its decision-making the social, economic and environmental impacts of energy-related activities so that detrimental effects of these activities are understood and minimized.

8) Develop and maintain energy emergency preparedness plans to minimize the effects of an energy shortage within the city.

Procedure

The following procedures are available to accomplish the objectives:

1) Encouraging the optimum utilization of all alternate and conventional energy sources so that an adequate, flexible and reliable supply of energy for the city of Wichita can be achieved.

2) Ensuring and maintaining the efficient utilization of energy in all municipal operations.

3) Providing the public with information and education concerning the proper use of energy.

4) Utilizing the City's authority to legislate and ability to influence legislation and regulation at other levels of government to assure efficient use of energy.

5) Promoting and encouraging the use of financial incentives to assist in the conservation of energy and/or application of alternative energy sources.

6) Promoting the utilization of alternate energy sources as completely as practical.

7) Providing a structure so that the community will be assured an adequate transportation system, including public and private alternatives.

8) Recognizing and accepting that impacts on the environment will be a consideration in all energy decisions.

The Plan

The Comprehensive Area Energy Policy (attached) is presented in three Sections, each addressing separate and major energy-related matters. Each Section is subdivided, identifying four categories of Plans of Action to be considered and implemented. These subsections are entitled: (a) Awareness Programs; (b) City Operations Directives; (c) Private Sector Responsibilities; and (d) Regulatory Measures. Each of these actions may require individual adoption, initiation, implementation and/or promulgation.

ATTACHMENT 2

Kansas Corporation Commission
State Energy Office
Stimulus Outline

The State Energy Office of the Kansas Corporation Commission proposes to U.S. DOE and to the Commission itself, the following uses for the American Recovery and Reinvestment Act of 2009:

State Energy Program ($38 million)

We propose to DOE and to the Commission to establish a revolving loan fund for energy efficiency upgrades for residential and light commercial properties in Kansas, with the goal of sustainability. The applicant will be able to access revolving loans through either their participating energy provider/utility or through participating banks. An energy audit will be required and will start the process, culminating with an approved energy conservation plan and verified energy upgrades to the building/dwelling itself. Both the utility/bank and the State Energy Office will have established protocols for measurement and verification.

Energy Efficiency Conservation Block Grant ($9.5 million)

We propose to the DOE and to the Commission itself the following two uses for EECBG funds:

1) Renewable Energy – We will establish a renewable energy grant program for 25% of the cost of renewable energy used to generate electricity for a local unit of government in Kansas (K-12, Community College, Vocational Technical, City, County) or a unit of the state government. The maximum award will be $250,000 per project. Scoring will include additional points for completion of the state's existing Facilities Conservation Improvement Program (FCIP). The funding will be competitive and will most likely be implemented in a series of funding and scoring rounds. Funds allocated will be $3.8 million.
2) Facility Conservation Improvement Program Enhancements – The State Energy Office of the KCC runs a very successful and effective Facility Conservation Improvement Program. The FCIP program is a self financing program for units of government in Kansas (local or state), or for schools and non-profits. Up front capital improvements are made with a participating energy service company (ESCO) and then paid for over the life of the project through energy savings. We propose to the DOE and the Commission additional enhancements to FCIP to bring a larger number of projects and to do more in depth energy remodeling of participating building(s). Funds allocated will be $5.7 million.

The third program is proposed by DOE to be an appliance rebate program of approximately $3.7 million for more efficient appliance purchase and use in Kansas. The State Energy Office has proposed no particular program design, as the DOE has release no funding announcement to date.

OMB Number: 4040-0004
Expiration Date: 01/31/2009

Application for Federal Assistance SF-424

Version 02

*1. Type of Submission:	*2. Type of Application	* If Revision, select appropriate letter(s)
☐ FORMCHECKBOX ☐	☒ New	
☒ Application	☐ Continuation	*Other (Specify)
☐ Changed/Corrected Application	☐ Revision	

3. Date Received:

4. Applicant Identifier:
City of Wichita

5a. Federal Entity Identifier:

*5b. Federal Award Identifier:

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

*a. Legal Name: The City of Wichita, Kansas

*b. Employer/Taxpayer Identification Number (EIN/TIN):
48-6000653

*c. Organizational DUNS:
04-306-34-60

d. Address:

*Street 1: 455 N Main
Street 2:
*City: Wichita
County: Sedgwick
*State: Kansas
Province:
*Country: United States
*Zip / Postal Code 67202

e. Organizational Unit:

Department Name:
Environmental Services

Division Name:
Environmental Compliance

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Ms.
*First Name: D.
Middle Name: Kay
*Last Name: Johnson
Suffix:

Title: Environmental Services Director

Organizational Affiliation:

*Telephone Number: 316-268-8351
Fax Number: 316-858-7394

*Email: Kjohnson@wichita.gov

OMB Number: 4040-0004
Expiration Date: 01/31/2009

Application for Federal Assistance SF-424 Version 02

***9. Type of Applicant 1: Select Applicant Type:**

C. City or Township Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

*Other (Specify)

***10 Name of Federal Agency:**

Department of Energy

11. Catalog of Federal Domestic Assistance Number:

81.128

CFDA Title:

Energy Efficiency and Conservation Block Grant Program (EECBG)

***12 Funding Opportunity Number:**

DE-FOA-0000013

*Title:

RecoverY Act - Energy Efficiency and Conservation Block Grants

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

City of Wichita

***15. Descriptive Title of Applicant's Project:**

City of Wichita Energy Efficiency & Conservation Strategy

Application for Federal Assistance SF-424 Version 02

16. Congressional Districts Of:

*a. Applicant: *b. Program/Project:

17. Proposed Project:

*a. Start Date: within 120 days after 06/25/2009 - approximately October 26, 2009
*b. End Date: October 26, 2012

18. Estimated Funding ($):

*a. Federal $3,519,000
*b. Applicant
*c. State
*d. Local
*e. Other
*f. Program Income
*g. TOTAL

***19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on _____

☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.

☐ c. Program is not covered by E. O. 12372

***20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)**

☐ Yes ☒ No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U. S. Code, Title 218, Section 1001)

☐ ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions

Authorized Representative:

Prefix: *First Name:
Middle Name:
*Last Name:
Suffix:

*Title:

*Telephone Number: Fax Number:

* Email:

*Signature of Authorized Representative: *Date Signed:

EECBG Activity Worksheet

Grantee: City of Wichita Date: 06/11/2009

DUNS #: 43063469 Program Contact Email: jmayer@wichita.gov

Program Contact First Name: Kay Last Name: Johnson

Project Title: Boiler survey, analysis and combustion burner retrofit

Activity: 5. Energy Efficiency Retrofits If Other:

Sector: Public If Other:

Proposed Number of Jobs Created: 2.50 Proposed Number of Jobs Retained:

Proposed Energy Saved and/or Renewable Energy Generated: Unknown at this time

Proposed GHG Emissions Reduced (CO2 Equivalents):

Proposed Funds Leveraged:

Proposed EECBG Budget: 226,000.00

Projected Costs Within Budget: Administration: $15,820.00 Revolving Loans: Subgrants:

Project Contact First Name: James Last Name: Mayer Email: jmayer@wichita.gov

Metric Activity: If Other:

Project Summary: *(limit summary to space provided)*

This project will be a no-impact survey of approx 30 existing City owned combustion burner boilers and various locations throughout the City. Sites such as Century II, Fire Stations, Water Utility Facilities,Housing and the Mid-Continent Airport. Once the survey is complete and comprehensive report will be submitted for each boiler and recommendations for retrofits identified. This information will be used to take bids from local licensed contractors to make energy efficiency retrofits to the burner assemblies of each boiler.

*If you are proposing more than one activity, save this file as many times as needed with successive page numbers. For example: "OH-CITY-Columbus-Project Activity **page 1**.pdf," "OH-CITY-Columbus-Project Activity **page 2**.pdf," and continue as needed.*

EECBG Activity Worksheet

Grantee: City of Wichita Date: 06/15/2009

DUNS #: 43063460 Program Contact Email: Kjohnson@wichita.gov

Program Contact First Name: Kay Last Name: Johnson

Project Title: Comprehensive Community Energy Efficiency & Air Emissions Program

Activity: 7. Transportation If Other:

Sector: All Sectors If Other:

Proposed Number of Jobs Created: 2.00 Proposed Number of Jobs Retained: 0.00

Proposed Energy Saved and/or Renewable Energy Generated: !0% energy reduction over 3 yr time frame

Proposed GHG Emissions Reduced (CO2 Equivalents):

Proposed Funds Leveraged: $0.00

Proposed EECBG Budget: 513,540.00

Projected Costs Within Budget: Administration: $0.00 Revolving Loans: Subgrants:

Project Contact First Name: Kay Last Name: Johnson Email: Kjohnson@wichita.gov

Metric Activity: Workshops, Training, and Education If Other:

Project Summary: *(limit summary to space provided)*

The Comprehensive Community Energy Efficiency and Air Emissions Reduction Program will promote energy efficiency and renewable energy as a priority and coordinate energy efforts throughout the local government and the community. Initial staffing will be two full-time positions. The goal of this office will be to revise the City's comprehensive energy strategy. The key responsibilities of the program include: producing a baseline inventory of all energy use by facility and operation, tracking future energy use, assessing the potential value of energy improvements, securing resources to implement the energy strategy, implementing energy projects and air emission reduction programs, tracking and communicating results; and raising the visibility of the program community-wide. The program will serve as the focus point for forming public/private partnerships and communicating with surrounding communities and the state energy office to leverage funding and implement wider ranged policies and programs.

This program meets EECBG program core principles by establishing a commitment to prioritize energy efficiency, conservation and renewable energy to meet energy demand in the community. Current energy performance will be benchmarked and an aggressive energy strategy developed to reduce energy use and contribute to local environmental goals for sustainability and climate protection. The program will coordinate efforts to leverage public/private partnerships, state,federal and other funding sources to implement programs that will create new energy sector jobs and increase demand for energy conservation and renewable energy projects.

The program will play a significant role in assuring that all the desired EECBG Program Outcomes are achieved as listed in the FOA. In particular, the establishment of this program is an excellent way to improve coordination of energy-related policies and air emission programs not only in the community between government, private sector, utilities and non-profits but also with other regional and state energy and air quality programs to maximize the impact of this program on long-term local priorities.

The Comprehensive Community Energy Efficiency and Air Emissions Reduction Program will be involved in the following eligible activities: Residential and Commercial Building Energy Audits and Energy Efficiency and Conservation Programs for Buildings and Facilities. In addition, the energy office may be involved in any or all of the following eligible activities as it explores and implements energy saving opportunities: Retain Technical Consultant Services, Financial Incentive Programs, Energy Efficiency Retrofits, Development and Implementation of Transportation Programs, Building Codes and Inspections, Energy Distribution, Material Conservation Programs, Reduction and Capture of Methane and Greenhouse Gases, Traffic Signals and Street Lighting and Renewable Energy Technologies on Government Buildings.

If you are proposing more than one activity, save this file as many times as needed with successive page numbers. For example: "OH-CITY-Columbus-Project Activity page 1.pdf," "OH-CITY-Columbus-Project Activity page 2.pdf," and continue as needed.

EECBG Activity Worksheet

Grantee: City of Wichita, Kansas Date: 06/09/2009

DUNS #: 43063460 Program Contact Email: bcoon@wichita.gov

Program Contact First Name: Kay Last Name: Johnson

Project Title: Synchronization of Traffic Signals

Activity: 7. Transportation If Other:

Sector: Public If Other:

Proposed Number of Jobs Created: 3.00 Proposed Number of Jobs Retained: 2.00

Proposed Energy Saved and/or Renewable Energy Generated: Reduction in fossil fuel consumption

Proposed GHG Emissions Reduced (CO2 Equivalents): 66,340.000

Proposed Funds Leveraged: $3,344,629.00

Proposed EECBG Budget: 560,000.00

Projected Costs Within Budget: Administration: $560,000.00 Revolving Loans: $0.00 Subgrants: $0.00

Project Contact First Name: Brian Last Name: Coon Email: bcoon@wichita.gov

Metric Activity: Transportation If Other:

Project Summary: *(limit summary to space provided)*

The synchronization project will synchronize 227 arterial intersections to provide smooth movement of traffic with minimal stops. The reduction of large numbers of vehicles sitting idle at an intersection leads to a reduction in vehicle emissions due to reduced vehicles stops, starts and idling; a reduction in lost time to the drivers; and a reduction in pavement wear and the environmental and economic costs associated with reconstruction due to a reduction in decelerations at intersections. The environmental benefit will be approximately 66,340 tons of CO2 equivalent per year, according to formulas developed by The Climate Trust.

If you are proposing more than one activity, save this file as many times as needed with successive page numbers. For example: "OH-CITY-Columbus-

EECBG Activity Worksheet

Grantee: City of Wichita Date: 06/26/2009

DUNS #: 43063460 Program Contact Email: Kjohnson@wichita.gov

Program Contact First Name: Kay Last Name: Johnson

Project Title: McAdams Bike Pathway

Activity: 7. Transportation If Other:

Sector: Transportation If Other:

Proposed Number of Jobs Created: 36.75 Proposed Number of Jobs Retained: 10.00

Proposed Energy Saved and/or Renewable Energy Generated: 10,752,630 kwh

Proposed GHG Emissions Reduced (CO2 Equivalents): 5,637,865.000

Proposed Funds Leveraged: $0.00

Proposed EECBG Budget: 1,529,900.00

Projected Costs Within Budget: Administration: $183,588.00 Revolving Loans: $0.00 Subgrants: $0.00

Project Contact First Name: Carl Last Name: Haas Email: chaas@wichita.gov

Metric Activity: Transportation If Other:

Project Summary: *(limit summary to space provided)*

The project is to construct a bike path to connect an existing suburban bike path route (the K-96 Bike Path) to an existing City core bike path network (via the I-135 Bike Path). This connection will facilitate an energy efficient transportation method for citizens to reach downtown business places with no fuel costs.

If you are proposing more than one activity, save this file as many times as needed with successive page numbers. For example: "OH-CITY-Columbus-

EECBG Activity Worksheet

Grantee: City of Wichita Date: 06/11/2009

DUNS #: 33063460 Program Contact Email: jmayer@wichita.gov

Program Contact First Name: James Last Name: Mayer

Project Title: Energy efficient chiller and cooling tower for Environmental Services building

Activity: 5. Energy Efficiency Retrofits If Other:

Sector: Public If Other:

Proposed Number of Jobs Created: 2.00 Proposed Number of Jobs Retained:

Proposed Energy Saved and/or Renewable Energy Generated: 214,552Kwh

Proposed GHG Emissions Reduced (CO2 Equivalents): 154.000

Proposed Funds Leveraged:

Proposed EECBG Budget: 275,000.00

Projected Costs Within Budget: Administration: $12,500.00 Revolving Loans: Subgrants:

Project Contact First Name: James Last Name: Mayer Email: jmayer@wichita.gov

Metric Activity: If Other:

Project Summary: *(limit summary to space provided)*

Replace the 30 year old chiller and 14 year old cooling tower with new technology, high efficiency chiller and cooling tower. Both units will be equipped with variable frequency motor drives which will now allow the machines to load and unload according to cooling demand. This will entail a collaborative installation effort between City staff and outside contractors as they update the 30 year old building mechanical and electrical systems and integrate them.

*If you are proposing more than one activity, save this file as many times as needed with successive page numbers. For example: "OH-CITY-Columbus-Project Activity **page 1**.pdf," "OH-CITY-Columbus-Project Activity **page 2**.pdf," and continue as needed.*

APPLICANT'S NAME: City of Wichita

OMB Approval No. 0348-0041

BUDGET INFORMATION - Construction Programs

NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case, you will be notified.

COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Columns a-b)
1 Administrative and legal expenses	$65,900.00	$0.00	$65,900.00
2 Land, structures, rights-of-way, appraisals, etc.	$0.00	$0.00	$0.00
3 Relocation expenses and payments	$0.00	$0.00	$0.00
4 Architectural and engineering fees	$0.00	$0.00	$0.00
5 Other architectural and engineering fees	$110,000.00	$0.00	$110,000.00
6 Project inspection fees	$110,000.00	$0.00	$110,000.00
7 Site work	$264,800.00	$0.00	$264,800.00
8 Demolition and removal	$21,550.00	$0.00	$21,550.00
9 Construction	$1,086,350.00	$0.00	$1,086,350.00
10 Equipment	$696,000.00	$0.00	$696,000.00
11 Miscellaneous	$124,000.00	$0.00	$124,000.00
12 SUBTOTAL	$2,478,600.00	$0.00	$2,478,600.00
13 Contingencies	$0.00	$0.00	$0.00
14 SUBTOTAL	$2,478,600.00	$0.00	$2,478,600.00
15 Project (program) income	$0.00	$0.00	$0.00
16 TOTAL PROJECT COSTS (*subtract #15 from #14*)	$2,478,600.00	$0.00	$2,478,600.00
FEDERAL FUNDING			
17 Federal assistance requested, calculated as follows: (Consult Federal agency for Federal percentage share.) Enter the resulting Federal share.	Enter eligible costs from line 16c Multiply X 61.72436%		$1,529,900.00

Previous Edition Usable

Authorized for Local Reproduction

Standard Form 424C (Rev. 7-97)
Prescribed by OMB Circular A-102

Applicant Name: City of Wichita

Award Number:

Budget Information - Non Construction Programs

OMB Approval No. 0348-0044

Section A - Budget Summary

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. EECBG	81.128					$0
2.						$0
3.						$0
4.						$0
5. Totals		$0	$0	$0	$0	$0

Section B - Budget Categories

6. Object Class Categories	Grant Program, Function or Activity				Total (5)
	Community Energy Program	(2)Cardboard Baler	(3)	(4)	
a. Personnel	$193,352				$193,352
b. Fringe Benefits	$86,868				$86,868
c. Travel	$5,000				$5,000
d. Equipment	$3,320	$15,000			$18,320
e. Supplies	$48,000				$48,000
f. Contractual	$30,000				$30,000
g. Construction	$0				$0
h. Other	$40,000				$40,000
i. Total Direct Charges (sum of 6a-6h)	$406,540		$0	$0	$406,540
j. Indirect Charges	$107,000	$15,000			$122,000
k. **Totals** (sum of 6i-6j)	$513,540	$15,000	$0	$0	$528,540
7. Program Income					$0

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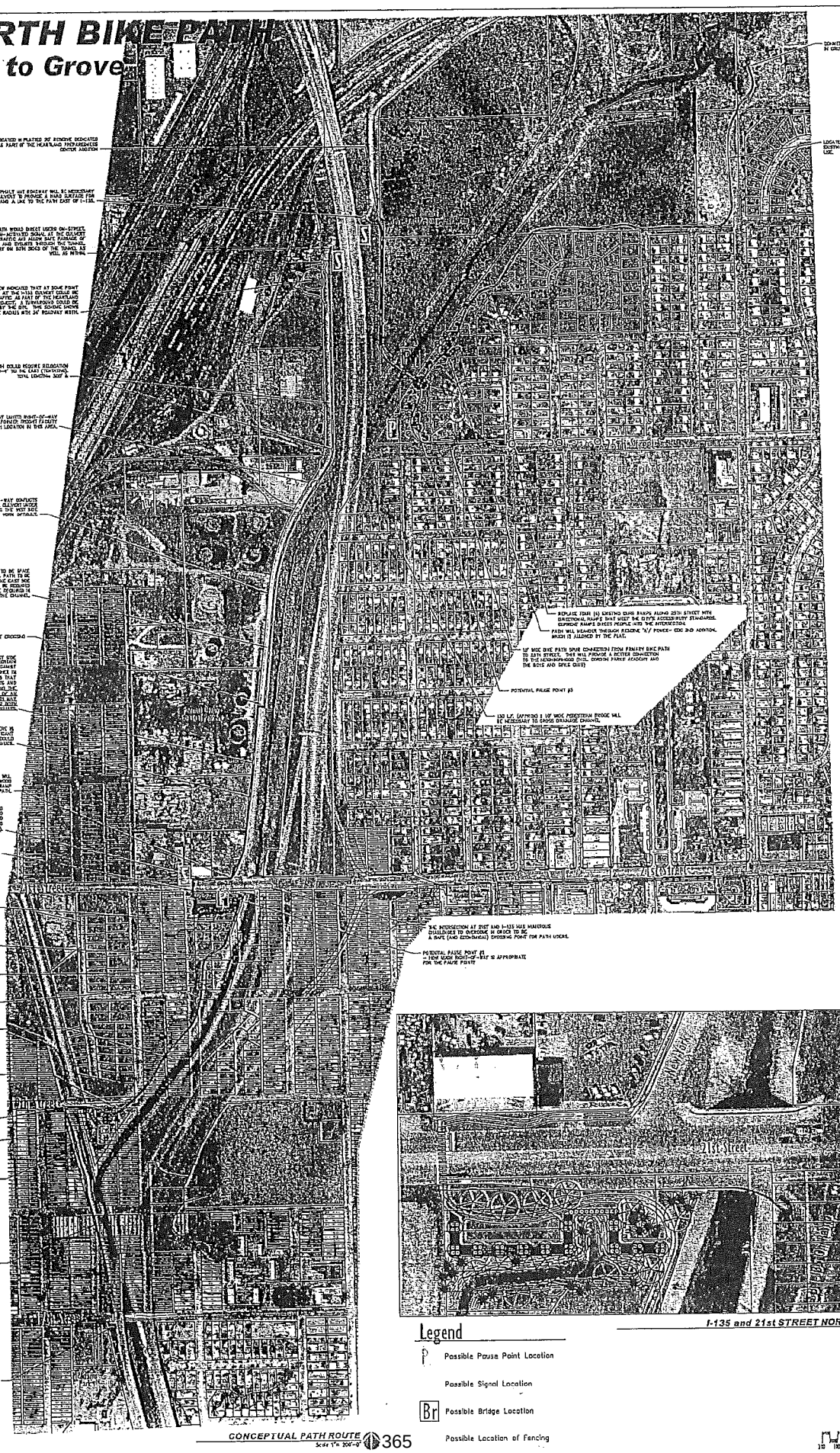
I-135 NORTH BIKE PATH
17th Street to Grove



I-135 and 21st STREET NORTH INTERCHANGE

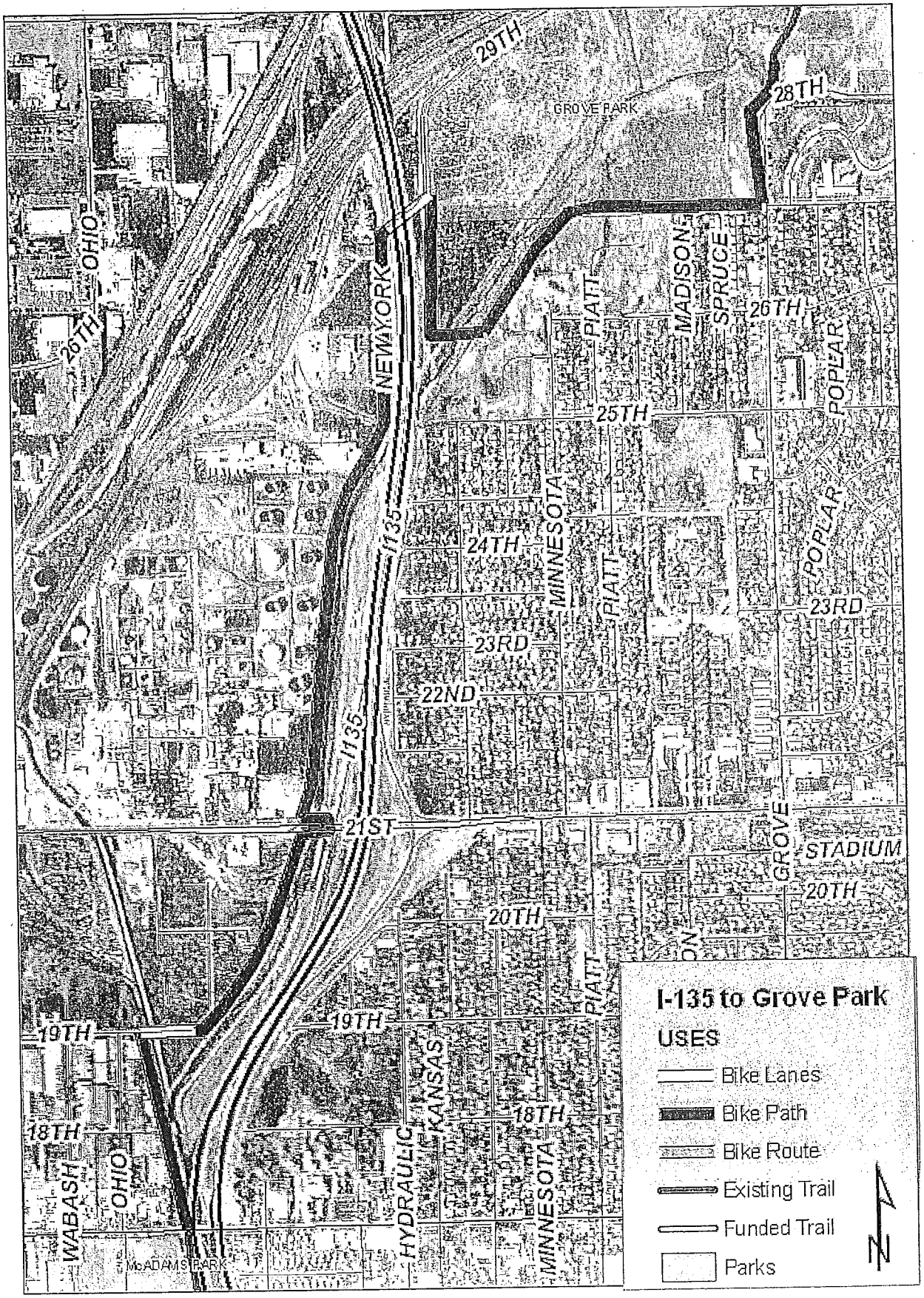
Legend

- Possible Pause Point Location
- Possible Signal Location
- Br Possible Bridge Location
- Possible Location of Fencing

CONCEPTUAL PATH ROUTE

Scale 1" = 200'

I-135 to K-96 Bike Path



FINANCIAL MANAGEMENT ASSESSMENT

This assessment should be completed, signed and certified by the Applicant's Financial Officer.

	YES	NO
1. Have you previously done business with DOE?	☐	☑
2. Have you previously done business with any other Federal Agency? If so, please identify:	☑	☐
3. Can the Applicant's Financial Officer or Independent Auditor certify that the Applicant has a financial management system sufficient to meet the requirements of 10 CFR 600.220? If yes, please skip to question #10 and sign/certify below.	☑	☐
4. Does your accounting system have the ability to track costs on a reimbursable basis?	☐	☐
5. Does your system allow for accurate, current and complete financial reporting, and record keeping as well as the maintaining of adequate source documentation?	☐	☐
6. Does your system allow for effective internal controls and accountability?	☐	☐
7. Does your system allow for effective and efficient cash management procedures?	☐	☐
8. Does your system prohibit subaward at any tier to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs? ☐		☐
9. The expenditure of $500,000 or more of Federal funds in a fiscal year requires an organization to have an audit performed in accordance with OMB Circular A-133. Has your organization had such an audit performed?	☐	☐
10. If yes, please provide the most recent report or a copy of the SF-SAC forms filed with the Federal Audit Clearinghouse. If no, proceed to the next statement and certify by checking the YES block.		
I understand the audit requirements and will comply with the provisions of OMB Circular A-133.	☑	☐

Carol F. McMillan

CAROL F. McMILLAN, CONTROLLER — June 3, 2009

PRINTED NAME, TITLE AND PHONE NUMBER OF INDIVIDUAL COMPLETING FORM — DATE

By signing this form, the above individual certifies that the responses provided to this survey are accurate as of the date.

If "NO" has been selected for any of the statements above, please provide further explanation on page 2.

Applicant Name: City of Wichita

Award Number:

Budget Information - Non Construction Programs

OMB Approval No. 0348-0044

Section A - Budget Summary

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. EECBG	81.128					$0
2.						$0
3.						$0
4.						$0
5. Totals		$0	$0	$0	$0	$0

Section B - Budget Categories

6. Object Class Categories	Grant Program, Function or Activity (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$71,398/yr				$0
b. Fringe Benefits	$21,682/yr				$0
c. Travel	$2,500				$2,500
d. Equipment	$10,000	$15,000	$226,000		$251,000
e. Supplies	$45,000	$1			$45,001
f. Contractual	$10,000/yr				$0
g. Construction	$0				$0
h. Other	$20,000				$20,000
i. Total Direct Charges (sum of 6a-6h)	$77,500		$226,000	$0	$303,500
j. Indirect Charges	$10,000	$15,001			$25,001
k. **Totals** (sum of 6i-6j)	$165,000	$15,001	$226,000	$0	$328,501
7. Program Income					$0

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Section C - Non-Federal Resources

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) **Totals**
8.				$0
9.				$0
10.				$0
11.				$0
12. **Total** (sum of lines 8 - 11)	$0	$0	$0	$0

Section D - Forecasted Cash Needs

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th quarter
13. Federal	$0				
14. Non-Federal	$0				
15. **Total** (sum of lines 13 and 14)	$0	$0	$0	$0	$0

Section E - Budget Estimates of Federal Funds Needed for Balance of the Project

	Future Funding Periods (Years)			
(a) Grant Program	(b) First	(c) Second	(d) Third	(e) Fourth
16.				
17.				
18.				
19.				
20. **Total** (sum of lines 16-19)	$0	$0	$0	$0

Section F - Other Budget Information

21. Direct Charges	22. Indirect Charges

23. Remarks

City of Wichita, KS EECBG Funding Opportunity
DE-FOA-0000013 – CFDA # 81.128
BUDGET JUSTIFICATION
BUDGET PERIOD: 3 years starting after DOE Grant Award

Shovel Ready Projects:

Project I: Comprehensive Community Energy Efficient and Air Emissions Reduction & Grant Tracking Program

Personnel ($ 193,366)
Energy Coordinator (EC)
The EC will be responsible for the overall project management. This person will promote energy efficiency and renewable energy as a priority and coordinate energy efforts throughout the local government and the community. This position will also be responsible for monitoring, tracking and communicating results of the various EECBG project activities.
Environmental Resource Specialist (ERS)
The ERS will share the responsibility of overseeing the overall project management. This person will track and monitor Greenhouse Gas Emissions, promote an ozone reduction program, and assist the City's third party contractor in report tracking. This position will assist the EC in coordinating Wichita's annual Energy Conference.

Fringe Benefits ($ 108,987)
Wichita's current negotiated fringe benefit rate for full-time employees is 31%. This rate covers Social Security, FICA, health/life/disability insurance, retirement and unemployment compensation.

Travel & Training ($ 5,000)
Staff may be traveling to various training seminars with regards to energy efficiency and air quality programs.

Equipment ($ 3,320)
The City is requesting $3,320 to purchase telephones and computers for staff.

Software ($ 35,520)
Software is need to track and measure EECBG projects, greenhouse gases, and sustainability activities that will be implemented by the City and promoted throughout the community. The software is $29,600, with annual maintenance costs of $2,960.

Supplies ($ 30,000)
For purposes of the project, it will be necessary to purchase various office supplies, and promotional materials.

Consulting Fees ($30,000)
The project will be working with University staff to evaluate the tracking and monitoring program for EECBG record requirements.

City of Wichita, KS EECBG Funding Opportunity
DE-FOA-0000013 – CFDA # 81.128

Energy Conference, Marketing, Promotional Materials & Contractuals ($67,000)
An annual energy conference will be conducted to display energy efficient products, exchange technical and regulatory information, and conduct tours of energy efficient facilities. This budget allocation is proposed for facility rental, marketing materials, and diems for speakers. The City of Wichita will request $25,000 each year of City Mill Levy money to be used to fund the majority of the Energy Conference. This totals $75,000 which shall be leveraged funds.

Other Expenses ($10,000)
Other expenses will include IT costs and additional expenses for professional development trainings.

Indirect Costs ($57,347)
These expenses are being requested to cover indirect costs associated with working on this project on the City's facilities.

Project II: Energy Efficient Chiller and Cooling Tower ($ 275,000)
Replace 30 year old chiller with energy efficient model, resulting in energy savings.

Project III: Occupancy Sensors for Lighting Control ($ 199, 000)
Rewire building lighting circuits in all private offices, restrooms, conference rooms and break rooms on all 13 floors of City Hall, to accept occupancy sensors to reduce lighting energy consumption by an estimated 25%. This would entail the use of a contractor to perform the rewiring and install 383 occupancy sensors throughout the building.

Project IV: Boiler Evaluation and Retrofit Program ($ 226,000) Wichita has up to 30 combustion boilers that need to be evaluated for efficiency and potential retrofits. Retrofits will be implemented based on contractor's recommendation and available funding.

Project IV: Improved traffic Synchronization ($ 560,000)
The synchronization project will synchronize 227 arterial intersections to provide smooth movement of traffic with minimal stops.

Project V: McAdams Bike Pathway ($ 1,529,900)
The project is to construct a bike path to connect an existing suburban bike path route (the K-96 Bike Path) to an existing City core bike path network (via the I-135 Bike Path). This connection will facilitate an energy efficient transportation method for citizens to reach downtown business places with no fuel costs.

Project VI: Cardboard Baler for Century II Convention Center ($15,000)
Efficient recycling of cardboard will free space and create a safer working environment. This will be managed as a part of a comprehensive waste management system at the City's main convention center facility.

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(3/2009) OPI=320
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U.S. DEPARTMENT OF ENERGY

ENVIRONMENTAL QUESTIONNAIRE

I. BACKGROUND

The Department of Energy (DOE) National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR 1021) require careful consideration of the potential environmental consequences of all proposed actions during the early planning stages of a project or activity. DOE must determine at the earliest possible time whether such actions will require either an Environmental Assessment or an Environmental Impact Statement, or whether they qualify for a Categorical Exclusion. To comply with these requirements, an Environmental Questionnaire must be completed for each proposed action to provide DOE with the information necessary to determine the appropriate level of NEPA review.

II. INSTRUCTIONS

Separate copies of the Environmental Questionnaire should be completed by the principal proposer and appropriate proposer's subcontractor. In addition, if the proposed project includes activities at different locations, an independent questionnaire should be prepared for each location. Supporting information can be provided as attachments.

In completing this Questionnaire, the proposer is requested to provide specific information and quantities, when applicable, regarding air emissions, wastewater discharges, solid wastes, etc., to facilitate the necessary review. The proposer should identify the location of the project and specifically describe the activities that would occur at that location. In addition, the proposer will be required to submit an official copy of the project's statement of work (SOW) or statement of project objective (SOPO) that will be used in the contract/agreement between the proposer and DOE.

III. QUESTIONNAIRE

A. PROJECT SUMMARY

1. Solicitation/Project Number: _____
2. Proposer: City of Wichita
3. Principal Investigator: Carl R. Haas, PE
   Telephone Number: 316-268-4505
4. Project Title: McAdams Bike Path Connection
5. Duration: One year
6. Location(s) of Performance (City/Township, County, State): City of Wichita
   Sedgwick County
   Kansas
7. Identify and select checkbox with the predominant project work activities under Group A-7b or A-7c.

Group A-7b

☐ Work or project activities does NOT involve new building/facilities construction and site preparation activities. This work typically involves routine operation, modification, and retrofit of existing utility and transportation infrastructure, laboratories, commercial buildings/properties, offices and homes, test facilities, factories/power plants, vehicles test stands and components, refueling facilities, greenspace infrastructure, or other existing facilities.

Group A-7c

☒ Work or project activities typically involves major building or facility construction, site preparation; the installation, replacement, or major modifications of energy system prototypes and infrastructure, access right-of-ways and roads; utility, greenspace, and transportation infrastructure, vehicle test facilities; commercial buildings/properties, fuel refinery/mixing facilities, factories/power plants; and other types of energy efficiency/conservation related systems, structures, and facilities. This work can require new or modified regulatory permits, environmental sampling and monitoring requirements, master planning, public involvement, and environmental impact review.

☐ Other types of work or project activities not listed. (please describe):

8. Summarize the objectives of the proposed work. List activities planned at the location as covered by this Environmental Questionnaire. Construction of a bikepath to connect suburban areas using the K-96 Bike Path to the I-135 Bike Path which leads to downtown business areas in the City of Wichita for the purposes of energy conservation by savings of fuel for motorized vehicles.

9. List all other locations where proposed work or project would be performed by project's proposer and subcontractors.

10. Identify major project operation related materials and waste that would be used, consumed, and produced by this project or activity.

11. Provide a brief description of the project location (physical location, surrounding area, adjacent structures). This project corridor begins at the west end of the completed K-96 Bike Path at Grove Park near 28th Street North and Grove Street. The corridor leads south and west behind residential areas past a small pause point and bridges across the East Fork of the Chisholm Creek. An improved section of walk along 25th Street joins the path before the bridge. This walk section provides access from Gordon Parks Academy and the Boys and Girls Clubs east of that path intersection. From the creek the path heads north to the New York Street underpass (beneath I-135) and proceeds southwest through the tunnel then south along New York Street past former industrial (refinery) areas to 21st Street North. The path crosses 21st Street at a pedestrian signal to a designed pause point on the south side of the street. From the 21st Street North pause point the path proceeds south paralleling the west side of I-135 to another pause point at 19th Street North. The path heads west a short distance across an existing box bridge then south along Ohio Street to 17th Street North and the north side of McAdams Park to complete the connection corridor. Pause points include benches, water fountains, trash receptacles, signage and landscaping with native trees and grasses.

12. Attach a site plan or topographic map of the project work area.

B. ENVIRONMENTAL IMPACTS

This section is designed to obtain information for objectively assessing the environmental impacts of a proposed project. NEPA procedures require evaluations of possible effects (including land use, energy resource use, natural, historic and cultural resources, and pollutants) from proposed projects on the environment.

1. Land Use

a. Characterize present land use where the proposed project would be located.

☒ Urban	☒ Industrial	☐ Commercial	☐ Agricultural
☐ Suburban	☐ Rural	☒ Residential	☐ Research Facilities
☐ Forest	☐ University Campus	☐ Other	

b. Describe how land use would be affected by planned construction and project activities.

☐ No construction would be anticipated for this project.

