REVISIONS:
ITEM I-1 PULLED
ITEM IX-1 MOVED TO VII-1 (NON-CONSENT AIRPORT)

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. March 10, 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 March 3, 2009

AWARDS AND PROCLAMATIONS

-- Proclamations:

American Red Cross Month
Braeden and Reese Day
Registered Dietician Day

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. ***PULLED***

2. Jared Brickman-Upcoming First Friday, Wichita's Music Crawl, April 3rd, 2009.

COUNCIL BUSINESS

II. UNFINISHED COUNCIL BUSINESS

1. Amendments to the Wichita Historic Preservation Ordinance.

   RECOMMENDED ACTION: Approve the amendments to the Historic Preservation Ordinance and approve the first reading of the ordinance.

III. NEW COUNCIL BUSINESS

1. Century II Performing Arts and Convention Center Booking Policy.

   RECOMMENDED ACTION: Approve the revised Century II Booking Policy.

2. Agreement between the City of Wichita and the City of Kechi.

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

3. I-235 Freeway at 13th Street Flyover. (Districts V and VI)

   RECOMMENDED ACTION: Approve the design concept, authorize the issuance of an R.F.P. for design services and authorize the signing of State/Federal agreements as required.

4. Supplemental Agreement No. 1- AMEC Earth and Environmental - Design Services - Wichita Valley Center Flood Control Levee Certification Rehabilitation.

   RECOMMENDED ACTION: Approve the project, supplemental agreement, resolution, City/County Agreement and CIP sheet and authorize the necessary signatures.

5. Public Hearing of Proposed Assessments for Twenty-three (23) Paving Projects in August 2009 Bond Sale series 798.

   RECOMMENDED ACTION: Close the public hearing; approve the proposed assessments; and place the ordinance on first reading.

6. Public Hearing on Proposed Assessments for Thirty Three (33) Water Projects, Twenty Six (26) Sewer Projects, and twelve (12) Storm Sewer Projects in July 2009 Bond Sale Series 798.

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

7. General Obligation Refunding Bond and Temporary Note Sale. (10:00 a.m. or soon thereafter)

   RECOMMENDED ACTION: Direct the opening and reading of the bids; award the sale of the Bonds and Temporary Notes; and find and declare, upon the request of the Mayor, that a public emergency exists, requiring the final passage of the Bond and Note Ordinances on the date of their introduction, adopt the Bond and Note Ordinances and Resolutions and authorize the publication of the Bond and Note Ordinances.

8. Revision of Chapter 6.04 Animal Control and Protection; Deleting Chapter 6.12 Keeping Animals and Fowl and Chapter 6.16 Cats.

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

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

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

IV. NON-CONSENT PLANNING AGENDA

1. CUP2008-52– DP 18 Amendment #3 to allow a night club/drinking establishment on property zoned LC Limited Commercial; generally located North of 21st Street North and east of Somerset Avenue, 1580 West 21st Street North. (District VI)

   RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and approve the community unit plan amendment subject to the recommended conditions (requires a ¾ supermajority vote by the governing body to override the valid protest); OR 2) Return the application to the MAPC for reconsideration (requires a simple majority). (An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

V. CONSENT PLANNING AGENDA

1. *SUB 2008-96 -- Plat of Regency Lakes Commercial Third Addition located on the northwest corner of 21st Street North and Greenwich Road. (District II)

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

HOUSING AGENDA

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

Allan Murdock, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

VII. CONSENT HOUSING AGENDA

1. *Administrative Plan Revisions - Section 8 Housing Choice Voucher Program.

   RECOMMENDED ACTION: Review and approve the Administrative Plan revisions for the Section 8 Housing Choice Voucher Program

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

1. Hangar 16 Rehabilitation - Wichita Mid-Continent Airport.

   RECOMMENDED ACTION: Approve the change order and the budget adjustment and authorize necessary signatures.

IX. CONSENT AIRPORT AGENDA

1. ***(MOVED TO NON-CONSENT AIRPORT AGENDA)***

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

1. Appointment of Municipal Court Judge.

   RECOMMENDED ACTION: Declare a vacancy in a Municipal Court Judge position, waive the selection procedure, and proceed to appoint a Municipal Court Judge from among the candidates recently recommended by the Municipal Court Judge Nominating Commission and appoint _____to a full four year term as Municipal Court Judge, commencing on April 21, 2009 and expiring on the third Tuesday of April, 2013.

XI. COUNCIL MEMBER APPOINTMENTS

1.

RECOMMENDED ACTION: Approve the Appointments

XII. CONSENT AGENDA (ITEMS 1 THROUGH 19A)

1. Report of Board of Bids and Contracts dated March 9, 2009.

   a. 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)
Mark Branham	Quik Trip	324 South West Street
Mark Branham	Quik Trip	1500 South Maize Road

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

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

RECOMMENDED ACTION: Receive and file.

4. Agreements/Contracts:
   a. City/County/State Agreement: 63rd Street South Improvement, between Hydraulic and Broadway. (District III)

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

5. Design Services Agreement:
   a. Supplemental Design Agreement for a Bike Path along I-135 to K-96, McAdams Park to Grove Park. (Districts I and VI)

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

6. Property Acquisitions:
   a. Partial Acquisition of Land at 4258 South Meridian for the Meridian; 47th Street – 31st Street Road Improvement Project. (District IV)
   b. Partial Acquisition of Land at 4756 South Meridian for the Meridian; 47th Street – 31st Street Road Improvement Project. (District IV)
   c. Partial Acquisition of Land at 4255 South Meridian for the Meridian; 47th Street - 31st Street Road Improvement Project. (District IV)

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

7. Minutes of Advisory Boards/Commissions

   Arts Council Minutes, February 12, 2009
   District II Advisory Board, January 5, 2009
   District II Advisory Board, February 2, 2009
   Joint Investment Committee, January 8, 2009

   RECOMMENDED ACTION: Receive and file.

8. Childcare Licensing Grant Application.

   RECOMMENDED ACTION: Approve the grant application, the grant award and authorize the necessary signatures.

9. HOME Program Funding Allocations.

   RECOMMENDED ACTION: Approve the amendment to the funding agreement, the additional funding allocation for HOME Program administration, and authorize the necessary signatures.

10. Grant Application for Kansas Emergency Shelter Grant Funds.

    RECOMMENDED ACTION: Approve the application for Kansas Emergency Shelter Grant funds, and authorize necessary signatures for the application and subsequent grant award.

11. Swimming Pool Renovations.

    RECOMMENDED ACTION: Approve the substitution of projects, approve and amend the bonding resolution, authorize initiation of the project and authorize all necessary signatures.

12. Nuisance Abatement Assessments. (Districts I, II, III, IV and VI)

    RECOMMENDED ACTION: Approve the proposed assessments.

13. 2009 Enforcing Underage Drinking Laws (EUDL) Grant.

    RECOMMENDED ACTION: Approve the application and authorize the appropriate signatures.

14. February 2009 Monthly Report to Council.

    RECOMMENDED ACTION: Receive and File

15. Resolution Ordering a Public Hearing: Wichita Street Improvement, between Murdock and 8th Street. (District VI)

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

16. Equus Beds Funding Memorandum of Understanding with Kansas Water Office.

    RECOMMENDED ACTION: Approve the Memorandum of Understanding and authorize the necessary signatures.

17. Street Closure: Intersection of Mt. Vernon and Broadway. (District III)

    RECOMMENDED ACTION: Approve the Street Closure.

18. Community Events, 50th Anniversary Air Capital Tour, September 5, 2009. (District 1)

    RECOMMENDED ACTION: Approve the request subject to 1) hiring off-duty certified law enforcement officers as required and 2) obtaining barricades to close the streets in accordance with requirements of Police, Fire, and Public Works.

19. Second Reading Ordinances: (First Read March 3, 2009)
    a. List of Second Reading Ordinances (See Attached)

    RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Agenda Item No. _____

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Amendments to the Wichita Historic Preservation Ordinance

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Unfinished Business

Historic Preservation Board Recommendation: Approve the draft and place the ordinance on first reading (4-0).

Staff Recommendation: Place the ordinance on first reading.

Background: The Wichita Historic Preservation Board initiated review of the Historic Preservation Ordinance with input from Wichita Downtown Development Corporation and Wichita Area Realtors. Staff has developed ordinance amendments that clarify the definitions and duties of the Historic Preservation Board as they relate to properties and procedures for Wichita Historic Register properties and districts. The Historic Preservation Board duties and procedures as a Certified Local Government (CLG) have been added.

Analysis: Proposed ordinance amendments were presented at the January 27, 2009, City Council Workshop. The following changes and additions were presented at that time and are reflected in the proposed amendments.

1. Definitions: Added, revised, or expanded the definitions to assist the user in understanding the preservation ordinance and its applications, including replacement of "historic landmark" and "historic landmark district" throughout with "Wichita Register Property" or "Wichita Register Historic District".

2. Historic Preservation Board Function: Incorporated the ten "Secretary of Interior's Standards for Rehabilitation" into the ordinance; identified by name the design guidelines adopted by City Council; clarified items on which the Historic Preservation Board provides comments; added provision to review determinations by Superintendent of Office of Central Inspection of dangerous or unsafe buildings that are Wichita Register Historic Properties or buildings within a Wichita Register Historic District; added provision to act as a Certified Local Government in accordance with K.S.A. 75-2724, *et seq.*, for the purposes of environs review of projects within 500 feet of a property or district listed on the state or national register.

3. Procedure for listing historic resources and districts on a historic register: Requires submission of application 15 days before the hearing date; notice of hearing to be posted by sign not less than 10 days before the scheduled Historic Preservation Board hearing.

4. Certificate of Appropriateness reviews as required under Wichita Municipal Code (applies to only to properties listed on Wichita Register of Historic Places): Requires submission of application 15 days before the hearing date; requires a sign be posted on the property not less than 10 days prior to the hearing; sets a time limit of one year to complete project.

5. Demolition, moving, damage, or destruction of historic features on properties listed on the Wichita Register: Requires bond for demolition (10 % of project cost) and completion date of demolition within 90 days; failure to complete results in forfeiture of bond; order to complete will be issued by Superintendent of OCI if project is abandoned.

6. Economic Hardship: Certificate of Economic Hardship provides relief from Code; new section sets forth procedure for determination of hardship.

7. CLG review as required under Kansas Statute (applies only to Major cases for properties listed on state and national registers or properties within such environs): Requires submission of application 15 days before the hearing date: requires public notice of hearing by posting of sign 10 days before the HPB hearing; sign to remain until after the hearing.

8. Penalty: Stipulates it is unlawful for owner of Wichita Register Historic Property to fail to maintain the property in good condition, and sets a penalty of up to $500 per day for each day the offense occurs; this amount is comparable to Office of Central Inspection fines.

At its meeting on March 3, the City Council received a presentation from staff on the proposed revisions. Following a discussion regarding Section 12, the Council voted to defer action on the amendments to its meeting on March 10 to allow staff to make revisions based on that discussion. Staff will review those revisions at the March 10 meeting. A copy of a revised delineated ordinance is attached.

Financial Considerations: None.

Goal Impact: Core Area and neighborhoods. Promote economic vitality and affordable living.

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

Recommendations/Actions: Approve the amendments to the Historic Preservation Ordinance and approve the first reading of the ordinance.

First Published in The Wichita Eagle on _____

DELINEATED 03/04/09

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 2.12.1015, 2.12.1016, 2.12.1018, 2.12.1019, 2.12.1019.1, 2.12.1020, 2.12.1021, 2.12.1021.1, 2.12.1022, 2.12.1023, 2.12.1024, 2.12.1024.1, 2.12.1024.2 AND 2.12.1025 AND CREATING SECTIONS 2.12.1024.3 AND 2.12.1024.5 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE HISTORIC PRESERVATION BOARD, AND REPEALING THE ORIGINALS OF SECTIONS 2.12.1015, 2.12.1016, 2.12.1018, 2.12.1019, 2.12.1019.1, 2.12.1019.2, 2.12.1020, 2.12.1021, 2.12.1021.1, 2.12.1022, 2.12.1023, 2.12.1024, 2.12.1024.2 AND 2.12.1025 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 2.12.1015 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Historic Preservation Board--General provisions.** Established. There is created and established a board to be known as the 'Historic Preservation Board' of the city.

(a) **Scope of Duties.** The duties of the board are to advise the ~~c~~City ~~c~~Council on city-owned historic resources and to safeguard the architectural and cultural heritage of the city through the preservation of historic resources. The board may carry out these duties through the identification, documentation and designation of the city's historic resources; administration of city ordinances

governing the designation, alteration, and removal of historic resources and Wichita Register Historic Properties; assistance with educational programs, economic development and tourism; and coordination of public and private historic preservation activities.