The project would provide alternate access to the Urban areas adjacent to the Bike Path and a connction to business areas. The path would also improve value to the abandoned industrial areas to make them more attractive for economic

development. The would be little impact to the Residential areas other than improved energy efficient access to business areas in the City's core and added value to the properties.

c. Describe any plans to reclaim/replant areas that would be affected by the proposed project.
☐ No land areas would be affected.
The Bike Path as designed would include landscaping at pause points and along the corridor at convenient locations. Any disturbed areas due to construction will be restored, replanted and maintained to facilitate healthy plant growth.

d. Would the proposed project affect any unique or unusual landforms (e.g., cliffs, waterfalls, etc.)?
☒ No ☐ Yes (describe)

e. Would the proposed project be located in or near a national park or wilderness area?
☒ No ☐ Yes (describe)

If project work activities falls under item A-7b; then proceed directly to question B.6 (Atmospheric Conditions/Air Quality) and continue to fill out questionnaire.

If project work falls under item A-7c; then proceed directly below to question B.2 (Construction Activities and/or Operations) and continue to fill out questionnaire.

2. Construction Activities and/or Operations

a. Identify any roads, trails, or utility right of ways that traverse the proposed site or will be constructed and clearly mark them on project site maps.
☐ None
Roads affected by the Bike Path project are shown on the Project Drawings and include 25th Street North ADA ramps, New York Street, a crossing at 21st Street North, Ohio Street and a crossing at 17th Street North.

b. Would the proposed project require the construction of settling ponds?
☒ No ☐ Yes (describe and identify location, and estimate surface area disturbed)

c. Would the proposed project affect any existing body of water?
☐ No ☐ Yes (describe) A new pre-fab bridge will cross the East Fork of Chisholm Creek.

d. Would the proposed project be located in or impact a floodplain or wetland?
☒ No ☐ Yes (describe)

e. Would the proposed project be likely to cause runoff/sedimentation/erosion?
☒ No ☐ Yes (describe)

3. Vegetation and Wildlife Resources

a. Identify any State- or Federal-listed endangered or threatened plant or animal species affected by the proposed project.
☒ None

b. Would any foreign substances/materials be introduced into ground or surface waters, or other earth/geologic resource because of project activities? Would these foreign substances/materials affect the water, soil, and geologic resources?
☒ No ☐ Yes (describe)

c. Would any migratory animal corridors be impacted or disrupted by the proposed project?
☒ No ☐ Yes (describe)

4. Socioeconomic and Infrastructure Conditions.

a. Would local socio-economic changes result from the proposed project?

☒ No ☐ Yes (describe) Due to the Bike Path's ability to facilitate non-fueled vehicles, it is likely that it will be responsible for some easing of fuel cost difficulties for individuals to work in the downtown Wichhita area.

b. Would the proposed project generate increased traffic use of roads through local neighborhoods, urban or rural areas.?
☒ No ☐ Yes (describe)

c. Would the proposed project require new transportation access (roads, rail, etc.)? Describe location, impacts, costs.
☒ No ☐ Yes (describe)

d. Would any new transmission lines and/or power line right-of-ways be required?
☒ No ☐ Yes (describe location, voltage, and length of line)

5. Historical/Cultural Resources

a. Describe any historical, archeological, or cultural sites in the vicinity of the proposed project; note any sites included on the National Register of Historic Places.
☒ None

b. Would construction or operational activities planned under the proposed project disturb any historical, archeological, or cultural sites?
☒ No planned construction ☒ No historic sites ☐ Yes (describe)

c. Would the proposed project interfere with visual resources (e.g., eliminate scenic views) or alter the present landscape?
☒ No ☐ Yes (describe) There will be minor alteration of present landscape in the corridor, however the project itself will mitigate any negative effects and create new scenic views.

For all proposed project work activities identified under item A-7b, respond to item B6 directly below and continue filling out environmental questionnaire.

6. Atmospheric Conditions/Air Quality

a. Identify air quality conditions in the immediate vicinity of the proposed project with regard to attainment of National Ambient Air Quality Standards (NAAQS). This information is available under the NAAQS tables from the U.S. EPA Air and Radiation Division.

	Attainment	Non-Attainment
O_3	☒	☐
SO_x	☒	☐
PM_{10}	☒	☐
CO	☒	☐
NO_2	☒	☐
Lead	☒	☐

b. Would proposed project require issuance of new or modified major source air quality permits?
☒ No ☐ Yes (describe)

c. Would the proposed project be in compliance with the National Emissions Standards for Hazardous Air Pollutants?
☐ No (explain) ☒ Yes

d. Would the proposed project be classified as either a New Source or a major modification to an existing source?
☒ No ☐ Yes (describe)

e. Would the proposed project be in compliance with the New Source Performance Standards?

☒ Not Applicable ☐ No (explain) ☐ Yes

f. Would the proposed project be subject to prevention of significant deterioration air quality review?
☒ Not applicable ☐ No (explain) ☐ Yes (describe)

g. What types of air emissions, including fugitive emissions, would be anticipated from the proposed project?
None.

h. Would any types of emission control or particulate collection devices be used?
☒ No ☐ Yes (describe, including collection efficiencies)

i. If no control devices are used, how would emissions be vented? Not Applicable.

7. Hydrologic Conditions/Water Quality

a. What is the closest body of water to the proposed project area and what is its distance from the project site?
The East Fork of the Chisholm Creek which proceeds to the Wichita Drainage Canal under I-135.

b. What sources would supply potable and process water for the proposed project?
Not Applicable.

c. Quantify the daily or annual amount of wastewater that would be generated by the proposed project.
None.

d. Identify the local treatment facility that would receive wastewater from the proposed project.
☒ No discharges to local treatment facility

e. Describe how wastewater would be collected and treated.
Not Applicable.

f. Would any run-off or leachates be produced from storage piles or waste disposal sites?
☒ No ☐ Yes (describe source)

g. Would project require issuance of new or modified water permits to perform project work or site development?
☒ No ☐ Yes (describe)

h. Where would wastewater effluents from the proposed project be discharged?
☒ No wastewater produced

i. Would the proposed project be permitted to discharge effluents into an existing body of water?
☒ No ☐ Yes (describe water use and effluent impact)

j. Would a new or modified National Pollutant Discharge Elimination System (NPDES) permit be required?
☒ No ☐ Yes (describe)

k. Would the proposed project adversely affect the quality or movement of groundwater?
☒ No ☐ Yes (describe)

8. Solid and Hazardous Wastes

a. Describe and estimate major nonhazardous solid wastes that would be generated from the project. Solid wastes are defined as any solid, liquid, semi-solid, or contained gaseous material that is discarded or has served its intended purpose, or is a manufacturing or mining by-product (40 CFR 260, Appendix I). Minimal trash is potentially disposed of by users of the Bike Path. Trash receptacles will be provided at the pause points which will be maintained by the City of Wichita.

b. Would project require issuance of new or modified solid waste and/or hazardous waste related permits to perform project work activities?
☒ No ☐ Yes (explain)

c. How and where would solid waste disposal be accomplished?
☒ On-site (identify and describe location) Trash will be collected at receptacles at the pause points.
☐ Off-site (identify location and describe facility and treatment)

d. How would wastes for disposal be transported?
City Maintainence.

e. Describe and estimate the quantity of hazardous wastes (40 CFR 261.31) that would be generated, used, or stored under this project.
☒ None

f. How would hazardous or toxic waste be collected and stored?
☒ None used or produced

g. If hazardous wastes would require off-site disposal, have arrangements been made with a certified TSD (Treatment, Storage, and Disposal) facility?
☒ Not required ☐ Arrangements not yet made ☐ Arrangements made with a certified TSD facility (identify):

C. DESCRIBE ANY ISSUES THAT WOULD GENERATE PUBLIC CONTROVERSY REGARDING THE PROPOSED PROJECT.
☒ None

IV. CERTIFICATION BY PROPOSER

I hereby certify that the information provided herein is current, accurate, and complete as of the date shown immediately below.

SIGNATURE: _____ DATE: 06 / 10 / 2009
month day year

TYPED NAME: Carl R. Haas

TITLE: Civil Engineer

ORGANIZATION: City of Wichita

V. REVIEW AND APPROVAL BY DOE

I hereby certify that I have reviewed the information provided in this questionnaire, have determined that all questions have been appropriately answered, and judge the responses to be consistent with the efforts proposed.

PROJECT MANAGER:

SIGNATURE: _____ DATE: ____ / ____ / ____
month day year

TYPED NAME: _____

NETL F 451.1-EECBG
(3/2009) OPI=320
(Previous Editions Obsolete)

U.S. DEPARTMENT OF ENERGY

ENVIRONMENTAL QUESTIONNAIRE

I. BACKGROUND

The Department of Energy (DOE) National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR 1021) require careful consideration of the potential environmental consequences of all proposed actions during the early planning stages of a project or activity. DOE must determine at the earliest possible time whether such actions will require either an Environmental Assessment or an Environmental Impact Statement, or whether they qualify for a Categorical Exclusion. To comply with these requirements, an Environmental Questionnaire must be completed for each proposed action to provide DOE with the information necessary to determine the appropriate level of NEPA review.

II. INSTRUCTIONS

Separate copies of the Environmental Questionnaire should be completed by the principal proposer and appropriate proposer's subcontractor. In addition, if the proposed project includes activities at different locations, an independent questionnaire should be prepared for each location. Supporting information can be provided as attachments.

In completing this Questionnaire, the proposer is requested to provide specific information and quantities, when applicable, regarding air emissions, wastewater discharges, solid wastes, etc., to facilitate the necessary review. The proposer should identify the location of the project and specifically describe the activities that would occur at that location. In addition, the proposer will be required to submit an official copy of the project's statement of work (SOW) or statement of project objective (SOPO) that will be used in the contract/agreement between the proposer and DOE.

III. QUESTIONNAIRE

A. PROJECT SUMMARY

1. Solicitation/Project Number: _____
2. Proposer: City of Wichita
3. Principal Investigator: Dr. Brian A. Coon, PhD, JD, PE, PTOE
   Telephone Number: 316-268-4448
4. Project Title: Synchronization of Traffic Signals in the City of Wichita
5. Duration: Three years
6. Location(s) of Performance (City/Township, County, State): Wichita, Sedgwick County, Kansas
7. Identify and select checkbox with the predominant project work activities under Group A-7b or A-7c.

Group A-7b

☒ Work or project activities does NOT involve new building/facilities construction and site preparation activities. This work typically involves routine operation, modification, and retrofit of existing utility and transportation infrastructure, laboratories, commercial buildings/properties, offices and homes, test facilities, factories/power plants, vehicles test stands and components, refueling facilities, greenspace infrastructure, or other existing facilities.

Group A-7c

☐ Work or project activities typically involves major building or facility construction, site preparation; the installation, replacement, or major modifications of energy system prototypes and infrastructure, access right-of-ways and roads; utility, greenspace, and transportation infrastructure, vehicle test facilities; commercial buildings/properties, fuel refinery/mixing facilities, factories/power plants; and other types of energy efficiency/conservation related systems, structures, and facilities. This work can require new or modified regulatory permits, environmental sampling and monitoring requirements, master planning, public involvement, and environmental impact review.

☐ Other types of work or project activities not listed. (please describe):

8. Summarize the objectives of the proposed work. List activities planned at the location as covered by this Environmental Questionnaire. Synchronization and optimization of the traffic signals in the City of Wichita for the purposes of energy conservation

9. List all other locations where proposed work or project would be performed by project's proposer and subcontractors.

10. Identify major project operation related materials and waste that would be used, consumed, and produced by this project or activity.

11. Provide a brief description of the project location (physical location, surrounding area, adjacent structures).

12. Attach a site plan or topographic map of the project work area.

B. ENVIRONMENTAL IMPACTS

This section is designed to obtain information for objectively assessing the environmental impacts of a proposed project. NEPA procedures require evaluations of possible effects (including land use, energy resource use, natural, historic and cultural resources, and pollutants) from proposed projects on the environment.

1. Land Use

a. Characterize present land use where the proposed project would be located.

☒ Urban ☐ Industrial ☐ Commercial ☐ Agricultural
☒ Suburban ☐ Rural ☐ Residential ☐ Research Facilities
☐ Forest ☐ University Campus ☐ Other

b. Describe how land use would be affected by planned construction and project activities.

☒ No construction would be anticipated for this project.

c. Describe any plans to reclaim/replant areas that would be affected by the proposed project.

☒ No land areas would be affected.

d. Would the proposed project affect any unique or unusual landforms (e.g., cliffs, waterfalls, etc.)?

☒ No ☐ Yes (describe)

e. Would the proposed project be located in or near a national park or wilderness area?

☒ No ☐ Yes (describe)

If project work activities falls under item A-7b; then proceed directly to question B.6 (Atmospheric Conditions/Air Quality) and continue to fill out questionnaire.

If project work falls under item A-7c; then proceed directly below to question B.2 (Construction Activities and/or Operations) and continue to fill out questionnaire.

2. **Construction Activities and/or Operations**

a. Identify any roads, trails, or utility right of ways that traverse the proposed site or will be constructed and clearly mark them on project site maps.
☒ None

b. Would the proposed project require the construction of settling ponds?
☒ No ☐ Yes (describe and identify location, and estimate surface area disturbed)

c. Would the proposed project affect any existing body of water?
☐ No ☐ Yes (describe)

d. Would the proposed project be located in or impact a floodplain or wetland?
☒ No ☐ Yes (describe)

e. Would the proposed project be likely to cause runoff/sedimentation/erosion?
☒ No ☐ Yes (describe)

3. **Vegetation and Wildlife Resources**

a. Identify any State- or Federal-listed endangered or threatened plant or animal species affected by the proposed project.
☒ None

b. Would any foreign substances/materials be introduced into ground or surface waters, or other earth/geologic resource because of project activities? Would these foreign substances/materials affect the water, soil, and geologic resources?
☒ No ☐ Yes (describe)

c. Would any migratory animal corridors be impacted or disrupted by the proposed project?
☒ No ☐ Yes (describe)

4. **Socioeconomic and Infrastructure Conditions.**

a. Would local socio-economic changes result from the proposed project?
☒ No ☐ Yes (describe)

b. Would the proposed project generate increased traffic use of roads through local neighborhoods, urban or rural areas.?
☒ No ☐ Yes (describe)

c. Would the proposed project require new transportation access (roads, rail, etc.)? Describe location, impacts, costs.
☒ No ☐ Yes (describe)

d. Would any new transmission lines and/or power line right-of-ways be required?
☒ No ☐ Yes (describe location, voltage, and length of line)

5. Historical/Cultural Resources

a. Describe any historical, archeological, or cultural sites in the vicinity of the proposed project; note any sites included on the National Register of Historic Places.
☒ None

b. Would construction or operational activities planned under the proposed project disturb any historical, archeological, or cultural sites?
☒ No planned construction ☒ No historic sites ☐ Yes (describe)

c. Would the proposed project interfere with visual resources (e.g., eliminate scenic views) or alter the present landscape?
☒ No ☐ Yes (describe)

For all proposed project work activities identified under item A-7b, respond to item B6 directly below and continue filling out environmental questionnaire.

6. Atmospheric Conditions/Air Quality

a. Identify air quality conditions in the immediate vicinity of the proposed project with regard to attainment of National Ambient Air Quality Standards (NAAQS). This information is available under the NAAQS tables from the U.S. EPA Air and Radiation Division.

	Attainment	Non-Attainment
O_3	☒	☐
SO_x	☒	☐
PM_{10}	☒	☐
CO	☒	☐
NO_2	☒	☐
Lead	☒	☐

b. Would proposed project require issuance of new or modified major source air quality permits?
☒ No ☐ Yes (describe)

c. Would the proposed project be in compliance with the National Emissions Standards for Hazardous Air Pollutants?
☐ No (explain) ☒ Yes

d. Would the proposed project be classified as either a New Source or a major modification to an existing source?
☒ No ☐ Yes (describe)

e. Would the proposed project be in compliance with the New Source Performance Standards?
☒ Not Applicable ☐ No (explain) ☐ Yes

f. Would the proposed project be subject to prevention of significant deterioration air quality review?
☒ Not applicable ☐ No (explain) ☐ Yes (describe)

g. What types of air emissions, including fugitive emissions, would be anticipated from the proposed project?
None.

h. Would any types of emission control or particulate collection devices be used?
☒ No ☐ Yes (describe, including collection efficiencies)

i. If no control devices are used, how would emissions be vented? Not Applicable.

7. Hydrologic Conditions/Water Quality

a. What is the closest body of water to the proposed project area and what is its distance from the project site?
The Arkansas River runs through the City of Wichita.

b. What sources would supply potable and process water for the proposed project?
Not Applicable.

c. Quantify the daily or annual amount of wastewater that would be generated by the proposed project.
None.

d. Identify the local treatment facility that would receive wastewater from the proposed project.
☒ No discharges to local treatment facility

e. Describe how wastewater would be collected and treated.
Not Applicable.

f. Would any run-off or leachates be produced from storage piles or waste disposal sites?
☒ No ☐ Yes (describe source)

g. Would project require issuance of new or modified water permits to perform project work or site development?
☒ No ☐ Yes (describe)

h. Where would wastewater effluents from the proposed project be discharged?
☐ No wastewater produced

i. Would the proposed project be permitted to discharge effluents into an existing body of water?
☒ No ☐ Yes (describe water use and effluent impact)

j. Would a new or modified National Pollutant Discharge Elimination System (NPDES) permit be required?
☒ No ☐ Yes (describe)

k. Would the proposed project adversely affect the quality or movement of groundwater?
☒ No ☐ Yes (describe)

8. Solid and Hazardous Wastes

a. Describe and estimate major nonhazardous solid wastes that would be generated from the project. Solid wastes are defined as any solid, liquid, semi-solid, or contained gaseous material that is discarded or has served its intended purpose, or is a manufacturing or mining by-product (40 CFR 260, Appendix I). None.

b. Would project require issuance of new or modified solid waste and/or hazardous waste related permits to perform project work activities?
☒ No ☐ Yes (explain)

c. How and where would solid waste disposal be accomplished?
☐ On-site (identify and describe location)
☐ Off-site (identify location and describe facility and treatment)

d. How would wastes for disposal be transported?
Not Applicable.

e. Describe and estimate the quantity of hazardous wastes (40 CFR 261.31) that would be generated, used, or stored under this project.
☒ None

f. How would hazardous or toxic waste be collected and stored?

☒ None used or produced

g. If hazardous wastes would require off-site disposal, have arrangements been made with a certified TSD (Treatment, Storage, and Disposal) facility?
☒ Not required ☐ Arrangements not yet made ☐ Arrangements made with a certified TSD facility (identify):

C. DESCRIBE ANY ISSUES THAT WOULD GENERATE PUBLIC CONTROVERSY REGARDING THE PROPOSED PROJECT.
☒ None

IV. CERTIFICATION BY PROPOSER

I hereby certify that the information provided herein is current, accurate, and complete as of the date shown immediately below.

SIGNATURE: _____ DATE: 06 / 10 / 2009
month day year

TYPED NAME: Brian A. Coon

TITLE: Assistant Traffic Engineer

ORGANIZATION: City of Wichita

V. REVIEW AND APPROVAL BY DOE

I hereby certify that I have reviewed the information provided in this questionnaire, have determined that all questions have been appropriately answered, and judge the responses to be consistent with the efforts proposed.

PROJECT MANAGER:

SIGNATURE: _____ DATE: ____ / ____ / ____
month day year

TYPED NAME: _____

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: DER 2009-02 -- Request for a Street Name Change from Wild Rose Cir. to Beach Club Cir., located on the south side of 37th Street North and west of Ridge Road. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the street name change.

Background: The Street Naming Address Committee has approved the change. This item was approved by the City Council on June 2, 2009; however, it is being resubmitted to correct the recommended action to reflect the first reading of the ordinance.

Analysis: None.

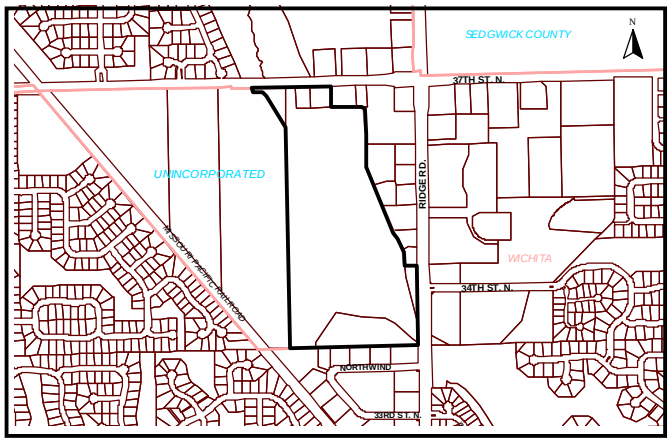
Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

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

Recommendations/Actions: It is recommended that the City Council place the ordinance for the name change on first reading.

Attachment: Ordinance.



(OCA150004 BID 37529-009 CID#76383) Published in The Wichita Eagle on _____

ORDINANCE NO. _____

AN ORDINANCE CHANGING A STREET NAME FROM WILD ROSE CIR. TO BEACH CLUB CIR.

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

SECTION 1. That it is hereby declared to be in the interest and convenience of the public to rename the following described street in the City of Wichita, Kansas, and the name of the street should be and the same designated by the new street name as follows, to wit:

Wild Rose Cir., as platted in the Pier 37 Addition, Wichita, Sedgwick County, Kansas, to be renamed to Beach Club Cir.

Generally located on the south side of 37th Street North and west of Ridge Road.

SECTION 2. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 200__.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, City Attorney

City of Wichita
City Council Meeting
June 16, 2009

TO: Wichita Airport Authority

SUBJECT: Airline Use Agreements

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the agreements.

Background: The Wichita Airport Authority has a uniform lease and use agreement with the passenger carrying airlines serving Wichita Mid-Continent Airport. On January 13, 2009, the WAA approved supplemental agreements with Atlantic Southeast and Northwest Airlines, which extended those airline agreements through December 31, 2009. Also, included in both supplemental agreements was language which allowed the airlines to make space changes in anticipation of Northwest's merger with Delta.

Analysis: Current lease agreements allow Northwest and Atlantic Southeast to operate as signatory airlines at Mid-Continent Airport. Both agreements include leased space in the terminal building. In order to facilitate operations following Northwest's merger with Delta, Delta proposes to enter into a lease and use agreement with the WAA and to transfer space from Northwest and Atlantic Southeast Airlines (which is owned by Delta) into Delta's new agreement. The removal of space from the respective leases requires supplemental agreements.

Financial Considerations: Prior to June 1, 2009, Northwest operated from Gate 2 on the east concourse and Atlantic Southeast Airlines operated from Gate 11 on the west concourse. Under the new operating arrangement, Delta will lease Gate 2 and the adjacent Gate 4, which are both on the east concourse. This will result in a reduction of 432 sq. ft. of leased space and represents a revenue loss of $9,997 over the seven-month period.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through modifying agreements to allow for airline changes which will facilitate improved service to the traveling public.

Legal Considerations: The Law Department has approved the Agreement and Supplemental Agreements as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Agreement and Supplemental Agreements; and authorize the necessary signatures.

Attachment: Delta Agreement, Supplemental Agreements with Atlantic Southeast and Northwest Airlines.

SUPPLEMENTAL AGREEMENT NUMBER SEVEN

AIRLINE AIRPORT USE AND LEASE AGREEMENT
WICHITA MID-CONTINENT AIRPORT

BY AND BETWEEN

THE

WICHITA AIRPORT AUTHORITY

AND

NORTHWEST AIRLINES, INC.

THIS SUPPLEMENTAL AGREEMENT NUMBER SEVEN, made and entered into this June 16, 2009 by and between the WICHITA AIRPORT AUTHORITY, hereinafter referred to as "AUTHORITY", and NORTHWEST AIRLINES, INC., hereinafter referred to as "AIRLINE".

WITNESSETH:

WHEREAS, the parties hereto have heretofore entered into an Airline Airport Use and Lease Agreement dated April 4, 2000, 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. One dated May 23, 2000, for the purpose of including clarifying language to allow ingress and egress through airline exclusive-use premises for access of joint-use premises; and Supplemental Agreement Nos. Two through Six dated May 6, 2003, December 21, 2004, January 9, 2007, December 11, 2007, and January 13, 2009, respectively, which extended the term of the Agreement and modified exhibits within the Agreement; and

WHEREAS, Supplemental Agreement No. Six included a provision which allowed Airline to modify space as a result of merging with Delta Airlines; and

WHEREAS, the Authority and Airline are now desirous of entering into this Supplemental Agreement No. Six for the purpose of modifying the leased premises;

NOW, THEREFORE, the parties further agree as follows:

1.

Section 3.1.A. of Article III, Airline Premises, shall be modified to include the following language:

Exhibits "C" and "G", attached hereto and incorporated herein, shall replace like exhibits included in the original Agreement and Supplemental Agreements.

2.

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.

Effective June 1, 2009, space leased by Airline under this Agreement, as reflected on Exhibit B-1 dated April 4, 2000 (holdroom) and Revised Exhibit B-1, dated April 9, 2003 (ticket counter, office, and bag makeup) shall be deleted.

3.

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:

NORTHWEST AIRINES, INC.

By _____

By_____
"Airline"

APPROVED AS TO FORM: _____ Date: _____
Director of Law

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)	217	1,468	431	-	1,291	627	4,034	s.f.
American	-	-	-	-	-	-	-	s.f.
American Eagle	200	2,224	1,098	-	1,637	1,752	6,911	s.f.
Atlantic Southeast	-	-	-	-	-	-	-	s.f.
Chautauqua	-	-	-	-	-	-	-	s.f.
Delta	693	3,221	1,589	-	1,396	1,855	8,754	s.f.
ExpressJet (CO)	105	1,470	-	-	203	-	1,778	s.f.
Frontier Holdings	233	1,016	467	-	339	399	2,454	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	644	6,750	3,905	-	18,768	2,592	32,659	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.

Last Updated: 06/02/2009

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.

EXHIBIT "G"

ADJUSTMENT OF RATES FOR RENTALS, FEES, AND CHARGES

Section G.1 - Adjustment of Signatory Airline Rates

Signatory Airline rates for Terminal rentals, landing fees, and apron fees shall be adjusted as set forth in Article VII and this Exhibit G. Tables G-1 through G-3 set forth the method to be used in calculating the Signatory Airline average Terminal rental rate and the landing fees rate. The apron fees rate for Aircraft Parking Aprons shall be established as set forth in Section G.3.

Section G.2 - Airline Rentals, Fees, and Charges

G.2.A. Airline's Terminal rentals in each period shall be determined as the sum of:

G.2.A.(1) The product of the appropriate differential Terminal rental rates for the period and the amount of each type of Airline's Exclusive Use Premises and Preferential Use Premises.

G.2.A.(2) Airline's share of rentals for Joint Use Premises. Rentals for Joint Use Premises shall be calculated as the product of the appropriate differential Terminal rental rates for the period and the amount of each category of Joint Use Premises. Airline's share of rentals for Joint Use Premises shall be determined as set forth in Section 6.2.B. of this Agreement.

G.2.B. Airline's apron fees in each period shall be determined as the product of the apron fees rate for the period and the number of aircraft passenger loading gates leased by Airline.

G.2.C. Airline's landing fees in each period shall be determined as the product of the landing fees rate for the period and airline's landed weight for the period. Airline's landed weight for each period shall be determined as the sum of the Maximum Gross Landing Weight of each of Airline's aircraft multiplied by the number of Revenue Landings by each of said aircraft at Airport during the period. Training and Testing flight landings not exceeding 10% of Revenue landings as well as return landings as defined within the term Revenue Landings shall be excluded from landing fee calculations.

Section G.3 - Signatory Airline Apron Fees Rate

The annual Signatory Airline apron fees rate shall initially be $14,400 per aircraft passenger loading gate, with said rate to be adjusted annually in accordance with changes in the U.S. Implicit Price Deflator Index.

Section G.4 - Differential Terminal Rates

G.4.A. Premises leased by Signatory Airlines in the Terminal shall be classified according to types of space for the purpose of establishing differential rental rates by location and function as set forth below:

Types of Space	Location/Function	Weighted Value
1	Ticket Counter	1.00
2	Holdrooms; Concourses; Bag Claim	0.90
3	Offices; VIP/Club Space	0.80
4	Bag Make-Up; Operations Space, Elevators	0.70
5	Inbound Bag; Tug Lane, Stairwells	0.50

G.4.B. The amount of each type of space shall be as set forth in Exhibit "C", as such shall be amended from time to time pursuant to this Agreement. A summary of each type of space as shown on Exhibit "C" is set forth below:

	Type of Space					
	Type 1	Type 2	Type 3	Type 4	Type 5	Total
Airline Exclusive Use and Preferential Use						
AirTran	233	1,689	581	801	0	3,304 s.f.
America West	217	1,468	431	1,918	0	4,034 s.f.
American Eagle	200	2,224	1,098	3,389	0	6,911 s.f.
Continental Express	105	1,470	0	203	0	1,778 s.f.
Delta	693	3,221	1,589	3,251	0	8,754 s.f.
Frontier Holdings	233	1,016	467	738	0	2,454 s.f.
United	335	1,467	1,145	668	0	3,615 s.f.
Vacant	644	6,750	3,905	21,360	0	32,659 s.f
Sub-Total	2,660	19,305	9,216	32,328	0	63,509 s.f.
Airline Joint Use	0	15,725	0	1,205	6,035	22,965 s.f.
Total Airline Space	2,660	35,030	9,216	33,533	6,035	86,474 s.f.

G.4.C. Using the above space totals, as such may be amended from time to time pursuant to this Agreement, the average Terminal rental rate in each period shall be converted to differential Terminal rental rates by weighting the amount of Type 1 through 5 space for all Signatory Airlines by the relative factors set forth in Paragraph G.4.A. to obtain a weighted equivalent amount of space. The total amount of Signatory Airline Terminal rentals for Type 1 through 5 space shall be next determined as the product of the average Terminal rate for the period multiplied by the total amount of said Signatory Airline space, and divided by the weighted equivalent space to determine the rate for the Type 1 (premium) space. Rates for Types 2 through 5 space shall then be determined by multiplying the relative factors for these types of space by the Type 1 premium rate.

Section G.5 - Signatory Airline Rates For The Current Rate Setting Period

G.5.A. For the period extending from January 1, 2009 to December 31, 2009, Signatory Airline Terminal rental rates shall be as follows:

Type of Space	Location/Function	Annual Rate per Sq. Ft.
1	Ticket Counter	$44.08
2	Holdrooms; Concourses; Bag Claim	$39.67
3	Offices; VIP/Club Space	$35.26
4	Bag Make-Up; Operations Space, Elevators	$30.85
5	Inbound Bag; Tug Lane, Stairwells	$22.04

These rates are based upon an average Signatory Airline Terminal rental rate of $34.69 per square foot, as calculated in Table G-1.

G.5.B. For the period set forth in Paragraph G.5.A, the annual Signatory Airline apron fees rate shall be $14,400 per aircraft passenger loading gate leased by Airline.

G.5.C. For the period set forth in Paragraph G.5.A, the Signatory Airline landing fees rate shall be $2.42 per 1,000 pounds of Maximum Gross Landing Weight.

Section G.6 - Explanation of Table G-1 Line Items

G.6.A **Direct O&M Expenses**. These expenses are incurred for operation and maintenance of the Airport and are attributable to direct cost centers.

G.6.B **Indirect O&M Expenses**. These expenses are associated with the operation and maintenance of the Airport, but cannot be associated with specific revenue-producing activities, and are allocated to the direct cost centers for rate setting purposes.

G.6.C **Capital Charges**. These charges include Capital Charges as defined in Section 1.1.

G.6.D **Debt Service Coverage**. In the event general purpose revenue bonds are issued for Airport System improvements or projects, coverage equal to twenty-five percent (25%) of Debt Service assignable to the Terminal and Airfield cost centers (including amounts allocable from indirect cost centers) would be included as a rate-base element.

G.6.E **Special Fund/Accounts**. In the event a general purpose Airport System revenue bond financing occurs, allocable portions of any special funds or accounts would be included as rate-base elements, as follows:

G.6.E.(1) Debt Service Reserve Fund deficiencies – allocated 100 percent to landing fees calculation.

G.6.E.(2) O&M Reserve deficiencies – allocated to direct cost centers in proportion to direct and allocated indirect operation and maintenance expenses in each.

G.6.E.(3) Renewal and replacement fund replenishment – to be funded through coverage funds if sufficient; otherwise included in Terminal rental and landing fees rate-bases in proportion to the revenue bond Debt Service in each.

G.6.F **Apron Fees**. Apron fees shall be credited against the Airfield landing fees requirement.

G.6.G **Other Landing Fees.** Cargo Airline landing fee and landing fees collected from any Air Transportation Companies other than Signatory Airlines.

G.6.H **Other Airfield Offsets**. Revenues received as fuel flowage fees, in-flight catering concession fees, and any other miscellaneous Airfield revenues, shall be credited against the airfield landing fees requirement.

G.6.I **Security Reimbursements**. Revenues received as reimbursement for security expenses shall be credited against the Terminal rental requirement.

G.6.J **Average Terminal Rental Rate**. The adjusted Terminal rental requirement shall be divided by usable Terminal area (gross area per Exhibit "C" less mechanical/utility space) to calculate the required average Terminal rental rate in each period.

G.6.K **Landing Fees Rate**. The adjusted Airfield landing fees requirement shall be divided by Signatory Airline landed weight to calculate the required Signatory Airline landing fees rate in each period.

Section G.7 - Airport Cost Centers

Airport cost centers used in the determination of rates for rentals, fees, and charges shall include, but not necessarily be limited to, those described in Paragraphs G.7.A. and G.7.B below.

G.7.A. **Direct Cost Centers**.

01 - Airfield - Areas provided for the landing, takeoff, and taxiing of aircraft; aircraft parking; approach and clear zones; and avigation easements.

02 - Terminal - Terminal building and concourses, including areas below concourses. Airport expenses associated with security screening and the public address system shall be included in the Terminal cost center.

03 - Other Airline - Air cargo buildings and associated apron areas; airline maintenance buildings; building space occupied by Air Midwest; and any other miscellaneous Airline facilities not included in the Terminal cost center.

04 - Ground Transportation - All landside roadways, rental car facilities and areas, and auto parking facilities and areas.

05 - General Aviation - United Beechcraft and Yingling Aircraft, including associated aircraft storage and auto parking facilities.

06 - Commercial & Other Aviation - All other leased facilities and properties including Cessna, Gates Learjet, Hilton Hotel, and other miscellaneous commercial enterprises.

07 - Government - FAA activities, including Tower and Flight Service Station; U.S. Post Office; and U.S. Weather Service.

08 - Jabara - All activities and facilities at Colonel James Jabara Airport.

G.8.B **Indirect Cost Centers.**

09 - Administration - Administration activities and facilities which cannot be directly assigned to other direct or indirect cost centers.

10 - Building Maintenance - Maintenance activities and facilities which are dedicated to buildings and which cannot be directly assigned to other direct or indirect cost centers.

11 - Field Maintenance - Maintenance activities and facilities which are dedicated to airside and landside other than buildings and which cannot be directly assigned to other direct or indirect cost centers.

12 - Custodial - Janitorial activities and facilities which cannot be directly assigned to other direct or indirect cost centers.

13 - Engineering - Activities and facilities associated with project development and grant administration which cannot be directly assigned to other direct or indirect cost centers.

14 - Safety - ARFF and medical activities and facilities which cannot be directly assigned to other direct or indirect cost centers.

15 - Systems & Services - Special services and utilities which cannot be directly assigned to other direct or indirect cost centers.

Section G.8 - Indirect Cost Center Allocations

Expenses for each indirect cost center shall be allocated to the direct cost centers as set forth in Paragraphs G.8.A. through G.8D. below.

G.8.A. **Custodial (12) -** Expenses for Custodial (12), which represent Terminal custodial/janitorial expenses, shall be allocated 100 percent to the Terminal (02) cost center.

G.8.B. **Administration (09), Building Maintenance (10), Field Maintenance (11), and Engineering (13) -** Expenses for Administration (09), Building Maintenance (10), Field Maintenance (11), and Engineering (13) shall be allocated as follows:

Direct Cost Center	Admini-stration (09) (%)	Building Maint. (10) (%)	Field Maint. (11) (%)	Engineering (13) (%)
Airfield (01)	20.0	-	50.0	25.0
Terminal (02)	35.0	75.0	5.0	30.0
Other Airline (03)	5.0	5.0	5.0	5.0
Ground Transport (04)	10.0	5.0	10.0	5.0
General Aviation (05)	10.0	5.0	15.0	5.0
Comm & Otr Avtn (06)	5.0	5.0	5.0	5.0
Government (07)	5.0	-	5.0	5.0
Jabara (08)	10.0	5.0	5.0	20.0
	100.0	100.0	100.0	100.0

G.8.C **Safety (14) -** Expenses for Safety (14) shall be allocated to each direct cost center based on the following allocation percentages:

Direct Cost Center	Percentage
Airfield (01)	70.0%
Terminal (02)	5.0
Other Airline (03)	5.0
Ground Transportation (04)	5.0
General Aviation (05)	5.0
Commercial & Other Aviation (06)	5.0
Government (07)	5.0
Jabara (08)	-
	100.0%

G.8.D. **Systems and Services (15) -** Expenses for Systems and Services (15) shall be allocated in proportion to the direct assignments of Systems and Services expenses to the direct cost centers. Based on 2007 actual data, the assignment percentages used to estimate the rates for the rate setting period indicated in Section G.5 are as follows:

Direct Cost Center	Percentage
Airfield (01)	24.0%
Terminal (02)	58.0
Other Airline (03)	2.0
Ground Transportation (04)	6.0
General Aviation (05)	0.0
Commercial & Other Aviation (06)	1.0
Government (07)	9.0
Jabara (08)	0.0
	100.0%

SUPPLEMENTAL AGREEMENT NUMBER EIGHT

AIRLINE AIRPORT USE AND LEASE AGREEMENT
WICHITA MID-CONTINENT AIRPORT

BY AND BETWEEN

THE

WICHITA AIRPORT AUTHORITY

AND

ATLANTIC SOUTHEAST AIRLINES, INC.

THIS SUPPLEMENTAL AGREEMENT NUMBER EIGHT, made and entered into this June 16, 2009, by and between the WICHITA AIRPORT AUTHORITY, hereinafter referred to as "AUTHORITY", and ATLANTIC SOUTHEAST AIRLINES, INC., hereinafter referred to as "AIRLINE".

WITNESSETH:

WHEREAS, the parties hereto have heretofore entered into an Airline Airport Use and Lease Agreement dated April 4, 2000 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. One dated May 23, 2000, for the purpose of including clarifying language to allow ingress and egress through airline exclusive-use premises for access of joint-use premises; Supplemental Agreement No. Two dated May 6, 2003, which extended the term of the Agreement and modified exhibits within the Agreement; Supplemental Agreement No. Three dated March 2, 2004, which increased the leased premises; and Supplemental Agreements Nos. Four through Seven, dated December 21, 2004, January 9, 2007, December 12, 2007 and January 13, 2009

respectively, which extended the terms of the Agreement and modified the exhibits within the Agreement; and

WHEREAS, Supplemental Agreement No. Seven included a provision which allowed Airline to delete leased space as a result of the merger of Delta and Northwest Airlines; and

WHEREAS, the Authority and Airline are now desirous of entering into this Supplemental Agreement No. Eight for the purpose of modifying the leased premises;

NOW, THEREFORE, the parties further agree as follows:

1.

Section 3.1.A. of Article III, Airline Premises, shall be modified to include the following language:

Exhibits "C" and "G", attached hereto and incorporated herein, shall replace like exhibits included in the original Agreement and Supplemental Agreements.

2.

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.

Effective June 1, 2009, all space leased by Airline under this Agreement, as reflected on Exhibit B-1, dated April 18, 2000 (holdroom) and Revised Exhibit B-1, dated January 13, 2004 (ticket counter, office, and bag makeup) shall be deleted.

3.

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:

ATLANTIC SOUTHEAST AIRLINES, INC.

By _____

By_____
"Airline"

APPROVED AS TO FORM: _____ Date: _____
Director of Law

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)	217	1,468	431	-	1,291	627	4,034	s.f.
American	-	-	-	-	-	-	-	s.f.
American Eagle	200	2,224	1,098	-	1,637	1,752	6,911	s.f.
Atlantic Southeast	-	-	-	-	-	-	-	s.f.
Chautauqua	-	-	-	-	-	-	-	s.f.
Delta	693	3,221	1,589	-	1,396	1,855	8,754	s.f.
ExpressJet (CO)	105	1,470	-	-	203	-	1,778	s.f.
Frontier Holdings	233	1,016	467	-	339	399	2,454	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	644	6,750	3,905	-	18,768	2,592	32,659	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.

Last Updated: 06/02/2009

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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.

EXHIBIT "G"

ADJUSTMENT OF RATES FOR RENTALS, FEES, AND CHARGES

Section G.1 - Adjustment of Signatory Airline Rates

Signatory Airline rates for Terminal rentals, landing fees, and apron fees shall be adjusted as set forth in Article VII and this Exhibit G. Tables G-1 through G-3 set forth the method to be used in calculating the Signatory Airline average Terminal rental rate and the landing fees rate. The apron fees rate for Aircraft Parking Aprons shall be established as set forth in Section G.3.

Section G.2 - Airline Rentals, Fees, and Charges

G.2.A. Airline's Terminal rentals in each period shall be determined as the sum of:

G.2.A.(1) The product of the appropriate differential Terminal rental rates for the period and the amount of each type of Airline's Exclusive Use Premises and Preferential Use Premises.

G.2.A.(2) Airline's share of rentals for Joint Use Premises. Rentals for Joint Use Premises shall be calculated as the product of the appropriate differential Terminal rental rates for the period and the amount of each category of Joint Use Premises. Airline's share of rentals for Joint Use Premises shall be determined as set forth in Section 6.2.B. of this Agreement.

G.2.B. Airline's apron fees in each period shall be determined as the product of the apron fees rate for the period and the number of aircraft passenger loading gates leased by Airline.

G.2.C. Airline's landing fees in each period shall be determined as the product of the landing fees rate for the period and airline's landed weight for the period. Airline's landed weight for each period shall be determined as the sum of the Maximum Gross Landing Weight of each of Airline's aircraft multiplied by the number of Revenue Landings by each of said aircraft at Airport during the period. Training and Testing flight landings not exceeding 10% of Revenue landings as well as return landings as defined within the term Revenue Landings shall be excluded from landing fee calculations.

Section G.3 - Signatory Airline Apron Fees Rate

The annual Signatory Airline apron fees rate shall initially be $14,400 per aircraft passenger loading gate, with said rate to be adjusted annually in accordance with changes in the U.S. Implicit Price Deflator Index.

Section G.4 - Differential Terminal Rates

G.4.A. Premises leased by Signatory Airlines in the Terminal shall be classified according to types of space for the purpose of establishing differential rental rates by location and function as set forth below:

Types of Space	Location/Function	Weighted Value
1	Ticket Counter	1.00
2	Holdrooms; Concourses; Bag Claim	0.90
3	Offices; VIP/Club Space	0.80
4	Bag Make-Up; Operations Space, Elevators	0.70
5	Inbound Bag; Tug Lane, Stairwells	0.50

G.4.B. The amount of each type of space shall be as set forth in Exhibit "C", as such shall be amended from time to time pursuant to this Agreement. A summary of each type of space as shown on Exhibit "C" is set forth below:

	Type of Space					
	Type 1	Type 2	Type 3	Type 4	Type 5	Total
Airline Exclusive Use and Preferential Use						
AirTran	233	1,689	581	801	0	3,304 s.f.
America West	217	1,468	431	1,918	0	4,034 s.f.
American Eagle	200	2,224	1,098	3,389	0	6,911 s.f.
Continental Express	105	1,470	0	203	0	1,778 s.f.
Delta	693	3,221	1,589	3,251	0	8,754 s.f.
Frontier Holdings	233	1,016	467	738	0	2,454 s.f.
United	335	1,467	1,145	668	0	3,615 s.f.
Vacant	644	6,750	3,905	21,360	0	32,659 s.f
Sub-Total	2,660	19,305	9,216	32,328	0	63,509 s.f.
Airline Joint Use	0	15,725	0	1,205	6,035	22,965 s.f.
Total Airline Space	2,660	35,030	9,216	33,533	6,035	86,474 s.f.

G.4.C. Using the above space totals, as such may be amended from time to time pursuant to this Agreement, the average Terminal rental rate in each period shall be converted to differential Terminal rental rates by weighting the amount of Type 1 through 5 space for all Signatory Airlines by the relative factors set forth in Paragraph G.4.A. to obtain a weighted equivalent amount of space. The total amount of Signatory Airline Terminal rentals for Type 1 through 5 space shall be next determined as the product of the average Terminal rate for the period multiplied by the total amount of said Signatory Airline space, and divided by the weighted equivalent space to determine the rate for the Type 1 (premium) space. Rates for Types 2 through 5 space shall then be determined by multiplying the relative factors for these types of space by the Type 1 premium rate.

Section G.5 - Signatory Airline Rates For The Current Rate Setting Period

G.5.A. For the period extending from January 1, 2009 to December 31, 2009, Signatory Airline Terminal rental rates shall be as follows:

Type of Space	Location/Function	Annual Rate per Sq. Ft.
1	Ticket Counter	$44.08
2	Holdrooms; Concourses; Bag Claim	$39.67
3	Offices; VIP/Club Space	$35.26
4	Bag Make-Up; Operations Space, Elevators	$30.85
5	Inbound Bag; Tug Lane, Stairwells	$22.04

These rates are based upon an average Signatory Airline Terminal rental rate of $34.69 per square foot, as calculated in Table G-1.

G.5.B. For the period set forth in Paragraph G.5.A, the annual Signatory Airline apron fees rate shall be $14,400 per aircraft passenger loading gate leased by Airline.

G.5.C. For the period set forth in Paragraph G.5.A, the Signatory Airline landing fees rate shall be $2.42 per 1,000 pounds of Maximum Gross Landing Weight.

Section G.6 - Explanation of Table G-1 Line Items

G.6.A **Direct O&M Expenses**. These expenses are incurred for operation and maintenance of the Airport and are attributable to direct cost centers.

G.6.B **Indirect O&M Expenses**. These expenses are associated with the operation and maintenance of the Airport, but cannot be associated with specific revenue-producing activities, and are allocated to the direct cost centers for rate setting purposes.

G.6.C **Capital Charges**. These charges include Capital Charges as defined in Section 1.1.

G.6.D **Debt Service Coverage**. In the event general purpose revenue bonds are issued for Airport System improvements or projects, coverage equal to twenty-five percent (25%) of Debt Service assignable to the Terminal and Airfield cost centers (including amounts allocable from indirect cost centers) would be included as a rate-base element.

G.6.E **Special Fund/Accounts**. In the event a general purpose Airport System revenue bond financing occurs, allocable portions of any special funds or accounts would be included as rate-base elements, as follows:

G.6.E.(1) Debt Service Reserve Fund deficiencies – allocated 100 percent to landing fees calculation.

G.6.E.(2) O&M Reserve deficiencies – allocated to direct cost centers in proportion to direct and allocated indirect operation and maintenance expenses in each.

G.6.E.(3) Renewal and replacement fund replenishment – to be funded through coverage funds if sufficient; otherwise included in Terminal rental and landing fees rate-bases in proportion to the revenue bond Debt Service in each.

G.6.F **Apron Fees**. Apron fees shall be credited against the Airfield landing fees requirement.

G.6.G **Other Landing Fees.** Cargo Airline landing fee and landing fees collected from any Air Transportation Companies other than Signatory Airlines.

G.6.H **Other Airfield Offsets**. Revenues received as fuel flowage fees, in-flight catering concession fees, and any other miscellaneous Airfield revenues, shall be credited against the airfield landing fees requirement.

G.6.I **Security Reimbursements**. Revenues received as reimbursement for security expenses shall be credited against the Terminal rental requirement.

G.6.J **Average Terminal Rental Rate**. The adjusted Terminal rental requirement shall be divided by usable Terminal area (gross area per Exhibit "C" less mechanical/utility space) to calculate the required average Terminal rental rate in each period.

G.6.K **Landing Fees Rate**. The adjusted Airfield landing fees requirement shall be divided by Signatory Airline landed weight to calculate the required Signatory Airline landing fees rate in each period.

Section G.7 - Airport Cost Centers

Airport cost centers used in the determination of rates for rentals, fees, and charges shall include, but not necessarily be limited to, those described in Paragraphs G.7.A. and G.7.B below.

G.7.A. **Direct Cost Centers**.

01 - Airfield - Areas provided for the landing, takeoff, and taxiing of aircraft; aircraft parking; approach and clear zones; and avigation easements.

02 - Terminal - Terminal building and concourses, including areas below concourses. Airport expenses associated with security screening and the public address system shall be included in the Terminal cost center.

03 - Other Airline - Air cargo buildings and associated apron areas; airline maintenance buildings; building space occupied by Air Midwest; and any other miscellaneous Airline facilities not included in the Terminal cost center.

04 - Ground Transportation - All landside roadways, rental car facilities and areas, and auto parking facilities and areas.

05 - General Aviation - United Beechcraft and Yingling Aircraft, including associated aircraft storage and auto parking facilities.

06 - Commercial & Other Aviation - All other leased facilities and properties including Cessna, Gates Learjet, Hilton Hotel, and other miscellaneous commercial enterprises.

07 - Government - FAA activities, including Tower and Flight Service Station; U.S. Post Office; and U.S. Weather Service.

08 - Jabara - All activities and facilities at Colonel James Jabara Airport.

G.8.B **Indirect Cost Centers.**

09 - Administration - Administration activities and facilities which cannot be directly assigned to other direct or indirect cost centers.

10 - Building Maintenance - Maintenance activities and facilities which are dedicated to buildings and which cannot be directly assigned to other direct or indirect cost centers.

11 - Field Maintenance - Maintenance activities and facilities which are dedicated to airside and landside other than buildings and which cannot be directly assigned to other direct or indirect cost centers.

12 - Custodial - Janitorial activities and facilities which cannot be directly assigned to other direct or indirect cost centers.

13 - Engineering - Activities and facilities associated with project development and grant administration which cannot be directly assigned to other direct or indirect cost centers.

14 - Safety - ARFF and medical activities and facilities which cannot be directly assigned to other direct or indirect cost centers.

15 - Systems & Services - Special services and utilities which cannot be directly assigned to other direct or indirect cost centers.

Section G.8 - Indirect Cost Center Allocations

Expenses for each indirect cost center shall be allocated to the direct cost centers as set forth in Paragraphs G.8.A. through G.8D. below.

G.8.A. **Custodial (12) -** Expenses for Custodial (12), which represent Terminal custodial/janitorial expenses, shall be allocated 100 percent to the Terminal (02) cost center.

G.8.B. **Administration (09), Building Maintenance (10), Field Maintenance (11), and Engineering (13) -** Expenses for Administration (09), Building Maintenance (10), Field Maintenance (11), and Engineering (13) shall be allocated as follows:

Direct Cost Center	Admini-stration (09) (%)	Building Maint. (10) (%)	Field Maint. (11) (%)	Engineering (13) (%)
Airfield (01)	20.0	-	50.0	25.0
Terminal (02)	35.0	75.0	5.0	30.0
Other Airline (03)	5.0	5.0	5.0	5.0
Ground Transport (04)	10.0	5.0	10.0	5.0
General Aviation (05)	10.0	5.0	15.0	5.0
Comm & Otr Avtn (06)	5.0	5.0	5.0	5.0
Government (07)	5.0	-	5.0	5.0
Jabara (08)	10.0	5.0	5.0	20.0
	100.0	100.0	100.0	100.0

G.8.C **Safety (14) -** Expenses for Safety (14) shall be allocated to each direct cost center based on the following allocation percentages:

Direct Cost Center	Percentage
Airfield (01)	70.0%
Terminal (02)	5.0
Other Airline (03)	5.0
Ground Transportation (04)	5.0
General Aviation (05)	5.0
Commercial & Other Aviation (06)	5.0
Government (07)	5.0
Jabara (08)	-
	100.0%

G.8.D. **Systems and Services (15) -** Expenses for Systems and Services (15) shall be allocated in proportion to the direct assignments of Systems and Services expenses to the direct cost centers. Based on 2007 actual data, the assignment percentages used to estimate the rates for the rate setting period indicated in Section G.5 are as follows:

Direct Cost Center	Percentage
Airfield (01)	24.0%
Terminal (02)	58.0
Other Airline (03)	2.0
Ground Transportation (04)	6.0
General Aviation (05)	0.0
Commercial & Other Aviation (06)	1.0
Government (07)	9.0
Jabara (08)	0.0
	100.0%

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL JUNE 16, 2009

a. Dry Creek Channel Improvements, Lincoln to Orme (north of Lincoln, east of Orme) (468-84177/660801/636218/866002/779607) Traffic to be maintained using flagpersons & barricades. (District III) - $3,549,799.86

b. 2009 Contract Maintenance Concrete Repairs (north of 63rd Street South, east of 135th Street West) (472-84829/132722/620535/133116/) Traffic to be maintained using flagpersons & barricades. (District III,IV,VI) - $500,000.00

Agenda Item No. XII-4a.

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: Community Events (District VI)

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 Gary Carpenter, Automobilia is coordinating with area business owners and making arrangements with Staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Automobilia's Moonlight Car Show & Street Party July 11, 2009 1:00 pm – July 12, 2009 1:30 am

- First Street, Broadway to Mosley.
- Topeka Street, Douglas to First Street
- Emporia Street, Douglas to Second Street
- St. Francis Street, Douglas to Second Street
- Santa Fe Street, Douglas to First Street
- Mead Street, First Street to Douglas
- Moore Street, First Street to Douglas
- Rock Island Street, First Street to Douglas

Please see attached map.

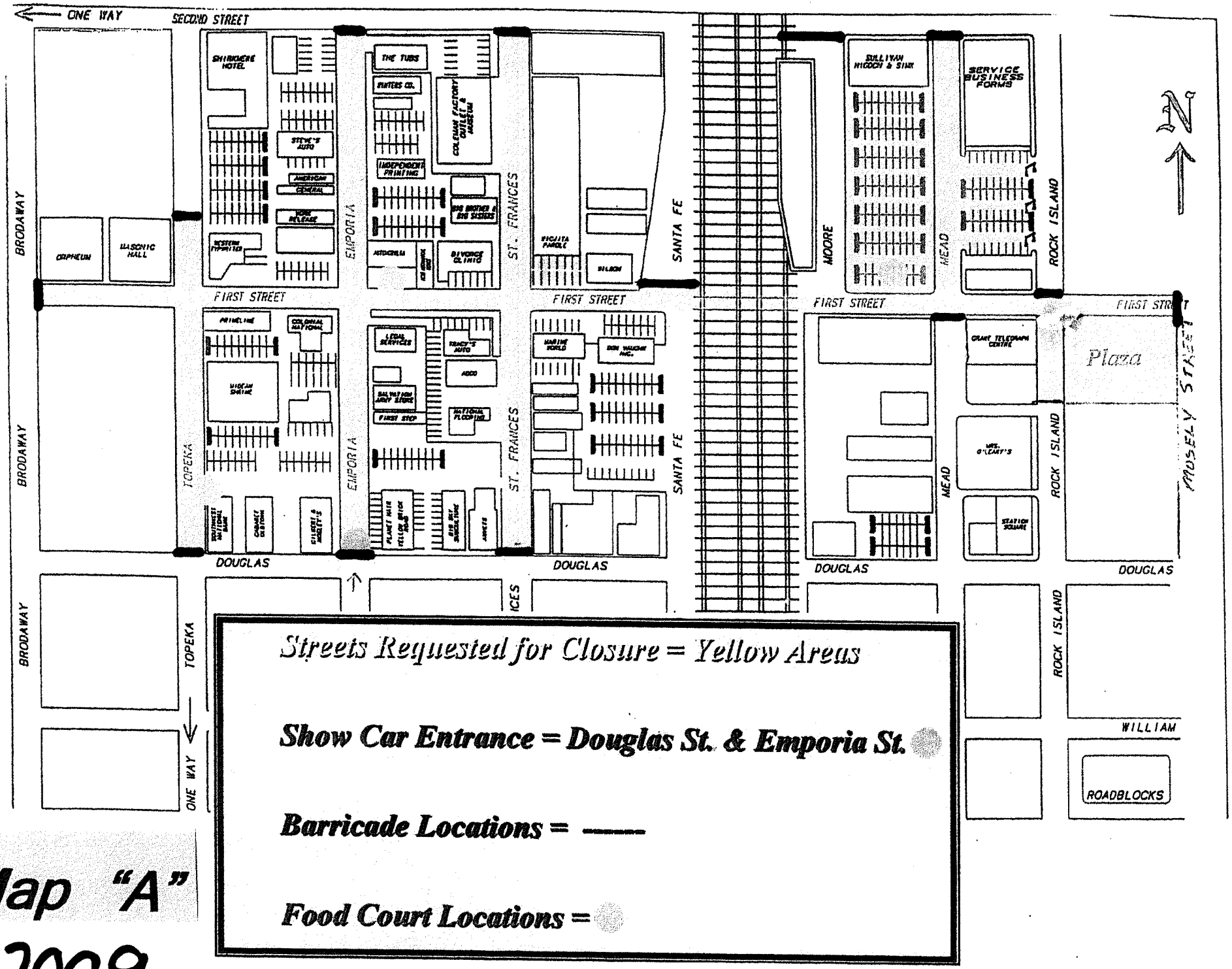
Client will arrange to remove blockades as necessary to allow emergency vehicle access during entire designated time period. Blockades will be removed immediately upon completion of the event.

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 Events Coordinator.



Streets Requested for Closure = Yellow Areas

Show Car Entrance = Douglas St. & Emporia St.

Barricade Locations = ——

Food Court Locations =

Map "A"

2009

Agenda Item No. XII-4b.

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: Community Events. (District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for street closure.

Background: In accordance with the Community Events Procedure, the event promoter, Schaunta James-Boyd is coordinating and with City of Wichita Staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

7th Annual Community Day 8:00 am to 3:00 pm, July 25, 2009.

- Lorraine Street, 15th Street to 16th Street, not including intersections

Client will arrange to remove blockades as necessary to allow emergency vehicle access during 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 Events Coordinator.

Agenda Item No. XII-5a.

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Change Order: Midtown Bike Path. (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the change order.

Background: On October 7, 2008, the City Council approved a construction contract with Cornejo & Sons to construct a bike path from Central near Waco to Broadway near 15th Street. After the work began, the Kansas Department of Health and Environment requested that the cool weather grass that had been planted along the bike path be overseeded with buffalo grass which is more durable and drought resistant. Also, concrete pavement was needed to support the brick plaza area due to poor soil conditions, and a sidewalk was extended to connect the bike path to an existing street sidewalk.

Analysis: A Change Order has been prepared for the cost of the additional work. Funding is available within the project budget.

Financial Considerations: The total cost of the additional work is $10,452 with $2,090 paid by City General Obligation Bonds and $8,362 by Federal grants. The original contract amount is $1,348,452. This change order plus a previous change order represents 1.24% of the original contract amount.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing a bike path in the Midtown Neighborhood.

Legal Considerations: The Law Department has approved the change order as to legal form.

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

Attachment: Change order.

PUBLIC WORKS-ENGINEERING

May 8, 2009

CHANGE ORDER

To: Cornejo & Sons
Change Order No.: 2
Purchase Order No.: 801227
CHARGE TO OCA No.: 706968

Project: Midtown Bikepath/Greenway
Project No.: TE-0234-01/472-84562
OCA No.: 706968
PPN: 207434

Please perform the following extra work at a cost not to exceed $10,451.50

Add overseeding approximately 3.5 acres with buffalo at 100 lbs per acre per request of Environmental Services in coordination with KDHE. Overrun 663 sf (73.7 sy) of 5" concrete pavement to support site amenities on the brick plaza areas designated in 12/12/08 proposal and add 4 sy at 15th & Broadway due to utility pole conflict. Overrun 57 sy of sidewalk removal north of 12th on Main Street, 4 sy at 15th and 90 sy at 13th Street drive. Overrun 29 lf of silt fence on Wichita north of 8th Street. Overrun 16 lf of saw joint at 15th & Broadway and 71 lf at 13th Street Drive.

Lump Sum Bid Items (706968)	Quantity		Unit Price		
Buffalo Seed (3.5 ac)	1.00	ls	$4,702.00	=	$4702.00
Concrete Pvmt 5"	77.70	sy	$45.00	=	$3,496.50
Sidewalk, Drives, Pkg Lot Removed	151.00	sy	$13.00	=	$1,963.00
Silt Fence	29.00	lf	$1.00	=	$29.00
Sawed Joint	87.00	lf	$3.00	=	$261.00

CIP Budget Amount: $1,915,000.00

Consultant: R&B
Total Exp. & Encum. To Date: $1,505,726.11
CO Amount: $10,451.50
Unencum. Bal. After CO: $398,822.39

Original Contract Amt.: $1,348,452.00

Current CO Amt.: $10,451.50
Amt. of Previous CO's: $6,308.00
Total of All CO's: $16,759.50
% of Orig. Contract / 25% Max.: 1.24%
Adjusted Contract Amt.: $1,365,211.50

Recommended By:

_____ _____
Greg Baalman, P.E. Date
Construction Engineer

Approved:

_____ _____
Contractor Date

Approved as to Form:

_____ _____
Gary Rebenstorf Date
Director of Law

Approved:

_____
Tom Eisenbarth
KDOT Metro Engineer

Approved:

_____ _____
Jim Armour, P.E. Date
City Engineer

Approved:

_____ _____
Chris Carrier, P.E. Date
Director of Public Works

By Order of the City Council:

_____ _____
Carl Brewer Date
Mayor

Attest: _____
City Clerk

Agenda Item No. XII-6a.

CITY OF WICHITA
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of 4830 South Broadway for the I-135/47th Street South Interchange Project (District III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On April 7, 2009, City Council approved funding to acquire right of way for a project to improve the interchange of 47th Street South and I-135 and 47th Street South from Lulu to Broadway. The project will provide a center left turn lane, reconstruct the interchange, improve storm drainage and improve access to adjoining properties. The Kansas Department of Transportation will administer the construction of the project utilizing Federal money. The project requires the partial acquisition of nine tracts. One of the partial acquisitions is from the retail site at 4830 South Broadway and involves road right-of-way and a temporary construction easement. The property is zoned commercial and improved with a Kmart. The improvements are not impacted as a result of the acquisition.

Analysis: The project requires a 368 square foot tract for right of way and a 1,820.3 square foot temporary easement. The owner has agreed to accept the appraised offer of $3,660. This consists of $1,500 ($4.08 per square foot) for the right of way and $2,160 for the temporary easement.

Financial Considerations: A budget of $5,660 is requested. This includes $3,660 for the acquisition and $2,000 for closing costs, title and other acquisition related fees. The City's share of project acquisition will be paid by general obligation bonds.

Goal Impact: The acquisition of these parcels is necessary to ensure efficient infrastructure.

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

Recommendation/Action: : It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Contract for the Conveyance of Real Estate and 3) Authorize the necessary signatures.

Attachments: Tract map, real estate purchase agreement and aerial map.

PROJECT: I-135/KTA/47TH ST INTERCHANGE

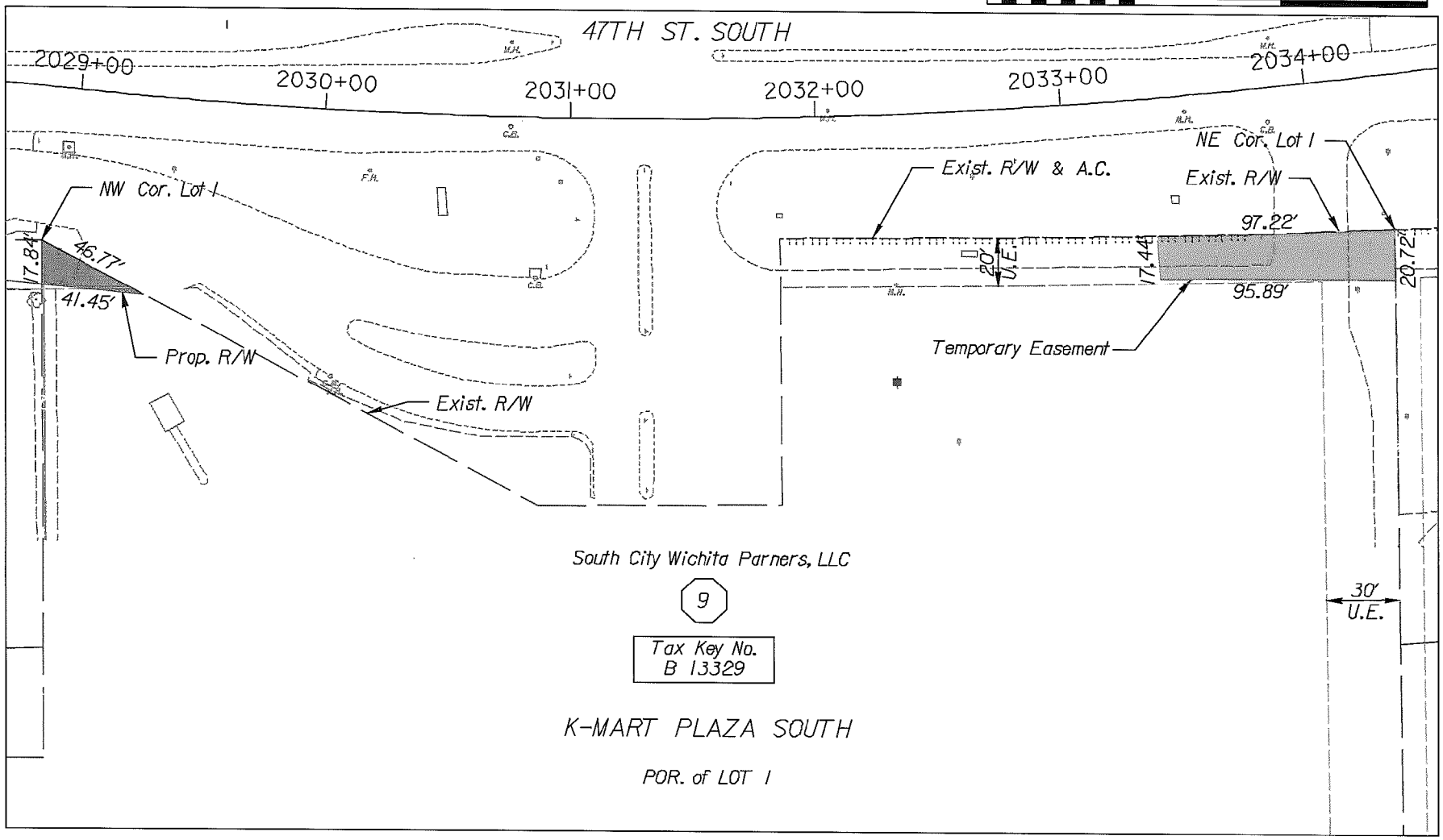
TRACT NUMBER: 9 03/12/2009

SHEET: 1 of 1

HNTB

LEGEND:
Proposed Right of Way (367.9 SQ. FT.)
Proposed Right of Entry

SCALE 60 0 60 120



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By: wlafolette Plot Scale: 60.000000:1.000000 Pen Table:\\avpw00\Jobs\46121\Highway\library\plotpen\color_tract.pen
Design Filename: \\avpw00\Jobs\46121\Highway\ROW\Proposed\Tract_Maps\Tract_Map_09.dgn

PROJECT: 47th Street an I135 Interchange **DATE:** 04/20/2009

COUNTY: Sedgwick **TRACT NO.:** 9

THE CITY OF WICHITA, KANSAS

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

THIS AGREEMENT Made and entered into this _____ day of _____, 2009., by and between

South City Wichita Partners, LLC, a Delaware limited liability company

With a mailing address of: c/o Mika Realty Group

837 Traction Ave., Suite 400

Los Angeles, CA 90013

(Name and Address)

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

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

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Together with a temporary construction easement (3 years) on the following described property

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

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

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

Approximately 368 Sq. Ft. for Right of Way Damages including but not limited to all improvements and real property of the landowner: $ 1,500.00

Approximately 1990 Sq. Ft. for Temporary Easement Damages including but not limited to all improvements and real property of the landowner: $ 2,160.00

TOTAL: $ 3,660.00

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

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

LANDOWNERS: South City Wichita Partners, LLC, a Delaware limited liability company

By: _____

By: _____

THE CITY OF WICHITA

Attest:

By: _____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

MEMORANDA

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

South City Wichita Partners, LLC, a Delaware limited liability company

If mortgage or other liens, show names of holders:

Lehman Brothers Bank, FSB, a federal stock savings bank

REMARKS:

PIN/APN B-13329; B-13329-0001 and B-13329-0002
Security Title File Number 1069557

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Gerald Cain, Project Manager

EXHIBIT 'A'

Right of Way

That portion of Lot 1 of K MART PLAZA SOUTH, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Northwest corner of said Lot 1; thence S61°59'36"E along the South right of way line of 47TH Street South, a distance of 46.77 feet; thence N84°17'50"W, a distance of 41.45 feet to a point on the West line of said Lot 1; thence N00°10'06"W along said West line, a distance of 17.84 feet to the Point of Beginning, containing 367.9 square feet, more or less.

Temporary Construction Easement

That portion of Lot 1 of K MART PLAZA SOUTH, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Northeast corner of said Lot 1, said point lying on a curve, concave northerly, having a radius of 3,899.83 feet and a radial bearing of S02°47'22"E; thence westerly along the North line of said Lot 1, along said curve through a central angle of 01°25'42", a distance of 97.22 feet; thence S05°03'00"E, a distance of 17.44 feet; thence N89°53'46"E, a distance of 95.89 feet to a point on the East line of said Lot 1; thence N00°45'07"W along said East line, a distance of 20.72 feet to the Point of Beginning, containing 1,820.3 square feet, more or less.

4830 South Broadway - KMart

Identified Features

Property Parcels

Roads

State Highway

US Federal Highway

Interstate

KTA

Arterial

Collector

Minor

Ramp

Railroads

Quarter Section

Waterways

Streams

Parks

Airports

SDERASTER.S-DEDATA.ORTH-O1FT

SDERASTER.S-DEDATA.ORTH-O

City Limits

Andale

Bel Aire

Bentley

Cheney

Clearwater

Colwich

Derby

Eastborough

Garden Plain

Goddard

Haysville

Kechi

Maize

Mount Hope

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Agricultural Land in the East Half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian for Integrated Local Water Supply Plan (County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993, the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River, transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita.

Analysis: Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. From the vacant land located at the southeast corner of 117th Street North and 119th Street West, said property being in the East half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the 6th P.M., it is necessary to acquire a pipeline easement together with a temporary construction easement. The proposed pipeline easement is 60-feet wide and consists of 4.63-acres. The temporary construction easement is 75-feet wide and consists of 4.31-acres. The seller has agreed to accept the $5,719 offer. This offer is based on a market analysis valuation. The proposed permanent easement was valued at $4,167, or $900 an acre. The proposed temporary construction easement was valued at $1,552, or $360 an acre.

Financial Considerations: A budget of $6,719 is requested; this includes $5,719 for the acquisition, $1,000 for title work, title insurance, closing costs and recording fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has an available funding of over $7.6 million

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure.

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

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

Attachments: Real estate purchase agreement, permanent easement and temporary construction easement and area maps.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ___ day of _____, 2009 by and between Oda Lee Broadhurst, etal, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Sedgwick County, Kansas, to wit:

Permanent Easement (Pipeline – Parcels "A" North & South) A 60.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the northwest corner of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00^{0}24'53"E, 893.45 feet along the west line of said east half to the Point of Beginning; thence S43^{0}05'47"E, 1937.32 feet to the Point of Termination, said point being on the east line of said east half and lying S00^{0}25'58"E, 2330.66 feet south of the northeast corner of said Northwest Quarter.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the west line of said east half and on the east line of said east half.

The above easement adjoins the southwesterly side of an easement described in Condemnation Case No. 104,110 and recorded in Miscellaneous Book 150, Page 1.

TOGETHER WITH The south 100 feet of the north 130 feet of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, EXCEPT the east 466.69 feet of the north 466.69 feet of said east half.

Said tracts contain 4.63 acres, more or less.

Temporary Easement (Construction – Parcels "B" North & South) A 75 feet wide strip of land lying on the right side (southwesterly side) of a line described as: Commencing at the northwest corner of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00^{0}24'53"E, 893.45 feet along the west line of said east half to the Point of Beginning; thence S43^{0}05'47"E, 1937.32 feet to the Point of Termination, said point being on the east line of said east half and lying S00^{0}25'58"E, 2330.66 feet south of the northeast corner of said Northwest Quarter.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the west line of said east half and on the east line of said east half.

TOGETHER WITH the south 50 feet of the north 180 feet of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Merdian, Sedgwick County, Kansas, EXCEPT the east 466.69 feet of the north 466.69 feet of said east half.

MDS
INCLUDING MEMO DATED 5/26/09.
O.L.B.
DLH
LJH
JGB
DLB

Said tracts contain 4.31 acres, more or less.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Five Thousand Seven Hundred Nineteen Dollars and No Cents ($5,719.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before ~~May~~ JULY 30, 2009.

MDS O.L.B. LJH DLH JGB DLB

6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.

7. Possession to be given to Buyer on date of closing.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.

9. In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.

10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.

11. Buyer hereby agrees that the finished grade will match the existing grade as it currently

exists upon completion of the project.

12. Site Assessment

A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Oda Lee Broadhurst
Oda Lee Broadhurst, Life Estate

Donald Leroy Broadhurst
Donald Leroy Broadhurst

Susan J. Broadhurst
Susan J. Broadhurst

Debra Lee Broadhurst Hein
Debra Lee Broadhurst Hein

Leonard J. Hein
Leonard J. Hein

BUYER:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

Memorandum

Date: May 26, 2009	
To: Program Manager and CDM – Pipe Line Design Team	**From:** Mike Schomaker
Attention: Lynn Moore and Tom Mercer	**Project Name/No.:**
Reference: Line 1-3 and 1-4 Tree Removal	**Copies To:**

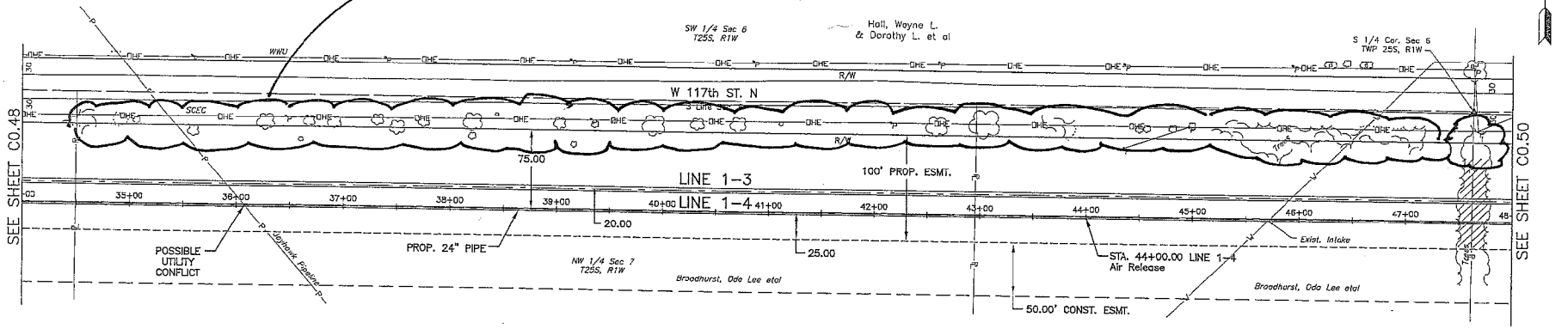
PLEASE ADVISE IMMEDIATELY OF ANY MISCONCEPTIONS OR OMISSIONS YOU BELIEVE TO BE CONTAINED HEREIN.

During the property negotiations with "Broadhurst, Oda Lee etal" a request was made to remove all trees, shrubs, and miscellaneous materials from the north line of her property as shown on the attached copy of the 30% Preliminary Plans. Please include this request as a contractor requirement on the Final Plans.

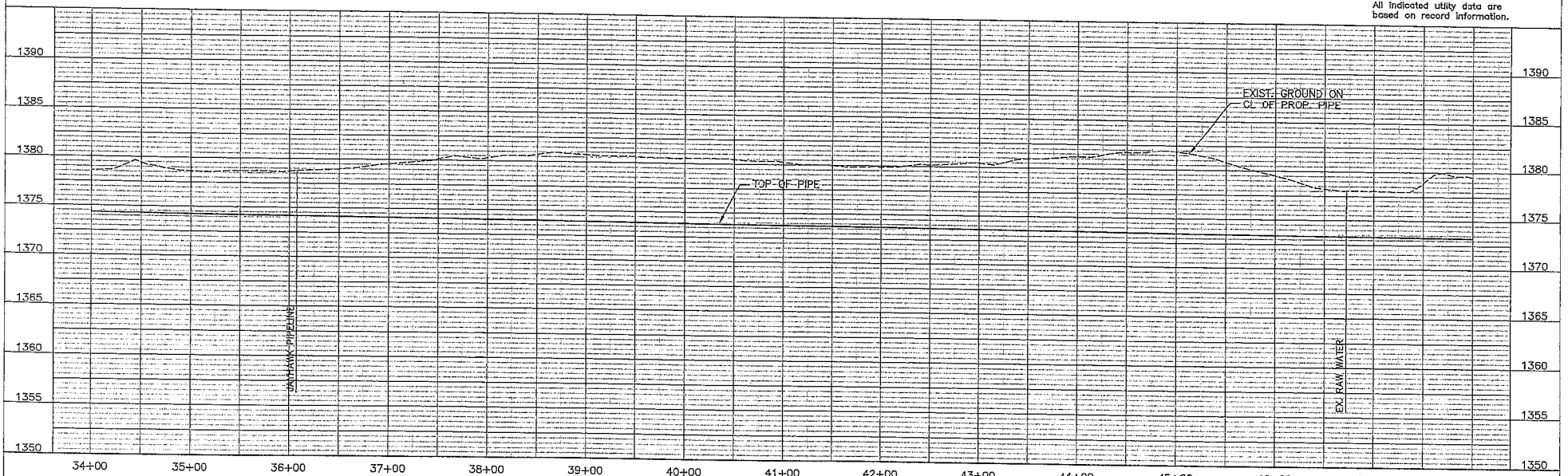
OLB
DHZ
LJK
SJB
DLB

REMOVE ALL TREES AND BRUSH - DO NOT REPLACE

SEDGWICK COUNTY



Note:
All indicated utility data are based on record information.