(b) **Members.** The board shall be composed of seven members to be appointed by the mayor with the approval of the ~~c~~City ~~c~~Council. The membership of the board shall be composed of members, who shall have demonstrated special interest, knowledge, or training, in fields closely related to historic preservation~~,~~. A minimum of three members shall be preservation related professionals, who have experience in such fields as architecture, history, conservation, curation, engineering, cultural anthropology, landscape architecture, architectural history, planning, archaeology, urban design, geography, real estate, law, finance, building trades or related areas. ~~A minimum of three of the members shall be preservation related professionals.~~

(c) **Terms.** The terms of office shall be as set forth in subsection (1) of Section 2.12.020.

(d) **Officers.** Annually, ~~T~~the board shall elect a president and two vice-presidents from its members. In the president's absence, one of the vice-presidents shall conduct the meeting.

(e) Meetings. The board shall meet at least once each month, with additional meetings upon call by the president or upon petition of a simple majority of the members. Four members present shall constitute a quorum, and

issues shall be decided by a simple majority vote of the members present. The minutes of each meeting shall be filed in the office of the city clerk. A copy of the minutes of each meeting shall also be filed with the State Historic Preservation Office. All meetings of the board shall be open to the public.

(f) Ex Officio Members. A representative from the Office of Central Inspection, a representative of the Metropolitan Area Planning Department, a representative of the planning commission, the library historian, the city archaeologist and the historical museum director shall sit on the board as ex officio members. None of the ex officio members shall ~~have voting power~~ be allowed to vote, but shall assist the board in its various functions.

(g) **Committees and Subcommittees.** ~~In addition to the design review committee t~~The board may establish through its bylaws, a design review committee and such additional committees or subcommittees as ~~deemed~~ necessary or convenient to carry out the various functions and duties of the board. Such committees or subcommittees may be made up of ~~part or all of the~~ no more than three voting members of the board and may include members outside the Historic Preservation Board. ~~And~~ Committees may meet upon such schedule and for such purposes as established by the board.

(h) Staff of the Board. The board shall receive ~~such~~ staff support as directed by the ~~c~~City ~~m~~Manager. The ~~d~~Director of ~~p~~Planning or a designee shall serve as secretary to keep minutes of all meetings, handle correspondence, and perform such other duties as the board may direct.

(i) Succeeded Powers of Historic Wichita Board. The ~~c~~City ~~c~~Council shall succeed to all powers and authority previously placed in the Historic Wichita ~~b~~Board except as may be placed in the Historic Preservation Board by this ~~section~~ code. Further, the board shall exercise the powers and duties of the Historic Wichita ~~b~~Board over city cemetery property unless and until the effective date of a certain charter ordinance providing that the city council shall become the board of directors and trustees of such cemetery property."

SECTION 2. Section 2.12.1016 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** As used in this chapter, the following words, terms and phrases shall have the meanings set out below:

'Applicant for Certificate of Appropriateness' shall mean:

(a) the property owner; or

(b) an agent or other person acting on behalf of the property owner with the owner's consent.

'Applicant for nomination of a Wichita Register Historic Property' shall mean the person or group who initiates and signs the application to nominate a property or district for listing on the Wichita Register of Historic Places. An applicant may be:

(i) the property owner, or in the case of an application for a Wichita Register Historic District, owners of a minimum of fifty percent of the property , land or area within the proposed historic district;

(ii) a majority of the Historic Preservation Board;

(iii) a majority of the City Council;

(iv) other, if accompanied by written consent of the property owner.

(v) Members of the public, if nominating publically owned properties.

~~(a) 'Appurtenances and environmental setting' is the entire parcel, as of the date of "historic district" or 'historic landmark' designation, on which is located an historic resource and to which it relates physically and/or visually. Appurtenances and environmental settings includes, but is not limited to, interior structures, fixtures and features, walkways and driveways (whether paved or not), vegetation (including trees, gardens, lawns), fences, gateways, rocks, open space and waterways.~~

'Area' means properties near to or adjacent to one another, capable of being described in such a manner that their collective location may be established and boundaries definitely ascertained.

'Board' means the Historic Preservation Board of the City of Wichita.

'Building' means a structure, such as a house, barn, church, hotel, courthouse, city hall, social hall, commercial structure, library, factory, mill, train depot, theater, school, mausoleum, store or similar construction. The term also may refer to a small group of buildings consisting of a main building and subsidiary buildings which constitute an historically and functionally related unit

such as a courthouse and jail, house and barn, mansion and carriage house, church and rectory, and farmhouse and related outbuildings.

'Certificate of Appropriateness' means a certificate issued by the Board indicating its approval of plans for the alteration, construction, removal, or demolition of a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District, based primarily on design considerations.

'Certificate of Economic Hardship' means a certificate issued by the Board indicating its approval of plans for the alteration, construction, removal, or demolition of a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District, based primarily on economic considerations.

'Certified Local Government – A program of the National Park Service designated to promote the preservation of prehistoric and historic sites, structures, objects, buildings, and historic districts by establishing a partnership between local government, the State Historic Preservation Officer and the National Park Service. A certified local government carries out the purposes of the National Historic Preservation Act and the Kansas Historic Preservation Act as amended.

'Character-defining features' means those physical characteristics and elements that indicate the integrity of design and materials of a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District.

‘Contributing Feature: A significant building, site, structure, or object which adds to the architectural qualities, character-defining features, historic association or archeological values of a Wichita Register Historic Property or Wichita Register Historic District because:

(a) It was present during the pertinent historic time; or

(b) It possesses integrity and reflects its significant historic character or is capable of yielding important information about the pertinent historic period.

~~(b)~~ ‘Demolition’ ~~shall mean any and all activity that requires a demolition permit under the provisions of the building code and shall also include any other activity by the owner or any party in possession of an historic resource or historic resource within an historic district which creates or results in:~~

~~(i) A dangerous or unsafe condition, as defined in Section 18.16.040 of this Code; or~~

~~(ii) The removal, destruction or deterioration of exterior walls, roof, chimneys, doors, windows, porches, steps or trim or of interior structures, fixtures and features which will or could cause permanent damage, injury or loss of or to historically significant exterior or interior features.~~ means the partial or complete removal of a building or structure, the components of a building or structure, or the man-made components of the site where the building or structure is located, including walks, driveways, retaining walls, and fences.

~~(b)~~ 'Demolition by neglect' means the failure to provide ordinary and necessary maintenance and repair to ~~an historic resource~~ a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District ~~historic resource within an historic district~~, whether such neglect is willful or not, on purpose or by design, by the owner or any party in possession of such a site, which results in any of the following conditions:

(1) The deterioration of exterior features so as to create or permit a dangerous or unsafe condition to exist, as defined by Section 18.16.040.

(2) The deterioration of exterior walls, roof, chimneys, doors, windows, porches, steps or trim; the lack of adequate waterproofing; or deterioration of interior features or foundations which will or could result in permanent damage, injury or loss of or to exterior features.

~~(c)~~ 'Design review committee' means a committee of no more than three voting members with one alternate ~~to be~~ which may be appointed by the president when necessary to assist the board ~~for the purpose of~~ in reviewing ~~c~~Certificates of ~~a~~Appropriateness. The design review committee shall work closely and informally with ~~the~~ preservation staff ~~for the purpose of~~ to review~~ing~~, report~~ing~~ and recommend~~ing~~ action to the board ~~on requests for~~ regarding ~~c~~Certificate of ~~a~~Appropriateness for all ~~major~~ projects which may be assigned to them. The design review committee shall follow the guidelines adopted by the ~~b~~Board for ~~certificate of appropriateness~~ such review. ~~If the committee recommends denial of a cCertificate of aAppropriateness, it shall accompany such a denial~~ Any

denial, recommendation or decision made by the committee shall include ~~with~~ an explanation detailing the basis for such decision. ~~why the request should be denied.~~

'Emergency Demolition' means the demolition of a building or structure which the Superintendent of Central Inspection has determined is unfit for use or human habitation and conditions exist which are dangerous to the health, welfare or safety of the occupants of such structure, the occupants of neighboring structures, dwellings or other residents of the City.

'Feasible and prudent alternative' means an alternative solution that can be reasonably accomplished and that is sensible or realistic. Factors that shall be considered when determining whether or not a feasible and prudent alternative exists include, but are not limited to, the following:

(1) Technical issues;

(2) Design Issues;

(3) The project's relationship to the community-wide plan, if any;

(4) Economic issues; and

(5) Planning issues or alternatives.

~~(d) 'Historic landmark' means an historic resource of historical, architectural, archaeological, or cultural importance or value which the city council determines shall be protected, enhanced and preserved in the interest of the culture, prosperity, education and welfare of the people and which is so designated.~~

~~(f)~~ 'Historic resource' means a district, site, land, area, building, ~~interior~~, structure or object, including appurtenances and environmental setting, which has historical, cultural, aesthetic, architectural and/or archaeological significance, or other character-defining features ~~or is a district, site, land area, building, interior, structure or object~~ with potential importance or value.

'Historically or Architecturally important feature': The quality present in a structure, property or district because it:

1. Is associated with an event or events that significantly contributed to the broad patterns of the history or architectural heritage of the city, state or nation;

2. Is associated with the life of a person(s) significant to the history of the city, state or nation;

3. Embodies distinctive characteristics of a type, design, period or method of construction;

4. Represents the work of a master craftsman or possesses high artistic value.

5. Exemplifies the cultural, political, economic, social or historic heritage of city, state or nation.

6. Contains elements of design, detail, materials, or craftsmanship which represent a significant construction innovation.

7. Is part of or related to a square, park or other distinctive area that was or should be developed or preserved according to a plan based on a historic or architectural motif.

8. Is an established and familiar visual feature of a neighborhood or of the community.

9. Has yielded or is likely to yield archeological or artifacts and/or information.

'Integrity' means a property's original and historic characteristics, construction, elements, qualities, design, architectural features, distinctive style, craftsmanship, composition, color, texture and other visual characteristics.

'Lot' means a portion of a subdivision or other parcel of land intended as a unit of ownership and occupied or intended to be occupied by one main structure and accessory structures or a complex of structures, including open spaces and parking. A lot may be more than one lot of record or may be a metes and bounds described tract having its principal frontage upon a street or officially approved place.

'Non-contributing Feature': A building, site, structure, or object that does not add to the architectural qualities, character-defining features, historic association, or archeological values of a Wichita Register Historic District or Wichita Register Historic Property because:

(a) It was not present during the pertinent time; or

(b) Due to alterations, disturbances, additions, or other changes, it no longer possesses integrity, nor reflects its significant historic character or is incapable of yielding important information about the pertinent historic period.

'Object' means those physical items that have functional, aesthetic, cultural, historical or scientific value and are relatively small in scale and simply constructed. While an object may be, by nature or design, movable, it should be located in a specific setting or environment appropriate to its significant historic use, role or character. Objects include, but are not limited to: sculptures, monuments, street signs, fence posts, hitching posts, mileposts, boundary markers, statuary, and fountains.

'Owner(s) of Record' means those individuals, partnerships, firms, corporations, public agencies, or any other legal entity holding title to property but not including legal entities holding mere easements or leasehold interests. (May also be referred to as property owner(s).) Current owner(s) of record are those listed as owners on the records of the register of deeds.

~~(g)~~ 'Permit' means a building, demolition, moving, sign, fence, parking lot, ~~location,~~ roofing, siding, or swimming pool permit which is issued by the Office of Central Inspection.

'Person' means any individual, firm, association, organization, partnership, business, trust, corporation, or company.

~~(h) 'Preservation district' is a contiguous building grouping of potentially significant historic resources so defined in the city's preservation plan.~~

~~(i)~~ 'Preservation staff' means personnel assigned to provide staff services for the Historic Preservation Board.

~~(j)~~ 'Project Classification.' For the purpose of the ~~c~~Certificate of ~~a~~Appropriateness, ~~for proposed work~~ projects involving ~~an historic landmark~~ a Wichita Register Historic Property, or ~~resource~~ a building, object or structure within a Wichita Register ~~h~~Historic ~~d~~District shall be classified as major or minor.