REV	DATE	BY	APP	DESCRIPTION

ASR

PREPARED FOR
WICHITA WATER UTILITIES

CDM
Camp Dresser & McKee
345 Riverview, Ste. 620
Wichita, KS 67203
Tel: (316) 440-6700
consulting • engineering • construction • operations

DESIGNED
DESIGN D. Lancaster
DRAWN K. Lidgett

REVIEWED
CHECKED
APPROV

MKEC ENGINEERING CONSULTANTS, INC.
411 N. WEBB ROAD
WICHITA, KS. 67206
316-684-8600

VERIFY SCALE
1" BAR IS NOT ONE INCH ON ORIGINAL DRAWING.
0 1
DRAWING IS NOT TO SCALE

30% Design Not For Construction

BID PACKAGE 1 - DIAGONAL TRANSMISSION MAIN AND RIVER INTAKE LINE

LINE 1-4
RESIDUALS RETURN LINE
STA. 34+00 TO 48+00

CITY OF WICHITA
PROJ. NO. 788013

OCA PROJECT NO. 633972

SCALE: H:1"=50'; V:1"=5"
DATE: 3/31/2009
DRAWING NO. C0.49
SHEET NO. ##

Saved 03-31-2009 5:16:11 PM by UTUCO
PLOT SCALE 1:1 PLOTTED 03-31-2009 by JEFF COOK
N:\CAD\WICHITA\Projects\Active\633972\Drawings\Utility\633972-C0.49.dwg

PIPELINE EASEMENT

THIS EASEMENT made this 27 day of May, 2009 by Oda Lee Broadhurst, etal, "Grantor" and The City of Wichita, Kansas, a Municipal Corporation, "Grantee". mnl

and Memo dated 5/26/09

WITNESSETH: That Grantor, in consideration of the sum of Four Thousand One Hundred Sixty-Seven Dollars and No Cents ($4,167.00), the receipt whereof is hereby acknowledged, do hereby grant and convey unto Grantee a perpetual easement for the purpose of constructing, operating, maintaining, inspecting and repairing a pipeline for the transmission of water and other equipment which the Grantee shall deem necessary under the following described real estate situated in Sedgwick County, Kansas, to wit:

OL.B.
DLH
LJH
SJB
DLB

Permanent Easement (Pipeline – Parcels "A" North & South) A 60.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the northwest corner of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00^{0}24'53"E, 893.45 feet along the west line of said east half to the Point of Beginning; thence S43^{0}05'47"E, 1937.32 feet to the Point of Termination, said point being on the east line of said east half and lying S00^{0}25'58"E, 2330.66 feet south of the northeast corner of said Northwest Quarter.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the west line of said east half and on the east line of said east half.

The above easement adjoins the southwesterly side of an easement described in Condemnation Case No. 104,110 and recorded in Miscellaneous Book 150, Page 1.

TOGETHER WITH The south 100 feet of the north 130 feet of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, EXCEPT the east 466.69 feet of the north 466.69 feet of said east half.

Said tracts contain 4.63 acres, more or less.

These easements are for the installation and maintenance of underground utilities and associated appurtenances. Grantee shall not disturb or alter the surface of the property after the completion of the installation of any utilities installed hereunder without first obtaining the written consent of the Grantor, its heirs and assigns.

The amenities installed hereunder shall remain the property of Grantee, and Grantee shall have the right to inspect, rebuild, remove, repair, improve and make alterations to its facilities as it may from time to time deem advisable.

Grantor, his successors and assigns, may use the land within the easement for any purpose not inconsistent with the rights hereby granted, provided such use does not interfere with or endanger the construction, operations and maintenance of Grantee's facilities.

Grantee shall in no way interfere with the Grantors use and enjoyment of the surface of the property.

For the purpose of constructing, inspecting, maintaining or operating its facilities, Grantee shall have the right of ingress and egress from the easement over the lands of Grantor adjacent to said easement and lying between public or private roads. Grantee shall exercise said right in practicable manner whereby Grantee attempts to cause the least damage and inconvenience to Grantor. Grantee shall pay for any damages to growing crops caused by actions of Grantee in inspecting, maintaining or operating said facility.

Grantee shall not interfere with the ingress and egress of the Grantor, his heirs and assigns. Should it become necessary to relocate the facilities of the Grantee to aid in the future development of the subject property, Grantee hereby agrees to cooperate with Grantor in relocating said facilities. However, Grantor shall reimburse Grantee for the actual cost of relocating said facilities.

IN WITNESS WHEREOF: Grantor has signed these presents the day and year first written.

Oda Lee Broadhurst
Oda Lee Broadhurst, Life Estate

Donald Leroy Broadhurst
Donald Leroy Broadhurst

Susan J. Broadhurst
Susan J. Broadhurst

Debra Lee Broadhurst Hein
Debra Lee Broadhurst Hein

Leonard J. Hein
Leonard J. Hein

STATE OF KANSAS)
) **ss:**
SEDGWICK **COUNTY**)

LEONARD J. Hein
DONALD LEROY BROADHURST
and DEBRA LEE BROADHURST HEIN

Personally appeared before me a notary public in and for the County and State aforesaid ODA LEE BROADHURST, SUSAN J. BROADHURST to me personally known to be the same persons who executed the foregoing instrument of writing and said persons duly acknowledged the execution thereof.

Dated at SEDGWICK, Kansas, this 27TH day of MAY, 2009.

MICHAEL D. SCHOMAKER
Notary Public - State of Kansas
My Appt. Expires 3/25/13

Notary Public

My Commission expires 3/25/13

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made this 27 day of May, 2009, by and between Oda Lee Broadhurst, etal, (hereinafter referred to as "Grantor") and the City of Wichita, Kansas, a Municipal Corporation, (hereinafter referred to as "Grantee")

WITNESSETH: That the said Grantor, in consideration of the sum of One Thousand Five Hundred Fifty-Two Dollars and No Cents ($1,552.00) and other valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the Grantee a Temporary Right-Of-Way for the purpose of constructing, maintaining, and repairing utilities, over, along and under the following described real estate situated in Sedgwick County, Kansas, to wit:

Temporary Easement (Construction – Parcels "B" North & South) A 75 feet wide strip of land lying on the right side (southwesterly side) of a line described as: Commencing at the northwest corner of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00^{0}24'53"E, 893.45 feet along the west line of said east half to the Point of Beginning; thence S43^{0}05'47"E, 1937.32 feet to the Point of Termination, said point being on the east line of said east half and lying S00^{0}25'58"E, 2330.66 feet south of the northeast corner of said Northwest Quarter.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the west line of said east half and on the east line of said east half.

TOGETHER WITH the south 50 feet of the north 180 feet of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Merdian, Sedgwick County, Kansas, EXCEPT the east 466.69 feet of the north 466.69 feet of said east half.

Said tracts contain 4.31 acres, more or less.

And said Grantee is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such utility improvements for a period of twenty-four months from the onset of construction. This temporary easement shall expire automatically at the end of the described.

IN WITNESS WHEREOF: The said Grantor have signed these presents the day and year first written.

Oda Lee Broadhurst
Oda Lee Broadhurst, Life Estate

Donald Leroy Broadhurst
Donald Leroy Broadhurst

Susan J. Broadhurst
Susan J. Broadhurst

Debra Lee Broadhurst Hein
Debra Lee Broadhurst Hein

Leonard J. Hein
Leonard J. Hein

Susan J. Broadhurst
Leonard J. Hein
Donald Leroy Broadhurst
and Debra Lee Broadhurst Hein

STATE OF KANSAS)
) ss:
Sedgwick COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid Oda Lee Broadhurst came to me personally known to be the same persons who executed the foregoing instrument of writing and said persons duly acknowledged the execution thereof.

Dated at Sedgwick (city), Kansas, this 27th day of May, 2009.

MICHAEL D. SCHOMAKER
Notary Public - State of Kansas
My Appt. Expires 3/25/13

Notary Public

My Commission expires: 3/25/13

EASEMENT

A 60.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the northwest corner of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00°24'53"E, 893.45 feet along the west line of said east half to the Point of Beginning; thence S43°05'47"E, 1937.32 feet to the Point of Termination, said point being on the east line of said east half and lying S00°25'58"E, 2330.66 feet south of the northeast corner of said Northwest Quarter.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the west line of said east half and on the east line of said east half.

The above easement adjoins the southwesterly side of an easement described in Condemnation Case No. 104,110 and recorded in Miscellaneous Book 150, Page 1.

TOGETHER WITH The south 100 feet of the north 130 feet of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, EXCEPT the east 466.69 feet of the north 466.69 feet of said east half.

Said tracts contain 4.63 acres, more or less.

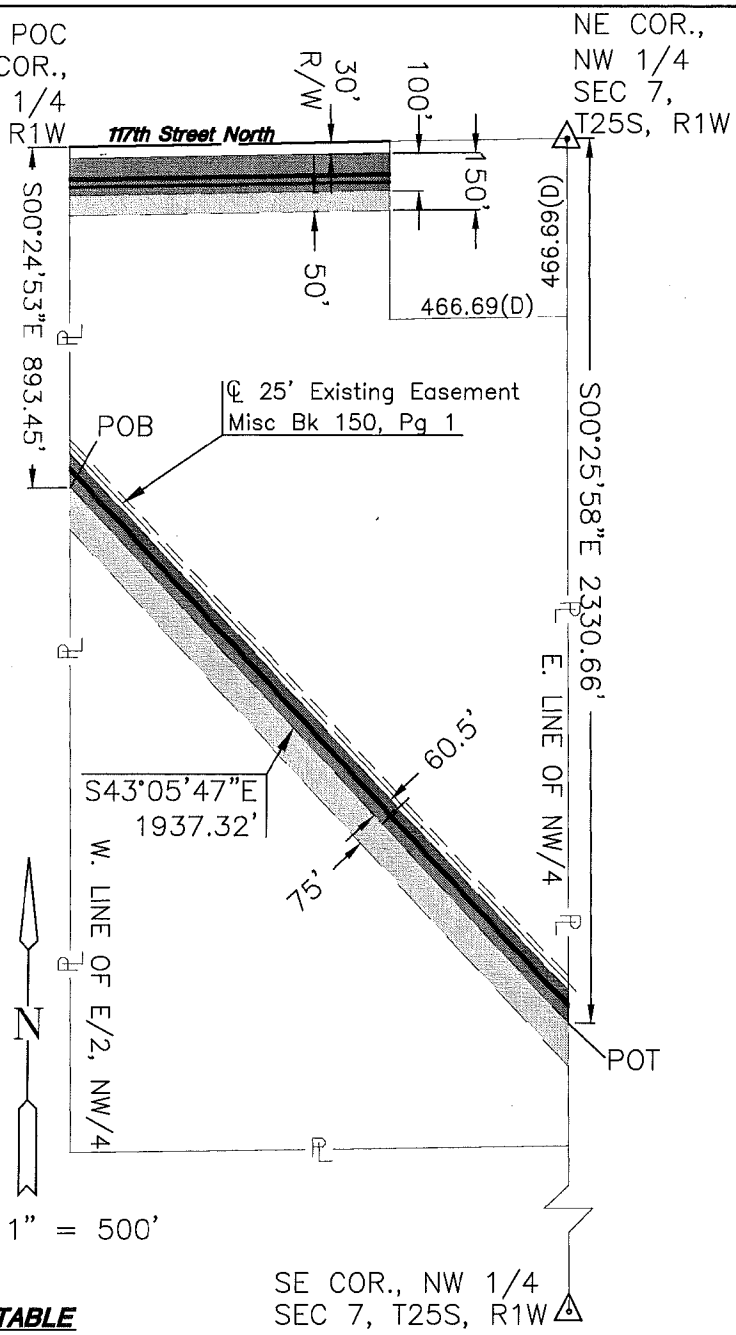
CONSTRUCTION EASEMENT

A 75 feet wide strip of land lying on the right side (southwesterly side) of a line described as: Commencing at the northwest corner of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S00°24'53"E, 893.45 feet along the west line of said east half to the Point of Beginning; thence S43°05'47"E, 1937.32 feet to the Point of Termination, said point being on the east line of said east half and lying S00°25'58"E, 2330.66 feet south of the northeast corner of said Northwest Quarter.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the west line of said east half and on the east line of said east half.

TOGETHER WITH the south 50 feet of the north 180 feet of the east half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, EXCEPT the east 466.69 feet of the north 466.69 feet of said east half.

Said tracts contain 4.31 acres, more or less.



AREA TABLE

EASEMENT	
N Tract:	1.94
S Tract:	2.69
Total	4.63

CONST ESMNT	
N Tract:	0.97
S Tract:	3.34
Total	4.31

LEGEND

D – Described
POC – Point of Commencement
POB – Point of Beginning
POT – Point of Termination

Easement (4.63 acres)

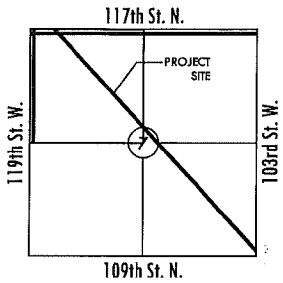
Construction Easement (4.31 acres)

Proposed Water Line

I:\MAP\2008\08248\DWG APRIL 2009\TRACT MAPS\54.DWG

OWNER:

Broadhurst, Oda Lee ETAL



VICINITY MAP

ASR

CDM
Camp Dresser & McKee
345 Riverview, Ste. 520
Wichita, KS 67203
Tel: (316) 660-6700
consulting • engineering • construction • operations

MKEC ENGINEERING CONSULTANTS, INC.

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

DIAGONAL TRANSMISSION MAIN AND RIVER INTAKE LINE
PROJECT NAME

TRACT 54
SHEET TITLE

DFL	DSN/AAM/DM	JCM
DESIGN BY:	DRAWN BY:	CHECKED BY:
APRIL 2009	08248	1 / 1
DATE	JOB NO.	SHEET/OF

ASR
PRESERVING OUR WATER
...OUR FUTURE

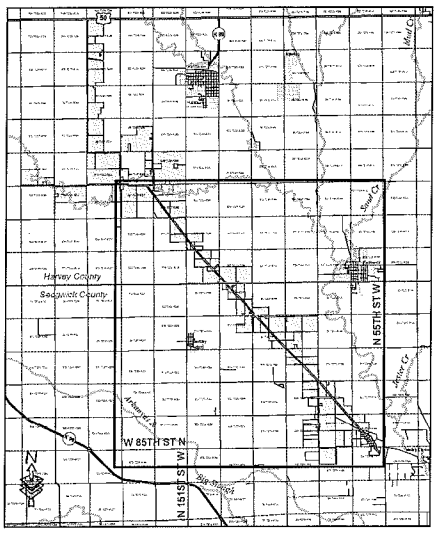
BID PACKAGE 1
Property Acquisition Map

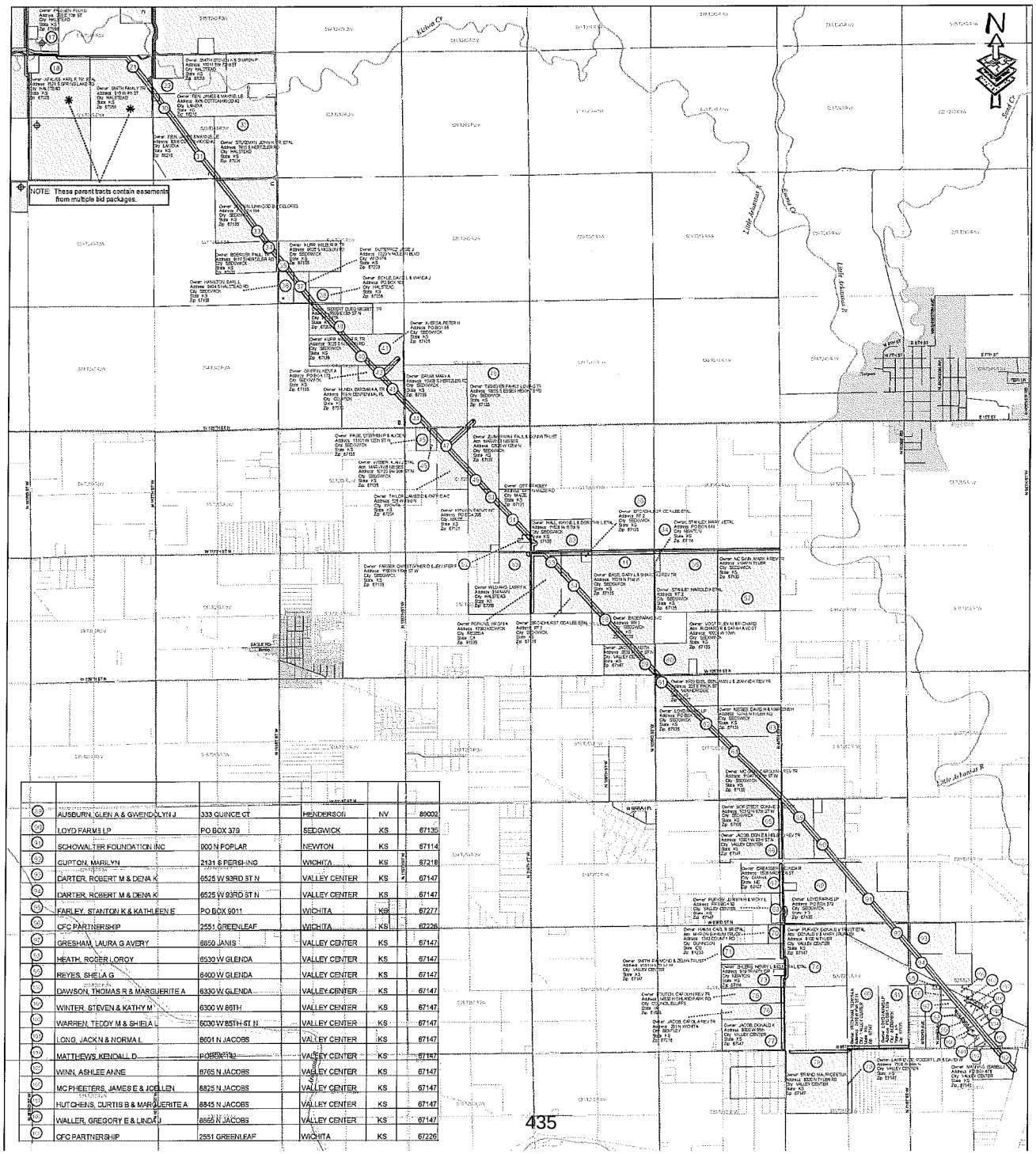
Legend

- Section Lines
- City Limits
- County Boundaries
- Streets and Roads
- Highways
- Rivers and Streams
- Parent Tracts
- Bid Package 1 Easements
- Bid Package 2 Easements
- Bid Package 3 Easements
- Well Location
- RR ## Well ID Number
- # Parent Tract ID Number

Q:\2007\07685\Brent\Project GIS\ASR Bid Package2 Easements.mxd
Last saved 2/2/2009 by SAD
NAD_1983_StatePlane_Kansas_South_FIPS_1502_Feet
Projection: Lambert_Conformal_Conic

Professional Engineering Consultants, P.A.
303 S. Topeka
Wichita, KS 67202
Ph. (316) 262-2691
© 2008 Professional Engineering Consultants, P.A.




N
NOTE: These parent tracts contain easements from multiple bid packages.
Kisiwa Cr
Spring Cr
Little Arkansas R
Little Arkansas R
W 125TH ST N
W 109TH ST N
W 93RD ST N
W 85TH ST N
W 77TH ST N
W 69TH ST N
W 61ST ST N
W 53RD ST N
W 45TH ST N
W 37TH ST N
W 29TH ST N
W 21ST ST N
W 13TH ST N
W 5TH ST N
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CITY OF WICHITA
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Agricultural Land in the South Half of the Southeast Quarter of Section 7, Township 25 South, Range 1 West of the 6th Principal Meridian for Integrated Local Water Supply Plan (Harvey County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993, the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River, transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita.

Analysis: Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. From the vacant land located at the northwest corner of 109th Street North and 103rd Street West, said property being in the South half of the Southeast Quarter of Section 7, Township 25 South, Range 1 West of the 6th P.M., it is necessary to acquire a pipeline easement together with a temporary construction easement. The proposed pipeline easement is 60-feet wide and consists of 2.19-acres. The temporary construction easement is 75-feet wide and consists of 2.95-acres. The seller has agreed to accept the $4,305 offer. This offer is based on a market analysis valuation. The proposed permanent easement was valued at $2,798, or $1,278 an acre. The proposed temporary construction easement was valued at $1,507, or $511 an acre.

Financial Considerations: A budget of $5,305 is requested; this includes $4,305 for the acquisition, $1,000 for title work, title insurance, closing costs and recording fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has an available funding of over $7.6 million

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure.

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

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

Attachments: Real estate purchase agreement, permanent easement and temporary construction easement and area maps.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 15 day of May, 2009 by and between D. Keith Jacob, a single person, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Sedgwick County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel "A") A 60.5 feet wide strip of land lying left (northeasterly) of the following described line: Commencing at the Northeast corner of the South half of the Southeast Quarter, Section 7, Township 25 South, Range 1 West of the Sixth P.M., Sedgwick County, Kansas; thence along the north line of said South half of the Southeast Quarter, on an assumed bearing of S89^{0}19'27"W, 1138.01 feet to the Point of Beginning; thence S43^{0}05'47"E, 1601.15 feet; thence S43^{0}00'01"E, 79.53 feet to a point on the east line of said South half of the Southeast Quarter, being 90.90 feet north of the southeast corner of said southeast quarter; said point being the point of termination. Said tract contains 2.19 acres, more or less, excluding road right of way.

The above easement adjoins the southwesterly side of an easement described in Condemnation Case NO. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the north and east lines of the South half of said Southeast Quarter.

Temporary Easement (Construction – Parcel "B") a 75 feet wide strip of land lying right (southwesterly) of the following described line: Commencing at the Northeast corner of the South half of the Southeast Quarter, Section 7, Township 25 South, Range 1 West of the Sixth P.M., Sedgwick County, Kansas; thence along the north line of the South half of said Southeast Quarter, on an assumed bearing of S89^{0}19'27"W, 1138.01 feet to the Point of Beginning; thence S43^{0}05'47"E, 1601.15 feet; thence S43^{0}00'01"E, 79.53 feet to a point on the east line of said South half of the Southeast Quarter, being 90.90 feet north of the southeast corner of said Southeast Quarter; said point being the point of termination. Said tract contains 2.95 acres, more or less, excluding road right of way.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the north, south and east lines of the South half of said Southeast Quarter.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Four Thusand Three Hundred Five Dollars and No Cents ($4,305.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to

Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before May 30, 2009.

6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.

7. Possession to be given to Buyer on date of closing.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer will pay 100% closing costs.

9 . In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.

10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.

11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.

12. Site Assessment

A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

D. Keith Jacob

D. Keith Jacob, a single person

BUYER:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

PIPELINE EASEMENT

THIS EASEMENT made this 15 day of May, 2009 by D. Keith Jacob, a single person, "Grantor" and The City of Wichita, Kansas, a Municipal Corporation, "Grantee".

WITNESSETH: That Grantor, in consideration of the sum of Two Thousand Seven Hundred Ninety-Eight Dollars and No Cents ($2,798.00), the receipt whereof is hereby acknowledged, do hereby grant and convey unto Grantee a perpetual easement for the purpose of constructing, operating, maintaining, inspecting and repairing a pipeline for the transmission of water and other equipment which the Grantee shall deem necessary under the following described real estate situated in Sedgwick County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel "A") A 60.5 feet wide strip of land lying left (northeasterly) of the following described line: Commencing at the Northeast corner of the South half of the Southeast Quarter, Section 7, Township 25 South, Range 1 West of the Sixth P.M., Sedgwick County, Kansas; thence along the north line of said South half of the Southeast Quarter, on an assumed bearing of S89^{0}19'27"W, 1138.01 feet to the Point of Beginning; thence S43^{0}05'47"E, 1601.15 feet; thence S43^{0}00'01"E, 79.53 feet to a point on the east line of said South half of the Southeast Quarter, being 90.90 feet north of the southeast corner of said southeast quarter; said point being the point of termination. Said tract contains 2.19 acres, more or less, excluding road right of way.

The above easement adjoins the southwesterly side of an easement described in Condemnation Case NO. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the north and east lines of the South half of said Southeast Quarter.

This easement is for the installation and maintenance of underground utilities and associated appurtenances. Grantee shall not disturb or alter the surface of the property after the completion of the installation of any utilities installed hereunder without first obtaining the written consent of the Grantor, its heirs and assigns.

The amenities installed hereunder shall remain the property of Grantee, and Grantee shall have the right to inspect, rebuild, remove, repair, improve and make alterations to its facilities as it may from time to time deem advisable.

Grantor, his successors and assigns, may use the land within the easement for any purpose not inconsistent with the rights hereby granted, provided such use does not interfere with or endanger the construction, operations and maintenance of Grantee's facilities.

Grantee shall in no way interfere with the Grantors use and enjoyment of the surface of the property.

For the purpose of constructing, inspecting, maintaining or operating its facilities, Grantee shall have the right of ingress and egress from the easement over the lands of Grantor adjacent to said easement and lying between public or private roads. Grantee shall exercise said right in practicable manner whereby Grantee attempts to cause the least damage and inconvenience to Grantor. Grantee shall pay for any damages to growing crops caused by actions of Grantee in inspecting, maintaining or operating said facility.

Grantee shall not interfere with the ingress and egress of the Grantor, his heirs and assigns. Should it become necessary to relocate the facilities of the Grantee to aid in the future development of the subject property, Grantee hereby agrees to cooperate with Grantor in relocating said facilities. However, Grantor shall reimburse Grantee for the actual cost of relocating said facilities.

IN WITNESS WHEREOF: Grantor has signed these presents the day and year first written.

D. Keith Jacob

D. Keith Jacob, a single person

STATE OF KANSAS)
) **ss:**
SEDGWICK **COUNTY**)

Personally appeared before me a notary public in and for the County and State aforesaid D. KEITH JACOB to me personally known to be the same persons who executed the foregoing instrument of writing and said persons duly acknowledged the execution thereof.

Dated at Valley Center, Kansas, this 15TH day of MAY, 2009.

Notary Public

My Commission expires 3/25/13

MICHAEL D. SCHOMAKER
Notary Public - State of Kansas
My Appt. Expires 3/25/13

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made this 15 day of May, 2009, by and between D. Keith Jacob, a single person, (hereinafter referred to as "Grantor") and the City of Wichita, Kansas, a Municipal Corporation, (hereinafter referred to as "Grantee")

WITNESSETH: That the said Grantor, in consideration of the sum of One Thousand Five Hundred Seven Dollars and No Cents ($1,507.00) and other valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the Grantee a Temporary Right-Of-Way for the purpose of constructing, maintaining, and repairing utilities, over, along and under the following described real estate situated in Sedgwick County, Kansas, to wit:

Temporary Easement (Construction – Parcel "B") a 75 feet wide strip of land lying right (southwesterly) of the following described line: Commencing at the Northeast corner of the South half of the Southeast Quarter, Section 7, Township 25 South, Range 1 West of the Sixth P.M., Sedgwick County, Kansas; thence along the north line of the South half of said Southeast Quarter, on an assumed bearing of S89^{0}19'27"W, 1138.01 feet to the Point of Beginning; thence S43^{0}05'47"E, 1601.15 feet; thence S43^{0}00'01"E, 79.53 feet to a point on the east line of said South half of the Southeast Quarter, being 90.90 feet north of the southeast corner of said Southeast Quarter; said point being the point of termination. Said tract contains 2.95 acres, more or less, excluding road right of way.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the north, south and east lines of the South half of said Southeast Quarter.

And said Grantee is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such utility improvements for a period of twenty-four months from the onset of construction. This temporary easement shall expire automatically at the end of the described.

IN WITNESS WHEREOF: The said Grantor have signed these presents the day and year first written.

D. Keith Jacob

D. Keith Jacob, a single person

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

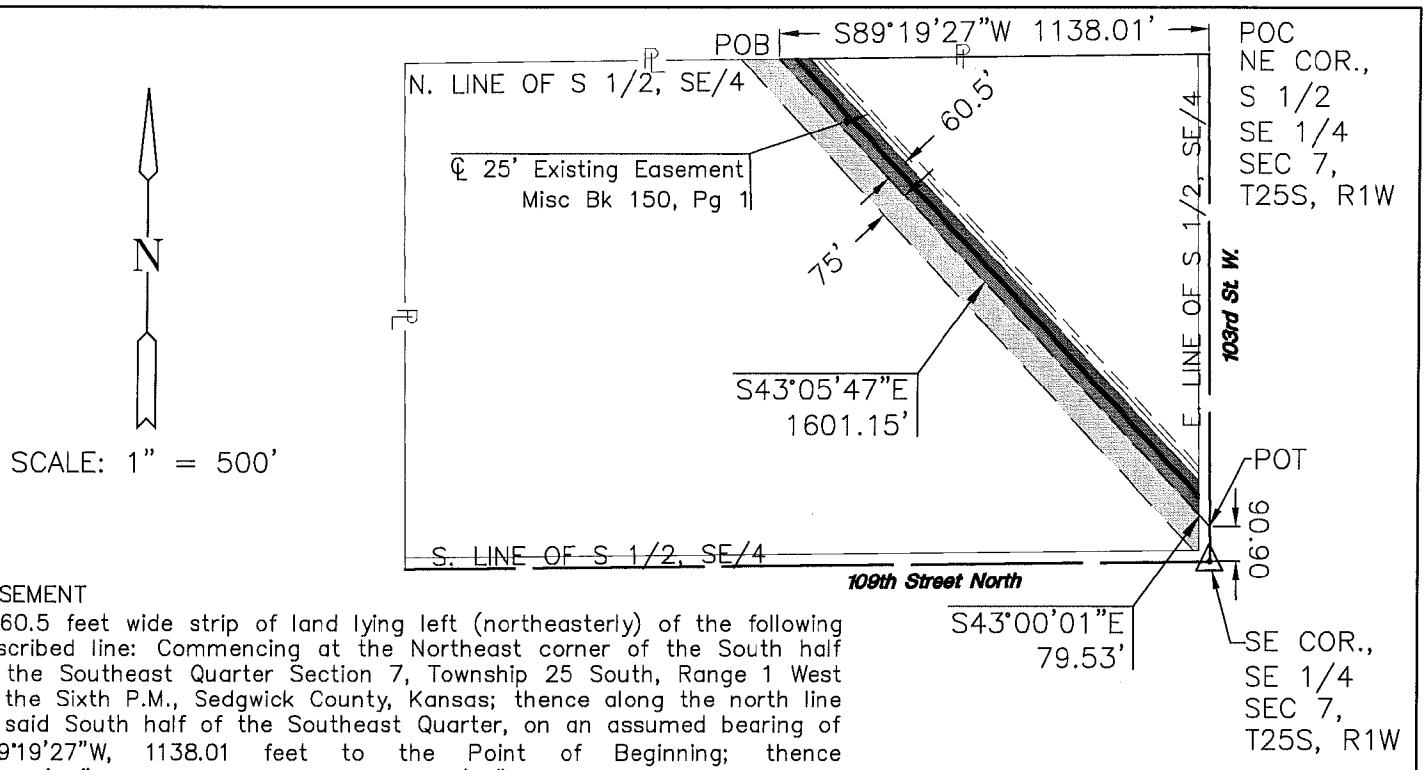
Personally appeared before me a notary public in and for the County and State aforesaid D. KEITH JACOB came to me personally known to be the same persons who executed the foregoing instrument of writing and said persons duly acknowledged the execution thereof.

Dated at VALLEY CENTER Kansas, this 15TH day of MAY, 2009.
(city)

Notary Public

My Commission expires: 3/25/13

MICHAEL D. SCHOMAKER
Notary Public - State of Kansas
My Appt. Expires 3/25/13



EASEMENT

A 60.5 feet wide strip of land lying left (northeasterly) of the following described line: Commencing at the Northeast corner of the South half of the Southeast Quarter Section 7, Township 25 South, Range 1 West of the Sixth P.M., Sedgwick County, Kansas; thence along the north line of said South half of the Southeast Quarter, on an assumed bearing of S89°19'27"W, 1138.01 feet to the Point of Beginning; thence S43°05'47"E, 1601.15 feet; thence S43°00'01"E, 79.53 feet to a point on the east line of said South half of the Southeast Quarter, being 90.90 feet north of the southeast corner of said southeast quarter; said point being the point of termination. Said tract contains 2.19 acres, more or less, excluding road right of way.

The above easement adjoins the southwesterly side of an easement described in Condemnation Case NO. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the north and east lines of the South half of said Southeast Quarter.

CONSTRUCTION EASEMENT

A 75 feet wide strip of land lying right (southwesterly) of the following described line: Commencing at the Northeast corner of the South half of the Southeast Quarter Section 7, Township 25 South, Range 1 West of the Sixth P.M., Sedgwick County, Kansas; thence along the north line of the South half of said Southeast Quarter, on an assumed bearing of S89°19'27"W, 1138.01 feet to the Point of Beginning; thence S43°05'47"E, 1601.15 feet; thence S43°00'01"E, 79.53 feet to a point on the east line of said South half of the Southeast Quarter, being 90.90 feet north of the southeast corner of said southeast quarter; said point being the point of termination. Said tract contains 2.95 acres, more or less, excluding road right of way.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the north, south and east lines of the South half of said Southeast Quarter.

LEGEND

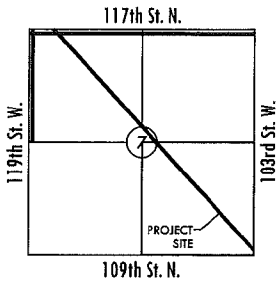
POC – Point of Commencement
POB – Point of Beginning
POT – Point of Termination

Easement (2.19 acres) Excluding road right of way.

Construction Easement (2.95 acres) Excluding road right of way.

Proposed Water Line

I:\MAP\2008\08248\DWG APRIL 2009\TRACT MAPS\59.DWG



VICINITY MAP

OWNER:

Jacobs, D. Keith

ASR

CDM
Camp Dresser & McKee
345 Riverview, Ste. 520
Wichita, KS 67203
Tel: (316) 660-6700
consulting • engineering • construction • operations

MKEC ENGINEERING CONSULTANTS, INC.

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

DIAGONAL TRANSMISSION MAIN AND RIVER INTAKE LINE
PROJECTNAME

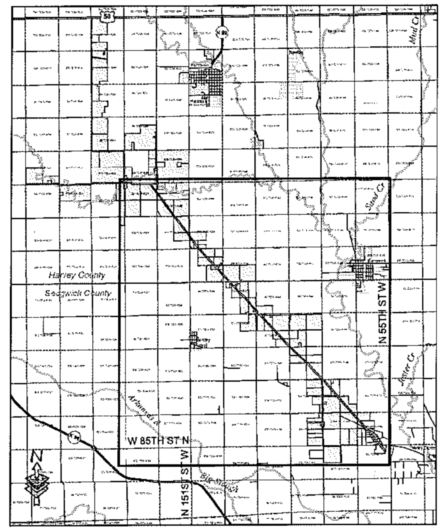
TRACT 59
SHEETTITLE

DFL	DSN/AAM	CWL
DESIGNBY:	DRAWNBY:	CHECKEDBY:
APRIL 2009	08248	1 / 1
DATE	JOBNO.	SHEET/OF

ASR
PRESERVING OUR WATER ...OUR FUTURE

BID PACKAGE 1
Property Acquisition Map

Legend
- Section Lines
- City Limits
- County Boundaries
- Streets and Roads
- Highways
- Rivers and Streams
- Parent Tracts
- Bid Package 1 Easements
- Bid Package 2 Easements
- Bid Package 3 Easements
- Well Location
- RR ## Well ID Number
- (#) Parent Tract ID Number



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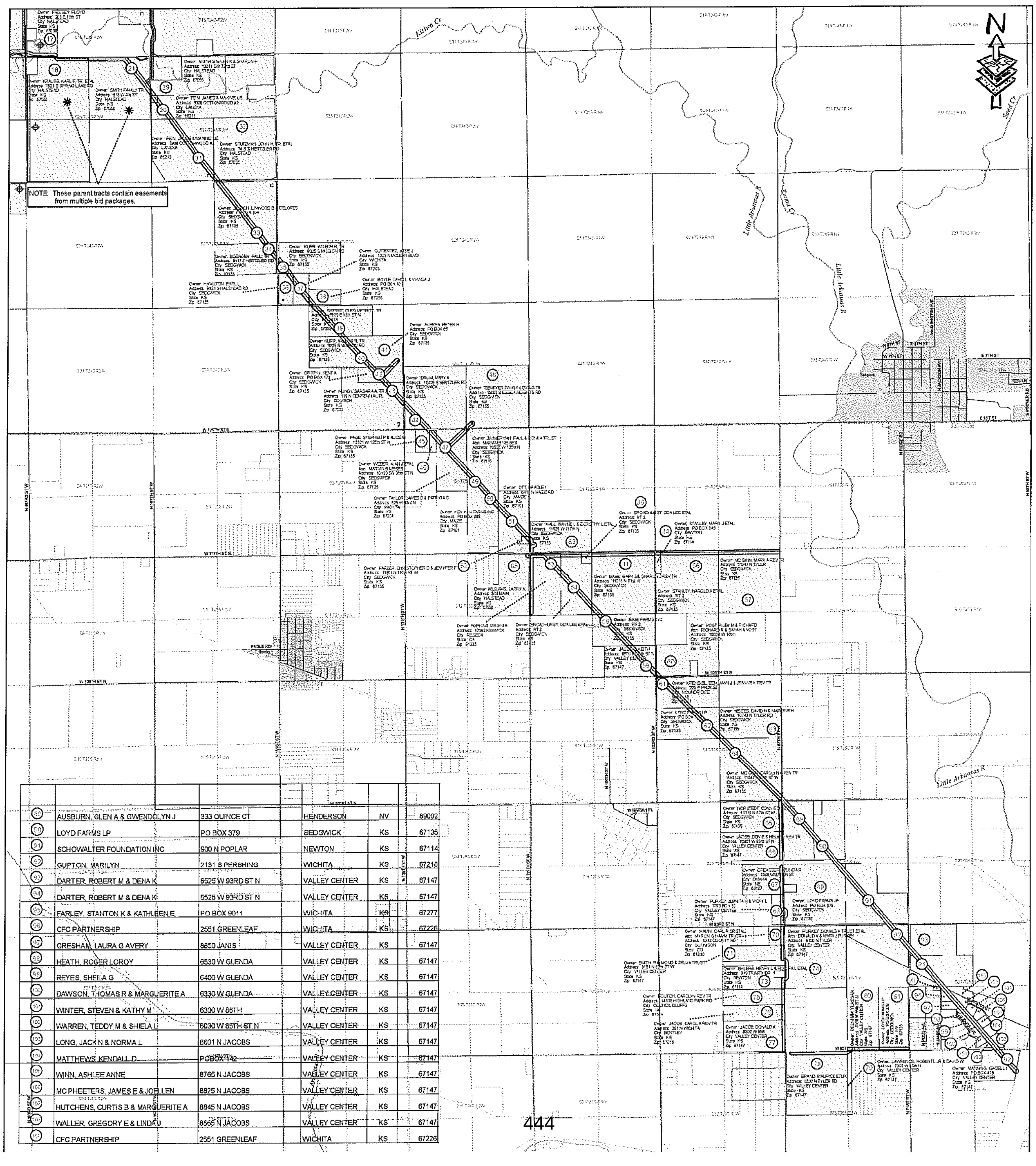
Projection: Lambert_Conformal_Conic

Professional Engineering Consultants, P.A.
303 S. Topeka
Wichita, KS 67202
Ph. (316) 262-2691

© 2008 Professional Engineering Consultants, P.A.



89	AUSBURN, GLEN A & GWENDOLYN J	333 QUINCE CT	HENDERSON	NV	89002
90	LOYD FARMS LP	PO BOX 379	SEDGWICK	KS	67135
91	SCHOWALTER FOUNDATION INC	900 N POPLAR	NEWTON	KS	67114
92	GUPTON, MARILYN	2131 S PERSHING	WICHITA	KS	67218
93	DARTER, ROBERT M & DENA K	6525 W 93RD ST N	VALLEY CENTER	KS	67147
94	DARTER, ROBERT M & DENA K	6525 W 93RD ST N	VALLEY CENTER	KS	67147
95	FARLEY, STANTON K & KATHLEEN E	PO BOX 9011	WICHITA	KS	67277
96	CFC PARTNERSHIP	2551 GREENLEAF	WICHITA	KS	67226
97	GRESHAM, LAURA G AVERY	8850 JANIS	VALLEY CENTER	KS	67147
98	HEATH, ROGER LOROY	6530 W GLENDA	VALLEY CENTER	KS	67147
99	REYES, SHEILA G	6400 W GLENDA	VALLEY CENTER	KS	67147
100	DAWSON, THOMAS R & MARGUERITE A	6330 W GLENDA	VALLEY CENTER	KS	67147
101	WINTER, STEVEN & KATHY M	6300 W 86TH	VALLEY CENTER	KS	67147
102	WARREN, TEDDY M & SHIELA L	6030 W 85TH ST N	VALLEY CENTER	KS	67147
103	LONG, JACK N & NORMA L	6601 N JACOBS	VALLEY CENTER	KS	67147
104	MATTHEWS, KENDALL D	PO BOX 142	VALLEY CENTER	KS	67147
105	WINN, ASHLEE ANNE	8765 N JACOBS	VALLEY CENTER	KS	67147
106	MC PHEETERS, JAMES E & JOELLEN	8825 N JACOBS	VALLEY CENTER	KS	67147
107	HUTCHENS, CURTIS B & MARGUERITE A	8845 N JACOBS	VALLEY CENTER	KS	67147
108	WALLER, GREGORY E & LINDA U	8865 N JACOBS	VALLEY CENTER	KS	67147
109	CFC PARTNERSHIP	2551 GREENLEAF	WICHITA	KS	67226

CITY OF WICHITA
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Agricultural Land at 11801 North 119th Street West for Integrated Local Water Supply Plan (County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993, the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River, transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita.

Analysis: Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. It is necessary to acquire a pipeline easement across the northwest portion of the residential property located at 11801 North 119th Street West. The proposed pipeline easement is 60-feet wide and consists of 0.16-acres. The seller has agreed to accept $2,700. This consists of the established minimum amount for an easement on the project, $500 and $2,200 as damages for the loss of four mature trees, damages to the in-ground sprinkler system and damages to landscaping.

Financial Considerations: A budget of $3,700 is requested; this includes $2,700 for the acquisition, $1,000 for title work, title insurance, closing costs and recording fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has an available funding of over $7.6 million

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure.

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

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

Attachments: Real estate purchase agreement, permanent easement and area maps.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ___ day of _____, 2008 by and between Christopher D. Farber and Jennifer F. Farber, husband and wife, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permaent Easement of the following described real property, situated in Harvey County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel "A") A 60.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the southeast corner of the Southeast Quarter of Section 1, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of N00°26'01"W, 697.45 feet along the east line of said Southeast Quarter; thence along the north line of tract described in DOC.#/FLM-PG 29735908 N89°31'05"W, 143.88 feet to the Point of Beginning, said point being 699.35 feet north of the south line of said Southeast Quarter; thence S42°52'26"E, 133.50 feet; thence S43°06'31"E, 79.33 feet to the Point of Termination, said point lying on the east line of said Southeast Quarter being 542.91 feet north of the southeast corner of said Southeast Quarter. Said tract contains 6923 square feet (0.16 acres), more or less, excluding road right of way.

The above easement adjoins the southwesterly side of an easement described in Condemnation Case No. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above-described strip of land are to be shortened or legenthed to form continuous lines and to terminate on the east line of said Quarter and on the north line of a tract described in DOC.#/FLM-PG 28735908.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Two Thousand Seven Hundred Dollars and No Cents ($2,700.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops exceeding current crop, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before _____.

6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.

7. Possession to be given to Buyer of date of closing.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by seller and 100% by Buyer. Buyer will pay 100% closing costs.

9 . In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.

10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.

11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.

12. Site Assessment

A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal

injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Christopher D. Farber

Jennifer F. Farber

BUYER:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

PIPELINE EASEMENT

THIS EASEMENT made this 14 day of May, 2009 by Christopher D. Farber and Jennifer F. Farber, husband and wife, "Grantor" and The City of Wichita, Kansas, a Municipal Corporation, "Grantee".

WITNESSETH: That Grantor, in consideration of the sum of Three Hundred Forty-One Dollars and No Cents ($341.00), the receipt whereof is hereby acknowledged, do hereby grant and convey unto Grantee a perpetual easement for the purpose of constructing, operating, maintaining, inspecting and repairing a pipeline for the transmission of water and other equipment which the Grantee shall deem necessary under the following described real estate situated in Sedgwick County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel "A") A 60.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the southeast corner of the Southeast Quarter of Section 1, Township 25 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of N00^{0}26'01"W, 697.45 feet along the east line of said Sutheast Quarter; thence alng the north line of tract described in DOC.#/FLM-PG 29735908 N89^{0}31'05"W, 143.88 feet to the Point of Beginning, said point being 699.35 feet north of the south line of said Southeast Quartrer; thence S42^{0}52'26"E, 133.50 feet; thence S43^{0}06'31"E, 79.33 feet to the Point of Termination, said point lying on the east line of said Southeast Quarter being 542.91 feet north of the southeast corner of said Southeast Quarter. Said tract contains 6923 square feet (0.16 acres), more or less, excluding road right of way.

The above easement adjoins the southwesterly side of an easement described in Condemnation Case No. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the east line of said Quarter and on the north line of a tract described in DOC.#/FLM-PG 28735908.

This easement is for the installation and maintenance of underground utilities and associated appurtenances. Grantee shall not disturb or alter the surface of the property after the completion of the installation of any utilities installed hereunder without first obtaining the written consent of the Grantor, its heirs and assigns.

The amenities installed hereunder shall remain the property of Grantee, and Grantee shall have the right to inspect, rebuild, remove, repair, improve and make alterations to its facilities as it may from time to time deem advisable.

Grantor, his successors and assigns, may use the land within the easement for any purpose not inconsistent with the rights hereby granted, provided such use does not interfere with or endanger the construction, operations and maintenance of Grantee's facilities.

Grantee shall in no way interfere with the Grantors use and enjoyment of the surface of the property.

For the purpose of constructing, inspecting, maintaining or operating its facilities, Grantee shall have the right of ingress and egress from the easement over the lands of Grantor adjacent to said easement and lying between public or private roads. Grantee shall exercise said right in practicable manner whereby Grantee attempts to cause the least damage and inconvenience to Grantor. Grantee shall pay for any damages to growing crops caused by actions of Grantee in inspecting, maintaining or operating said facility.

Grantee shall not interfere with the ingress and egress of the Grantor, his heirs and assigns. Should it become necessary to relocate the facilities of the Grantee to aid in the future development of the subject property, Grantee hereby agrees to cooperate with Grantor in

relocating said facilities. However, Grantor shall reimburse Grantee for the actual cost of relocating said facilities.

IN WITNESS WHEREOF: Grantor has signed these presents the day and year first written.

Christopher D. Farber

Jennifer F. Farber

STATE OF KANSAS)
) **ss:**
SEDGWICK **COUNTY**)

Personally appeared before me a notary public in and for the County and State aforesaid CHRISTOPHER and Jennifer Farber to me personally known to be the same persons who executed the foregoing instrument of writing and said persons duly acknowledged the execution thereof.

Dated at SEDGWICK, Kansas, this 14TH day of MAY, 2009.

MICHAEL D. SCHOMAKER
Notary Public - State of Kansas
My Appt. Expires 3/25/13

Notary Public

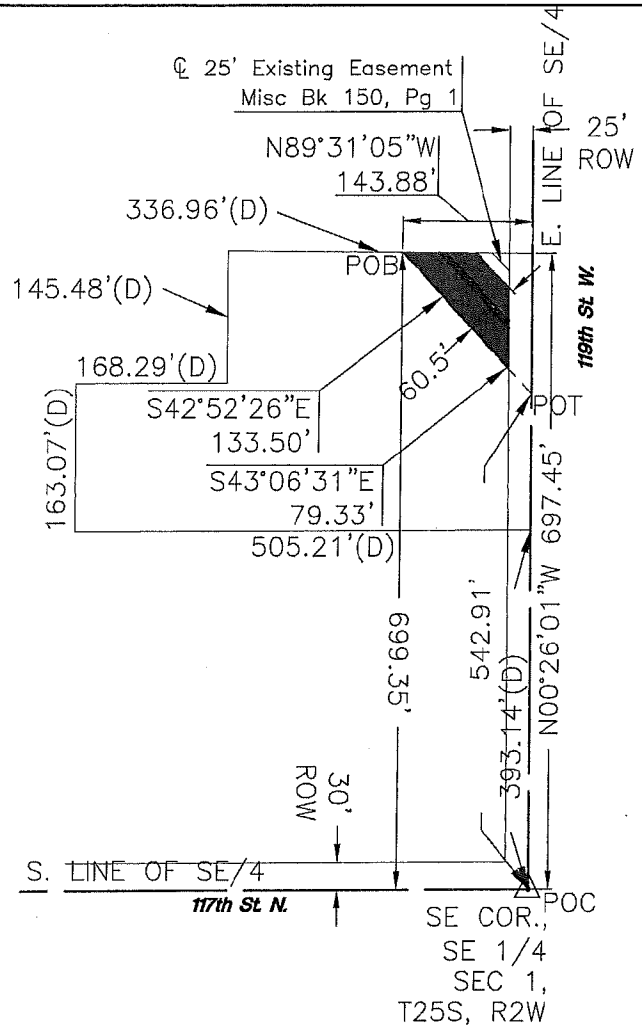
My Commission expires 3/25/13

EASEMENT

A 60.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the southeast corner of the Southeast Quarter of Section 1, Township 25 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of N00°26'01"W, 697.45 feet along the east line of said Southeast Quarter; thence along the north line of tract described in DOC.#/FLM–PG 28735908 N89°31'05"W, 143.88 feet to the Point of Beginning said point being 699.35' north of the south line of said Southeast Quarter; thence S42°52'26"E, 133.50 feet; thence S43°06'31"E, 79.33 feet to the Point of Termination, said point lying on the east line of said Southeast Quarter being 542.91 feet north of the southeast corner of said Southeast Quarter. Said tract contains 6923 square feet (0.16 acres), more or less, excluding road right of way.

The above easement adjoins the southwesterly side of an easement described in Condemnation Case No. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the east line of said Quarter and on the north line of a tract described in DOC.#/FLM–PG 28735908.



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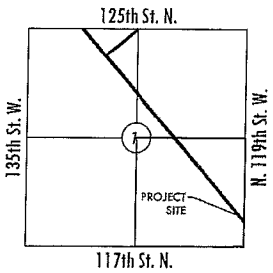
SCALE: 1" = 200'



VICINITY MAP

OWNER:

Farber, Christopher D.
& Jennifer F.
11801 N 119TH ST W

LEGEND

D – Described
POC – Point of Commencement
POB – Point of Beginning
POT – Point of Termination

Easement (6923 sq. ft.)(0.16 acres) Excluding road right of way.

Proposed Water Line

I:\MAP\2008\08248\DWG APRIL 2009\TRACT MAPS\52.DWG

ASR

CDM
Camp Dresser & McKee
345 Riverview, Ste. 520
Wichita, KS 67203
Tel: (316) 660-6700
consulting • engineering • construction • operations

MKEC ENGINEERING CONSULTANTS, INC.

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

DIAGONAL TRANSMISSION MAIN AND RIVER INTAKE LINE
PROJECT NAME

TRACT 52
SHEET TITLE

DFL	DSN/AAM/DM	MS
DESIGN BY:	DRAWN BY:	CHECKED BY:
APRIL 2009	08248	1 / 1
DATE	JOB NO.	SHEET/OF

ASR
PRESERVING OUR WATER
OUR FUTURE

BID PACKAGE 1
Property Acquisition Map

Legend

- Section Lines
- City Limits
- County Boundaries
- Streets and Roads
- Highways
- Rivers and Streams
- Parent Tracts
- Bid Package 1 Easements
- Bid Package 2 Easements
- Bid Package 3 Easements
- Well Location
- RR ## Well ID Number
- # Parent Tract ID Number

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NAD_1983_StatePlane_Kansas_South_FIPS_1502_Feet
Projection: Lambert_Conformal_Conic

Professional Engineering Consultants, P.A.
303 S. Topeka
Wichita, KS 67202
Ph. (316) 262-2691
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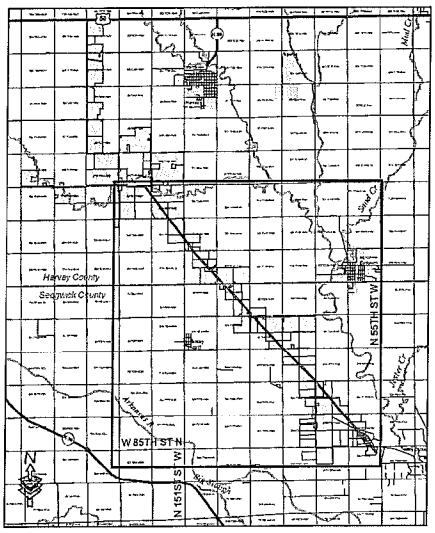
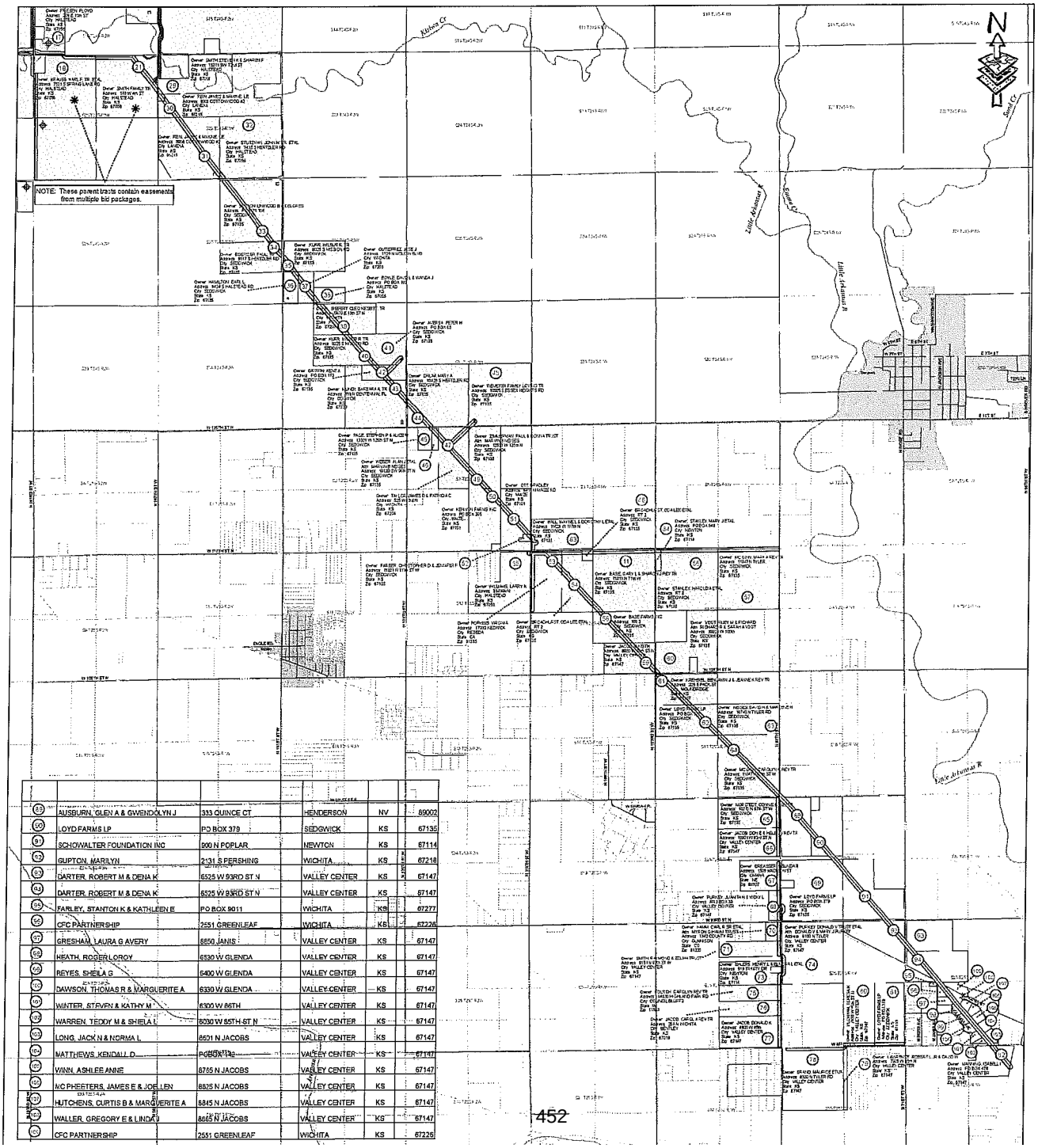




89	AUSBURN, GLEN A & GWENDOLYN J	333 QUINCE CT	HENDERSON	NV	89002
90	LOYD FARMS LP	PO BOX 379	SEDGWICK	KS	67135
91	SCHOWALTER FOUNDATION INC	900 N POPLAR	NEWTON	KS	67114
92	GUPTON, MARILYN	2131 S PERSHING	WICHITA	KS	67218
93	DARTER, ROBERT M & DENA K	6525 W 93RD ST N	VALLEY CENTER	KS	67147
94	DARTER, ROBERT M & DENA K	6525 W 93RD ST N	VALLEY CENTER	KS	67147
95	FARLEY, STANTON K & KATHLEEN E	PO BOX 9011	WICHITA	KS	67277
96	CFC PARTNERSHIP	2551 GREENLEAF	WICHITA	KS	67226
97	GRESHAM, LAURA G AVERY	6850 JANIS	VALLEY CENTER	KS	67147
98	HEATH, ROGER LOROY	6530 W GLENDA	VALLEY CENTER	KS	67147
99	REYES, SHEILA G	6400 W GLENDA	VALLEY CENTER	KS	67147
100	DAWSON, THOMAS R & MARGUERITE A	6330 W GLENDA	VALLEY CENTER	KS	67147
101	WINTER, STEVEN & KATHY M	6300 W 86TH	VALLEY CENTER	KS	67147
102	WARREN, TEDDY M & SHEILA L	6030 W 85TH ST N	VALLEY CENTER	KS	67147
103	LONG, JACK N & NORMA L	8601 N JACOBS	VALLEY CENTER	KS	67147
104	MATTHEWS, KENDALL D	PO BOX 112	VALLEY CENTER	KS	67147
105	WINN, ASHLEE ANNE	8755 N JACOBS	VALLEY CENTER	KS	67147
106	NC PHEETERS, JAMES E & JOE LEN	8825 N JACOBS	VALLEY CENTER	KS	67147
107	HUTCHENS, CURTIS B & MARGUERITE A	8845 N JACOBS	VALLEY CENTER	KS	67147
108	WALLER, GREGORY E & LINDA J	8865 N JACOBS	VALLEY CENTER	KS	67147
109	CFC PARTNERSHIP	2551 GREENLEAF	WICHITA	KS	67226

CITY OF WICHITA
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land at 13301 West 125th Street North for Integrated Local Water Supply Plan (County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993, the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River, transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita.

Analysis: Certain sites have been identified as necessary for the capture of above base flow water, locations for water treatment facilities, recharge/recovery wells, and recharge basins. It is necessary to acquire a pipeline easement and temporary construction easement across the northeast portion of the residential property located at 13301 West 125th Street North. The proposed pipeline easement is 58-feet wide and consists of 0.04-acres. The temporary easement is 75-feet wide and consists of 0.28-acres. The seller has agreed to accept $3,620. This consists of the established minimum amount for an easement on the project, $500 and $3,120 as damages for the loss of five mature trees together with damages to 310 lineal feet of fencing.

Financial Considerations: A budget of $4,620 is requested; this includes $3,620 for the acquisition, $1,000 for title work, title insurance, closing costs and recording fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has an available funding of over $7.6 million

Goal Impact: The acquisition of this parcel is necessary to ensure efficient infrastructure.

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

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

Attachments: Real estate purchase agreement, permanent easement, temporary construction easement and area maps.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ___ day of _____, 2008 by and between Stephen P. Page and Alice M. Page, husband and wife, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permaent Easement of the following described real property, situated in Sedgwick County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel "A") Commencing at the northeast corner of the West half of the Northwest Quarter of Section 1, Township 25 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S89°34'42"W, 269.77 feet along the north line of said West half to the Point of Beginning, thence S00°40'48"E, 92.64 feet parallel with the east line of said West half; thence N42°52'26"W, 58.74 feet; thence N42°55'57"W, 66.88 feet to said north line; thence N89°34'42"W, 84.42 feet along said north line to the Point of Beginning. Said tract contains 1,787 square feet (0.04 acres), more or less, excluding road right of way.

Temporary Easement (Construction – Parcel "B") A 75 feet wide strip of land lying on the right side (southwesterly side) of a line described as: Commencing at the northeast corner of the West half of the Northwest Quarter of Section 1, Township 25 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S89°34'42"W, 354.19 feet along the north line of said West half to the Point of Beginning, thence S42°55'57"E, 66.68 feet; thence S42°52'26"E, 58.74 feet to the Point of Termination, said point lying 269.77 feet west of the east line of said West half. Said tract contains 12,053 square feet (0.28 acres), more or less, excluding road right of way.

The sidelines of the above-described strip of land are to be shortened or legenthed to form continuous lines and to terminate on the north line of said West half and on the west line of the east 269.77 feet of the said West half.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Three Thousand Six Hundred Twenty Dollars and No Cents ($3,620.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops exceeding current crop, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division for examination by the Buyer as promptly and expeditiously as

possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before _____.

6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.

7. Possession to be given to Buyer of date of closing.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by seller and 100% by Buyer. Buyer will pay 100% closing costs.

9 . In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.

10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.

11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.

12. Site Assessment

A. At any time prior to closing of this Agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, the Buyer shall have the right to void this agreement upon notice to the Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site

assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Stephen. P. Page

Alice M. Page

BUYER:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

PIPELINE EASEMENT

THIS EASEMENT made this 21 day of May, 2009 by Stephen P. Page and Alice M. Page, "Grantor" and The City of Wichita, Kansas, a Municipal Corporation, "Grantee". SP MMS AP

$3,381.00 AP THREE THOUSAND THREE HUNDRED EIGHTY ONE

WITNESSETH: That Grantor, in consideration of the sum of ~~Eighty-Five Dollars~~ and No Cents (~~$85.00~~), the receipt whereof is hereby acknowledged, do hereby grant and convey unto Grantee a perpetual easement for the purpose of constructing, operating, maintaining, inspecting and repairing a pipeline for the transmission of water and other equipment which the Grantee shall deem necessary under the following described real estate situated in Sedgwick County, Kansas, to wit:

Permanent Easement (Pipeline – Parcel "A") Commencing at the northeast corner of the West half of the Northwest Quarter of Section 1, Township 25 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S89^{0}34"42"W, 269.77 feet along the north line of said West half to the Point of Beginning; thence S00^{0}40'48"E, 92.64 feet parallel with the east line of said West half; thence N42^{0}52'26"W, 58.74 feet; thence N42^{0}55'57"W, 66.88 feet to said north line; thence N89^{0}34'42"W, 84.42 feet along said north line to the Point of Beginning. Said tract contains 1,787 square feet (0.04 acres), more or less, excluding road right of way.

This easement is for the installation and maintenance of underground utilities and associated appurtenances. Grantee shall not disturb or alter the surface of the property after the completion of the installation of any utilities installed hereunder without first obtaining the written consent of the Grantor, its heirs and assigns.

The amenities installed hereunder shall remain the property of Grantee, and Grantee shall have the right to inspect, rebuild, remove, repair, improve and make alterations to its facilities as it may from time to time deem advisable.

Grantor, his successors and assigns, may use the land within the easement for any purpose not inconsistent with the rights hereby granted, provided such use does not interfere with or endanger the construction, operations and maintenance of Grantee's facilities.

Grantee shall in no way interfere with the Grantors use and enjoyment of the surface of the property.

For the purpose of constructing, inspecting, maintaining or operating its facilities, Grantee shall have the right of ingress and egress from the easement over the lands of Grantor adjacent to said easement and lying between public or private roads. Grantee shall exercise said right in practicable manner whereby Grantee attempts to cause the least damage and inconvenience to Grantor. Grantee shall pay for any damages to growing crops caused by actions of Grantee in inspecting, maintaining or operating said facility.

Grantee shall not interfere with the ingress and egress of the Grantor, his heirs and assigns. Should it become necessary to relocate the facilities of the Grantee to aid in the future development of the subject property, Grantee hereby agrees to cooperate with Grantor in relocating said facilities. However, Grantor shall reimburse Grantee for the actual cost of relocating said facilities.

IN WITNESS WHEREOF: Grantor has signed these presents the day and year first written.

Stephen P. Page

Alice M. Page

STATE OF KANSAS)
) **ss:**
SEDGWICK **COUNTY**)

Personally appeared before me a notary public in and for the County and State aforesaid STEPHEN P. PAGE and ALICE M. PAGE to me personally known to be the same persons who executed the foregoing instrument of writing and said persons duly acknowledged the execution thereof.

Dated at SEDGWICK, Kansas, this 21ST day of MAY, 2009.

MICHAEL D. SCHOMAKER
Notary Public - State of Kansas
My Appt. Expires 3/25/13

Notary Public

My Commission expires 3/25/13

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made this 21 day of May, 2009, by and between Stephen P. Page and Alice M. Page, (hereinafter referred to as "Grantor") and the City of Wichita, Kansas, a Municipal Corporation, (hereinafter referred to as "Grantee")

WITNESSETH: That the said Grantor, in consideration of the sum of Two Hundred and Thirty-Nine Dollars and No Cents ($239.00) and other valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the Grantee a Temporary Right-Of-Way for the purpose of constructing, maintaining, and repairing utilities, over, along and under the following described real estate situated in Sedgwick County, Kansas, to wit:

Temporary Easement (Construction – Parcel "B") A 75 feet wide strip of land lying on the right side (southwesterly side) of a line described as: Commencing at the northeast corner of of the West half of the Northwest Quarter of Section 1, Township 25 Sourth, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S89^{0}34'42'W, 354.19 feet along the north line of said West half to the Point of Beginning; thence S42^{0}55'57'E, 66.68 feet; thence S42^{0}52'26"E, 58.74 feet to the Point of Termination, said point lying 269.77 feet west of the east line of said West half. Said tract contains 12053 square feet (0.28 acres), more or less, excluding road right of way.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the north line of said West half and on the west line of the east 269.77 feet of the said West half.

And said Grantee is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing such utility improvements for a period of twenty-four months from the onset of construction. This temporary easement shall expire automatically at the end of the described.

IN WITNESS WHEREOF: The said Grantor have signed these presents the day and year first written.

Stephen P. Page

Alice M. Page

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

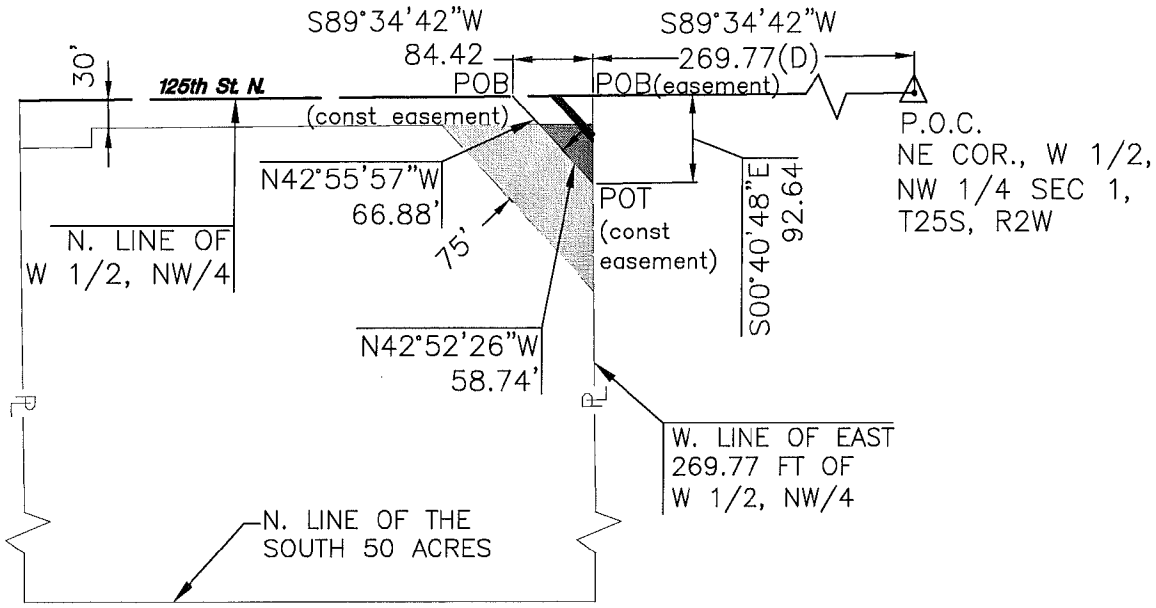
Personally appeared before me a notary public in and for the County and State aforesaid STEPHEN P. PAGE & ALICE M. PAGE came to me personally known to be the same persons who executed the foregoing instrument of writing and said persons duly acknowledged the execution thereof.

Dated at SEDGWICK (city), Kansas, this 21ST day of MAY, 2009.

MICHAEL D. SCHOMAKER
Notary Public - State of Kansas
My Appt. Expires 3/25/13

Notary Public

My Commission expires: 3/25/13



EASEMENT

Commencing at the northeast corner of the West half of the Northwest Quarter of Section 1, Township 25 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S89°34'42"W, 269.77 feet along the north line of said West half to the Point of Beginning; thence S00°40'48"E, 92.64 feet parallel with the east line of said West half; thence N42°52'26"W, 58.74 feet; thence N42°55'57"W, 66.88 feet to said north line; thence N89°34'42"E, 84.42 feet along said north line to the Point of Beginning. Said tract contains 1787 square feet (0.04 acres), more or less, excluding road right of way.

CONSTRUCTION EASEMENT

A 75 feet wide strip of land lying on the right side (southwesterly side) of a line described as: Commencing at the northeast corner of the West half of the Northwest Quarter of Section 1, Township 25 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of S89°34'42"W, 354.19 feet along the north line of said West half to the Point of Beginning; thence S42°55'57"E, 66.88 feet; thence S42°52'26"E, 58.74 feet to the Point of Termination, said point lying 269.77 feet west of the east line of said West half. Said tract contains 12053 square feet (0.28 acres), more or less, excluding road right of way.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the north line of said West half and on the west line of the east 269.77 feet of said West half.

N

SCALE: 1" = 200'

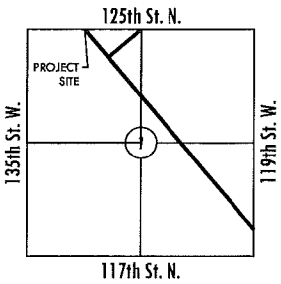
LEGEND

D – Described
POC – Point of Commencement
POB – Point of Beginning
POT – Point of Termination

Easement 1787 sq. ft.(0.04 acres) Excluding road right of way.

Construction Easement 12053 sq. ft. (0.28 acres) Excluding road right of way.

Proposed Water Line



VICINITY MAP

OWNER:
Page, Stephen P. & Alice M.
13301 W. 125th ST N.

I:\MAP\2008\08248\DWG APRIL 2009\TRACT MAPS\45.DWG

ASR

CDM
Camp Dresser & McKee
345 Riverview, Ste. 520
Wichita, KS 67203
Tel: (316) 660-6700
consulting • engineering • construction • operations

MKEC ENGINEERING CONSULTANTS, INC.

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

DIAGONAL TRANSMISSION MAIN AND RIVER INTAKE LINE
PROJECT NAME

TRACT 45
SHEET TITLE

DFL	DSN/AAM/DM	JCM
DESIGN BY:	DRAWN BY:	CHECKED BY:
APRIL 2009	08248	1 / 1
DATE	JOB NO.	SHEET/OF

ASR
PRESERVING OUR WATER
...OUR FUTURE

BID PACKAGE 1
Property Acquisition Map

Legend

- Section Lines
- City Limits
- County Boundaries
- Streets and Roads
- Highways
- Rivers and Streams
- Parent Tracts
- Bid Package 1 Easements
- Bid Package 2 Easements
- Bid Package 3 Easements
- Well Location
- RR ## Well ID Number
- # Parent Tract ID Number

Q:\2007\07685\Brent\Project GIS\ASR Bid Package2 Easements.mxd
Last saved 2/2/2009 by SAD
NAD_1983_StatePlane_Kansas_South_FIPS_1502_Feet
Projection: Lambert_Conformal_Conic

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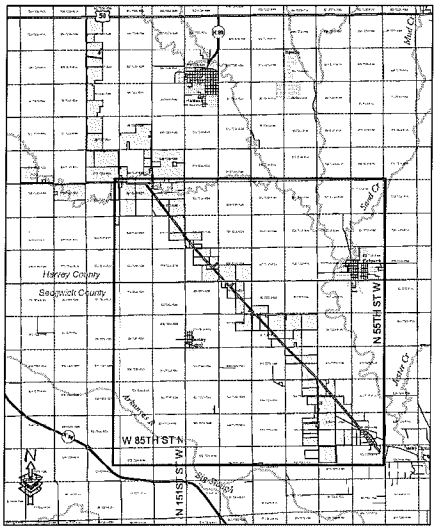

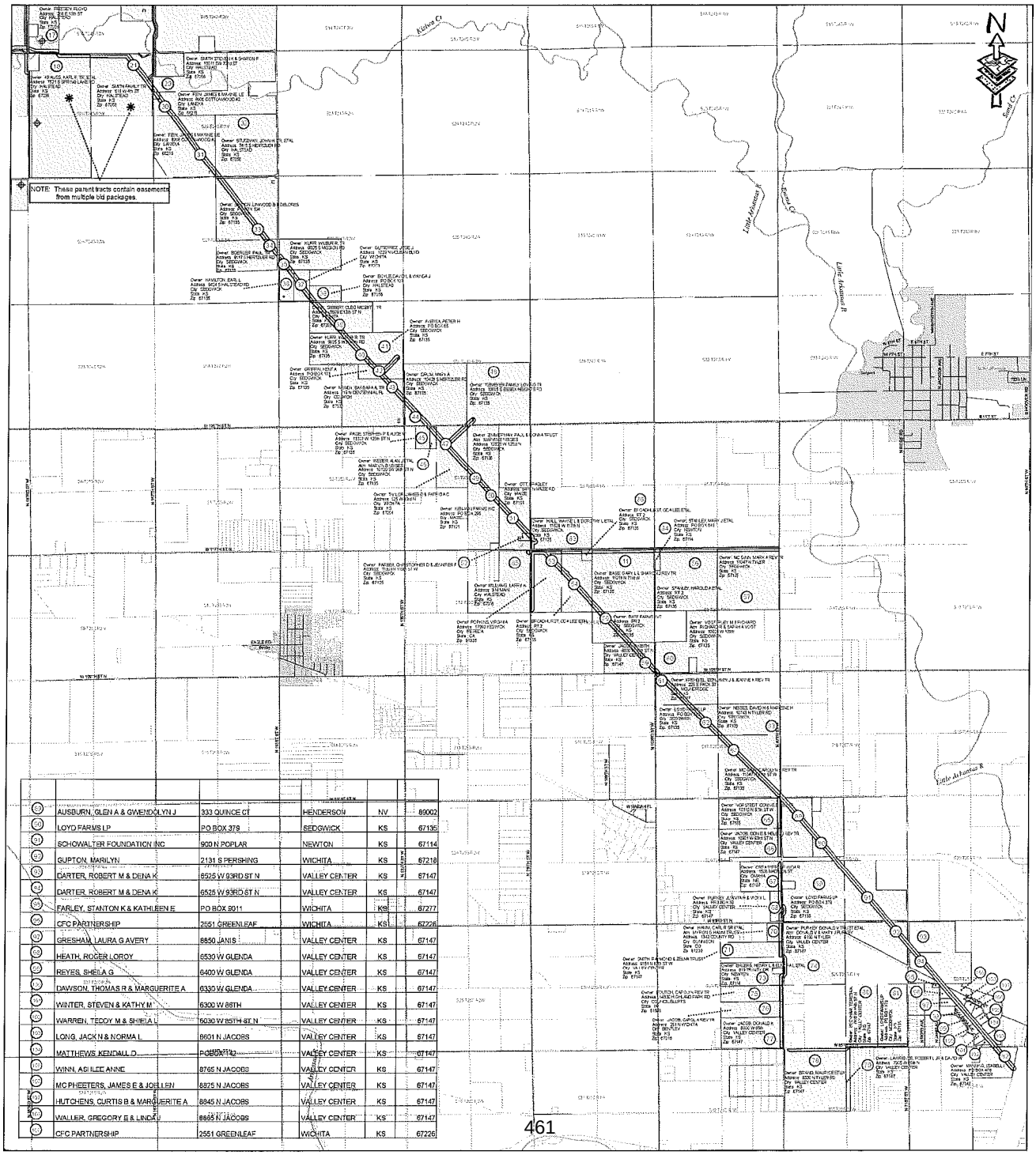
NOTE: These parent tracts contain easements from multiple bid packages.
Ninnescah R
Little Arkansas R
Sand Cr
W 37TH ST N
W 45TH ST N
W 53RD ST N
W 61ST ST N
W 69TH ST N
W 77TH ST N
W 85TH ST N
N 55TH ST W
N 47TH ST W
N 39TH ST W
N 31TH ST W
N 23TH ST W
N 15TH ST W
N 7TH ST W
N 1ST ST W
E 7TH ST
E 13TH ST
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CITY OF WICHITA
City Council Meeting

June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Settlement of Lawsuit

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize payment.