(1) Major projects include:

(A) (i) Any undertaking requiring a permit ~~on~~ for a ~~national, state or local register landmark~~ Wichita Register Historic Property, unless determined minor by ~~the~~ preservation staff and/or the design review committee; or ~~on a structure within a national state or local landmark district, unless determined minor by preservation staff and/or the design review committee;~~

(ii) Any undertaking requiring a permit on a site, land, area, object, building or structure within a Wichita Register Historic District unless determined minor by preservation staff and/or the design review committee; or

(B) (i) Any demolition permit or moving permit for any building, or structure listed as ~~an historic resource~~ a Wichita Register

Historic Property ~~in the preservation plan or for any building plan adopted by the city council~~; or

(ii) Any demolition permit or moving permit for any building, or structure within a Wichita Register Historic District;

(C) Any project deemed major by ~~any~~ the design review committee ~~member~~ regarding:~~.~~

(i) Wichita Register Historic Properties;

(ii) Buildings, site, land, area, object, or structures within a Wichita Register Historic District;

(2) Minor Project~~s.~~ Include: ~~For the purpose of certificate of appropriateness review, a minor project~~ ~~is~~ any project requiring a permit ~~on a local, state, or national landmark or any project requiring a permit within a local, state or national historic landmark district~~ that proposes to repair~~ing~~ or restor~~ing~~e an existing element or feature, or replac~~ing~~e an element or material with identical material and design to that which is existing for:~~.~~

(i) Wichita Register Historic Properties; or

(ii) Buildings, site, land, area, object, or structures within a Wichita Register Historic District;

~~(k)~~ 'Project' means any activity requiring a permit which would affect, change, or impact the appearance, ~~environs~~ or integrity of a Wichita Register ~~h~~Historic ~~resource~~ Property, or a building, site, land, area, object, or structure within a Wichita Register Historic District.

‘State Historic Preservation Officer or SHPO’: The person designated by the Governor of the State of Kansas to administer the State Historic Preservation Program for the purpose of carrying out the provisions of the National Historic Preservation Act of 1966, as amended, and related laws and regulations. The terms State Historic Preservation Office or SHPO may also refer to the staff of the State Historic Preservation Officer

‘Structure’ means anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but not limited to: buildings, fences, gazebos, signs, billboards and swimming pools.

‘Undesignated Historic Resource’ means those structures or buildings which have been determined and listed by the City Council by ordinance as having historical, cultural, aesthetic, architectural and/or archaeological significance or other character defining features.

~~(e)~~ ‘Wichita Register Historic ~~landmark~~ ~~d~~District’ means a group of historic resources or ~~historic~~ properties which are significant as a cohesive unit and contribute to the historical, architectural, archaeological or cultural values of the city, state or nation and which is so designated by the City Council.

‘Wichita Register Historic Property’ means property individually listed on Wichita’s Register of Historic Places by the Board and the City Council according to the procedures and provisions in this Chapter.”

SECTION 3. Section 2.12.1018 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"~~**Historic landmark – Designation**~~ **Wichita Register Listing.** The City Council may designate certain historic resources in the city ~~as historic landmarks~~ and define, amend and delineate the boundaries thereof through listing on the Wichita Register of Historic Places.. Such ~~designation~~ listing shall be in addition to any other zoning district designation established in Chapter 28 of this Code. The ~~suffix~~ prefix 'H' shall indicate the property's designation."

SECTION 4. Section 2.12.1019 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Same -- Criteria for determination of significance. In making such ~~designation~~ listing as set forth in Section 2.12.1018 of this Code, the ~~c~~City ~~c~~Council shall consider ~~designation~~ listing if a building, structure, site, land, area, object, or district ~~or interior~~ is at least fifty years old, retains a significant degree of integrity and meets one or more of the following criteria:

(a) Is associated with events that have made a significant contribution to the broad pattern of history of the city, county, state or nation;

(b) Is associated with a significant person or group of persons in the history of the city, county, state or nation;

(c) Embodies distinctive characteristics of a type, period, or method of construction, represents the work of a master builder/architect, possesses high

artistic values, or represents a distinguishable entity whose components may lack individual distinction;

(d) Yields or is likely to yield information important in prehistory or history;

~~(e) Is fifty years old.~~

Criteria a, b, c, d shall be justified on ~~a~~ the Wichita Register of Historic Places nomination form to be submitted by the applicant. ~~Any historic landmark so designated prior to January 1, 1993 shall not be subject to this requirement.~~"

SECTION 5. Section 2.12.1019.1 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Same -- Historic district designation criteria.** The following shall apply to nomination of a Wichita Register ~~h~~Historic ~~landmark~~ ~~d~~District:

(a) The boundaries of such historic districts shall be drawn so as to include all buildings, structures, sites, objects or land areas which meet one or more of the criteria set out herein or which directly affect or relate to such buildings, structures, sites, objects or land areas meeting one or more criteria of this section, provided that at least seventy-five percent of the total structures within the boundaries are of architectural, historical, archaeological, or cultural importance or value as determined by the board.

(b) A Wichita Register of Historic Places inventory nomination form accompanied by the following information is to be submitted to and retained by the Metropolitan Area Planning Department; and is required for establishment of an historic district:

(1) A list of specific historic resources located within the proposed district boundaries and a description of the particular importance or value of each such historic resource, such description to include the following:

(A) Approximate date of construction, and dates of major alterations, if known,

(B) Builder and/or architect, if known,

(C) Architectural style,

(D) Primary building materials,

(E) Current owner of record,

(F) Legal description of each property;

(2) A map showing the boundaries of the proposed historic district and the location of each structure of importance or value identified by a number or letter designation;

(3) ~~Sufficient~~ ~~p~~Photographs of each building, structure, site, object, or land area.

(c) Establishment of an historic district or boundaries thereof shall be subject to the procedure specified in Section 2.12.1021.

(d) Applications to increase the boundaries of an historic district may be made if one or more of the following conditions are met:

(1) When buildings, structures, sites, objects, or land areas of importance or value that are related to ~~the~~ such historic district are requested for inclusion;

(2) When facts previously undisclosed to or unknown by the Historic Preservation Board are revealed which indicate that a particular building or site is possessed of special architectural, archaeological, ~~or~~ cultural character or economic viability of the district.

(e) Applications to reduce the boundaries of an historic district may be made when one or more of the following conditions have been met:

(1) When it can be shown that a particular building, structure, site, object or land area, has no historic, architectural, archaeological, or cultural ~~importance~~ character or value to the viability of the district;

(2) When it can be shown that no degradation of the district either physical, historical, architectural, archaeological, or cultural character will result from exclusion of property from the district.

~~(f) Historic landmark districts so designated prior to December 24, 1992 shall not be subject to requirements of this section.~~"

SECTION 6. Section 2.12.1020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Historic Preservation Board -- Function.** The board will have the following functions:

(a) The board shall ~~familiarize itself with~~ survey and inventory the historic resources within the city and those which may be eligible for ~~designation~~ listing ~~as historic landmarks~~ on the Wichita Register of Historic Places and shall administer the identification, documentation and designation of such ~~landmarks~~

properties, and shall present verification of significance to the Metropolitan Area Planning Commission and the City Council.

(b) Consistent with those criteria set forth in Section 2.12.1019 of the Code of the City of Wichita, ~~T~~the board shall identify criteria to be used in determining whether certain buildings, sites, structures, land areas, districts, and ~~interiors~~ should be designated as Wichita Register ~~h~~Historic ~~landmarks~~ Properties or Wichita Register Historic Districts.

(c) The board shall administer ~~c~~Certificate of ~~a~~Appropriateness review for projects regarding Wichita Register Historic Properties, and buildings, sites, land areas, objects, or structures within a Wichita Register Historic District according to specified guidelines to determine whether to grant or deny approval of proposed undertakings. The ~~D~~design criteria shall be ~~either~~:

(1) 'The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings' and amendments thereto~~;~~ :

(a) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

(b) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

(c) Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense

of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

(d) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

(e) Distinctive features, finishes, and construction techniques or examples of craftsmanship; that characterize a historic property shall be preserved.

(f) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities, and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

(g) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(h) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

(i) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

(j) New additions, adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired. or

(2) ~~Specifically adopted district or property type guidelines based on criteria of the "Secretary of Interior's Standards."~~

(2) Specific Design Review Guidelines as adopted by the Wichita City Council for the following Wichita Register Historic Districts and any and all other local historic districts hereafter designated by the City Council:

(a) East Douglas Avenue;

(b) Topeka/Emporia Avenue;

(c) Park Place/Fairview Avenue;

(d) and Bitting Avenue.

(d) The board ~~may~~ shall review and provide comment ~~on undertakings that may, in the opinion of the preservation staff, affect the overall visual or~~

~~functional character of a historic landmark district or historic landmark that either involve the historic landmark or is within a foot radius~~ to the Wichita Area Planning Commission on any proposed zoning change or any publicly funded projects of construction such as street, lighting, paving, sidewalks, etc., excepting maintenance which occurs within a two-hundred foot radius of any Wichita Register Historic Property or Wichita Register Historic District.

~~(1) Change of zoning;~~

~~(2) Publicly funded projects of construction such as streets, lighting, paving, sidewalks, etc., excepting maintenance.~~

(e) The board shall review and comment on projects determined by the city archaeologist to pose a threat to an archaeological site.

(f) The board may suggest sources of funds for preservation and restoration activities and for acquisitions, to include federal, state, municipal, private and foundation sources.

(g) The board may recommend incentives for preservation.

(h) If the board finds that certain buildings, structures, land, areas, or districts cannot be preserved without acquisition, the board may recommend to the city council that the fee or a lesser interest in the property be acquired by gift, or purchase, using funds or facilities available for preservation or restoration.

(i) The board may annually review the status of ~~designated~~ historic resources and districts and include in the board minutes a report of such review.

(j) The board shall make or cause to be made, a preservation plan with authorization hereby to review and update the preservation plan as needed.

(k) The board may implement a receivership program for facade easement donations for the purpose of historic preservation.

(l) The board may recommend programs and legislation to the city council to encourage historic preservation in the city.

(m) The board shall review all determinations of the Superintendent of Central Inspection, that any Wichita Register Historic Property or any building or structure within a Wichita Register Historic District is dangerous and unsafe pursuant to chapter 18.16 and make any appropriate order regarding the repair or removal of such structure.

(n) The Board shall act as the advisory board to the City to assist the City in carrying out its responsibilities as a Certified Local Government. These responsibilities are outlined in the 'Procedures for Implementation of Certified Local Governments in Kansas' and as provided by the SHPO. The Board shall also carry out the City's responsibilities as outlined in any agreement with the SHPO to undertake reviews pursuant to K.S.A. 75-2724 and amendments thereto.

Environs review is not applicable to Wichita Register Historic Properties or Wichita Register Historic Districts.

(o) The board may review and recommend local incentives which may encourage the listing of historic properties These may be in the form of tax rebates, permit fee waivers, utility reductions or other means to stimulate interest in historic preservation available only to properties listed on the Wichita Register of Historic Places. Such incentives shall be by agreement between the City, the

property owner and the respective business or utility providing the reduction or rebate."

SECTION 7. Section 2.12.1021 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Procedure for ~~designation~~ listing of historic ~~landmark~~ resources and historic districts.**

An application for ~~historic landmark destination~~ listing on the Wichita Register of Historic Places requires the following ~~procedures~~:

(a) **~~Application and Fees~~ Nomination:** A Wichita Register of Historic Places nomination form and, for districts, district preservation guidelines as defined in Section 2.12.1021.1, shall be submitted to the Metropolitan Area Planning Department. Nomination forms and guidelines, when required, must be submitted to the planning department not less than thirty (30) days prior to the scheduled meeting of the Historic Preservation Board.

(b) **Notice of Hearing:** The applicant shall place a sign(s) on the property(ies) proposed for designation informing the general public that a public hearing will be held on a specific date concerning the proposed listing. The sign(s) shall be provided by the City, and placed in a location designated by the City. Such signs must be placed and remain in place for a period of not less than ten (10) days preceding the public hearing. The sign may be removed at the conclusion of the public hearing or upon withdrawal of the nomination. Failure to post the sign(s) in accordance with these procedures may result in a delay of the public hearing.

~~(b)~~ (c) **Hearing:** Upon receipt of such nomination, a hearing, by the Historic Preservation Board will be scheduled either at its regular meeting or at a special meeting, provided that published notice be given fifteen days prior to the date of such hearing. The owner or owners of any ~~parcel on which a~~ proposed Wichita Register ~~h~~Historic~~al~~ ~~landmark is situated~~ Property or property which is a part of a proposed Wichita Register ~~h~~Historic ~~d~~District shall be mailed written notice at least fifteen days prior to the hearing relating to the designation of such ~~proposed historic landmark or historic landmark district~~ property, the amendment to any designation thereof, or the proposed rescission of any designation or the amendment thereto. The board shall afford a full and fair hearing to all interested persons. The board may solicit expert testimony regarding the historic and architectural importance of the ~~historic resource~~ property or district under consideration for designation. All interested persons may appear in person or by representative and present evidence or comment. The board shall make its decision within a reasonable time, preferably at the close of the hearing. In the event a member of the board shall make application, evidence shall be presented in the same manner as all other persons and the board member shall not vote on the matter contained in the application. ~~Four affirmative votes shall be required to constitute a recommendation of approval on any application presented to the board.~~ An affirmative vote of a majority of the members present is required to constitute an approval of any application presented to the board.