Background: This case, *Michael Cleary v. City of Wichita et. al.*, results from allegations of improper treatment, including improper use of force, in the course of an arrest which occurred in 2006. The incident arose from a domestic dispute. Protective action was initiated by an observing off-duty WPD officer, and the case was completed by on-duty officers.

Analysis: After proceeding through discovery, evaluating the extent of the claimed damages, and considering the risks of trial, it was determined that a resolution of this matter is appropriate. After some discussion, the City has been offered an opportunity to resolve the claim with a lump sum payment as full settlement of all claims arising out of this incident. No admission of liability is made by the City. The purpose of the settlement is to resolve a disputed claim.

Goal Impact: Payment of the negotiated 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 is from the 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 $10,000.00 as a full settlement of all possible claims which are the subject of this lawsuit.

Attachments: None.

Agenda Item No. XII-9.

City of Wichita
City Council Meeting

June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Repair or Removal of Dangerous & Unsafe Structures (District I)

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendations: Adopt the attached resolutions to schedule required City Council public hearings to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes.

Background: On June 1, 2009, the Board of Code Standards and Appeals conducted hearings on the three (3) properties listed below. The buildings on these properties are considered dangerous and unsafe structures per State Statutes and local ordinances, and are being presented in order to schedule condemnation hearings before the City Council. The Board of Code Standards and Appeals has recommended that the City Council proceed with condemnation, demolition and removal of the dangerous buildings on these properties.

Analysis: Minimum Housing Code violation notices have been issued on these structures; however, compliance has not been achieved. Pre-condemnation and formal condemnation letters have also been issued, and the time granted for repair or removal has expired. No actions have been taken by the property owners and/or other interested parties to complete required building repairs or to remove the dangerous buildings.

Property Address	Council District
a. 2031 E. 16th N.	I
b. 1648 N. Piatt	I
c. 647 S. Sylvan	I

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: The structures have defects that under Ordinance No. 28-251 of the Code of the City of Wichita, shall cause them to be deemed as dangerous and unsafe buildings for condemnation consideration, as required by State Statutes.

Recommendations/Actions: Adopt the attached resolutions to schedule a public hearing before the City Council on August 4, 2009 at 9:30 a.m. or as soon as possible thereafter, to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes and local ordinances.

Attachments: Letters to Council, summaries, and resolutions.

OCA: 230200

Published in the Wichita Eagle on June 19 and June 26, 2009

RESOLUTION NO. 09-176

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: **LOT 51 AND 53, STRONG NOW ASH STREET, LOGAN ADDITION TO THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS** KNOWN AS **2031 E. 16TH N.** MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the **16h day of June 2009**, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.
That a hearing will be held on the **4th day of August 2009**, before the governing body of the city at **9:30 A.M.,** or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at LOT 51 AND 53, STRONG NOW ASH STREET, LOGAN ADDITION TO THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, known as: 2031 E. 16TH N., may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is A two story frame dwelling about 89 x 36 feet in size. Vacant and open, this structure has damaged and missing asphalt siding shingles; deteriorated metal siding; badly worn composition roof, with missing shingles; and the front porches have exposed structural members.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this **16th day of June 2009**.

_____
Carl Brewer, Mayor

(SEAL)

ATTEST:_____
Karen Sublett, City Clerk

OCA: 230200

Published in the Wichita Eagle on June 19 and June 26, 2009

RESOLUTION NO. 09-177

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: **LOTS 56 AND 58, PIATT AVENUE, LOGAN ADDITION TO THE CITY OF WICHITA, KANSAS, SEDGWICK COUNTY, KANSAS** KNOWN AS **1648 N. PIATT** MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the **16h day of June 2009**, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.
That a hearing will be held on the **4th day of August 2009**, before the governing body of the city at **9:30 A.M.,** or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at LOTS 56 AND 58, PIATT AVENUE, LOGAN ADDITION TO THE CITY OF WICHITA, KANSAS, SEDGWICK COUNTY, KANSAS, known as: 1648 N. PIATT, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is A one story frame dwelling about 92 x 27 feet in size. Vacant for at least 3 years, this structure has brick cracking and shifting veneer siding; deteriorated loose soffits; rotted wood trim; and cracked concrete front and rear porches.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this **16th day of June 2009**.

_____
Carl Brewer, Mayor

(SEAL)

ATTEST:_____
Karen Sublett, City Clerk

OCA: 230200

Published in the Wichita Eagle on June 19 and June 26, 2009

RESOLUTION NO. 09-178

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: **LOT 10, BLOCK 4, BEVERLY MANOR ADDITION, SEDGWICK COUNTY, KANSAS** KNOWN AS **647 S. SYLVAN** MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the **16h day of June 2009**, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.
That a hearing will be held on the **4th day of August 2009**, before the governing body of the city at **9:30 A.M.,** or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at LOT 10, BLOCK 4, BEVERLY MANOR ADDITION, SEDGWICK COUNTY, KANSAS, known as: 647 S. Sylvan, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is A one story frame dwelling about 38 x 24 feet in size. Vacant and open, this structure has a shifting and cracking concrete foundation; missing asbestos siding; fire damaged front porch and east wall; and the interior has been gutted by fire.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this **16th day of June 2009**.

_____
Carl Brewer, Mayor

(SEAL)

ATTEST:_____
Karen Sublett, City Clerk

GROUP # 3

NOTICE OF DEMOLITION ACTION

This is to certify that the property located at **2031 E. 16TH N.** and legally described as: **LOT 51 AND 53, STRONG NOW ASH STREET, LOGAN ADDITION TO THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS**, is the subject of a demolition action by the City of Wichita, Kansas, under the provisions of Section 18.16 of the Code of the City of Wichita. Unless certain improvements to the structure(s) located thereon are commenced and completed by **August 4, 2009** such structures are subject to being demolished and the costs associated therewith charged, as a lien, against the above-described real property.

_____
Kurt A. Schroeder, Superintendent, Office of Central Inspection
City of Wichita

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, That on this _____day of _____, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kurt A. Schroeder, Superintendent of the Office of Central Inspection, City of Wichita, 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 last above written.

_____
Notary Public

My Appointment Expires:
_____

TO: The Mayor and City Council
Wichita, Kansas

RE: Statement of Dangerous or Unsafe Structure

The following described structure is in a dangerous or unsafe condition:

(a) Description of Structure: A two story frame dwelling about 89 x 36 feet in size. Vacant and open, this structure has damaged and missing asphalt siding shingles; deteriorated metal siding; badly worn composition roof, with missing shingles; and the front porches have exposed structural members.

(b) Street Address: 2031 E. 16TH N.

(c) Owners:
Schupbach Investments LLC
c/o Johnathan I. Schupbach
3147 Keywest Ct
Wichita, KS 67204

(d) Resident Agent: None

(e) Occupant: None

(f) Lienholders of Record:
Kelly Arnold, County Clerk
Sedgwick County Courthouse
525 N. Main
Wichita, KS 67203

Chris McElgunn, Attorney
301 N. Main #1600
Wichita, KS 67202

(g) Mortgage Holder(s): None

(h) Interested Parties: None

DATE: June 2, 2009

CDM SUMMARY

COUNCIL DISTRICT # 1

ADDRESS: 2031 E. 16TH N.

LEGAL DESCRIPTION: LOT 51 AND 53, STRONG NOW ASH STREET, LOGAN ADDITION TO THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A two story frame dwelling about 89 x 36 feet in size. Vacant and open, this structure has damaged and missing asphalt siding shingles; deteriorated metal siding; badly worn composition roof, with missing shingles; and the front porches have exposed structural members.

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

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

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

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

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

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

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

GROUP # 3

NOTICE OF DEMOLITION ACTION

This is to certify that the property located at **1648 N. PIATT** and legally described as: **LOTS 56 AND 58, PIATT AVENUE, LOGAN ADDITION TO THE CITY OF WICHITA, KANSAS, SEDGWICK COUNTY, KANSAS**, is the subject of a demolition action by the City of Wichita, Kansas, under the provisions of Section 18.16 of the Code of the City of Wichita. Unless certain improvements to the structure(s) located thereon are commenced and completed by **August 4, 2009** such structures are subject to being demolished and the costs associated therewith charged, as a lien, against the above-described real property.

_____
Kurt A. Schroeder, Superintendent, Office of Central Inspection
City of Wichita

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, That on this _____day of _____, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kurt A. Schroeder, Superintendent of the Office of Central Inspection, City of Wichita, 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 last above written.

_____
Notary Public

My Appointment Expires:
_____

TO: The Mayor and City Council
Wichita, Kansas

RE: Statement of Dangerous or Unsafe Structure

The following described structure is in a dangerous or unsafe condition:

(a) Description of Structure: A one story frame dwelling about 92 x 27 feet in size. Vacant for at least 3 years, this structure has brick cracking and shifting veneer siding; deteriorated loose soffits; rotted wood trim; and cracked concrete front and rear porches.

(b) Street Address: 1648 N. PIATT

(c) Owners:
Schupbach Investments LLC
c/o Johnathan I. Schupbach
3147 Keywest Ct
Wichita, KS 67204

(d) Resident Agent: None

(e) Occupant: None

(f) Lienholders of Record:
Kelly Arnold, County Clerk
Sedgwick County Courthouse
525 N. Main
Wichita, KS 67203

Chris McElgunn, Attorney
301 N. Main #1600
Wichita, KS 67202

Security Savings Bank, FSB
8525 W. Central
Wichita, KS 67212

(g) Mortgage Holder(s): None

(h) Interested Parties: None

DATE: June 2, 2009

CDM SUMMARY

COUNCIL DISTRICT # 1

ADDRESS: 1648 N. PIATT

LEGAL DESCRIPTION: LOTS 56 AND 58, PIATT AVENUE, LOGAN ADDITION TO THE CITY OF WICHITA, KANSAS, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 92 x 27 feet in size. Vacant for at least 3 years, this structure has brick cracking and shifting veneer siding; deteriorated loose soffits; rotted wood trim; and cracked concrete front and rear porches.

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

GROUP # 3

NOTICE OF DEMOLITION ACTION

This is to certify that the property located at **647 S. SYLVAN** and legally described as: **LOT 10, BLOCK 4, BEVERLY MANOR ADDITION, SEDGWICK COUNTY, KANSAS**, is the subject of a demolition action by the City of Wichita, Kansas, under the provisions of Section 18.16 of the Code of the City of Wichita. Unless certain improvements to the structure(s) located thereon are commenced and completed by **August 4, 2009** such structures are subject to being demolished and the costs associated therewith charged, as a lien, against the above-described real property.

_____
Kurt A. Schroeder, Superintendent, Office of Central Inspection
City of Wichita

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, That on this _____day of _____, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kurt A. Schroeder, Superintendent of the Office of Central Inspection, City of Wichita, 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 last above written.

_____
Notary Public

My Appointment Expires:
_____

TO: The Mayor and City Council
Wichita, Kansas

RE: Statement of Dangerous or Unsafe Structure

The following described structure is in a dangerous or unsafe condition:

(a) Description of Structure: A one story frame dwelling about 38 x 24 feet in size. Vacant and open, this structure has a shifting and cracking concrete foundation; missing asbestos siding; fire damaged front porch and east wall; and the interior has been gutted by fire.

(b) Street Address: 647 S. Sylvan

(c) Owners:
Robert Perry & Roger V. Perry (both deceased)
POST ON PROPERTY

(d) Resident Agent: None

(e) Occupant: None

(f) Lienholders of Record:
Kelly Arnold, County Clerk
Sedgwick County Courthouse
525 N. Main
Wichita, KS 67203

Chris McElgunn, Attorney
301 N. Main #1600
Wichita, KS 67202

Via Christi Regional Medical Center Inc
929 N. St Francis
Wichita, KS 67214

(g) Mortgage Holder(s): None

(h) Interested Parties: None

DATE: June 2, 2009

CDM SUMMARY

COUNCIL DISTRICT # 1

ADDRESS: 647 S. Sylvan

LEGAL DESCRIPTION: LOT 10, BLOCK 4, BEVERLY MANOR ADDITION, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 38 x 24 feet in size. Vacant and open, this structure has a shifting and cracking concrete foundation; missing asbestos siding; fire damaged front porch and east wall; and the interior has been gutted by fire.

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

CITY OF WICHITA
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: Notice of Intent to Use Debt Financing – Administration Building Rehabilitation

INITIATED BY: Department of Airports

AGENDA: Consent

Recommendation: Adopt the Resolution.

Background: 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 Mid-Continent Airport facility. Additionally, the nature of said improvements, the estimated costs thereof and the manner of payment needs to be disclosed. The actual issuance of the bonds/notes will require a separate authorization from the City Council. Debt financing can be in the form of temporary notes for durations as short as six months for timing considerations or the form of General Obligation bonds for long term financing.

Analysis: On May 5, 2009, the Wichita Airport Authority authorized an increase in the Administration Building Rehabilitation project budget to provide funding for the repair and correction of water damage conditions and the inclusion of a room needed to support network and telecommunication systems. The complete project also includes ADA compliance upgrades, safety improvements to exterior lighting, telephone cabling replacement, removal and abatement of asbestos materials, replacement of exterior windows to improve energy efficiency and the addition of a stand-by generator to support the network and telecommunications systems. 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 revised total budget is $1,100,000 which represents the maximum cost that will be financed with General Obligation bonds/notes. The source of repayment for the bonds/notes will be 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 = 501822; UC1 = 1009

Published in the Wichita Eagle on June 19 and June 26, 2009

RESOLUTION NO. 09-179

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 WICHITA MID-CONTINENT AIRPORT FACILITY;AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS; THE ESTIMATED COSTS THEREOF; AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 3-114 provides that an airport authority established pursuant to K.S.A. 3-162 shall have the power to equip, improve and maintain an airport and

WHEREAS, 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.

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,

Administration Building Remodel

to the Wichita Mid-Continent 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 Million One Hundred Thousand Dollars ($1,100,000), exclusive of the cost of interest on borrowed money, 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 $1,100,000.

SECTION 3. 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, June 16, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

CITY OF WICHITA
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Dedication of a Portion of 1140 East 47th Street South for the I-135/47th Street South Interchange Project (District III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Accept the dedication.

Background: On April 7, 2009, City Council approved funding to acquire right of way for a project to improve the interchange of 47th Street South and I-135 and 47th Street South from Lulu to Broadway. The project will provide a center left turn lane, reconstruct the interchange, improve storm drainage and improve access to adjoining properties. The Kansas Department of Transportation will administer the construction of the project utilizing Federal money. The project requires the partial acquisition of nine tracts. One of the partial acquisitions is from the property at 1140 East 47th Street South and involves road right-of-way and a temporary construction easement. The property is zoned residential and improved with a church and supporting improvements. The building is not impacted as a result of the acquisition.

Analysis: The project requires a 13,049.4 square foot acquisition for the extension of Washington Street to Ida. A 1,873.7 square foot strip is also required along 47th Street. The takes will eliminate eight parking spaces and require the removal of several mature trees. The church has agreed to dedicate these two parcels in exchange for the construction of parking west of the church and north of the church as part of the project. This work will require temporary easements of 12,830.8 square feet and 13,709.3 square feet.

Financial Considerations: A budget of $1,500 is requested for closing costs, title and other acquisition related fees. The City's share of project acquisition will be paid by general obligation bonds.

Goal Impact: The acquisition of these parcels is necessary to ensure efficient infrastructure.

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

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Contract for the Conveyance of Real Estate and 3) Authorize the necessary signatures.

Attachments: Tract map, real estate purchase agreement and aerial map.

PROJECT: 47th Street an I135 Interchange **DATE:** 05/29/2009

COUNTY: Sedgwick **TRACT NO.:** 20

THE CITY OF WICHITA, KANSAS

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

THIS AGREEMENT Made and entered into this _____ day of _____, 2009,, by and between

The Cedar Chapel United Methodist Church , as successor to

Withita Methodist City Union, a religious corporation

1140 East 47th Street South

Wichita, KS 67216

(Name and Address)

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

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

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Together with a temporary construction easement (3 years) on the following described property

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

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

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

Approximately 14,923.1 Sq. Ft. for Right of Way Damages including but not limited to all improvements and real property of the landowner: $ 0.00

Approximately 26,540.1 Sq. Ft. for Temporary Easement Damages including but not limited to all improvements and real property of the landowner: $ 0.00

TOTAL: $ 0.00

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

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

LANDOWNERS: Cedar Chapel United Methodist Church, a religious organization as successor to Withita Methodist City Union, a religious corporation

By: _____ By: _____

THE CITY OF WICHITA Attest:

By: _____ By: _____

Carl Brewer, Mayor Karen Sublett, City Clerk

MEMORANDA

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

Cedar Chapel United Methodist Church, a religious organization as successor to Withita Methodist City Union, a religious corporation

If mortgage or other liens, show names of holders:

n/a

REMARKS:

PIN/APN B-12491, B-12490
Security Title File Number 1069574, 1069572

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Gerald Cain, Project Manager

Exhibit A

Right Of Way and Access Control

That portion of Lot 4, Block 2 of CEDARVALE ACRES, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Southwest corner of said Lot 4; thence N89°35'59"E along the South line of said Lot 4, a distance of 243.74 feet to the Southeast corner thereof; thence N00°51'10"W along the East line of said Lot 4, a distance of 7.04 feet; thence S89°42'40"W, a distance of 181.01 feet; thence N87°23'46"W, a distance of 62.85 feet to a point on the West line of said Lot 4; thence S00°51'10"E along said West line, a distance of 10.69 feet to the Point of Beginning, containing 1,873.7 square feet, more or less.

There shall be no abutter's rights of access to and from 47TH Street South, over and across the South line of the remaining property from which the right of way described above was acquired.

Right Of Way

That portion of Lots 3 and 4, Block 2 of CEDARVALE ACRES, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Beginning at the Southeast corner of said Lot 3; thence N00°51'10"W along the East line thereof, a distance of 28.34 feet; thence S89°07'32"W, a distance of 6.01 feet to the beginning of a tangent curve, concave southeasterly, having a radius of 275.00 feet; thence southwesterly along said curve through a central angle of 14°31'33", a distance of 69.72 feet; thence S74°36'00"W, a distance of 43.47 feet to the beginning of a tangent curve, concave northwesterly, having a radius of 225.00 feet; thence southwesterly along said curve through a central angle of 03°57'55", a distance of 15.57 feet to a point on the West line of said Lot 3; thence S00°52'41"E along said West line, a distance of 4.17 feet to the Southwest corner of said Lot 3; thence S89°35'59"W along the North line of said Lot 4, a distance of 131.80 feet to the Northwest corner thereof, said point lying on a curve, concave easterly, having a radius of 176.21 feet; thence southeasterly along said curve, through a central angle of 13°14'58", a distance of 40.75 feet to a point on a curve, concave southwesterly, having a radius of 236.21 feet and a radial bearing of N70°47'42"E; thence southeasterly along said curve through a central angle of 02°38'26", a distance of 10.89 feet; thence N89°30'13"E, a distance of 77.28 feet to the beginning of a tangent curve, concave northerly, having a radius of 275.00 feet; thence northeasterly along said curve through a central angle of 14°54'14", a distance of 71.53 feet; thence N74°36'00"E, a distance of 43.47 feet to the beginning of a tangent curve, concave southeasterly, having a radius of 225.00 feet; thence northeasterly along said curve through a central angle of 14°31'33", a distance of 57.04 feet; thence N89°07'32"E, a distance of 5.99 feet to a point on the East line of Lot 4; thence N00°51'10"W along said East line, a distance of 21.66 feet to the Point of

Beginning, containing 13,049.4 square feet, more or less.

Temporary Construction Easement

That portion of Lot 3, Block 2 of CEDARVALE ACRES, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Commencing at the Southeast corner of said Lot 3; thence N00°51'10"W along the East line thereof, a distance of 28.34 feet to the True Point of Beginning; thence S89°07'32"W, a distance of 6.01 feet to the beginning of a tangent curve, concave southeasterly, having a radius of 275.00 feet; thence southwesterly along said curve through a central angle of 14°31'33", a distance of 69.72 feet; thence S74°36'00"W, a distance of 43.47 feet to the beginning of a tangent curve, concave northwesterly, having a radius of 225.00 feet; thence southwesterly along said curve through a central angle of 03°57'55", a distance of 15.57 feet to a point on the West line of said Lot 3; thence N00°52'41"W along said West line, a distance of 112.04 feet; thence N89°32'41"E, a distance of 132.30 feet to a point on said East line of Lot 3; thence S00°51'10"E along said East line, a distance of 88.00 feet to the True Point of Beginning, containing 12,830.8 square feet, more or less.

Temporary Construction Easement

That portion of Lot 4, Block 2 of CEDARVALE ACRES, and of a portion of vacated Ida Street lying adjacent to said Lot 4, in the City of Wichita, Sedgwick County, Kansas, described as follows:

Commencing at the Southeast corner of said Lot 4; thence N00°51'10"W along the East line of said Lot 4, a distance of 7.04 feet to the True Point of Beginning; thence S89°42'40"W, a distance of 15.11 feet; thence N00°36'12"W, a distance of 179.99 feet to a point on a curve, concave southeasterly, having a radius of 220.00 feet and a radial bearing of N03°02'43"W; thence southwesterly along said curve through a central angle of 12°21'17", a distance of 47.44 feet; thence S74°36'00"W, a distance of 43.47 feet to the beginning of a tangent curve, concave northerly, having a radius of 280.00 feet; thence southwesterly along said curve through a central angle of 14°54'14", a distance of 72.83 feet; thence S89°30'13"W, a distance of 2.60 feet; thence S00°18'59"W, a distance of 151.62 feet; thence N87°23'46"W, a distance of 62.85 feet to a point on the West line of said Lot 4; thence N00°51'10"W, a distance of 89.30 feet to the beginning of a tangent curve, concave westerly, having a radius of 236.21 feet; thence northerly along said curve through a central angle of 15°42'42", a distance of 64.77 feet; thence N89°30'13"E, a distance of 77.28 feet to the beginning of a tangent curve, concave northerly, having a radius of 275.00 feet; thence northeasterly along said curve through a central angle of 14°54'14", a distance of 71.53 feet; thence N74°36'00"E, a distance of 43.47 feet to the beginning of a tangent curve, concave southeasterly, having a radius of 225.00 feet; thence northeasterly along said curve through a central angle of 14°31'33", a distance of 57.04 feet; thence N89°07'32"E, a distance of 5.99 feet to a point on said East line of said

Lot 4; thence S00°51'10"E along said East line, a distance of 185.30 feet to the True Point of Beginning, containing 13,709.3 square feet, more or less.

PROJECT: I-135/KTA/47TH ST INTERCHANGE

TRACT NUMBER: 20 DATE: 03/06/2009

SHEET: 1 of 1

HNTB

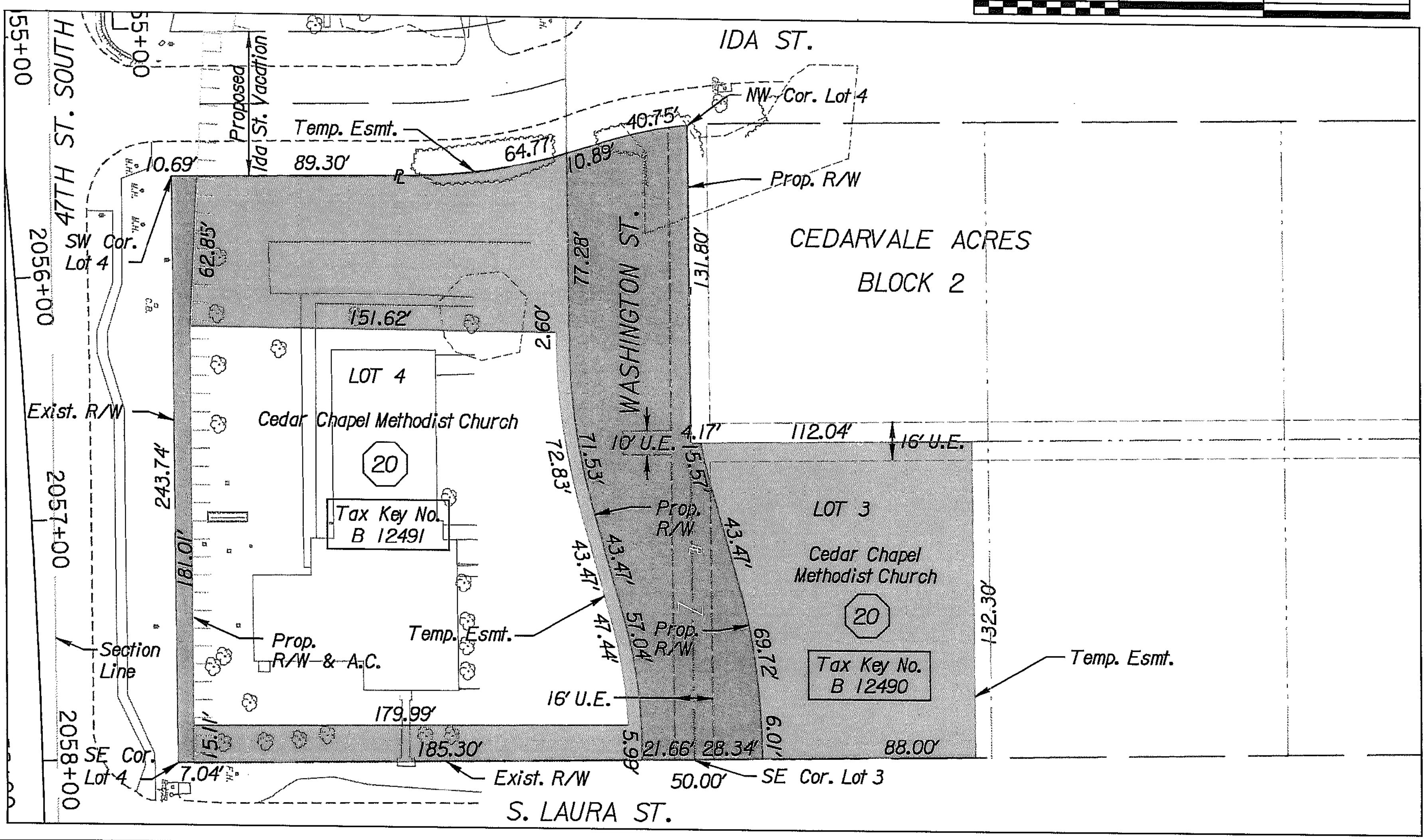
LEGEND:

Proposed Right of Way (14,923.1 SQ. FT.)

Temporary Construction Easement (26,540.1 SQ. FT.)

Proposed Access Control (Additional 273.7 L.F.)

SCALE 60 0 60 120



Plotted on 11-MAR-2009 0624 PM Model: P_MODEL
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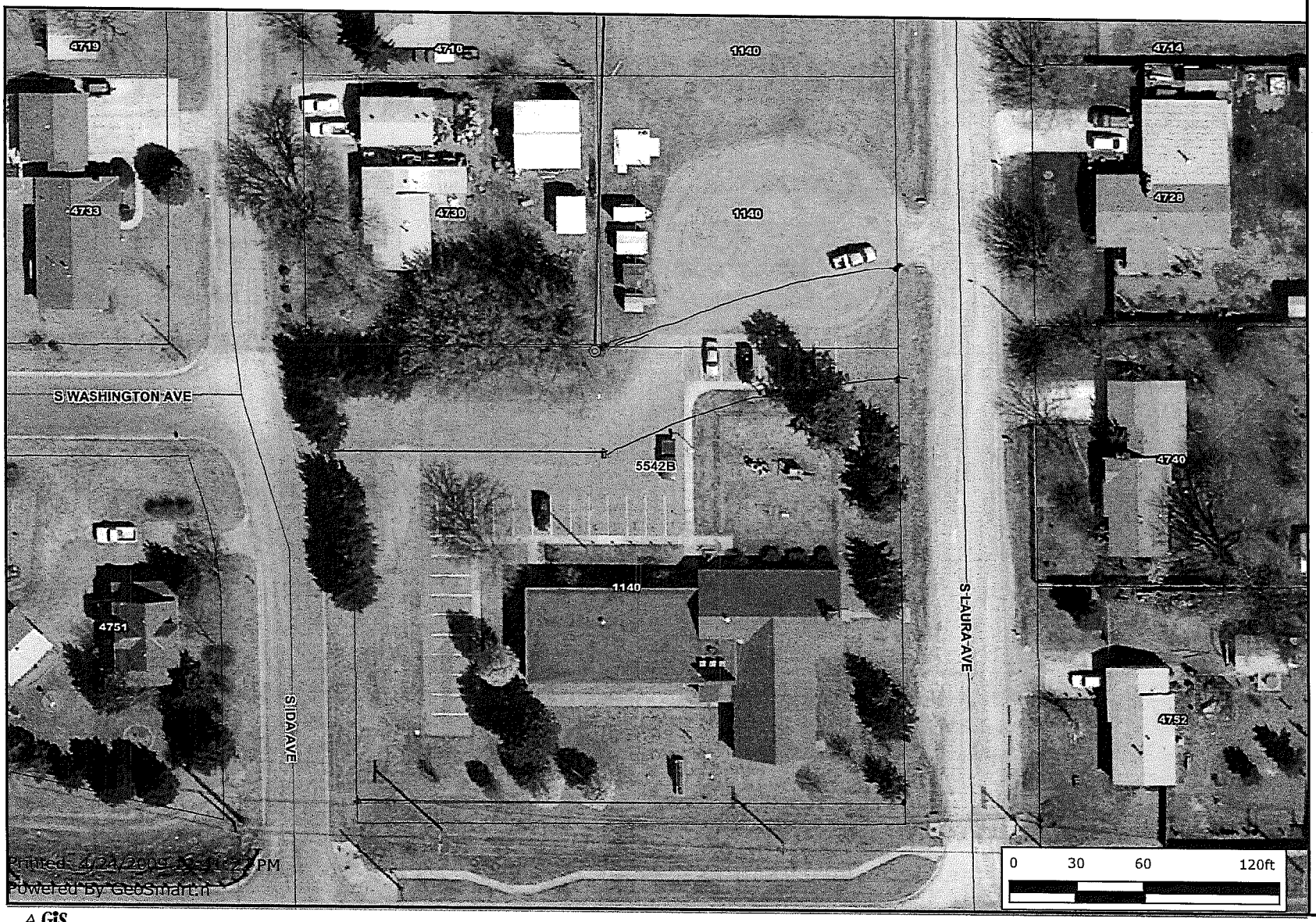
Cedar Chapel Methodist Church



- Identified Features
- Sewer Manholes
- Sewer Observation Manholes
- Property Parcels
- Sewer Lines
- Roads
  - State Highway
  - US Federal Highway
  - Interstate
  - KTA
  - Arterial
  - Collector
  - Minor
  - Ramp
- Railroads
- Quarter Section
- Waterways
- Streams
- Airports
- SDERASTER.S-DEDATA.ORTH-O1FT
- SDERASTER.S-DEDATA.ORTH-O
- City Limits
  - Andale
  - Bel Aire
  - Bentley
  - Cheney
  - Clearwater
  - Colwich
  - Derby
  - Eastborough
  - Garden Plain
  - Goddard
  - Haverville

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

Agenda Item No. XII-12.

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: Appeal from an Order of the Chief of Police to suspend Local Liquor License of El Farol Rojo Club, 1030 S. Broadway. (District I).

INITIATED BY: Department of Law

AGENDA: Consent

Recommendation: Rescind the order suspending the drinking establishment license for El Farol Rojo Club.

Background: On May 12, 2009, the City Council conducted an appeal hearing regarding the suspension of the drinking establishment license of the El Farol Rojo Club and voted to uphold the suspension.

Analysis: Upon the advice of legal counsel the order suspending the drinking establishment license should be rescinded on technical legal grounds. To do so will insure full due process rights for the applicant.

Financial Considerations: None

Goal Impact: Provide a safe and secure environment by enforcing the City Ordinances regarding liquor licenses and drinking establishments.

Legal Considerations: The City Council has the authority under its quasi-judicial authority to rescind a previous order.

Recommendations/Actions: It is recommended that the City Council rescind the order suspending the drinking establishment license for El Farol Rojo Club.

City of Wichita
City Council Meeting
June 16, 2009

To: Mayor and City Council

Subject: Contract Metropolitan Transportation Plan 2035

Initiated By: Wichita Area Metropolitan Planning Organization

Agenda: City Council (Consent)

Recommendation: As fiscal agent, approve contract with Wilbur Smith Associates for the Metropolitan Transportation Plan (MTP 2035) consulting services.

Background: The Wichita Area Metropolitan Planning Organization (WAMPO) is responsible for updating and maintaining the Wichita Area Regional Metropolitan Transportation Plan (MTP). The MTP is the document that provides direction for the use of regional federal transportation funds.

On January 13, 2009, the Transportation Policy Body (TPB) directed WAMPO staff to pursue a contract with consultants to supplement the activities of the WAMPO staff in the update to the MTP. WAMPO was able to procure matching funds through regional planning studies. The preferred vender, Wilbur Smith Associates was selected to provide MTP 2035 consulting services as they demonstrated the clearest understanding of the needs and approach required to complement the activities of the staff. Attached is the contract between WAMPO and Wilbur Smith Associates to provide the desired services.

Analysis: The City of Wichita is the fiscal agent for the WAMPO. Professional consulting services are sought to assist staff in completing the MTP 2035. The MTP 2035 will comply with federal mandated processes and programs. The results of the MTP 2035 will identify the transportation needs of the region based on current and forecasted future land use/development, associated traffic analyses, regional connectivity and accessibility; and complete documentation that will support the mandated process.

Three (3) proposals were received in response to the Request for Proposals (RFP). Wilbur Smith Associates was chosen by the 12 member consultant selection committee comprised of officials from the Federal Highway Administration, Federal Transit Administration, Kansas Department of Transportation, WAMPO Transportation Policy Body, Cities of Wichita and Derby, Sedgwick County Public Works, Wichita Transit Advisory Board, Sedgwick County Association of Cities, and WAMPO staff.

Financial Consideration: This contract is for a total not to exceed $255,900. Federal transportation planning and transit funds available to the WAMPO will be used to pay 80 percent of the costs associated with the contractual services. A planning study being completed by the City of Andover and the Kansas Department of Transportation is supplying the required 20 percent in-kind matching funds ($63,975).

Goal Impact: Efficient Infrastructure.

Legal Consideration: The Law Department has approved the contract as to form.

Recommendation/Actions: It is recommended that the City Council approve the selection of Wilbur Smith Associates to complete the MTP 2035 and authorize the necessary signatures to execute the contract as the fiscal agent for the WAMPO.

Attachment: Consultant contract.

CONTRACT FOR PROFESSIONAL SERVICES

Metropolitan Transportation Plan 2035 Consultant Contract

THIS AGREEMENT made and entered into this ____ day of _____, 2009, by and between the Wichita Area Metropolitan Planning Organization (WAMPO), party of the first part (hereinafter referred to as "the Client"); and Wilbur Smith Associates party of the second part (hereinafter referred to as "the Consultant")

WHEREAS, the Client wants to contract with the Consultant for services to support the development of the Metropolitan Transportation Plan 2035 (MTP). The contract is financed in part with funding from the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) and is subject to federal requirements and regulations. The services performed under any resulting agreement shall comply with all federal, state and the City of Wichita laws and regulations. In addition, this contract will be subject to the requirements of 49 CFR 18 and cost eligibility reimbursement will be subject to 48 CFR 31.2; and

WHEREAS, the Consultant has the knowledge, experience and expertise in transportation planning to undertake this Project on behalf of the Client; and

WHEREAS, the Client desires to retain the services of the Consultant to provide support in the development and completion of the Metropolitan Transportation Plan 2035 (MTP).

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

DESCRIPTION OF SERVICES. The Consultant will provide the services and deliver the documents required to update the MTP 2035 as outlined in the Scope of Services set forth in Exhibit B and as follows.

A. To make available during regular office hours, all calculations, maps, drawings, and all other appropriate forms of representation such as the Client may wish to examine periodically during performance of this agreement.
B. To attend meetings with the Client and other local, state and federal agencies as necessitated by the Scope of Services as set forth in Exhibit B, which by this reference is incorporated and made a part of this agreement.
C. To save and hold the Client harmless against all suits, claims, and losses arising from or caused by errors, omissions or negligent acts of the Consultant, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
D. To maintain books, documents, papers, accounting records, and other evidence pertaining to costs incurred by the Consultant and, where relevant to method of payment, to make such material available to the Client.

E. To comply with all federal, state, and local laws, ordinances, and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964.

F. To be responsible for the professional and technical accuracies and the coordination of all designs, maps and presentation, drawings, specifications, plans and/or other work or material furnished by the Consultant under this agreement. The Consultant further agrees that all designs, drawings, specifications, plans, and other work or material furnished by the Consultant, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

2. PERFORMANCE OF SERVICES. The Consultant shall determine the manner in which its services hereunder are to be performed and the specific hours to be worked in performing such services; provided, the Consultant will provide requested information and activities as agreed between Client and Consultant.

3. PAYMENT. The Client will compensate upon finding that services and deliverables provided by the Consultant are acceptable under the terms of the agreement for the direct hours worked by the Consultant's employee(s) at the rates set forth in Exhibit C, Fee Schedule, which by this reference is incorporated and made a part of this agreement. The Client will compensate the Consultant upon finding that costs are acceptable under the terms of the agreement for material and other direct costs specified in the Scope of Services and for reasonable expenses, including travel, incurred as a direct result of Consultant's performance of services. The actual cost shall be incurred in conformity with the cost principles established in 23 CFR 172 and 48 CFR et seq. Unless acceptable by the Client, the maximum cost not to exceed dollar amount for the compensation for services detailed in this agreement is $255,900.56 effective the date of the final signature of this contract until the end of project including reimbursable expenses for the time they are productively engaged in work necessary to fulfill the terms of this contract. During the progress of work covered by this agreement, payments less a retainage of 5% will be made to the Consultant at intervals of 30 days based on the statements provided by the Consultant itemizing the number of hours of work performed, the percentage of the services hereunder completed and in compliance with the Fee Schedule as set forth in Exhibit "C", a copy of which is attached hereto and incorporated herein by reference. Client will make payment within 30 days of a reconciled and approved invoice reflecting deliverables as outlined by the scope of work. The Consultant will negotiate with the Client if there are any changes in deliverable dates. In addition, the Consultant agrees that;

A. The reimbursement for the professional services required by this agreement will be based on the Consultant's actual costs, which can be less than the estimated amount. If additional work should be necessary, the Client will negotiate with the Consultant if there are any changes in the deliverables. 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 Client and the Consultant.

B. Accumulated partial payments shall not exceed $230,310 (ninety percent of the maximum fee payment amount) until the final draft report has been received and approved by the WAMPO Transportation Policy Body.

C. Client will inform Consultant promptly of any dissatisfaction with deliverables or invoicing and will reimburse to the Consultant any withheld payment upon completion of the associated work effort to the Client's satisfaction.

D. The Client may withhold reimbursement of payment at the end of each 30-day cycle and the accrued retainage dollar amount in the situation where deliverables applicable to the invoiced amount get delayed by more than two weeks without the Client's approval. Any payment withheld will be proportional to a reasonable estimate of the work effort that may be delayed. Reimbursement will be made promptly upon completion of the associated services to the satisfaction of the Client. The Consultant will not be responsible or held liable for delays occasioned by the actions or inactions on the part of the Client or for other unavoidable delays beyond the control of the Consultant.

E. At scheduled project meetings the Consultant will review with the Client the Consultant's progress with regard to both completed and ongoing work efforts. Progress will be assessed with regard to the status of completion of deliverables that are ongoing and the Consultant's efforts to resolve issues that may affect schedule. Deliverables as identified within the scope of services will be discussed as well as any known project issues that may be beyond the control of the Consultant that could affect the schedule. Client may withhold payment in part or in whole for services not completed or for which work progress is not proportional to the level of effort invoiced. Any withheld payment will be proportional to the effort deemed necessary to bring the associated tasks or deliverables up to the level of effort that has been invoiced. Client will inform Consultant promptly of any dissatisfaction with deliverables or invoicing and will reimburse to the Consultant any withheld payment upon completion of the associated work effort to the Client's satisfaction.

F. To the extent the Client is satisfied with Consultant's work progress, accrued retainage held by the Client from prior invoice payments will be released to the Consultant every six months or every sixth invoice. Retainage due will be included in the applicable invoice from Consultant. At the Client's discretion, retainage may continue to be withheld from future payments for work not yet invoiced. Upon completion of all services accepted by the Client, Client will release all remaining retainage to Consultant within 30 days of final approved and reconciled invoicing from Consultant.

4. CASH BASIS AND BUDGET LAWS. The right of the Client to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be

construed and interpreted so as to ensure that the Client shall at all times stay in conformity with such laws, and as a condition of this Agreement the Client reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

5. INDEMNIFICATION AGREEMENT. Consultant agrees to fully indemnify, defend, and hold harmless Client, its officers, employees, and volunteers from any and all loss, damage, liability, claim, demand, or cause of action whatsoever to the extent arising out of or resulting from or alleged to have arisen out of or have resulted from any negligent act or omission or willful misconduct of Consultant, its officers, employees, independent contractors, or representatives in the performance of this Agreement.

6. TERM/TERMINATION. This agreement shall run for the life of the project effective the date of the final signature of this contract. This agreement shall terminate upon the satisfactory completion by the Consultant of the services and documents required to be provided hereunder, or upon 20 days written notice of cancellation by the Client. Upon receipt of such notice of termination the Consultant shall discontinue and cause all such work to terminate upon the date specified in the notice from the Client. The Consultant will be entitled to compensation for actual effort performed up to the date of termination. Any invoice for completed work or termination claim including the total accumulated retainage dollar amount must be submitted to the Client within thirty (30) days after the effective date of termination. In the event of termination, such information prepared by Consultant to carry out this contract, including data, studies, surveys, records, drawings, maps and reports shall, at the option of Client, become the property of the Client and be immediately turned over to the Client. Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

7. PROPRIETARY MATERIALS. Upon the successful completion of contract, all data and electronic models provided by the Client, and any new data and electronic models prepared by the Consultant under this contract will be returned to the Client. The Consultant agrees to not keep a copy of the electronic transportation model after the successful completion of the contract for any other use, or transfer data or electronic models to any other party without the written approval from the Client.

8. RELATIONSHIP OF PARTIES. It is understood and agreed that the Consultant is an independent contractor.

9. NOTICES. All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficient if delivered in person or deposited in the United States mail, postage prepaid, and addressed as follows:

For the Client: Mitchell A. Coffman
Associate Planner
Wichita Area Metropolitan Planning Organization
455 N. Main St. – 10th Floor
Wichita, Kansas 67202-1688

For the Consultant: Chris Nazar, AICP
Project Manager
Wilbur Smith Associates
10401 Holmes Road, Suite 210
Kansas City, Missouri, 64131

9. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement, either oral or written. This Agreement supersedes any prior written or oral agreement between the parties pertaining to the same subject matter.

10. AMENDMENT. This Agreement may be modified or amended if the modification or amendment is made in writing and signed by the Client and the Consultant.

11. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds any provision of this Agreement is invalid or unenforceable, but by limiting the applicability of such provision the entire Agreement would be valid and enforceable, then such provision shall be deemed to be written, construed and enforced as limited.

12. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

13. APPLICABLE LAW. This Agreement shall be governed by the law of the State of Kansas.

Approved as to form:

By_____ _____
Joe Allen Lang Date
Chief Deputy City Attorney, City of Wichita

WICHITA AREA METROPOLITAN PLANNING ORGANIZATION:

_____ _____
Jeff Longwell Date
Transportation Policy Body Chairperson

CITY OF WICHITA AS FISCAL AGENT:

_____ _____
Carl Brewer Date
Mayor

ATTEST:

_____ _____
John Schlegel Date
WAMPO Secretary

WILBUR SMITH ASSOCIATES

_____ _____
Douglas LaVoie, PE Date
Regional Vice President

EXHIBIT A

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

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

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:
   1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
   2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
   3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
   4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
   5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

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

   2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration

for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

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

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

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

D. Exempted from these requirements are:

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

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

EXHIBIT B

Scope of Services

Task 1 - Project Management

The Wilbur Smith Associates team, led by project manager Chris Nazar and project director Bob Orr, will ensure appropriate coordination and management steps are taken keeping the project on track while being responsive to WAMPO's needs. The following are key aspects of our project management approach.

Initiation of WSA Team Involvement

Following the notice to proceed, WSA will prepare a project management plan and will hold a kickoff meeting with WAMPO staff. The plan will identify:

- WSA contacts
- WAMPO staff
- Key study participants
- Establish protocols and procedures

At the kickoff meeting a workshop will be held to discuss/identify what staff members have heard or researched to date and ideas for going forward.

Working in an Integrated Manner with Project Team

Working in a collaborative environment with WAMPO staff, project stakeholders, and the travel demand modeling team is a WSA commitment. WSA's project manager and task leaders will initiate needed conversations on project data collection, analysis, results, and documentation on a daily basis as needed to move the project forward. WSA staff will be available to all other members of the project team to respond to questions, requests for information, and input. As part of regular team discussions, WSA will work with WAMPO staff to keep the calendar up-to-date ensuring that all parties know who is where and working on what.

Team Meetings and Conference Calls

Successful delivery of the MTP 2035 will require constant contact between all parties. As shown on the proposed project schedule at the end of this task write-up, communication between the WSA team and WAMPO staff will occur on an almost daily basis. Bi-weekly update conference calls between the WSA team and the WAMPO project manager is suggested. Other key staff, including members of the modeling team could join as needed ensuring consistent updates on progress and regular discussion of the data and analysis as it proceeds.

Schedule

The WSA team is aware the MTP 2035 must be adopted by July 2010. By working together effectively this schedule can be accelerated. Assuming a June 2009 start, the WSA team proposes a 12 month schedule with a project completion date of the end of June 2010. To ensure integrated deadlines could be met, the WSA team referenced the schedule put forward by the modeling team and the tentative PAC meeting schedule developed by WAMPO. Our proposed schedule is located at the end of Task 1.

Involvement of Other Agencies

The WSA team is aware of the need to consistently coordinate and involve other agencies in the development of the MTP 2035. Development of a strong plan will involve working with and meeting the needs of partner agencies such as KDOT, FHWA, transit providers, airport managers, and each of the local communities in the WAMPO region. It will also involve wider stakeholder coordination with various local agencies and groups. The WSA team acknowledges the need to be responsive to multiple representatives, often from different departments, from partner agencies. The discussion below on stakeholder interviews and involvement expands on the WSA team's plans for working with other agencies.

Progress Reports

Providing quality projects on-time and within budget is something WSA constantly strives to do. WSA will use its project management and scheduling software to track and monitor project progress and budgets by task. WSA will create detailed progress reports including schedule updates and a comparison of budget used versus task work accomplished to date. The WSA team will provide the client a written progress report on a monthly basis. Progress reports will also provide the status of each of the project phases and the documentation process.

Communication Plan

Working with WAMPO staff, the WSA team will develop an effective communications strategy that includes development of both communication mediums and the nature and quality of the communication. For example, a style guide can and should be developed for documents including handouts, newsletters, technical reports, and the executive summary as well as web content. The elimination of jargon or planner speak and the use of graphics, pictures, call-out boxes, and figures to display and convey information would be encouraged. This will allow stakeholders and members of the public to easily understand the issues, potential solutions, and help them to provide effective feedback.

Quality Assurance

Commitment to providing quality and accurate deliverables is the foundation of all of the work of the WSA team. WSA will provide a project protocols manual to all team members and WAMPO. In addition to outlining the QA procedures, the manual will also:

- Provide protocols for communicating progress and requesting data,
- Describe key personnel and their role on the project,
- Identify key milestones and deliverables,
- Identify key standards for data analysis and project deliverables,
- Include a project study style guide for the preparation of documents, memos and presentations.

Task 2 - Data Collection

The WSA team understands that WAMPO staff has already compiled much of the base data needed for the MTP. The WSA team has substantial familiarity with the local data sources and plans through WSA's work on the South Area Transportation Study. At the outset of the project, the WSA team will engage in a comprehensive review of available data from WAMPO staff. Based on this review, the WSA team will develop a data collection needs and acquisition plan and will work with WAMPO staff to collect remaining data needed from local agencies, KDOT, chambers of commerce, economic and industrial development entities and others. The information to be obtained and reviewed includes but isn't necessarily limited to:

- Existing and historic traffic volumes on all major roadways
- County and city long range visions for their jurisdictions
- Model information that may be available from past studies
- Recent and planned development activity, as well as economic development initiatives
- Traffic analysis zone level socioeconomic data
- Existing and future land use plans from the various cities and counties
- Environmental justice communities' data
- Existing functional classifications maps and data
- Transit routes, ridership data, and plans
- Current KDOT programmed projects
- Bicycle and pedestrian routes and plans
- Roadway inventories
- Population
- Retail employment
- Total employment
- Occupied dwelling units
- Total dwelling units
- School location and attendance
- Environmental constraint data
- Data on road, rail, and air freight movements
- Lists of committed projects including TIP and relevant CIP information
- Safety data including crash data on key facilities to allow mapping of high crash rate locations and data on any specific transportation safety management systems
- Existing Intelligent Transportation Systems data and components

To the extent possible, data should be collected and kept in a GIS database for easy use in spatial analysis and map generation. The WSA team will work with WAMPO staff regarding available GIS data and databases.

Task 3 - Refinement and Finalization of Goals and Objectives

The WAMPO staff has been working with the PAC to develop goals and objectives for the study and has reviewed the items presented for public review to-date. At the initial PAC meeting after a contract is reached, the key task will be the refinement of the goals and objectives for the plan. This portion of building the MTP 2035 into a strategic planning framework includes goals, objectives, alternative strategies, and performance measures. The PAC will have the opportunity for input regarding suggested performance measures and ranking criteria for multimodal transportation investments. The relative weight and possible performance measures for each suggested goal will be included in the discussion of goals, such that the technical feasibility of benchmarking and suggested goals can be realistically understood. Based on discussion with the PAC and WAMPO staff, WSA will develop a matrix of study weighted goals and performance measures to guide subsequent tasks in the planning process. This framework will be reviewed and finalized in conjunction with WAMPO staff and the PAC.

Task 4 - Public Involvement

The WSA team approach to public and stakeholder communication includes additional opportunities for active involvement that will achieve quality and usable feedback. Better participation of stakeholders and the public will occur when the team actively engages potential participants rather

than waiting for them to attend an advertised public meeting. In discussing potential public involvement activities, the WSA team understands that WAMPO staff intends to continue to lead the delivery of the public involvement process with the consultant team in a support role. The WSA team also acknowledges that WAMPO'S Public Involvement Plan will be a key guide for the public involvement activities. The WSA team will assist in preparing summaries of public involvement activities and results.

Integration into Process

The WAMPO staff held a series of public meetings in January 2009 to introduce the MTP 2035 plan and receive feedback on goals, objectives, and spending priorities. WAMPO has also held an on-line survey on similar issues. The WSA team is ready to integrate into the public involvement process what WAMPO has already begun in a seamless manner including participation in proposed meetings and quarterly newsletter updates. The WSA team has noted that the planned WAMPO public involvement process included three phases of public involvement. As shown in our proposed project schedule discussed in Task 1, the WSA team proposes a fourth phase to occur early on in the consultant's team involvement. This phase would build on the first phase and discuss important characteristics of the WAMPO region developed as a result of the data collection and analysis process. This phase would serve as further introduction to specific alternative scenario development. It would also reduce the time gap in public interaction between the first meetings held this January and alternative specific meetings proposed for the fall. Some of the activities described below could be part of the various public involvement phases.

District/Area Stakeholder Workshops or Meetings

The WSA team proposes attending a series of district/area group meetings at locations around the city to elicit comment from various parts of the community. For cost-effectiveness, these will not be project specific meetings but will instead involve attendance at or piggybacking on other community meetings or specific stakeholder meetings already scheduled. The project team would present the project, answer questions, and provide feedback. In addition, the project team could lead attendees in a ranking or game exercise to elicit opinions and feedback on alternative ideas.

On-Line Presence

The WSA team will work with WAMPO staff to continue the strong use of the web page for the project. The current uses of the site have included surveys and dissemination of information. The WSA team has had recent success with on-line public meetings. These include placing a detailed, interactive PDF based presentation on the website that effectively walks someone through the exhibits they would see at a meeting. The presentation would also provide an e-mail link and some form of comment board or blog to gain responses. This monitored comment board or blog can be setup inexpensively and used to hold public conversations on key topics important to the MTP 2035. Traffic to the site would be encouraged through the stakeholder group and mobile meetings along with media coordination. The on-line meetings would be an extension of the existing proposed regular public meetings that would still be held as planned.

Podcasts

The creation of four podcasts is recommended. These short videos could be linked and distributed through the project web site and e-mail distribution lists and include both project team members and

stakeholders. The first could provide project background and discussion of the goals and objectives. The second could discuss the alternative scenarios under consideration and some of the constraints (financial, environmental) and key factors leading to selection of specific projects. The third could briefly introduce and explain the key items in the draft plan document. The fourth will provide results at the end of the study and discuss implementation.

Mobile On the Street Meetings

At three points during the project, the WSA team proposes a series of mobile on the street meetings. The project team would setup a small booth or table at public locations or events and provide project information along with a contact card that directs members of the public to the project's web page. This allows for greater involvement of the general public because we are going to them instead of waiting for them to come to us. The WSA team proposes having a series of three mobile meetings during each of the proposed public interaction periods during the project.

Media Kits

The WSA team proposes sending media kits three times during the project to create media buzz about the project. Each media kit would consist of a press release, project fact sheet, relevant exhibits and potentially a draft opinion-editorial piece. WSA will work with WAMPO and city staff to develop, edit, and disseminate the kits to targeted media.

Public Meetings

The WSA team will assist the WAMPO staff in scheduling, advertising, preparing for, and holding general public meetings including preparation and distribution of flyers and exhibits.

Task 5 - Stakeholder Involvement

The WSA team is prepared to fully integrate into the stakeholder involvement process already developed and being implemented by WAMPO.

PAC Meetings

The WSA team would prepare for and attend the bi-monthly PAC meetings as needed depending on the overall integration of roles between the WSA team and WAMPO staff. In other words, if there is material that the WSA team needs to present or discuss or important feedback to discuss, we will be there. If WAMPO staff decides for cost-effectiveness that there are certain PAC meetings where the consultant does not need to attend, we will continue work behind the scenes. The WSA team recognizes the importance of the PAC in guiding the process and making key project decisions and endorses the plan for consistent regular meetings and updates.

Stakeholder Interviews

The WSA team understands that WAMPO staff have completed a first round of stakeholder interviews. The WSA team agrees with the importance of holding stakeholder interview and briefing sessions at key phases of the project and would assist in setting up, preparing, and holding these briefings as needed. The key stakeholders that must be involved in the interview and/or coordination process include but are not limited to:

Kansas Department of Transportation	Sedgwick County Emergency Management
Planning and Corridor Staff	Federal Transit Administration
Local KDOT Engineering Staff	Federal Highway Administration
Kansas Department of Health and Environment	Federal Railroad Administration
Kansas Highway Patrol	Federal Aviation Administration
Kansas Turnpike Authority	Airport Managers
Sedgwick County Engineering and Planning	Bicycle and Pedestrian Advocacy Groups
Butler County Engineering and Planning	Local Economic Development Agencies
Sumner County Engineering and Planning	School officials from multiple districts
Wichita Transit Officials and Advisory Board	Coordinated Transit District 12
Resource agencies including:	Visioneering Wichita
EPA	Northern Flyer Alliance
U.S. Army Corps of Engineers	Farm Bureau
Kansas Department of Wildlife and Parks	Engineering, public works, planning, environmental, emergency service and finance/budget officials from local communities Regional Economic Partnership

E-News Updates

In addition to the quarterly WAMPO newsletters, a monthly electronic news update to stakeholders could be sent. This would be a one or two page bulletin covering the latest work completed as well as upcoming meetings and would ask survey or thought provoking questions when applicable. This cost effective communication could be distributed to those on the project e-mail distribution list.

Task 6 - Incorporation of Regional and Local Plans

All pertinent local plans will be obtained and reviewed for incorporation of key components into to MTP 2035. The WSA team will prepare brief summary abstracts (approximately 1-2 pages plus any needed appended maps) for each plan highlighting the relevant issues pertinent to the MTP 2035. Plans to be reviewed include, but are not limited to:

Local Land Use and Comprehensive Plans
Kansas Long Range Transportation Plan
Current WAMPO 2030 Long Range Transportation Plan
Visioneering Wichita Documents
Development Trends Reports
Current local and county capital improvement plans
Current (and updated) WAMPO TIP
South Area Transportation Study
Parks and Recreation Open Space Plan
Regional Pathway System Plan
Railroad Crossing Plan
Wichita Transit Development Plan
CTD Coordinated Public Transit-Human Service Plan

Amtrak Expansion Feasibility Study
Local Emergency Management Plans

Task 7 - Alternative Development and Analysis

The WSA team will work the WAMPO staff and the travel demand model consultant throughout the alternatives development and analysis process. The WSA team recognizes that this process must be stakeholder and public driven, with the project team providing clear concise data and a framework for the analysis.

Alternatives Development

To identify and evaluate potential MTP 2035 projects and alternatives, WSA, in coordination WAMPO staff and the PAC along with input from the general public, will develop up to three improvement scenarios. These scenarios will identify complementary projects and programs to support the long-term development of a well balanced transportation system, which will address current and projected land use and regional travel patterns. The roadway and transit projects will need to be tested in the travel demand model and this evaluation will provide estimated performance of these projects for each scenario.

The WSA team proposes initially using a fiscally unconstrained approach to ensure all possible projects regardless of costs are evaluated to address deficiencies identified in the future network. Various combinations of improvements, such as new roadways, widening major roadways and making improvements to existing roadways will be developed, tested, and evaluated during this task. The roadway and transit projects will need to be tested in the travel demand model and this evaluation will provide estimated performance of these projects for each scenario. Other plan elements (air, bicycle, pedestrian, safety, security, technology etc.) will be evaluated using project objectives and performance measures determined in prior tasks. The scenarios will be summarized and reviewed with the PAC against the goals and objectives and performance measures agreed to and presented to the general public to assist in the project selection process.

Project Rankings

The evaluation of potential projects will be based on the goals, objectives, and measures developed in early tasks and the transportation planning factors deemed most important to the area by WAMPO staff, the PAC and the general public. For example, factors could be organized into the following categories: critical, important, and useful. The PAC would provide guidance on selecting factors. The project ranking process will assess the ability of projects to address future travel demand, the effectiveness of transportation and land use strategies in changing travel behavior, cost estimates and SAFETEA-LU planning factors. The ranking of projects, in conjunction with revenue estimates, will form the basis for a set of fiscally constrained projects and programs to address future travel demands. The WSA team would provide quantitative and qualitative results so WAMPO staff, the PAC, and the general public will have information to rank each project and program. The travel demand model may provide many key performance indicators relative to changes in congestion, delay, vehicle miles of travel, and vehicle hours of travel. There are many others that are not mode specific, but are important to the overall assessment of impacts. The WSA team will make use of available GIS information as well as the local knowledge of the PAC and WAMPO staff to assess the impacts of various improvements. Improvements will include, but not necessarily be limited to, new construction to alleviate traffic congestion, widening of existing facilities, and intersection geometric

improvements to improve the movement of people and goods throughout the study area. Solutions such as bicycling, walking, travel demand management and transit will also be identified, based on input provided by WAMPO staff, the PAC, and the general public.

Project Implementation

Based on the available funding identified in the funding analysis, and the alternatives analyzed in this task, the WSA team, with assistance from the PAC and WAMPO staff, will identify a final set of recommended multimodal projects to meet projected travel demands. Strong coordination with the travel demand modeling team will be needed to ensure these projects are modeled as envisioned. Based on the results of the model within the context of the goals and performance measures of, the WSA team will work with WAMPO staff and the PAC on a prioritization exercise to develop the list of recommended projects for implementation. A multimodal transportation plan map, showing the proposed improvements to the road network and other transportation facilities as appropriate (including pedestrian and bicycle facilities) will be prepared. As needed, functional classification maps will be updated.

Task 8 - Plan Evaluations

Task 8 includes the specialized evaluations of the alternative scenarios and the final set of recommended projects that will be needed to complete the MTP 2035.

Freight Analysis

The WSA team understands a regional freight study will be completed in addition to the MTP 2035. The WSA team will coordinate with WAMPO staff regarding the available data that has been collected. The WSA team has extensive experience with regional freight analyses and proposes including basic freight analyses within the MTP 2035 and will provide an overview of freight and goods movement in the region including assessment of existing freight flows. This overview of the freight and goods movement will be used to assist in the project prioritization process.

Environmental Analysis and Coordination

The WSA team will collect and map known human and natural environmental features throughout the WAMPO region using existing environmental data. The environmental analysis will make heavy use of GIS data and mapping to develop a clear picture of the environmental constraints in the WAMPO region. The WSA team will coordinate with federal, state and local environmental resource and regulatory agency databases to ensure that known environmental resources and constraints within the project area are identified and considered. The WSA team possesses extensive experience in environmental constraints analysis, documentation, and coordination that will ensure all SAFETEA-LU requirements are met. Environmental resources to be evaluated will include but are not limited to:

- Community services – schools, parks, fire, police, hospitals, community centers etc.
- Cultural, architectural, and archaeological resources in the study area
- Section 4(f) and 6(f) properties in the study area
- U.S. Fish and Wildlife Service National Wetland Inventory maps
- Federal Emergency Management Agency 100 year floodplain data
- Threatened and endangered species and natural sites information
- Hazardous materials sites database information
- Available geographic data files on soil and geological conditions

Natural Resource Conservation Service County Soil Survey maps
Hydraulic and drainage data
Air quality data from existing monitors

Environmental constraints maps to assist with the identification of potential development and constraints faced by potential transportation projects will be produced. A summary review of potential impacts from the MTP 2035 program alternatives on environmental resources will be completed and will include discussions on potential affects on air quality, energy use, and climate change.

Environmental Justice and Title VI Review

The WSA team has extensive experience in dealing with projects in potential Environmental Justice communities and applying the requirements of Title VI to public and plan activities. An Environmental Justice review and analysis of the MTP 2035 recommendations based on the parameters set in WAMPO's Environmental Justice policy and other federal requirements will be completed. The WSA team will use census and community data in compiling the EJ analysis, supplemented with information obtained through stakeholder discussions. The WSA team will be prepared to recommend changes to the public involvement process (such as interpretation or translation) based on specific identified environmental justice or Title VI population needs.

Financial Plan

WSA will complete a SAFETEA-LU compliant financial plan including forecast costs and revenue streams, use of revenue and cost bands for outer years of the plan, documentation of assumptions regarding revenue and cost inflation, and coordination with local financial stakeholders. All assumptions will be coordinated in advance with WAMPO, KDOT, FTA, and FHWA officials. This plan will demonstrate that the MTP 2035 will be fiscally constrained using year of expenditure analysis and will lead to the development of a list of illustrative projects, not included in the funded MTP 2035. The WSA team's past experience with financial analysis for the WAMPO region as part of the South Area Transportation Study will be a key asset in completing the financial plan effectively.

A basic description of the recommended MTP 2035 projects including lengths and facility types will be provided along with cost estimates for each recommended roadway and non-roadway projects. The cost estimates will be developed for each recommended project in accordance with WAMPO, KDOT, FTA, and FHWA planning level project cost estimating methodology and will be reviewed with WAMPO staff and the PAC.

The WSA team understands that MPOs have to address conflicts between ever-increasing travel demands and limited financial resources to address these needs since most funds have restricted uses. The backbone of an adopted fiscally constrained MTP is a set of sound revenue forecasts, along with considerations for innovative financing, where appropriate. SAFETEA-LU requires that the plan be based on revenues reasonably expected to be available to the year 2035 for both capital improvement projects and operations and maintenance.

In coordination with WAMPO, local governments, KDOT, FTA, and FHWA staffs, WSA will review all current and historical MPO funding information related to methods and sources of transportation funding used by WAMPO. Using the historical trend and any known or anticipated future funding sources, WSA will project available funding to the year 2035. Available funds will be compared to each

planning horizon year to ensure that funds are reasonably expected to be available for implementation of the projects. WSA is familiar with all federal, state and regional transportation funding initiatives and this will assist in identifying all existing and potential funding sources related to KDOT as well as any new federal initiatives.

Financial plan documentation including all assumptions, data sources uses, and spreadsheets will be developed giving WAMPO a strong record of the financial planning that occurred as part of the MTP and can be update as needed.

Task 9 - Travel Demand Model Coordination

The WSA team is committed to on-going coordination with WAMPO staff and the travel demand modeling team in ensuring that the model development and results reflect the intentions and needs of the MTP 2035. The WSA team anticipates several key coordination points including:

- Updating Data in the Existing Model
- Updating Future Projections
- Results from the model on multi-modal needs
- Input of alternatives into the model
- Measures of effectiveness output from the model on the alternatives
- Coordination on writing of the model analysis and outcomes section of the Plan Document

The WSA team includes staff with strong travel demand modeling experience who will be able to make sure there are no translation gaps between what the planning team and modeling team develop.

Task 10 - Development of Plan Elements

Working with WAMPO staff, the WSA team will develop the multi-modal planning analysis. It is anticipated that plan sections will include discussion of:

- Roadways: Discussion of existing and planned roadway information including anticipated regional roadway needs and the potential for alternatives to meet these needs. The section will also discuss congestion and level of services along with desired standards, functional classifications, and the results of the traffic analysis.
- Public Transportation: Discussion of existing and planned transit facilities including anticipated transit needs and the potential for alternatives to meet these needs. Coordination with transit providers and advocacy groups will inform this section. This section will inventory existing and planned transit facilities and services and discussion of coordination with existing plans.
- Freight: Existing freight facilities and any planned improvements particularly related to freight movements will be discussed and will provide basic freight analysis information and reference the future completion of a regional freight plan.
- Rail: Discussion of rail facilities and rail plans for the region. This section will link to both the freight discussion and the transit passenger rail discussion. This will include links to upcoming Kansas rail studies.
- Aviation: Given the WAMPO region's prominence in the aviation industry, the MTP should include strong discussion of aviation facilities and plans. This will include results from discussions with airport managers including development of an inventory of existing and

planned facilities. Based on airport plans, it will include a discussion of airport usage and capacity, future needs, and the ability of alternatives to meet those needs.

Bicycle and Pedestrian: Discussion of existing and planned non-motorized facilities with reference to the Pathways Plan and coordination with local, state, and federal agencies as well as bicycle and pedestrian advocacy groups. This analysis will include discussion of existing and future non-motorized needs and potential alternatives to meet the needs. It will include inventory of existing and planned facilities.

Safety: This section will be developed in coordination with the anticipated WAMPO safety plan. The section will identify current safety issues and needs in the region and evaluate alternatives and/or mitigation strategies to address those needs. This will include recommendations from the Railroad Crossing Study and Strategic Highway Safety Plan.

Security: This section needs to identify and address the critical infrastructure and facilities that are crucial to security, as related to the transportation system. Coordination with emergency management plans and stakeholders will be an important part of this analysis. Proposed future transportation infrastructure critical to security and emergency services will also be evaluated. This section will also discuss hazardous materials movement, emergency and evacuation routes, and effects of proposed projects on emergency first responders.

Technology and ITS: This section will discuss the existing use of ITS in the region, its consistency with regional transportation goals and objectives as outlined in the MTP and the potential for further ITS implementation to help address regional transportation facilities.

System Management (Congestion): Opportunities for congestion management, travel demand management, and transportation system management to address transportation needs in the WAMPO region will be discussed and will incorporate the existing WAMPO Congestion Management Process and recommend further strategies.

The plan will also have chapters discussing the results of the environmental, environmental justice/Title VI, and financial analyses.

Task 11 - Plan Document Production

The WSA team will complete the writing of the MTP 2035 plan documents as requested in the RFP. The following documents will be produced:

The WAMPO Metropolitan Transportation Plan 2035. This document will include:

- The writing of all sections as previously discussed in the earlier tasks
- Researching of plans related to transportation in the region
- Other information needed to complete this document

A concise, graphical executive summary

Technical report document(s) documenting working procedures and information, analysis, decisions, project results, and associated text, graphics, tables, maps, and figures. The WSA team understands one or more detailed technical reports may be required to complete the analysis discussed in this scope of work.

All writing will be done in coordination and consultation with WAMPO staff to ensure that it is completed in a satisfactory style and content.

As requested in the RFP, WSA will provide:

Format: All documents will be completed in the Microsoft Office 2007 suite and in 8.5x11 inch format with 11x17 inch fold out graphics as needed

Technical Report: Five hard copies and 10 DVD copies

Executive Summary: 100 copies of a bound final approved

DVDs: 100 DVD copies of the entire plan including executive summary, appendices, and maps.

MTP 2035: 30 final color copies in D-ring binders with appropriately labeled dividers

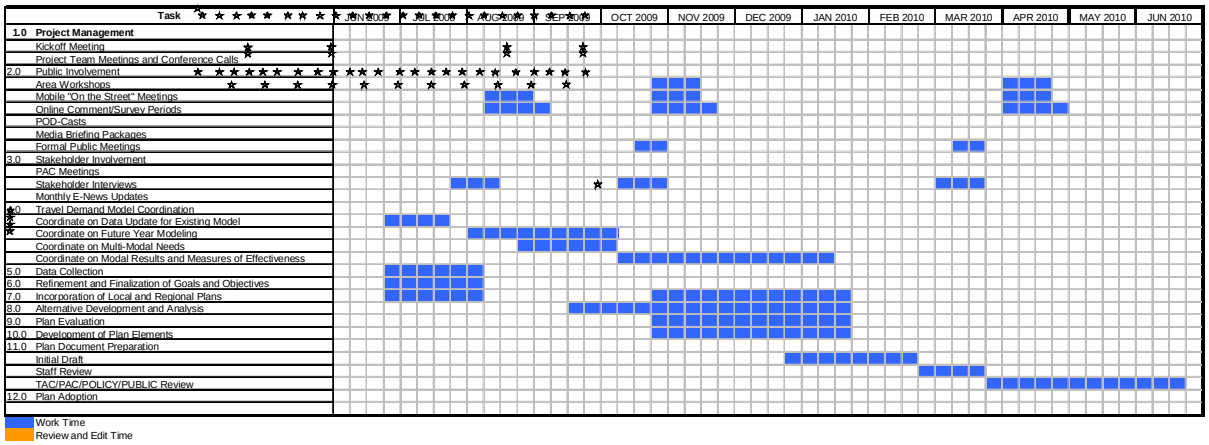
Maps: 50 color maps showing recommended MTP 2035 improvements on 34 x 22 inch sheets, completed in GIS, and transferred to a PDF electronic reproducible format

Electronic copies: An electronic copy of all documents prepared in Microsoft Office 2007 and Adobe .pdf program electronic formats

Task 12 - Plan Adoption

The WSA team will support WAMPO staff throughout the plan adoption process including public and agency presentations and meetings, committee presentations, and Transportation Policy Body presentations.

Proposed Project Schedule: WAMPO 2035 Metropolitan Transportation Plan



Note: This schedule is predicated upon a June 25, 2009 contract start date. The schedule will shift accordingly if the study starts sooner or later.

EXHIBIT C

Fee Schedule

The project will be based on a cost plus fixed fee basis not to exceed $ 255,900.