~~(c)~~ (d) After consideration ~~of and recommendation~~ by the board, the applicant shall submit application for designation to the Metropolitan Area Planning Department, division of current plans. The following materials are required as part of the designation application:

(1) The historic preservation board recommendation;

(2) Required filing fee, unless submitted by the city council or the historic preservation board;

(3) Legal description and map of the boundaries of the proposed designation;

(4) Completed Wichita Register of Historic Places nomination form;

(5) District preservation guidelines as defined in Section 2.12.1021.1, ~~for nomination dated after December 24, 1992,~~ if applicable;

(6) List of property owner(s) of record.

~~(d)~~ (e) The ~~designation~~ nomination for listing on the Wichita Register of Historic Places or designation as a Wichita Register Historic District, shall be placed on the next possible Metropolitan Area Planning Commission meeting agenda for public hearing as provided in this Code to consider ~~historic resource~~ the listing ~~designation~~. At the conclusion of its hearing, the Metropolitan Area Planning Commission shall set forth in writing its findings as to whether the ~~designation~~ listing is consistent with adopted plans and shall transmit such findings to the ~~c~~City ~~C~~Council.

~~(e)~~ (f) After notice and public hearing as required by law in a zoning case under Title 28 of this Code, the City Council may enact by ordinance ~~a~~ the ~~historic resource~~ historic property or historic district designation. Upon passage of such ordinance, the city clerk shall file a certified copy of the ordinance with the county register of deeds, and provide an affidavit of public notice stating the fact of the designation to the county clerk. A copy of such affidavit shall be sent to the owner or owners of all affected property.

~~(f)~~ (g) Upon approval of ~~a historic resource~~ the property or historic district designation, the ordinance listing such property by the City Council, the Metropolitan Area Planning Department shall set out on the official zoning map of the city, a designation corresponding to the case number and delineation of the property or properties involved. Designation shall not alter the uses permitted by the existing zoning classification or district regulations affecting the property.

~~(g)~~ (h) When ~~a majority of landowners, in the case of historic resource designation~~ individuals owning more than thirty percent of the land, property or area within a proposed Wichita Register Historic District, object in writing and file with the city clerk or in person at the public hearing before the ~~c~~City ~~c~~Council, a two-thirds majority affirmative vote by the city council is required for approval of the designation."

SECTION 8. Section 2.12.1021.1 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**District preservation guidelines.** Preservation guidelines for Wichita Register ~~h~~Historic ~~d~~Districts, to be completed by the applicant, are required to be submitted with a nomination application ~~when said application is submitted after December 24, 1992~~. The district preservation guidelines shall include, but not be limited to the following:

(a) Guidelines for those seeking a ~~c~~Certificate of ~~a~~Appropriateness pursuant to Section 2.12.1023, including, but not limited to, the following:

(1) Acceptable materials for any construction, additions, remodeling or rehabilitation activities;

(2) Appropriate architectural character, scale, and detail for any construction, additions, remodeling or rehabilitation activities;

(3) Acceptable appurtenances to new and existing structures;

(4) Acceptable textures, and ornamentation;

(5) Acceptable accessories on new or existing structures;

(6) Such other building regulations which would have impact on either new or existing buildings;

(7) Acceptable standards for changes to noncontributing resources within the district;

(8) Acceptable signage.

(9) Acceptable fences or other enclosures.

(b) Guidelines for public improvements in such districts, including but not limited to: street lighting, street furniture, signs, landscaping, utility facilities such as electric poles and wires, telephone lines, design textures of sidewalks and streets, and such other elements as deemed necessary for enhancement and preservation."

SECTION 9. Section 2.12.1022 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Historic ~~d~~District ~~d~~Designation ~~a~~Administrative ~~r~~Requirements.**

The following shall apply:

(a) When the Historic Preservation Board considers an area as a possible Wichita Register ~~h~~Historic ~~d~~District, the board shall, prior to rendering its final recommendations, submit the nomination package including district preservation guidelines to city departments, boards and commissions, and other public agencies directly affected.

(b) In addition, the board shall, ~~and~~ prior to rendering its final recommendation, make the district preservation guidelines available upon request to landowners in the proposed historic district.

(c) Board-approved graphics for designated structures within a such district may be prepared and made available to the owners of designated structures."

SECTION 10. Section 2.12.1023 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Certificate of ~~a~~Appropriateness ~~r~~Review for Wichita Register Historic Properties and Wichita Register Historic Districts.**

The following procedures/requirements apply to ~~c~~Certificate of ~~a~~Appropriateness review:

(a) A permit for any project affecting a ~~designated~~ Wichita Register ~~h~~Historic ~~landmark~~ Property, or ~~any property~~ a building, site, land, area, object, or structure within a ~~designated~~ Wichita Register ~~h~~Historic ~~landmark~~ ~~d~~District shall not be issued to any applicant by the Office of Central Inspection unless an application for a ~~c~~Certificate of ~~a~~Appropriateness has first been reviewed and approved by either the preservation staff, the ~~h~~Historic ~~p~~Preservation ~~b~~Board and/or the City Council. Projects not requiring a permit, but which propose to alter features which have been defined in a district's preservation guidelines as requiring protection, shall require a ~~c~~Certificate of ~~a~~Appropriateness application. Projects which will or have the potential to

damage or destroy historic features of ~~an historic landmark~~ a Wichita Register Historic Property, or ~~an historic resource~~ any building, site, land, area, object, or structure which is located within ~~an~~ a Wichita Register ~~h~~Historic ~~d~~District shall be subject to ~~c~~Certificate of ~~a~~Appropriateness review. ~~Projects described in Section 2.12.1024(b) shall be subject to certificate of appropriateness review.~~

(b) When applying for a ~~c~~Certificate of ~~a~~Appropriateness, the applicant shall provide plans, specifications or other documentation pertaining to the work as required on board-adopted application forms. A completed ~~c~~Certificate of ~~a~~Appropriateness application and accompanying materials must be submitted to the Metropolitan Area Planning Department. ~~where the p~~Preservation staff or design review committee will review the application and determine if the proposed work is a major or minor project. Such application must be submitted no less than fifteen (15) days prior to the scheduled meeting of the Historic Preservation Board.

(c) **Notice of Hearing:** For major projects, the applicant shall place a sign(s) on the property(ies) informing the general public that a public hearing will be held on a specific date concerning the proposed alterations of the property. The sign(s) shall be provided by the City, and placed in a location(s) designated by the City. Such sign(s) must be placed on the property (ies) for a period of no less than ten (10) days prior to the Historic Preservation Board meeting.

~~(c)~~ (d) A ~~c~~Certificate of ~~a~~Appropriateness for a major project shall receive preliminary review by the design review committee or preservation staff. Preservation staff or ~~T~~the committee shall then report and make a recommendation to the board. The board shall review the application and recommend approval, approval with conditions, or denial within thirty days of the receipt of the application. ~~If approved and provided that a protest is not filed within five business days,~~ ~~p~~Preservation staff shall ~~issue a copy of the certificate of appropriateness to~~ notify the applicant of the board's decision and provide a

copy to the Office of Central Inspection and the applicant. If an ~~protest~~ appeal of the board's decision is filed, by the applicant or any interested party, with the preservation staff within ~~five~~ seven (7) business days of the board's ~~approval~~ decision, the ~~c~~Certificate of ~~a~~Appropriateness shall not be issued until the City Council holds a public hearing regarding the application. This public hearing shall be at the next possible City Council meeting.

~~(d)~~ (e) A ~~c~~Certificate of ~~a~~Appropriateness for a minor project shall be reviewed and approved or denied by the preservation staff. ~~If approved, the p~~Preservation staff shall ~~provide a copy of the signed application to the applicant~~ notify, in writing, the applicant and the Office of Central Inspection of their decision regarding the project. ~~and provide documented notification of the approval to the Office of Central Inspection.~~

~~(e)~~ (f) If no action has been taken by the preservation staff and/or the board within forty-five (45) days for major projects and within fifteen (15) days for minor projects after the date of receipt by the Metropolitan Area Planning Department of the completed application, the building permit may be applied for with the Office of Central Inspection.

~~(f)~~ (g) Any applicant or other interested party wishing to appeal a denial or approval with conditions of any ~~c~~Certificate of ~~a~~Appropriateness may appeal to the next higher authority. The order of the appeal procedure shall be: (1) the preservation staff, ~~(2)~~ or the design review committee, ~~(3)~~ (2) the Historic

Preservation Board, and ~~(4)~~ (3) the ~~c~~City ~~c~~Council. Such appeal must be filed no later than seven business days from the date of the decision.

~~(g)~~ (h) No change shall be made in the work defined in the ~~c~~ Certificate of ~~a~~Appropriateness without resubmittal and approval thereof in the same manner as provided above. All such work defined in the certificate shall be completed within one year or within such time period specified in the Certificate of Appropriateness. Such period may be extended by the applicant re-submitting the application to the board.

~~(h)~~ (i) After a decision is reached denying with prejudice an application for ~~c~~Certificate of ~~a~~Appropriateness, ~~a~~ resubmittal of application will not be accepted for an additional hearing within a twelve-month period from the date of final decision, except upon written request by the applicant indicating ~~the incorporation of recommended~~ any changes in plans and specifications made to the original application. Denial of a ~~c~~Certificate of ~~a~~Appropriateness without prejudice permits reapplication immediately.

~~(i)~~ (j) In the event the staff assigned to the board certifies to the City Manager that the board and/or its president are unable to process a ~~c~~Certificate of ~~a~~Appropriateness for a major project in a timely fashion (through lack of quorum or otherwise) then the City Council is empowered to act upon written recommendation of the preservation staff without the review procedure set forth above."

SECTION 11. Section 2.12.1024 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**~~Historic landmark~~ Wichita Register Listed Property -- Demolition, moving or damage or destruction of historic features.**

(a) If an application is received by the Office of Central Inspection for demolition or moving of any ~~historic resource~~ Wichita Register Historic Property, or any building, site, land, area, object, or structure within a Wichita Register Historic District, the applicant shall be referred to the preservation staff for a ~~c~~Certificate of ~~a~~Appropriateness application. Review of such application and required notification for a ~~c~~Certificate of ~~a~~Appropriateness shall be as provided in Section 2.12.1023.

(b) For a project which involves demolition or which will or has the potential to damage or destroy historic features of ~~an historic landmark or resource~~ a Wichita Register Historic Property, or a building, site, land, area, object, or structure within a Wichita Register Historic District ~~which is listed on the national, state and local registers~~, the proponent of such project shall, before doing any of the demolition or work in furtherance of such project, ~~whether or not a building or other permit is required to be obtained to do such demolition or work,~~ submit a ~~c~~Certificate of ~~a~~Appropriateness for review as provided for in Section 2.12.1023.

(c) **Bond requirement for demolition.** A bond shall be placed on deposit with the Office of Central Inspection for the purpose of insuring completion of the demolition, or in the case of noncompletion, to insure that funds

are available to pay for project completion by the city. Such bond will be in an amount equal to ten percent of the estimated cost of the demolition. Completion of the project by the applicant, with final inspection approval by the Office of Central Inspection will cause the deposit to be returned to the applicant in its entirety. Bond money shall be placed on deposit by the city for the express purpose of holding cash bond/deposit funds.

(d) **Completion date for demolition.** All demolition work shall be completed by the applicant within ninety (90) days of issuance of the Certificate of Appropriateness. When circumstances beyond the certificate holder's control prevent completion of the work, the individual may request an extension, in writing, to the Historic Preservation Board prior to expiration of the permit. Requests for extension must indicate why the extension is required.

(e) Final inspection is to be made by the Office of Central Inspection when all demolition related debris, contaminated soil, paving, concrete, foundations, and utilities have been removed from the property and disposed of properly.

(f) **Failure to complete.** In the event the certificate holder fails to complete the demolition within the time established by the date set by subsection (d), or abandons the project site, the Office of Central Inspection shall inspect the demolition site to determine the extent of work yet to be completed. The Superintendent of Central Inspection may issue an order to complete, as provided for in subsection (g).