CONSULTANT NAME:

Wilbur Smith Associates

DIRECT LABOR:

Classification	Person Hours	Hourly Rate		=	Labor Costs
PROJECT MANAGER	370	$	45.84	$	16,960.80
QA/QC	56	$	59.29	$	3,320.24
SR TRAFFIC/FREIGHT SPECIALIST	84	$	55.00	$	4,620.00
SR PLANNER	216	$	33.72	$	7,283.52
ENGINEER	32	$	42.80	$	1,369.60
PLANNER	420	$	25.96	$	10,903.20
GIS/GRAPHIC SPECIALIST	188	$	25.96	$	4,880.48
CLERICAL	136	$	18.60	$	2,529.60
	1502			Total Labor	**$51,867.44**

OVERHEAD:

(Total Labor)	$ 51,867.44	=	Total Overhead	**$89,751.42**

DIRECT EXPENSES:

(Listed by Item at Actual Cost -NO MARKUP)	Quantity	
Mileage	5200	$2,730.00
Printing/Copying B & W	4800	$672.00
Printing/Copying Color	4800	$1,200.00
Plots - 36 x 48 Avg	50	$750.00
Exhibit Boards for Meetings	24	$2,040.00
Travel - Hotel	12	$1,200.00
Travel - Per Diem	12	$420.00
Travel - Air	2	$800.00
Subconsultant Expense (BWR)		$75,257.21
Subconsultant Expense (MKC)		$15,050.60
	Total Direct Costs	**$100,119.81**

FIXED FEE:

(Total Labor + Total Overhead)	$141,618.86	=	Total Fixed Fee	**$14,161.89**
		TOTAL TEAM COSTS	**$**	**255,900.56**

CONSULTANT NAME:

MKC Associates

DIRECT LABOR:

Classification	Person Hours	x	Hourly Rate	=	Labor Costs
SR PLANNER (MK Christopher)	114		$ 57.00		$ 6,498.00
Total Hours	114			Total Labor	**$6,498.00**

OVERHEAD:

(Total Labor)	$ 6,498.00	x	1.0000	= Total Overhead	**$6,498.00**

DIRECT EXPENSES:

(Listed by Item at Actual Cost -NO MARKUP)	Quantity	Unit	Unit Price		
Mileage	0		$0.53		$0.00
Printing/Copying B & W	0		$0.14		$0.00
Printing/Copying Color	0		$0.70		$0.00
Plots - 36 x 48 Avg	0		$15.00		$0.00
Exhibit Boards for Meetings	0		$85.00		$0.00
Travel - Hotel	2		$100.00		$200.00
Travel - Per Diem	3		$35.00		$105.00
Travel - Air	1		$450.00		$450.00
				Total Direct Costs	**$755.00**

FIXED FEE:

(Total Labor + Total Overhead)	$12,996.00	x	0.100	= Total Fixed Fee	**$1,299.60**
				TOTAL MKC COSTS	**$ 15,050.60**

CONSULTANT NAME:

BWR

DIRECT LABOR:

Classification	Person Hours	Hourly Rate	=	Labor Costs
QA/QC	60	$ 66.00		$ 3,960.00
SR PLANNER	320	$ 44.00		$ 14,080.00
PLANNER	60	$ 39.00		$ 2,340.00
GIS/GRAPHIC SPECIALIST	160	$ 22.00		$ 3,520.00
Total Hours	600		Total Labor	**$23,900.00**

OVERHEAD:

(Total Labor)	$ 23,900.00	1.8490	= Total Overhead	**$44,191.10**

DIRECT EXPENSES:

(Listed by Item at Actual Cost -NO MARKUP)	Quantity	Unit Price		
Mileage	680	$0.53		$357.00
Printing/Copying B & W	0	$0.14		$0.00
Printing/Copying Color	0	$0.70		$0.00
Plots - 36 x 48 Avg	0	$15.00		$0.00
Exhibit Boards for Meetings	0	$85.00		$0.00
Travel - Hotel	0	$100.00		$0.00
Travel - Per Diem	0	$35.00		$0.00
Travel - Air	0	$450.00		$0.00
			Total Direct Costs	**$357.00**

FIXED FEE:

(Total Labor + Total Overhead)	$68,091.10	0.100	= Total Fixed Fee	**$6,809.11**
			TOTAL BWR COSTS	**$ 75,257.21**

Hours by Task

(Hours by personnel category and task)

Task Number	Task Description	FIRM	PROJECT MANAGER	QA/QC	SR TRAFFIC/ FREIGHT SPECIALIST	SR PLANNER	ENGINEER	PLANNER	GIS/ GRAPHIC SPECIALIST	CLERICAL	TOTAL HOURS
1.0	Project Management	WSA	48	8	0	0	0	0	0	40	96
		BWR	0	20	0	20	0	0	0	0	40
		TOTAL	**48**	**28**	**0**	**20**	**0**	**0**	**0**	**40**	**136**
2.0	Data Collection	WSA	12	2	0	12	12	48	32	8	126
		BWR	0	0	0	40	0	0	80	0	120
		TOTAL	**12**	**2**	**0**	**52**	**12**	**48**	**112**	**8**	**246**
3.0	Refinement of Goals and Objectives	WSA	20	0	0	12	0	12	0	4	48
		BWR	0	0	0	20	0	0	0	0	20
		TOTAL	**20**	**0**	**0**	**32**	**0**	**12**	**0**	**4**	**68**
4.0	Public Involvement	WSA	72	8	0	24	0	48	32	20	204
		TOTAL	**72**	**8**	**0**	**24**	**0**	**48**	**32**	**20**	**204**
5.0	Stakeholder Involvement	WSA	48	0	0	24	0	24	0	12	108
		MKC	0	0	0	20	0	0	0	0	20
		TOTAL	**48**	**0**	**0**	**44**	**0**	**24**	**0**	**12**	**128**
6.0	Incorporation of Local and Regional Plans	WSA	8	0	0	16	0	20	16	4	64
		BWR	0	0	0	40	0	20	0	0	60
		TOTAL	**8**	**0**	**0**	**56**	**0**	**40**	**16**	**4**	**124**
7.0	Alternatives Development and Analysis	WSA	24	6	12	20	12	40	20	8	142
		BWR	0	10	0	40	0	0	0	0	50
		MKC	0	0	0	44	0	0	0	0	44
		TOTAL	**24**	**16**	**12**	**104**	**12**	**40**	**20**	**8**	**236**
8.0	Plan Evaluations	WSA	36	8	16	20	0	40	8	4	132
		BWR	0	10	0	20	0	0	0	0	30
		TOTAL	**36**	**18**	**16**	**40**	**0**	**40**	**8**	**4**	**162**
9.0	Travel Demand Modeling and Calibration Coordination	WSA	8	0	24	8	0	0	0	0	40
		BWR	0	0	0	50	0	0	0	0	50
		TOTAL	**8**	**0**	**24**	**58**	**0**	**0**	**0**	**0**	**90**
10.0	Development of Plan Elements	WSA	24	8	24	40	0	100	24	8	228
		BWR	0	10	0	40	0	40	40	0	130
		MKC	0	0	0	50	0	0	0	0	50
		TOTAL	**24**	**18**	**24**	**130**	**0**	**140**	**64**	**8**	**408**
11.0	Development of Plan Documentation	WSA	54	16	8	40	8	80	48	24	278
		BWR	0	10	0	50	0	0	40	0	100
		TOTAL	**54**	**26**	**8**	**90**	**8**	**80**	**88**	**24**	**378**
12.0	Plan Adoption	WSA	16	0	0	0	0	8	8	4	36
		TOTAL	**16**	**0**	**0**	**0**	**0**	**8**	**8**	**4**	**36**
Total WSA Hours			**370**	**56**	**84**	**216**	**32**	**420**	**188**	**136**	**1502**
Total BWR Hours			**0**	**60**	**0**	**320**	**0**	**60**	**160**	**0**	**600**
Total MKC Hours			**0**	**0**	**0**	**114**	**0**	**0**	**0**	**0**	**114**
Total Team Hours			**370**	**116**	**84**	**650**	**32**	**480**	**348**	**136**	**2216**

EXHIBIT D

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 _____ 2009.

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."

REVISED 06-15-2009

Agenda Item No. XII-14.

City of Wichita
City Council Meeting
June 16, 2009

TO: Mayor and City Council

SUBJECT: City Buildings and Facilities - Americans with Disabilities Act Compliance (All Districts)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the resolution.

Background: Many of the City's buildings and facilities do not meet the requirements of the American with Disabilities Act (ADA) and are required by federal law to be brought into compliance.

Analysis: In August of 2005 City staff and the consultant Disability Management Consultant Group completed the survey of City property for ADA compliance. This survey resulted in the creation and implementation of the City of Wichita's transition plan for ADA compliance.

Implementation of the City's transition plan will require a wide variety of construction projects throughout the City to meet the requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG). This is a multi-year CIP Project whereby project money is initiated in two year increments.

On April 21, 2009, the City Council approved resolution 09-116 authorizing the release of $600,000 for ADA Compliance for years 2009 and 2010. The passing of this resolution inadvertently treated the released funds as a standalone project which was not the original intent. The amendment of resolution 09-116 rectifies this erroneous impression and adds the approved funds to the on-going multi-year project.

Financial Considerations: Funding is included in the Proposed 2009-~~2008~~ ***2018*** Capital Improvement Program (CIP) at $300,000 per year for years 2009-2014 and $600,000 per year for years 2015 – 2017, for a total of $3.6 million. The previously initiated $750,000 plus initiation of $600,000 at this time for years 2009 and 2010 brings the total project budget to $1.35 million (Project No. 435379, OCA No. 792409).

Goal Impact: Efficient Infrastructure – Maintained and optimized public facilities and assets.

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

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

Attachment: Resolution and CIP sheet.

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	BUILDING SERVICES	2/14/2009	CITY BUILDINGS AND FACILITIES ADA COMPLIANCE

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
PE-350402	PROJ. #435379 OCA 4702409	2007-2010	5/1/2007

9. Estimated Start Date	10. Estimated Completion Date	11. Project Revised
2009	2010	

12. Project Cost Estimate

ITEM	GO 84	OTHER	TOTAL
CONSTRUCTION	1,350,000.00		1,350,000.00
Paving, grading & const.			
Bridge & Culverts			
Drainage			
Sanitary Sewer			
Sidewalk			
Water			
Other DESIGN	100,000.00		100,000.00
Totals	1,350,000.00		1,350,000.00
Total CIP Amount Budgeted	1,350,000.00		1,350,000.00
Total Prelim. Estimate			

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	x	

Remarks:

MANY EXISTING CITY BUILDINGS AND FACILITIES DO NOT MEET THE REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT (ADA) AND ARE REQUIRED BY FEDERAL LAW TO BE BROUGHT INTO COMPLIANCE.

13. Recommendation: APPROVE THE PROJECT, ADOPT THE RESOLUTION, AUTHORIZE STAFF TO CONTINUE WITH DESIGN AND CONSTRUCTION, A CONSULTANT TO DESIGN THE BUILDINGS/FACILITIES MODIFICATIONS, AND CONTRACTOR(S) TO EXECUTE THEM, AND AUTHORIZE THE NECESSARY SIGNATURES

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

792409

First Published in the Wichita Eagle on June 19, 2009

RESOLUTION NO. 09-180

A RESOLUTION AMENDING RESOLUTION NO. 09-116 OF THE CITY OF WICHITA, KANSAS TO PAY ALL OR A PORTION OF THE COSTS OF CONDUCTING A SURVEY OF EXISTING CITY BUILDINGS AND FACILITIES TO DETERMINE WHAT MODIFICATIONS ARE REQUIRED TO BRING EACH BUILDING AND/OR FACILITY IN COMPLIANCE WITH THE CURRENT ADA ACCESSIBILITY GUIDELINES AND COMPLETE SAID MODIFICATIONS, AND AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE.

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

SECTION 1. Section 1 of Resolution No. 09-116 of the City of Wichita Kansas is hereby amended to read as follows:

"The governing body hereby declares it to be its intention to issue and sell, in the manner provided by law, general obligation bonds under the authority of K.S.A. 13-1024c, as amended by City of Wichita Charter Ordinance No. 156, to pay all or a portion of the cost of modifications and construction to bring City buildings and facilities into compliance with ADA guidelines. The costs of such repair shall be paid by the issuance of general obligation bonds as aforesaid in an amount not to exceed $1,350,000 exclusive of the costs of interest on borrowed money."

SECTION 2. Section 1 of Resolution No. 09-116 is hereby rescinded.

SECTION 3. This resolution shall take effect and be in force from and after its passage and publication once in the official City paper.

ADOPTED at Wichita, Kansas, this 16th day of June, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

CITY OF WICHITA
City Council Meeting
June 16, 2009

TO: Mayor and City Council Members

SUBJECT: Acquisition by Eminent Domain of Tracts Required for the Greenwich: Harry to Kellogg Improvement Project (District II)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Adopt and place on first reading the ordinance providing for the acquisition by eminent domain of certain real properties.

Background: On August 5, 2008, City Council approved funding to acquire right-of-way for a project to improve Greenwich Road from two lanes to five lanes. There will be four lanes of traffic and a center two-way turn lane. Landscaped medians will also be constructed throughout the corridor. The intersection of Harry and Greenwich will be reconstructed with left turn lanes at all four approaches of the intersection. Ditches will be replaced with a storm water sewer system and sidewalks will be built along both the east and west side of Greenwich. The project requires the acquisition of part of twenty tracts. City staff has made offers and entered into negotiations on all tracts having acquired ten out of the twenty. It is at this time, due to a short time frame to obligate funding, eminent domain is being initiated.

Analysis: The property at 1459 S. Greenwich is improved with a single tenant office building whereby temporary construction easements and a permanent drainage easement are required. The building is removed from the proposed road improvements however; the seller's fence needs to be reset during construction. The estimated market value offer of $1,030 for the 370 square foot permanent drainage easement (at $0.40 per square foot) and 7,117 square foot temporary construction easement (at $0.12 per square foot) was neither accepted or rejected. Cost to reset the seller's fence is a relocation item and compensation is based on actual moving estimates. Due to the uniqueness of the seller's fence, it has been difficult obtaining estimates to relocate the fence. Staff will continue to negotiate with the owner and as agreement is reached, the tract will be deleted from the eminent domain action.

The 90-acre property at 953 S. Greenwich consists of three parcels. The property is zoned rural residential. The portion of the property near Greenwich Road is vacant pastureland, however; the drop water structure, or weir, and perimeter fencing are impacted. It is necessary to obtain a temporary construction easement across all three parcels totaling 15,372 square feet. A 3,250 square foot permanent drainage easement is also required at the existing drainage structure. The estimated market value of $9,485 (or $0.22 per square foot for the drainage easement, $0.05 per square foot for the temporary construction easement and $8,000 for fencing) was neither accepted or rejected by the owner. Staff will continue to negotiate with the owner and as agreement is reached, the tract will be deleted from the eminent domain action.

The property at 1510 South Greenwich is an 80-acre tract is zoned rural residential with a 600 foot by 600 foot corner nearest the intersection zoned limited commercial. The property is used for agricultural purposes and there is a single-family residence on site. No improvements are impacted as a result of the acquisition. It is necessary to obtain a 20-foot wide strip of land as road right-of-way (or 19,166 square feet) parallel to the Harry Street, a 4,000 square foot permanent drainage easement at the north end of the property along Greenwich Road, a 1,960 square foot pregnant drainage easement along Harry Street and a

square foot temporary construction easement. The owner rejected the appraised offer of $15,956 (or $0.60 per square foot for right-of-way and drainage easements together with $0.05 per square foot for the temporary easement). A counter offer of $127,413 based on $5.50 per square foot was presented, however; this amount is inconsistent with market data. Staff will continue to negotiate with the owner and as agreement is reached, the tract will be deleted from the eminent domain action.

11200 E. Bayley is a residential property improved with a single-family residence. It is necessary to obtain a 2,005 square foot temporary construction easement along the existing road right-of-way line together with a 570 square foot permanent drainage easement. The mature trees within the existing right-of-way that are impacted as a result of the project. The owner rejected the estimated market value of $395. This offer consisted of $0.12 per square foot for the temporary and 0.25 per square foot for the drainage easement. The owner countered at $4,895 which includes compensation for replacement landscaping. The landscaping the owner wishes to replace is already city-owned and therefore, a settlement for such is not reasonable or prudent at this time. Staff will continue to negotiate with the owner and as agreement is reached, the tract will be deleted from the eminent domain action.

The single-family residence at 930 South Greenwich is not impacted as a result of the project however; it is necessary to increase the size of the existing permanent drainage easement. The proposed drainage easement requires an additional 1,184 square feet. A 638 square foot temporary construction easement is required. The owner accepted the estimated market value of $525 however, the real estate purchase agreement has yet to be returned. Staff will continue to work with the owner and as an agreement is finalized, the tract will be deleted from the eminent domain action.

10919 E. Harry is improved with a retail shopping/office center however, no improvements are within the proposed easement area. The proposed acquisition area at 10919 E. Harry is a 30-foot by 10-foot permanent drainage easement at the west property line, south side of Harry Street together with a 10-foot wide temporary construction easement. The estimated market value of $865 (or $0.45 per square foot) was neither accepted or rejected by the owner. Staff will continue to negotiate with the owner and as agreement is reached, the tract will be deleted from the eminent domain action.

11319 E. Harry is improved with a single-family residence. No improvements are impacted as a result of the proposed project. It is necessary to obtain the north ten feet of the parcel as road right-of-way consisting of 1,170 square feet. A 585 square foot temporary construction easement is also required. The owner neither accepted or rejected the estimated market value of $1,535 (or $1.25 per square foot for the right-of-way and $0.12 per square foot for the temporary construction easement). Staff will continue to negotiate with the owner and as agreement is reached, the tract will be deleted from the eminent domain action.

A 1,000 square feet for road right-of-way and 1,000 square feet for a temporary construction easement are required from the single family-residence at 1610 S. Dowell. The owner rejected the estimated market value of $1,375 (or $1.25 per square foot for the land and $0.12 per square foot for the temporary easement). The owner is seeking additional compensation for five small, mature trees that were not included in the offer. Staff will continue to negotiate with the owner and as agreement is reached, the tract will be deleted from the eminent domain action.

Financial Considerations: The cost of this acquisition will be paid for by the City at large.

Goal Impact: The acquisition of these parcels is necessary to ensure efficient infrastructure.

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

Recommendation/Action: Adopt the resolution and approve and place on first reading the ordinance providing for the acquisition by eminent domain of certain real property and directing the City Attorney to file the appropriate proceedings in the District Court to accomplish such acquisition.

Attachments: Tract maps, engineer certification, resolution and ordinance.

I, James L. Armour, a licensed engineer in the State of Kansas, have reviewed the plans, to date, for the construction and improvement of Greenwich Road: Harry Street to Kellogg, including the intersection of Harry Street and Greenwich Road and determined that the following tracts of land are needed for the construction of the improvements contemplated for such expansion:

Clear and complete title for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

A tract in the SW¼ Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: commencing at the SW corner of said SW¼; thence on an assumed bearing of N 00º- 49'-21" W a distance of 87.69 feet to a point on the West line of said SW1/4; thence N 89º- 10'-39" E a distance of 50.00 feet to the point of beginning; thence S 45º- 11'-40" E a distance of 38.81 feet; thence N 89º- 13'-01" E a distance of 922.90 feet; thence S 00º- 46'-59" E a distance of 20.00 feet; thence S 89º- 13'-01" W a distance of 950.03 feet; thence N 00º- 49'-21" W a distance of 47.72 feet, more or less, to the point of beginning, said tract containing 0.44 acres, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

The North 10.00 feet of Lot 1, Sloan's Addition to Wichita, Sedgwick County, Kansas, said tract containing 1,170 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

The North 10.00 feet of Lot 3, Sloan's Addition to Wichita, Sedgwick County, Kansas, said tract containing 1000 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

Permanent Easements for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

A tract of land in the N ½ of the N ½ of the SE ¼ of the SE ¼ of Section 28, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas described as: commencing at the SE corner of said N ½ of the N ½ ; thence westerly on the S line of the said N ½ of the N ½ on an assumed bearing of N 89°-10'-39" W a distance of 50.00 feet; thence on an assumed bearing of N 0°-49'-21" W a distance of 168.35 feet to the point of beginning; thence on an assumed bearing of N 89°-10'-39" W a distance of 23.05 feet; thence on an assumed bearing of N 34°-50'-32" E a distance of 39.55 feet; thence on an assumed bearing of S 0°-49'-21" E a distance of 32.13 feet more or less to the point of beginning, said tract containing 370 square feet, more or less, for the purposes of constructing reconstructing, widening, improving, draining and maintaining a road or highway.

A tract in the SE ¼ Section 28, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: commencing at the NE corner of said

SE ¼; thence on an assumed bearing of S 00º- 49'-21" E a distance of 253.39 feet to a point on the East line of said SE ¼; thence S 89º- 10'-39" W a distance of 50.00 feet to the point of beginning; thence S 00º- 49'-21" E a distance of 130.00 feet; thence S 89º- 10'-39" W a distance of 25.00 feet; thence N 00º- 49'-21" W a distance of 130.00 feet; thence N 89º- 10'-39" E a distance of 25.00 feet, more or less, to the point of beginning, said tract containing 3250 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

A tract in the SW ¼ Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: commencing at the SW corner of said SW ¼; thence on an assumed bearing of N 00º- 49'-21" W a distance of 1265.00 feet to a point on the West line of said SW¼; thence N 89º- 10'-39" E a distance of 50.00 feet to the point of beginning; thence S 00º- 49'-21" E a distance of 100.00 feet; thence N 89º- 10'-39" E a distance of 40.00 feet; thence N 00º- 49'-21" W a distance of 100.00 feet; thence S 89º- 10'-39" W a distance of 40.00 feet, more or less, to the point of beginning, said tract containing 4000 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

That part of the SW ¼ of Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as commencing at the southwest corner of said SW ¼; thence East along the south line of said SW ¼, 1,890.98 feet; thence North, perpendicular to said south line, 40.00 feet to the place of beginning; thence continuing North, perpendicular to said south line, 35.00 feet; thence East, parallel with said south line, 56.00 feet; thence South, perpendicular to said south line, 35.00 feet; thence West, parallel with said south line, 56.00 feet to the place of beginning, said tract containing 1,960 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

A tract in the SW ¼ Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: commencing at the NW corner of said SW¼; thence on an assumed bearing of S 00º- 49'-21" E a distance of 347.39 feet to a point on the West line of said SW¼; thence N 89º- 10'-39" E a distance of 50.00 feet to the point of beginning; thence N 89º- 10'-39" E a distance of 25.00 feet; thence S 00º- 49'-21" E a distance of 57.40 feet; thence N 52º- 02'-14" W a distance of 32.07 feet; thence N 00º- 49'-21" W a distance of 37.31 feet, more or less, to the point of beginning, said tract containing 1184 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

A tract in the SW ¼ Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: commencing at the NW corner of said SW¼; thence on an assumed bearing of S 00º- 49'-21" E a distance of 489.39 feet to a point on the West line of said SW¼; thence N 89º- 10'-39" E a distance of 50.00 feet to the point of beginning; thence N 89º- 10'-39" E a distance of 25.00 feet; thence N 00º- 49'-21" W a distance of 12.76 feet; thence N 52º- 02'-14" W a distance of 32.07 feet; thence S 00º- 49'-21" E a distance of 32.85 feet, more or less, to the point of beginning, said tract containing 570 square feet, more or less, for the purposes of constructing,

reconstructing, widening, improving, draining and maintaining a road or highway.

A tract described as: the West 30.37 feet of the North 10.00 feet of Lot 2, Block A, Smithmoor Commercial Addition, Wichita, Sedgwick County, Kansas, said tract containing 304 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

Temporary Easements for the uses and purposed herein set forth in and to the following-described tracts, to-wit:

The West 20.00 feet of the East 70.00 feet of the S½, N½, SE¼, SE¼, excluding Thorn Creek Farms Addition Section 28, T-27-S, R-2-E of the 6th Principal Meridian, Wichita Sedgwick County, Kansas.

A tract of land in the N ½ of the N ½ of the SE ¼ of the SE ¼ of Section 28, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas described as: commencing at the SE corner of said N ½ of the N ½ ; thence westerly on the S line of the said N ½ of the N ½ on an assumed bearing of N 89°-10'-39" W a distance of 50.00 feet to the point of beginning; thence on an assumed bearing of N 89°-10'-39" W a distance of 30.00 feet; thence on an assumed bearing of N 0°-49'-21" W a distance of 157.91 feet; thence on an assumed bearing of N 32°-29'-51" E a distance of 12.66 feet; thence on an assumed bearing of S 89°-10'-39" E a distance of 23.05 feet; thence on an assumed bearing of S 0°-49'-21" E a distance of 168.35 feet more or less, to the point of beginning said tract containing 5017 square feet, more or less, for the purposes of constructing street improvements.

The West 10.00 feet of the East 60.00 feet of a tract described as: beginning at the SE Corner N½ N½ SE¼ Section 28, T-27-S, R-2-E of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas; thence West 1662.02 feet; thence North 439.00 feet; thence East 111.00 feet; thence North 225.57 feet; thence East 1551.02 feet; thence South 664.14 feet to point of beginning, except permanent drainage easement thereof.

A tract described as: the West 20.00 feet of the East 70.00 feet of the South 270.80 feet of the NE ¼, Section 28, T-27-S, R-2-E of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas.

The West 5.00 feet of the East 55.00 feet of a tract described as: beginning at the SE Corner N ½ SE ¼ Section 28, T-27-S, R-2-E of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas; thence West 55.00 feet; thence North 663.06 feet; thence East 55.00 feet; thence South 663.06 feet to the point of beginning.

The East 15.00 feet of the West 65.00 feet of the North 62.20 feet, of the S½, SW¼, Section 27, T-27-S, R-2-E of the 6th Principal Meridian, Sedgwick County, Kansas, and commencing at the SW corner of said S½; thence on an assumed bearing of N 00°-49'-21" W a distance of 1165.00 feet to a point on the West line of said S½; thence N 89°-10' 39" E a distance of 50.00 feet to the point of beginning; thence N

89°-10’-39” E a distance of 15.00 feet; thence S 00°-49’-22” E a distance of 300.00 feet; thence S 89°-10’-39” W a distance of 10.00 feet; thence S 00°-49’-22” E a distance of 775.27 feet; thence S 45°-11’-40” E a distance of 34.67 feet; thence N 89°-13’-01” E a distance of 135.67 feet; thence N 00°-46’-59” W a distance of 19.00 feet; thence N 89°-13’-01” E a distance of 30.00 feet; thence S 00°-46’-59” E a distance of 19.00 feet; thence N 89°-13’-01” E a distance of 755.13 feet; thence S 00°-46’-59” E a distance of 5.00 feet; thence S 89°-13’-01” W a distance of 922.90 feet; thence N 45°-11’-40” W a distance of 38.81 feet; thence 00°-49’-21” W a distance of 1077.31, feet more less, to the point of beginning, said tract containing 0.34 acres, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

The West 5.00 feet of Lot 5, Block 1, Windsor Park Addition, to Wichita, Sedgwick County, Kansas, except permanent drainage easement thereof.

The West 10 feet of the South 200.45 feet of Lot 4, Block 1, Windsor Park Addition, Sedgwick County, Kansas.

The North 10.00 feet of Lot 2, Block A, Smithmoor Commercial Addition, Wichita, Sedgwick County, Kansas, except permanent drainage easement thereof.

The South 5.00 feet, of the North 15.00 feet, of Lot 1, Sloan’s Addition, Sedgwick County, Kansas, containing 585 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

The South 10.00 feet of the North 20.00 feet of Lot 3, Sloan’s Addition to Wichita, Sedgwick County, Kansas, said tract containing 1,000 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

The areas needed are illustrated on the attached diagrams.

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James L. Armour, PE

PUBLISHED IN THE WICHITA EAGLE ON JUNE, 26, 2009

ORDINANCE **NO**. 48-357

AN ORDINANCE PROVIDING FOR THE ACQUISITION BY EMINENT DOMAIN OF CERTAIN PRIVATE PROPERTY, EASEMENTS AND RIGHT-OF-WAY THEREIN, FOR THE PURPOSE OF ACQUIRING REAL PROPERTY FOR THE CONSTRUCTION AND IMPROVEMENT OF THE GREENWICH ROAD: KELLOGG AVENUE TO HARRY STREET PROJECT, INCLUDING THE RECONSTRUCTION OF THE INTERSECTION AT HARRY AND GREENWICH IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS; DESIGNATING THE LANDS REQUIRED FOR SUCH PURPOSES AND DIRECTING THE CITY ATTORNEY TO FILE A PETITION IN THE DISTRICT COURT OF SEDGWICK COUNTY, KANSAS, FOR ACQUISITION OF THE LANDS AND EASEMENTS THEREIN TAKEN AND PROVIDING FOR PAYMENT OF THE COST THEREOF.

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

SECTION 1. That it be and is hereby declared to be a public necessity to acquire by eminent domain proceedings for the purpose of public right-of-way for improvement of the Greenwich Road: Kellogg Avenue to Harry Street including the reconstruction of the intersection of Harry and Greenwich in the City of Wichita, Sedgwick County, Kansas, the lands and easements hereinafter described in Section 2.

SECTION 2. That the description of the lands and title therein necessary for the purpose of such action is as follows:

Clear and complete title for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

A tract in the SW¼ Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: commencing at the SW corner of said SW¼; thence on an assumed bearing of N 00º- 49'-21" W a distance of 87.69 feet to a point on the West line of said SW1/4; thence N 89º- 10'-39" E a distance of 50.00 feet to the point of beginning; thence S 45º- 11'- 40" E a distance of 38.81 feet; thence N 89º- 13'-01" E a distance of 922.90 feet; thence S 00º- 46'-59" E a distance of 20.00 feet; thence S 89º- 13'-01" W a distance of 950.03 feet; thence N 00º- 49'-21" W a distance of 47.72 feet, more or less, to the point of beginning, said tract containing 0.44 acres, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

The North 10.00 feet of Lot 1, Sloan's Addition to Wichita, Sedgwick County, Kansas, said tract containing 1,170 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a

road or highway.

The North 10.00 feet of Lot 3, Sloan's Addition to Wichita, Sedgwick County, Kansas, said tract containing 1000 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

Permanent Easements for the uses and purposes herein set forth in and to the following-described tracts, to-wit:

A tract of land in the N ½ of the N ½ of the SE ¼ of the SE ¼ of Section 28, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas described as: commencing at the SE corner of said N ½ of the N ½ ; thence westerly on the S line of the said N ½ of the N ½ on an assumed bearing of N 89°-10'-39" W a distance of 50.00 feet; thence on an assumed bearing of N 0°-49'-21" W a distance of 168.35 feet to the point of beginning; thence on an assumed bearing of N 89°-10'-39" W a distance of 23.05 feet; thence on an assumed bearing of N 34°-50'-32" E a distance of 39.55 feet; thence on an assumed bearing of S 0°-49'-21" E a distance of 32.13 feet more or less to the point of beginning, said tract containing 370 square feet, more or less, for the purposes of constructing reconstructing, widening, improving, draining and maintaining a road or highway.

A tract in the SE ¼ Section 28, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: commencing at the NE corner of said SE ¼; thence on an assumed bearing of S 00º- 49'-21" E a distance of 253.39 feet to a point on the East line of said SE ¼; thence S 89º- 10'-39" W a distance of 50.00 feet to the point of beginning; thence S 00º- 49'-21" E a distance of 130.00 feet; thence S 89º- 10'-39" W a distance of 25.00 feet; thence N 00º- 49'-21" W a distance of 130.00 feet; thence N 89º- 10'-39" E a distance of 25.00 feet, more or less, to the point of beginning, said tract containing 3250 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

A tract in the SW ¼ Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: commencing at the SW corner of said SW ¼; thence on an assumed bearing of N 00º- 49'-21" W a distance of 1265.00 feet to a point on the West line of said SW¼; thence N 89º- 10'-39" E a distance of 50.00 feet to the point of beginning; thence S 00º- 49'-21" E a distance of 100.00 feet; thence N 89º- 10'-39" E a distance of 40.00 feet; thence N 00º- 49'-21" W a distance of 100.00 feet; thence S 89º- 10'-39" W a distance of 40.00 feet, more or less, to the point of beginning, said tract containing 4000 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

That part of the SW ¼ of Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as commencing at

the southwest corner of said SW ¼; thence East along the south line of said SW ¼, 1,890.98 feet; thence North, perpendicular to said south line, 40.00 feet to the place of beginning; thence continuing North, perpendicular to said south line, 35.00 feet; thence East, parallel with said south line, 56.00 feet; thence South, perpendicular to said south line, 35.00 feet; thence West, parallel with said south line, 56.00 feet to the place of beginning, said tract containing 1,960 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

A tract in the SW ¼ Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: commencing at the NW corner of said SW¼; thence on an assumed bearing of S 00º- 49'-21" E a distance of 347.39 feet to a point on the West line of said SW¼; thence N 89º- 10'-39" E a distance of 50.00 feet to the point of beginning; thence N 89º- 10'-39" E a distance of 25.00 feet; thence S 00º- 49'-21" E a distance of 57.40 feet; thence N 52º- 02'-14" W a distance of 32.07 feet; thence N 00º- 49'-21" W a distance of 37.31 feet, more or less, to the point of beginning, said tract containing 1184 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

A tract in the SW ¼ Section 27, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as: commencing at the NW corner of said SW¼; thence on an assumed bearing of S 00º- 49'-21" E a distance of 489.39 feet to a point on the West line of said SW¼; thence N 89º- 10'-39" E a distance of 50.00 feet to the point of beginning; thence N 89º- 10'-39" E a distance of 25.00 feet; thence N 00º- 49'-21" W a distance of 12.76 feet; thence N 52º- 02'-14" W a distance of 32.07 feet; thence S 00º- 49'-21" E a distance of 32.85 feet, more or less, to the point of beginning, said tract containing 570 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

A tract described as: the West 30.37 feet of the North 10.00 feet of Lot 2, Block A, Smithmoor Commercial Addition, Wichita, Sedgwick County, Kansas, said tract containing 304 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

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The West 20.00 feet of the East 70.00 feet of the S½, N½, SE¼, SE¼, excluding Thorn Creek Farms Addition Section 28, T-27-S, R-2-E of the 6th Principal Meridian, Wichita Sedgwick County, Kansas.

A tract of land in the N ½ of the N ½ of the SE ¼ of the SE ¼ of Section 28, Township 27 South, Range 2 East of the 6th Principal Meridian, Sedgwick County, Kansas described as: commencing at the SE corner of said N ½ of the N

½ ; thence westerly on the S line of the said N ½ of the N ½ on an assumed bearing of N 89°-10'-39" W a distance of 50.00 feet to the point of beginning; thence on an assumed bearing of N 89°-10'-39" W a distance of 30.00 feet; thence on an assumed bearing of N 0°-49'-21" W a distance of 157.91 feet; thence on an assumed bearing of N 32°-29'-51" E a distance of 12.66 feet; thence on an assumed bearing of S 89°-10'-39" E a distance of 23.05 feet; thence on an assumed bearing of S 0°-49'-21" E a distance of 168.35 feet more or less, to the point of beginning said tract containing 5017 square feet, more or less, for the purposes of constructing street improvements.

The West 10.00 feet of the East 60.00 feet of a tract described as: beginning at the SE Corner N½ N½ SE¼ Section 28, T-27-S, R-2-E of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas; thence West 1662.02 feet; thence North 439.00 feet; thence East 111.00 feet; thence North 225.57 feet; thence East 1551.02 feet; thence South 664.14 feet to point of beginning, except permanent drainage easement thereof.

A tract described as: the West 20.00 feet of the East 70.00 feet of the South 270.80 feet of the NE ¼, Section 28, T-27-S, R-2-E of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas.

The West 5.00 feet of the East 55.00 feet of a tract described as: beginning at the SE Corner N ½ SE ¼ Section 28, T-27-S, R-2-E of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas; thence West 55.00 feet; thence North 663.06 feet; thence East 55.00 feet; thence South 663.06 feet to the point of beginning.

The East 15.00 feet of the West 65.00 feet of the North 62.20 feet, of the S½, SW¼, Section 27, T-27-S, R-2-E of the 6th Principal Meridian, Sedgwick County, Kansas, and commencing at the SW corner of said S½; thence on an assumed bearing of N 00°-49'-21" W a distance of 1165.00 feet to a point on the West line of said S½; thence N 89°-10' 39" E a distance of 50.00 feet to the point of beginning; thence N 89°-10'-39" E a distance of 15.00 feet; thence S 00°-49'-22" E a distance of 300.00 feet; thence S 89°-10'-39" W a distance of 10.00 feet; thence S 00°-49'-22" E a distance of 775.27 feet; thence S 45°-11'-40" E a distance of 34.67 feet; thence N 89°-13'-01" E a distance of 135.67 feet; thence N 00°-46'-59" W a distance of 19.00 feet; thence N 89°-13'-01" E a distance of 30.00 feet; thence S 00°-46'-59" E a distance of 19.00 feet; thence N 89°-13'-01" E a distance of 755.13 feet; thence S 00°-46'-59" E a distance of 5.00 feet; thence S 89°-13'-01" W a distance of 922.90 feet; thence N 45°-11'-40" W a distance of 38.81 feet; thence 00°-49'-21" W a distance of 1077.31, feet more less, to the point of beginning, said tract containing 0.34 acres, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

The West 5.00 feet of Lot 5, Block 1, Windsor Park Addition, to Wichita, Sedgwick County, Kansas, except permanent drainage easement thereof.

The West 10 feet of the South 200.45 feet of Lot 4, Block 1, Windsor Park Addition, Sedgwick County, Kansas.

The North 10.00 feet of Lot 2, Block A, Smithmoor Commercial Addition, Wichita, Sedgwick County, Kansas, except permanent drainage easement thereof.

The South 5.00 feet, of the North 15.00 feet, of Lot 1, Sloan's Addition, Sedgwick County, Kansas, containing 585 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

The South 10.00 feet of the North 20.00 feet of Lot 3, Sloan's Addition to Wichita, Sedgwick County, Kansas, said tract containing 1,000 square feet, more or less, for the purposes of constructing, reconstructing, widening, improving, draining and maintaining a road or highway.

SECTION 3. That the City Attorney is hereby authorized and directed to commence proceedings in eminent domain in the District Court of Sedgwick County, Kansas, for the appropriation of said lands and determination of the compensation to be awarded for the taking thereof.

SECTION 4. That the costs of said acquisition when ascertained shall be paid from General Obligation Bonds to be issued for the costs of such improvements; PROVIDED, however, should the City of Wichita acquire said property (and said City hereby reserves its right to abandon the condemnation as to any of all tracts) that General Funds are available for said purpose as provided by law.

SECTION 5. That the costs of said acquisition shall be charged to the City of Wichita

SECTION 6. That this Ordinance shall take effect and be in force from and after its passage and publication once in the official City paper.

ADOPTED at Wichita, Kansas, this 23rd day of, June 2009.

CITY OF WICHITA

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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

OCA 706941

Published in the Wichita Eagle on June 19, 2009

RESOLUTION NO.09-181

A RESOLUTION DECLARING THE NECESSITY FOR ACQUIRING PRIVATE PROPERTY FOR THE USE OF THE CITY OF WICHITA IN CONNECTION WITH THE PLANNED GREENWICH ROAD: KELLOGG AVENUE TO HARRY STREET PROJECT, INCLUDING THE RECONSTRUCTION OF THE INTERSECTION AT HARRY AND GREENWICH IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS.

WHEREAS, the governing body has previously authorized the study and the preliminary design of certain improvements to Greenwich Road between Kellogg Avenue to Harry Street, including the reconstruction of the Harry and Greenwich intersection; and

WHEREAS, such study and preliminary design has identified the need to acquire several parcels of private property in order to properly complete such improvements; and

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

SECTION 1. The governing body hereby declares it to be necessary to acquire certain private property in connection with improvement of the Greenwich Road between Kellogg Avenue to Harry Street, including the reconstruction of the Harry and Greenwich intersection.

SECTION 2. The City Engineer is directed to make or cause to be made a survey and description of the lands and/or interests to be acquired and to have such survey and description filed with the City Clerk.

SECTION 3. That this Resolution shall take effect and be in force from and after its passage and publication once in the official City paper.

PASSED by the governing body of the City of Wichita, Kansas, this 16th day of June, 2009.

CITY OF WICHITA

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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

Second Reading Ordinances for June 16, 2009 (first read on June 9, 2009)

CHARTER ORDINANCE NO. 209

Wichita Employees' retirement System, Proposed Revisions of City Code Scetions 2.28.070, 2.28.121, 2.28.400, 2.28.410, and 2.28.430, and repealing the originals of said Sections and Section 2.28.420.

ORDINANCE NO. 48-344

An Ordinance amending Sections 2.28.070, 2.28.121, 2.28.400, 2.28.410, and 2.28.430 of the code of the City of Wichita, Kansas, pertaining to administration of the Wichita Employees' Retirement System, and repealing the originals of said sections and Section 2.28.420 of the code of the City of Wichita.

Police and Fire retirement System Proposed Revisions of Charter Ordinance Sections 1 through 41, inclusive.

CHARTER ORDINANCE NO. 209

A Charter Ordinance of the city of Wichita Kansas, amending Charter Ordinance No. 205 relating to the Police and Fire Retirement System of the City of Wichita and repealing the original of said Charter Ordinance.

17th Street and Hillside Intersection Improvements. (District I)

ORDINANCE NO. 48-345

An ordinance amending Ordinance No. 48-110 of the City of Wichita, Kansas declaring the intersection of 17th St. North and Hillside and 17th St. North, between Hillside and Grove (472-84766) to be a main trafficway within the city of Wichita Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.

Meridian Street Improvement, Between 47th Street South and 31st Street South. (District IV)

ORDINANCE NO. 48-346

An ordinance amending Ordinance No. 47-936 of the City of Wichita, Kansas declaring Meridian between 47th Street South and 31st Street South (472-84302) to be a main trafficway within the city of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.

Abatement of Dangerous and Unsafe Structures. (Districts 1,111,1V and VI)

ORDINANCE NO. 48-347

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. 48-348

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.

Delinquent Sewer and Storm Water Charges.

ORDINANCE NO. 48-349

An ordinance making a special assessment to pay the cost of unpaid sewer service charges and/or storm water fees in the City of Wichita, Kansas.