(g) **Order to complete.** An order to complete may be issued by the Superintendent of Central Inspection in the event a demolition project is either abandoned or not completed in the allotted time. This order shall be posted on site and copies sent to owner of record, contractor, and lienholder. For the purpose of this section, lienholder shall include the bonding company and insurer, if any. An order to complete shall be issued in accordance with provisions for unsafe buildings or structures in the Uniform Building Code.

(h) If the order to complete is not complied with within the allotted time, the Superintendent of Central Inspection shall forfeit the bond, the proceeds of such bond shall be paid into the general fund.

~~(c)~~ (i) The City Council, on appeal of the decision of the Historic Preservation Board, may approve the ~~c~~Certificate of ~~a~~Appropriateness ~~or deny the certificate of appropriateness~~ if it determines that feasible and prudent alternatives do not exist to the alteration, demolition or moving of the proposed project. ~~exist and~~ The City Council may deny the Certificate of Appropriateness if it determines that in the interest of preserving historical values, the ~~historic landmark or resource~~ Wichita Register Historic Property, or building, site, land, area, object, or structure within a Wichita Register Historic District should not be demolished, moved or altered.

~~(d)~~ (k) In the event of an emergency demolition of a ~~designated~~ Wichita Register ~~h~~Historic ~~resource~~ Property, or a building, site, land, area, object, or structure within ~~an~~ a Wichita Register ~~h~~Historic ~~landmark~~ ~~d~~District, Office of Central Inspection staff shall notify the preservation staff as soon as ~~is~~ possible."

SECTION 12. Section 2.12.1024.1 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Review of demolition and moving permits--Undesignated Historic Resources. An application to the ~~o~~Office of ~~c~~Central ~~i~~Inspection for a demolition or moving permit shall require notification to preservation staff if the permit is for ~~a~~ property approved by the City Council as an Undesignated ~~h~~Historic ~~r~~Resource. ~~determined by preservation staff to have potential for landmark designation~~ The following procedure applies:

~~(a) Demolition and moving permit applications for buildings or structures, whether an individual site or sites within a preservation district so identified in the city's preservation plan, will be reviewed by preservation staff.~~

~~(b) Preservation staff may make the determination that a building, site or structure threatened with demolition or removal meets the criteria for landmark designation; or may make the determination that a building, site or structure within a preservation district contributes to that preservation district and that the proposed undertaking will have a detrimental effect on the preservation district.~~

~~(c)~~ (a) ~~If a building, site or structure is determined to meet criteria for historic landmark designation by the preservation staff,~~ Within fifteen days of receipt of the application by the Office of Central Inspection, a written notice shall be sent by certified mail to the owner or owners of such building, site or structure. The notice shall describe the property ~~which meets historic landmark criteria~~ including its location and boundaries, justification of its historic or architectural significance, ~~announcement of the time, date and place of public~~

~~hearing by the historic preservation board~~, and statement of interim controls as provided in subsection ~~(d)~~ (c). The notice shall also be delivered to the ~~o~~Office of ~~c~~Central ~~i~~Inspection with acknowledgment of receipt by the ~~s~~Superintendent of ~~c~~Central ~~i~~Inspection required.

~~(d)~~ (b) Immediate but temporary interim controls, as provided in subsection ~~(e),~~ (c) below, prohibiting any alteration or demolition, ~~other than those alterations permitted by a valid certificate of appropriateness~~ may be placed by the preservation planner on any building, site or structure that is identified in the preservation plan as an Undesignated Historic Resource and for which a notice of interim control has been mailed, until effective evaluation of the building, site or structure can be made, provided that the interim period does not exceed ~~sixty~~ thirty days. This ~~sixty~~ thirty-day period may be extended by resolution of ~~c~~City ~~c~~Council but in no event may the interim control period exceed one hundred eighty days.

~~(e)~~ (c) The ~~o~~Office of ~~c~~Central ~~i~~Inspection is prohibited from issuing any permit for any building, site or structure upon which interim control has been placed unless the ~~s~~Superintendent of ~~c~~Central ~~i~~Inspection or his designee certifies to the preservation planner that such permit is necessary due to emergency public safety reasons, or the demolition is approved ~~pursuant to a valid certificate of appropriateness~~ by the preservation planner.

~~(f) A historic resource that is located within a preservation district as defined in the preservation plan for which a demolition or moving permit has been requested may be reviewed by the historic preservation board unless, in the~~

~~case of a demolition permit, the building official certifies that demolition is necessary due to emergency public safety reasons.~~

~~(g)~~ (d) The ~~historic preservation board~~ preservation planner shall, in the case of an ~~designated~~ Undesignated ~~h~~Historic ~~landmark or of a historic~~ ~~r~~Resource ~~within a preservation~~ ~~district,~~ work with the owner of the property to provide alternatives to demolition, or if demolition is the conclusive alternative, ~~the board~~ staff shall document or cause to be documented the resource with photographs, and/or measured drawings.

~~(h)~~ (e) If in the interim period ~~a non-designated~~ the Undesignated ~~h~~Historic ~~r~~Resource ~~or a~~ ~~historic landmark district~~ becomes ~~designated~~ listed on the Wichita Register of Historic Places pursuant to this subsection and Sections 2.12.1019, 2.12.1019.2 and 2.12.1021 and a permit application to demolish or move is sought, the procedure in Section 2.12.1024 shall apply.

(f) Any person applying for a demolition permit, affected by the provisions of this section and who is aggrieved thereby, may request and shall be granted an informal hearing on the matter before the Director of Planning. Such person shall file in the office of the Director of Planning, a written request for an informal hearing and setting forth a brief statement of the grounds there for, within ten days after the day of the decision complained of. Upon receipt of such petition, the Director of Planning shall set a time and place for such informal hearing and shall give the petitioner written notice thereof. At such informal hearing, the petitioner shall be given an opportunity to be heard and to show why the determination of preservation planner should be modified or withdrawn. The informal hearing shall be commenced not later than five business days after the day

on which the petition was filed. Upon application of the petitioner, the Planning Director may postpone the date of the informal hearing for a reasonable time beyond such five day period, if in his judgment the petitioner has submitted a good and sufficient reason for such postponement.

(g) The Director of Planning shall notify the individual of his or her decision in writing, stating the reasons for such decision. Service of the decision shall be by certified mail, return receipt requested. Service of process by certified mail shall be considered obtained upon the delivery of the certified mail envelope.

(h) Any person dissatisfied with any order or determination of the Director of Planning made under his or her authority pursuant to this section may appeal such order or determination to the City Council. An appeal must be filed with the City Clerk no more than ten business days from the date of the written order appealed from. The City Council will hear the appeal at its next regularly scheduled meeting, but in no case, not later than thirty days from the filing of such appeal."

SECTION 13. Section 2.12.1024.2 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**~~Historic landmark~~ Wichita Register Historic Property -- Demolition by ~~n~~Neglect.** In the event of ~~d~~Demolition by ~~n~~Neglect, as defined in Section 2.12.1016, of ~~an historic landmark~~ a Wichita Register Historic ~~or a p~~Property, or a building. site, land, area, object, or structure within a ~~landmark~~ Wichita Register Historic ~~d~~District on public or private property, the following provisions shall apply:

(a) If a ~~designated~~ Wichita Register ~~h~~Historic ~~landmark~~ property or a contributing ~~historic resource~~ feature within a designated Wichita Register ~~h~~Historic ~~landmark~~ ~~d~~District has been determined by the ~~h~~Historic ~~p~~Preservation ~~b~~Board to be the subject of ~~d~~Demolition by ~~n~~Neglect, the board or staff shall notify the Superintendent of Central Inspection to issue a written notice specifying the conditions of deterioration and the minimum items of repair or maintenance necessary to correct or prevent further deterioration.

(b) Such notice shall be sent by certified mail, return receipt requested, addressed to the owner of the property, or other responsible person, at his or her last known address, or the address shown on the real property tax records in the clerk's office of the county. Such notice, when so addressed and deposited with the postal service with proper postage prepaid, shall be deemed complete and sufficient. In the event that notification cannot be accomplished, as aforesaid, after reasonable efforts, notice shall be accomplished by posting a public notice on the property.

(c) The notice shall provide:

(1) that corrective action ~~shall~~ commence no later than thirty days from the receipt or posting of the notice, unless an extension is granted by the Historic Preservation Board or ~~c~~City ~~c~~Council.

(2) The ~~applicant~~ owner shall demonstrate continual progress and all repairs shall be completed within a reasonable period of time.

(3) ~~The notice shall state that~~ ~~t~~The owner(s) of record of the subject property, or any person therein, may, within ten days request a hearing before the Historic Preservation Board challenging the finding, of ~~d~~Demolition by ~~n~~Neglect and/or the notice to repair. If such request for a

hearing is received within this time period, a hearing will be at the next regular meeting of the Historic Preservation Board.

(d) The board shall review all evidence of ~~d~~Demolition by ~~n~~Neglect at the scheduled hearing~~,~~. ~~and authority granted~~ The board shall review the options and procedures set forth in Section ~~18.40.180(e)~~ 18.16.070 to ~~address correction shall be a remedy available~~ determine the appropriate action necessary.

(e) In the event that the Historic Preservation Board finds that~~,~~ ~~notwithstanding the necessity for such improvements,~~ the actions provided in subsections (a) and (c) of this section would impose a substantial hardship on the owner or any or all persons with any right, title or interest in the subject property, then the board shall establish a period of forty-five (45) days and direct staff to seek alternative methods to preserve the ~~historic resource located within an historic district~~ Wichita Register Historic Property and any contributing structure located within the Wichita Register Historic District.

(f) If no alternative is found to preserve the structure without undue hardship to the owner, b~~ut~~ and the structure is determined a threat to human safety and is in violation of city code, a demolition permit may be issued.

(g) The provisions of this section shall supersede Sections 20.04.180 and 18.40.180 of this Code when applied to removal and demolition of ~~historic resources~~ Wichita Register Historic Properties. Any requirements imposed upon an applicant by the Historic Preservation Board under this section may be appealed to the city council."

SECTION 14. Section 2.12.1024.3 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Certificate of Economic Hardship.** (a) **Purpose.** A Certificate of Economic Hardship serves as an alternative to a Certificate of Appropriateness whenever a Certificate of Appropriateness would otherwise be required. The purpose of the Certificate of Economic Hardship is to provide relief where the application of this code would otherwise impose undue economic hardship.

(b) **Application for Certificate.** (i) An application for a Certificate of Economic Hardship shall be made on a form prepared by preservation staff. Such application may be made in conjunction with, or separately from, an Application for a Certificate of Appropriateness or upon the denial of a Certificate of Appropriateness. The Board shall schedule a public hearing concerning such applications within thirty days.

(ii) The notification and appeal provisions of Section 2.12.1023 shall apply to applications for Certificates of Economic Hardship.

(iii) The board may solicit expert testimony or request that the applicant produce any or all of the following information before it makes a determination on the application:

(A) Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the recommendations of the board for changes necessary for the issuance of a certificate of appropriateness;

(B) A report from a qualified or bonded person with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation;

(C) Estimated market value of the property in its current condition; after completion of the proposed construction, alteration, demolition, or removal; after any changes recommended by the board; and, in the case of a proposed demolition, after renovation of the existing property for continued use;

(D) In the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property;

(E) If the property is income-producing, the annual gross income from the property for the previous two years;

itemized operating and maintenance expenses for the previous two years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period;

(F) Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two years;

(G) All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;

(H) Any listing of the property for sale or rent, price asked and offers received, if any, within the previous two years;

(I) Assessed value of the property according to the two most recent assessments;

(J) Real estate taxes for the previous two years;

(K) Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other;

(L) Any other information considered necessary by the board to a determination as to whether the property does yield or may yield a reasonable return to the owners.

(c) **Determination.** The board shall review all the evidence and information required of an applicant for a Certificate of Economic Hardship and make a determination of whether the denial of the application will deprive the owner of the property or reasonable use of, or reasonable economic return on, the property. Written notice of the determination shall be provided in the same manner as notification of a determination concerning a Certificate of Appropriateness."

SECTION 15. Section 2.12.1024.5 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Notice of Hearing of Certified Local Government Review of Applications for State or National Listings and Environs Review of Major Projects.**

(a) Nomination forms for listing on the Register of Historic Kansas Places or the National Register of Historic Places must be submitted to the Planning Department not less than fifteen (15) days prior to the scheduled meeting of the Historic Preservation Board. The applicant for listing on the Register of Historic Kansas Places or National Register of Historic Places shall place a sign(s) on the property(ies) proposed for state or national listing informing the general public that a public hearing will be held on a specific date concerning the proposed listing. The sign(s) shall be provided by the City, and placed in a location designated by the City. Such signs must be placed and remain in place for a period of not less than ten (10) days preceding the public hearing. The sign may be removed at the conclusion of the public hearing or upon withdrawal of the

nomination. Failure to post the sign(s) in accordance with these procedures may result in a delay of the public hearing.

(b) Application forms for review of projects by the certified local government must be filed with Planning Department not less than fifteen (15) days prior to the scheduled meeting of the Historic Preservation Board. The applicant for major projects occurring within the environs of property listed on the Register of Historic Kansas Places or the National Register of Historic Places shall place a sign(s) on the property(ies) on which such projects are being proposed, informing the general public that a public hearing will be held on a specific date concerning the proposed listing. The sign(s) shall be provided by the City, and placed in a location designated by the City. Such signs must be placed and remain in place for a period of not less than ten (10) days preceding the public hearing. The sign may be removed at the conclusion of the public hearing and must be removed by the applicant at the end of all proceedings on the application or upon withdrawal of the application. Failure to post the sign(s) in accordance with these procedures may result in a delay of the public hearing."

SECTION 16. Section 2.12.1025 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Same -- Penalty.** (a) It is unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish, deface, move or maintain a~~ny~~ Wichita Register ~~h~~H~~H~~istoric ~~landmark~~ Property, or a building, site, land, area, object, within a Wichita Register Historic District in violation of the provisions of ~~the ordinance codified in Sections 2.12.1015 through 2.12.1025~~ this chapter.

(b) It is unlawful for any owner or individual in control of a Wichita Register Historic Property or a building, site, land, area, object, or structure within a Wichita Register Historic District to fail to provide reasonable care, appropriate maintenance and upkeep of such property for the protection, preservation, and enhancement of such property.

(c) It is unlawful for any person, owner, individual, firm or corporation to enlarge, alter, convert, demolish or change the use of any property listed on the Wichita Register Historic Property or a building or structure within a Wichita Register Historic District without first obtaining a building permit or other permit as required by the Code of the City of Wichita.

(d) In addition to other remedies, the City may institute any appropriate action or proceedings to prevent such unlawful construction, restoration, demolition, moving or maintenance to restrain, correct or abate such violation. Any person who violates any provision of the ordinance codified in the sections cited above shall be guilty of a separate offense for each day or portion thereof during which any such violation is committed, continued or permitted, and each offense shall be punishable by a fine of not more than five hundred dollars."

SECTION 17. The originals of Sections 2.12.1015, 2.12.1016, 2.12.1018, 2.12.1019, 2.12.1019.1, 2.12.1019.1, 2.12.1020, 2.12.1021, 2.12.1021.1, 2.12.1022, 2.12.1023, 2.12.1024, 2.12.1024.1, 2.12.1024.2 and 2.12.1025 of the Code of the City of Wichita, Kansas, are hereby repealed.

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

03/04/09

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 2.12.1015, 2.12.1016, 2.12.1018, 2.12.1019, 2.12.1019.1, 2.12.1020, 2.12.1021, 2.12.1021.1, 2.12.1022, 2.12.1023, 2.12.1024, 2.12.1024.1, 2.12.1024.2 AND 2.12.1025 AND CREATING SECTIONS 2.12.1024.3 AND 2.12.1024.5 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE HISTORIC PRESERVATION BOARD, AND REPEALING THE ORIGINALS OF SECTIONS 2.12.1015, 2.12.1016, 2.12.1018, 2.12.1019, 2.12.1019.1, 2.12.1019.2, 2.12.1020, 2.12.1021, 2.12.1021.1, 2.12.1022, 2.12.1023, 2.12.1024, 2.12.1024.2 AND 2.12.1025 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 2.12.1015 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Historic Preservation Board--General provisions.** Established. There is created and established a board to be known as the 'Historic Preservation Board' of the city.

(a) **Scope of Duties.** The duties of the board are to advise the ~~c~~City ~~c~~Council on city-owned historic resources and to safeguard the architectural and cultural heritage of the city through the preservation of historic resources. The board may carry out these duties through the identification, documentation and designation of the city's historic resources; administration of city ordinances

governing the designation, alteration, and removal of historic resources and Wichita Register Historic Properties; assistance with educational programs, economic development and tourism; and coordination of public and private historic preservation activities.

(b) **Members.** The board shall be composed of seven members to be appointed by the mayor with the approval of the City Council. The membership of the board shall be composed of members, who shall have demonstrated special interest, knowledge, or training, in fields closely related to historic preservation. A minimum of three members shall be preservation related professionals, who have experience in such fields as architecture, history, conservation, curation, engineering, cultural anthropology, landscape architecture, architectural history, planning, archaeology, urban design, geography, real estate, law, finance, building trades or related areas.

(c) **Terms.** The terms of office shall be as set forth in subsection (1) of Section 2.12.020.

(d) **Officers.** Annually, the board shall elect a president and two vice-presidents from its members. In the president's absence, one of the vice-presidents shall conduct the meeting.

(e) Meetings. The board shall meet at least once each month, with additional meetings upon call by the president or upon petition of a simple majority of the members. Four members present shall constitute a quorum, and issues shall be decided by a simple majority vote of the members present. The minutes of each meeting shall be filed in the office of the city clerk. A copy of

the minutes of each meeting shall also be filed with the State Historic Preservation Office. All meetings of the board shall be open to the public.

(f) Ex Officio Members. A representative from the Office of Central Inspection, a representative of the Metropolitan Area Planning Department, a representative of the planning commission, the library historian, the city archaeologist and the historical museum director shall sit on the board as ex officio members. None of the ex officio members shall be allowed to vote, but shall assist the board in its various functions.

(g) **Committees and Subcommittees.** The board may establish through its bylaws, a design review committee and such additional committees or subcommittees as necessary or convenient to carry out the various functions and duties of the board. Such committees or subcommittees may be made up of no more than three voting members of the board and may include members outside the Historic Preservation Board. Committees may meet upon such schedule and for such purposes as established by the board.

(h) Staff of the Board. The board shall receive staff support as directed by the City Manager. The Director of Planning or a designee shall serve as secretary to keep minutes of all meetings, handle correspondence, and perform such other duties as the board may direct.

(i) Succeeded Powers of Historic Wichita Board. The City Council shall succeed to all powers and authority previously placed in the Historic Wichita Board except as may be placed in the Historic Preservation Board by this code. Further, the board shall exercise the powers and duties of the Historic

Wichita Board over city cemetery property unless and until the effective date of a certain charter ordinance providing that the city council shall become the board of directors and trustees of such cemetery property."

SECTION 2. Section 2.12.1016 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** As used in this chapter, the following words, terms and phrases shall have the meanings set out below:

'Applicant for Certificate of Appropriateness' shall mean:

(a) the property owner; or

(b) an agent or other person acting on behalf of the property owner with the owner's consent.

'Applicant for nomination of a Wichita Register Historic Property' shall mean the person or group who initiates and signs the application to nominate a property or district for listing on the Wichita Register of Historic Places. An applicant may be:

(i) the property owner, or in the case of an application for a Wichita Register Historic District, owners of a minimum of fifty percent of the property , land or area within the proposed historic district;

(ii) a majority of the Historic Preservation Board;

(iii) a majority of the City Council;

(iv) other, if accompanied by written consent of the property owner.

(v) Members of the public, if nominating publically owned properties.

'Area' means properties near to or adjacent to one another, capable of being described in such a manner that their collective location may be established and boundaries definitely ascertained.

'Board' means the Historic Preservation Board of the City of Wichita.

'Building' means a structure, such as a house, barn, church, hotel, courthouse, city hall, social hall, commercial structure, library, factory, mill, train depot, theater, school, mausoleum, store or similar construction. The term also may refer to a small group of buildings consisting of a main building and subsidiary buildings which constitute an historically and functionally related unit such as a courthouse and jail, house and barn, mansion and carriage house, church and rectory, and farmhouse and related outbuildings.

'Certificate of Appropriateness' means a certificate issued by the Board indicating its approval of plans for the alteration, construction, removal, or demolition of a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District, based primarily on design considerations.

'Certificate of Economic Hardship' means a certificate issued by the Board indicating its approval of plans for the alteration, construction, removal, or demolition of a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District, based primarily on economic considerations.

‘Certified Local Government – A program of the National Park Service designated to promote the preservation of prehistoric and historic sites, structures, objects, buildings, and historic districts by establishing a partnership between local government, the State Historic Preservation Officer and the National Park Service. A certified local government carries out the purposes of the National Historic Preservation Act and the Kansas Historic Preservation Act as amended.

‘Character-defining features’ means those physical characteristics and elements that indicate the integrity of design and materials of a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District.

‘Contributing Feature: A significant building, site, structure, or object which adds to the architectural qualities, character-defining features, historic association or archeological values of a Wichita Register Historic Property or Wichita Register Historic District because:

(a) It was present during the pertinent historic time; or

(b) It possesses integrity and reflects its significant historic character or is capable of yielding important information about the pertinent historic period.

‘Demolition’ means the partial or complete removal of a building or structure, the components of a building or structure, or the man-made components of the site where the building or structure is located, including walks, driveways, retaining walls, and fences.

‘Demolition by neglect’ means the failure to provide ordinary and necessary maintenance and repair to a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District whether such neglect is willful or not, on purpose or by design, by the owner or any party in possession of such a site, which results in any of the following conditions:

(1) The deterioration of exterior features so as to create or permit a dangerous or unsafe condition to exist, as defined by Section 18.16.040.

(2) The deterioration of exterior walls, roof, chimneys, doors, windows, porches, steps or trim; the lack of adequate waterproofing; or deterioration of interior features or foundations which will or could result in permanent damage, injury or loss of or to exterior features.

‘Design review committee’ means a committee of no more than three voting members with one alternate which may be appointed by the president when necessary to assist the board in reviewing Certificates of Appropriateness. The design review committee shall work closely and informally with preservation staff to review, report and recommend action to the board regarding Certificate of Appropriateness for all projects which may be assigned to them. The design review committee shall follow the guidelines adopted by the Board for such review. Any denial, recommendation or decision made by the committee shall include an explanation detailing the basis for such decision.

‘Emergency Demolition’ means the demolition of a building or structure which the Superintendent of Central Inspection has determined is unfit for use or human habitation and conditions exist which are dangerous to the health, welfare

or safety of the occupants of such structure, the occupants of neighboring structures, dwellings or other residents of the City.

'Feasible and prudent alternative' means an alternative solution that can be reasonably accomplished and that is sensible or realistic. Factors that shall be considered when determining whether or not a feasible and prudent alternative exists include, but are not limited to, the following:

(1) Technical issues;

(2) Design Issues;

(3) The project's relationship to the community-wide plan, if any;

(4) Economic issues; and

(5) Planning issues or alternatives.

'Historic resource' means a district, site, land, area, building, structure or object, including appurtenances and environmental setting, which has historical, cultural, aesthetic, architectural and/or archaeological significance, or other character-defining features with potential importance or value.

'Historically or Architecturally important feature': The quality present in a structure, property or district because it:

1. Is associated with an event or events that significantly contributed to the broad patterns of the history or architectural heritage of the city, state or nation;

2. Is associated with the life of a person(s) significant to the history of the city, state or nation;

3. Embodies distinctive characteristics of a type, design, period or method of construction;

4. Represents the work of a master craftsman or possesses high artistic value.

5. Exemplifies the cultural, political, economic, social or historic heritage of city, state or nation.

6. Contains elements of design, detail, materials, or craftsmanship which represent a significant construction innovation.

7. Is part of or related to a square, park or other distinctive area that was or should be developed or preserved according to a plan based on a historic or architectural motif.

8. Is an established and familiar visual feature of a neighborhood or of the community.

9. Has yielded or is likely to yield archeological or artifacts and/or information.

'Integrity' means a property's original and historic characteristics, construction, elements, qualities, design, architectural features, distinctive style, craftsmanship, composition, color, texture and other visual characteristics.

'Lot' means a portion of a subdivision or other parcel of land intended as a unit of ownership and occupied or intended to be occupied by one main structure and accessory structures or a complex of structures, including open spaces and parking. A lot may be more than one lot of record or may be a metes and bounds

described tract having its principal frontage upon a street or officially approved place.

'Non-contributing Feature': A building, site, structure, or object that does not add to the architectural qualities, character-defining features, historic association, or archeological values of a Wichita Register Historic District or Wichita Register Historic Property because:

(a) It was not present during the pertinent time; or

(b) Due to alterations, disturbances, additions, or other changes, it no longer possesses integrity, nor reflects its significant historic character or is incapable of yielding important information about the pertinent historic period.

'Object' means those physical items that have functional, aesthetic, cultural, historical or scientific value and are relatively small in scale and simply constructed. While an object may be, by nature or design, movable, it should be located in a specific setting or environment appropriate to its significant historic use, role or character. Objects include, but are not limited to: sculptures, monuments, street signs, fence posts, hitching posts, mileposts, boundary markers, statuary, and fountains.

'Owner(s) of Record' means those individuals, partnerships, firms, corporations, public agencies, or any other legal entity holding title to property but not including legal entities holding mere easements or leasehold interests. (May also be referred to as property owner(s).) Current owner(s) of record are those listed as owners on the records of the register of deeds.

‘Permit’ means a building, demolition, moving, sign, fence, parking lot, roofing, siding, or swimming pool permit which is issued by the Office of Central Inspection.

‘Person’ means any individual, firm, association, organization, partnership, business, trust, corporation, or company.

‘Preservation staff’ means personnel assigned to provide staff services for the Historic Preservation Board.

‘Project Classification.’ For the purpose of the Certificate of Appropriateness, projects involving a Wichita Register Historic Property, or a building, object or structure within a Wichita Register Historic District shall be classified as major or minor.

(1) Major projects include:

(A) (i) Any undertaking requiring a permit for a Wichita Register Historic Property, unless determined minor by preservation staff and/or the design review committee; or

(ii) Any undertaking requiring a permit on a site, land, area, object, building or structure within a Wichita Register Historic District unless determined minor by preservation staff and/or the design review committee; or

(B) (i) Any demolition permit or moving permit for any building, or structure listed as a Wichita Register Historic Property or

(ii) Any demolition permit or moving permit for any building, or structure within a Wichita Register Historic District;

(C) Any project deemed major by the design review committee regarding:

(i) Wichita Register Historic Properties;

(ii) Buildings, site, land, area, object, or structures within a Wichita Register Historic District;

(2) Minor Projects~~.~~ Include: any project requiring a permit that proposes to repair or restore an existing element or feature, or replace an element or material with identical material and design to that which is existing for:

(i) Wichita Register Historic Properties; or

(ii) Buildings, site, land, area, object, or structures within a Wichita Register Historic District;

'Project' means any activity requiring a permit which would affect, change, or impact the appearance, or integrity of a Wichita Register Historic Property, or a building, site, land, area, object, or structure within a Wichita Register Historic District.

'State Historic Preservation Officer or SHPO': The person designated by the Governor of the State of Kansas to administer the State Historic Preservation Program for the purpose of carrying out the provisions of the National Historic Preservation Act of 1966, as amended, and related laws and regulations. The terms State Historic Preservation Office or SHPO may also refer to the staff of the State Historic Preservation Officer

‘Structure’ means anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but not limited to: buildings, fences, gazebos, signs, billboards and swimming pools.

‘Undesignated Historic Resource’ means those structures or buildings which have been determined and listed by the City Council by ordinance as having historical, cultural, aesthetic, architectural and/or archaeological significance or other character defining features.

‘Wichita Register Historic District’ means a group of historic resources or properties which are significant as a cohesive unit and contribute to the historical, architectural, archaeological or cultural values of the city, state or nation and which is so designated by the City Council.

‘Wichita Register Historic Property’ means property individually listed on Wichita’s Register of Historic Places by the Board and the City Council according to the procedures and provisions in this Chapter.”

SECTION 3. Section 2.12.1018 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“**Wichita Register Listing.** The City Council may designate certain historic resources in the city and define, amend and delineate the boundaries thereof through listing on the Wichita Register of Historic Places.. Such listing shall be in addition to any other zoning district designation established in Chapter 28 of this Code. The prefix ‘H’ shall indicate the property's designation.”

SECTION 4. Section 2.12.1019 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Same -- Criteria for determination of significance. In making such listing as set forth in Section 2.12.1018 of this Code, the City Council shall consider listing if a building, structure, site, land, area, object or district is at least fifty years old, retains a significant degree of integrity and meets one or more of the following criteria:

(a) Is associated with events that have made a significant contribution to the broad pattern of history of the city, county, state or nation;

(b) Is associated with a significant person or group of persons in the history of the city, county, state or nation;

(c) Embodies distinctive characteristics of a type, period, or method of construction, represents the work of a master builder/architect, possesses high artistic values, or represents a distinguishable entity whose components may lack individual distinction;

(d) Yields or is likely to yield information important in prehistory or history;

Criteria a, b, c, d shall be justified on the Wichita Register of Historic Places nomination form to be submitted by the applicant."

SECTION 5. Section 2.12.1019.1 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Same -- Historic district designation criteria.** The following shall apply to nomination of a Wichita Register Historic ~~D~~istrict:

(a) The boundaries of such historic districts shall be drawn so as to include all buildings, structures, sites, objects or land areas which meet one or

more of the criteria set out herein or which directly affect or relate to such buildings, structures, sites, objects or land areas meeting one or more criteria of this section, provided that at least seventy-five percent of the total structures within the boundaries are of architectural, historical, archaeological, or cultural importance or value as determined by the board.

(b) A Wichita Register of Historic Places inventory nomination form accompanied by the following information is to be submitted to and retained by the Metropolitan Area Planning Department; and is required for establishment of an historic district:

(1) A list of specific historic resources located within the proposed district boundaries and a description of the particular importance or value of each such historic resource, such description to include the following:

(A) Approximate date of construction, and dates of major alterations, if known,

(B) Builder and/or architect, if known,

(C) Architectural style,

(D) Primary building materials,

(E) Current owner of record,

(F) Legal description of each property;

(2) A map showing the boundaries of the proposed historic district and the location of each structure of importance or value identified by a number or letter designation;

(3) Photographs of each building, structure, site, object, or land area.

(c) Establishment of an historic district or boundaries thereof shall be subject to the procedure specified in Section 2.12.1021.

(d) Applications to increase the boundaries of an historic district may be made if one or more of the following conditions are met:

(1) When buildings, structures, sites, objects, or land areas of importance or value that are related to such historic district are requested for inclusion;

(2) When facts previously undisclosed to or unknown by the Historic Preservation Board are revealed which indicate that a particular building or site is possessed of special architectural, archaeological, cultural character or economic viability of the district.

(e) Applications to reduce the boundaries of an historic district may be made when one or more of the following conditions have been met:

(1) When it can be shown that a particular building, structure, site, object or land area, has no historic, architectural, archaeological, or cultural character or value to the viability of the district;

(2) When it can be shown that no degradation of the district either physical, historical, architectural, archaeological, or cultural character will result from exclusion of property from the district."

SECTION 6. Section 2.12.1020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Historic Preservation Board -- Function.** The board will have the following functions:

(a) The board shall survey and inventory the historic resources within the city and those which may be eligible for listing on the Wichita Register of Historic Places and shall administer the identification, documentation and designation of such properties, and shall present verification of significance to the Metropolitan Area Planning Commission and the City Council.

(b) Consistent with those criteria set forth in Section 2.12.1019 of the Code of the City of Wichita, the board shall identify criteria to be used in determining whether certain buildings, sites, structures, land areas, districts, and interiors should be designated as Wichita Register ~~H~~istoric Properties or Wichita Register Historic Districts.

(c) The board shall administer Certificate of Appropriateness review for projects regarding Wichita Register Historic Properties, and buildings, sites, land areas, objects, or structures within a Wichita Register Historic District according to specified guidelines to determine whether to grant or deny approval of proposed undertakings. The design criteria shall be:

(1) 'The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings' and amendments thereto:

(a) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

(b) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

(c) Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

(d) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

(e) Distinctive features, finishes, and construction techniques or examples of craftsmanship; that characterize a historic property shall be preserved.

(f) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities, and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

(g) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be

used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(h) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

(i) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

(j) New additions, adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired. or

(2) Specific Design Review Guidelines as adopted by the Wichita City Council for the following Wichita Register Historic Districts and any and all other local historic districts hereafter designated by the City Council:

(a) East Douglas Avenue;

(b) Topeka/Emporia Avenue;

(c) Park Place/Fairview Avenue;

(d) and Bitting Avenue.

(d) The board shall review and provide comment to the Wichita Area Planning Commission on any proposed zoning change or any publicly funded projects of construction such as street, lighting, paving, sidewalks, etc., excepting maintenance which occurs within a two-hundred foot radius of any Wichita Register Historic Property or Wichita Register Historic District.

(e) The board shall review and comment on projects determined by the city archaeologist to pose a threat to an archaeological site.

(f) The board may suggest sources of funds for preservation and restoration activities and for acquisitions, to include federal, state, municipal, private and foundation sources.

(g) The board may recommend incentives for preservation.

(h) If the board finds that certain buildings, structures, land, areas, or districts cannot be preserved without acquisition, the board may recommend to the city council that the fee or a lesser interest in the property be acquired by gift, or purchase, using funds or facilities available for preservation or restoration.

(i) The board may annually review the status of historic resources and districts and include in the board minutes a report of such review.

(j) The board shall make or cause to be made, a preservation plan with authorization hereby to review and update the preservation plan as needed.

(k) The board may implement a receivership program for facade easement donations for the purpose of historic preservation.

(l) The board may recommend programs and legislation to the city council to encourage historic preservation in the city.

(m) The board shall review all determinations of the Superintendent of Central Inspection, that any Wichita Register Historic Property or any building or structure within a Wichita Register Historic District is dangerous and unsafe pursuant to chapter 18.16 and make any appropriate order regarding the repair or removal of such structure.

(n) The Board shall act as the advisory board to the City to assist the City in carrying out its responsibilities as a Certified Local Government. These responsibilities are outlined in the 'Procedures for Implementation of Certified Local Governments in Kansas' and as provided by the SHPO. The Board shall also carry out the City's responsibilities as outlined in any agreement with the SHPO to undertake reviews pursuant to K.S.A. 75-2724 and amendments thereto.

Environs review is not applicable to Wichita Register Historic Properties or Wichita Register Historic Districts.

(o) The board may review and recommend local incentives which may encourage the listing of historic properties These may be in the form of tax rebates, permit fee waivers, utility reductions or other means to stimulate interest in historic preservation available only to properties listed on the Wichita Register of Historic Places. Such incentives shall be by agreement between the City, the property owner and the respective business or utility providing the reduction or rebate."

SECTION 7. Section 2.12.1021 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Procedure for listing of historic resources and historic districts.**

An application for listing on the Wichita Register of Historic Places requires the following:

(a) **Nomination:** A Wichita Register of Historic Places nomination form and, for districts, district preservation guidelines as defined in Section 2.12.1021.1, shall be submitted to the Metropolitan Area Planning Department. Nomination forms and guidelines, when required, must be submitted to the planning department not less than thirty (30) days prior to the scheduled meeting of the Historic Preservation Board.

(b) **Notice of Hearing:** The applicant shall place a sign(s) on the property(ies) proposed for designation informing the general public that a public hearing will be held on a specific date concerning the proposed listing. The sign(s) shall be provided by the City, and placed in a location designated by the City. Such signs must be placed and remain in place for a period of not less than ten (10) days preceding the public hearing. The sign may be removed at the conclusion of the public hearing or upon withdrawal of the nomination. Failure to post the sign(s) in accordance with these procedures may result in a delay of the public hearing.

(c) **Hearing:** Upon receipt of such nomination, a hearing, by the Historic Preservation Board will be scheduled either at its regular meeting or at a special meeting, provided that published notice be given fifteen days prior to the

date of such hearing. The owner or owners of any proposed Wichita Register ~~H~~istoric~~al~~ Property or property which is a part of a proposed Wichita Register ~~H~~istoric District shall be mailed written notice at least fifteen days prior to the hearing relating to the designation of such property, the amendment to any designation thereof, or the proposed rescission of any designation or the amendment thereto. The board shall afford a full and fair hearing to all interested persons. The board may solicit expert testimony regarding the historic and architectural importance of the property or district under consideration for designation. All interested persons may appear in person or by representative and present evidence or comment. The board shall make its decision within a reasonable time, preferably at the close of the hearing. In the event a member of the board shall make application, evidence shall be presented in the same manner as all other persons and the board member shall not vote on the matter contained in the application. An affirmative vote of a majority of the members present is required to constitute an approval of any application presented to the board.

(d) After consideration by the board, the applicant shall submit application for designation to the Metropolitan Area Planning Department, division of current plans. The following materials are required as part of the designation application:

(1) The historic preservation board recommendation;

(2) Required filing fee, unless submitted by the city council or the historic preservation board;

(3) Legal description and map of the boundaries of the proposed designation;

(4) Completed Wichita Register of Historic Places nomination form;

(5) District preservation guidelines as defined in Section 2.12.1021.1, if applicable;

(6) List of property owner(s) of record.

(e) The nomination for listing on the Wichita Register of Historic Places or designation as a Wichita Register Historic District, shall be placed on the next possible Metropolitan Area Planning Commission meeting agenda for public hearing as provided in this Code to consider the listing. At the conclusion of its hearing, the Metropolitan Area Planning Commission shall set forth in writing its findings as to whether the listing is consistent with adopted plans and shall transmit such findings to the City ~~C~~ouncil.

(f) After notice and public hearing as required by law in a zoning case under Title 28 of this Code, the City Council may enact by ordinance the historic property or historic district designation. Upon passage of such ordinance, the city clerk shall file a certified copy of the ordinance with the county register of deeds, and provide an affidavit of public notice stating the fact of the designation to the county clerk. A copy of such affidavit shall be sent to the owner or owners of all affected property.

(g) Upon approval of the property or historic district designation, the ordinance listing such property by the City Council, the Metropolitan Area

Planning Department shall set out on the official zoning map of the city, a designation corresponding to the case number and delineation of the property or properties involved. Designation shall not alter the uses permitted by the existing zoning classification or district regulations affecting the property.

(h) When individuals owning more than thirty percent of the land, property or area within a proposed Wichita Register Historic District, object in writing and file with the city clerk or in person at the public hearing before the City Council, a two-thirds majority affirmative vote by the city council is required for approval of the designation."

SECTION 8. Section 2.12.1021.1 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**District preservation guidelines.** Preservation guidelines for Wichita Register Historic ~~D~~istricts, to be completed by the applicant, are required to be submitted with a nomination application. The district preservation guidelines shall include, but not be limited to the following:

(a) Guidelines for those seeking a Certificate of Appropriateness pursuant to Section 2.12.1023, including, but not limited to, the following:

(1) Acceptable materials for any construction, additions, remodeling or rehabilitation activities;

(2) Appropriate architectural character, scale, and detail for any construction, additions, remodeling or rehabilitation activities;

(3) Acceptable appurtenances to new and existing structures;

(4) Acceptable textures, and ornamentation;

(5) Acceptable accessories on new or existing structures;

(6) Such other building regulations which would have impact on either new or existing buildings;

(7) Acceptable standards for changes to noncontributing resources within the district;

(8) Acceptable signage.

(9) Acceptable fences or other enclosures.

(b) Guidelines for public improvements in such districts, including but not limited to: street lighting, street furniture, signs, landscaping, utility facilities such as electric poles and wires, telephone lines, design textures of sidewalks and streets, and such other elements as deemed necessary for enhancement and preservation."

SECTION 9. Section 2.12.1022 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Historic District Designation Administrative Requirements.**

The following shall apply:

(a) When the Historic Preservation Board considers an area as a possible Wichita Register Historic District, the board shall, prior to rendering its final recommendations, submit the nomination package including district preservation guidelines to city departments, boards and commissions, and other public agencies directly affected.

(b) In addition, the board shall, prior to rendering its final recommendation, make the district preservation guidelines available upon request to landowners in the proposed historic district.

(c) Board-approved graphics for designated structures within a such district may be prepared and made available to the owners of designated structures."

SECTION 10. Section 2.12.1023 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Certificate of Appropriateness Review for Wichita Register Historic Properties and Wichita Register Historic Districts.**

The following procedures/requirements apply to Certificate of Appropriateness review:

(a) A permit for any project affecting a Wichita Register ~~H~~istoric Property, or a building, site, land, area, object, or structure within a Wichita Register Historic District shall not be issued to any applicant by the Office of Central Inspection unless an application for a Certificate of Appropriateness has first been reviewed and approved by either the preservation staff, the Historic Preservation Board and/or the City Council. Projects not requiring a permit, but which propose to alter features which have been defined in a district's preservation guidelines as requiring protection, shall require a Certificate of Appropriateness application. Projects which will or have the potential to damage or destroy historic features of a Wichita Register Historic Property, or any building, site, land, area, object, or structure which is located within a Wichita

Register Historic District shall be subject to Certificate of Appropriateness review.

(b) When applying for a Certificate of Appropriateness, the applicant shall provide plans, specifications or other documentation pertaining to the work as required on board-adopted application forms. A completed Certificate of Appropriateness application and accompanying materials must be submitted to the Metropolitan Area Planning Department. Preservation staff or design review committee will review the application and determine if the proposed work is a major or minor project. Such application must be submitted no less than fifteen (15) days prior to the scheduled meeting of the Historic Preservation Board.

(c) **Notice of Hearing:** For major projects, the applicant shall place a sign(s) on the property(ies) informing the general public that a public hearing will be held on a specific date concerning the proposed alterations of the property. The sign(s) shall be provided by the City, and placed in a location(s) designated by the City. Such sign(s) must be placed on the property (ies) for a period of no less than ten (10) days prior to the Historic Preservation Board meeting.

(d) A Certificate of Appropriateness for a major project shall receive preliminary review by the design review committee or preservation staff. Preservation staff or the committee shall then report and make a recommendation to the board. The board shall review the application and recommend approval, approval with conditions, or denial within thirty days of the receipt of the application. Preservation staff shall notify the applicant of the board's decision and provide a copy to the Office of Central Inspection and the applicant. If an

appeal of the board's decision is filed, by the applicant or any interested party, with the preservation staff within seven (7) business days of the board's decision, the Certificate of Appropriateness shall not be issued until the City Council holds a public hearing regarding the application. This public hearing shall be at the next possible City Council meeting.

(e) A Certificate of Appropriateness for a minor project shall be reviewed and approved or denied by the preservation staff. Preservation staff shall notify, in writing, the applicant and the Office of Central Inspection of their decision regarding the project.

(f) If no action has been taken by the preservation staff and/or the board within forty-five (45) days for major projects and within fifteen (15) days for minor projects after the date of receipt by the Metropolitan Area Planning Department of the completed application, the building permit may be applied for with the Office of Central Inspection.

(g) Any applicant or other interested party wishing to appeal a denial or approval with conditions of any Certificate of Appropriateness may appeal to the next higher authority. The order of the appeal procedure shall be: (1) the preservation staff, or the design review committee, (2) the Historic Preservation Board, and (3) the City Council. Such appeal must be filed no later than seven business days from the date of the decision.

(h) No change shall be made in the work defined in the Certificate of Appropriateness without resubmittal and approval thereof in the same manner as provided above. All such work defined in the certificate shall be completed

within one year or within such time period specified in the Certificate of Appropriateness. Such period may be extended by the applicant re-submitting the application to the board.

(i) After a decision is reached denying with prejudice an application for Certificate of Appropriateness, ~~a~~ resubmittal of application will not be accepted for an additional hearing within a twelve-month period from the date of final decision, except upon written request by the applicant indicating any changes in plans and specifications made to the original application. Denial of a Certificate of Appropriateness without prejudice permits reapplication immediately.

(j) In the event the staff assigned to the board certifies to the City Manager that the board and/or its president are unable to process a Certificate of Appropriateness for a major project in a timely fashion (through lack of quorum or otherwise) then the City Council is empowered to act upon written recommendation of the preservation staff without the review procedure set forth above."

SECTION 11. Section 2.12.1024 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Wichita Register Listed Property -- Demolition, moving or damage or destruction of historic features.**

(a) If an application is received by the Office of Central Inspection for demolition or moving of any Wichita Register Historic Property, or any building, site, land, area, object, or structure within a Wichita Register Historic District, the

applicant shall be referred to the preservation staff for a Certificate of Appropriateness application. Review of such application and required notification for a Certificate of Appropriateness shall be as provided in Section 2.12.1023.

(b) For a project which involves demolition or which will or has the potential to damage or destroy historic features of a Wichita Register Historic Property, or a building, site, land, area, object, or structure within a Wichita Register Historic District, the proponent of such project shall, before doing any of the demolition or work in furtherance of such project, submit a Certificate of Appropriateness for review as provided for in Section 2.12.1023.

(c) **Bond requirement for demolition.** A bond shall be placed on deposit with the Office of Central Inspection for the purpose of insuring completion of the demolition, or in the case of noncompletion, to insure that funds are available to pay for project completion by the city. Such bond will be in an amount equal to ten percent of the estimated cost of the demolition. Completion of the project by the applicant, with final inspection approval by the Office of Central Inspection will cause the deposit to be returned to the applicant in its entirety. Bond money shall be placed on deposit by the city for the express purpose of holding cash bond/deposit funds.

(d) **Completion date for demolition.** All demolition work shall be completed by the applicant within ninety (90) days of issuance of the Certificate of Appropriateness. When circumstances beyond the certificate holder's control prevent completion of the work, the individual may request an extension, in

writing, to the Historic Preservation Board prior to expiration of the permit. Requests for extension must indicate why the extension is required.

(e) Final inspection is to be made by the Office of Central Inspection when all demolition related debris, contaminated soil, paving, concrete, foundations, and utilities have been removed from the property and disposed of properly.

(f) **Failure to complete.** In the event the certificate holder fails to complete the demolition within the time established by the date set by subsection (d), or abandons the project site, the Office of Central Inspection shall inspect the demolition site to determine the extent of work yet to be completed. The Superintendent of Central Inspection may issue an order to complete, as provided for in subsection (g).

(g) **Order to complete.** An order to complete may be issued by the Superintendent of Central Inspection in the event a demolition project is either abandoned or not completed in the allotted time. This order shall be posted on site and copies sent to owner of record, contractor, and lienholder. For the purpose of this section, lienholder shall include the bonding company and insurer, if any. An order to complete shall be issued in accordance with provisions for unsafe buildings or structures in the Uniform Building Code.

(h) If the order to complete is not complied with within the allotted time, the Superintendent of Central Inspection shall forfeit the bond, the proceeds of such bond shall be paid into the general fund.

(i) The City Council, on appeal of the decision of the Historic Preservation Board, may approve the Certificate of Appropriateness if it determines that feasible and prudent alternatives do not exist to the alteration, demolition or moving of the proposed project. The City Council may deny the Certificate of Appropriateness if it determines that in the interest of preserving historical values, the Wichita Register Historic Property, or building, site, land, area, object, or structure within a Wichita Register Historic District should not be demolished, moved or altered.

(k) In the event of an emergency demolition of a Wichita Register Historic Property, or a building, site, land, area, object, or structure within a Wichita Register Historic District, Office of Central Inspection staff shall notify the preservation staff as soon as possible."

SECTION 12. Section 2.12.1024.1 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Review of demolition and moving permits--Undesignated Historic Resources. An application to the Office of Central Inspection for a demolition or moving permit shall require notification to preservation staff if the permit is for ~~a~~ property approved by the City Council as an Undesignated Historic Resource. The following procedure applies:

Within fifteen days of receipt of the application by the Office of Central Inspection, a written notice shall be sent by certified mail to the owner or owners of such building, site or structure. The notice shall describe the property including its location and boundaries, justification of its historic or architectural

significance, and statement of interim controls as provided in subsection (c). The notice shall also be delivered to the Office of Central Inspection with acknowledgment of receipt by the ~~s~~Superintendent of Central Inspection required.

(b) Immediate but temporary interim controls, as provided in subsection (c) below, prohibiting any alteration or demolition, may be placed by the preservation planner on any building, site or structure that is identified in the preservation plan as an Undesignated Historic Resource and for which a notice of interim control has been mailed, until effective evaluation of the building, site or structure can be made, provided that the interim period does not exceed thirty days. This thirty-day period may be extended by resolution of City Council but in no event may the interim control period exceed one hundred eighty days.

(c) The Office of Central Inspection is prohibited from issuing any permit for any building, site or structure upon which interim control has been placed unless the Superintendent of Central Inspection or his designee certifies to the preservation planner that such permit is necessary due to emergency public safety reasons, or the demolition is approved by the preservation planner.

(d) The preservation planner shall, in the case of an Undesignated Historic Resource, work with the owner of the property to provide alternatives to demolition, or if demolition is the conclusive alternative, staff shall document or cause to be documented the resource with photographs, and/or measured drawings.

(e) If in the interim period, the Undesignated Historic Resource becomes listed on the Wichita Register of Historic Places pursuant to this

subsection and Sections 2.12.1019, 2.12.1019.2 and 2.12.1021 and a permit application to demolish or move is sought, the procedure in Section 2.12.1024 shall apply.

(f) Any person applying for a demolition permit, affected by the provisions of this section and who is aggrieved thereby, may request and shall be granted an informal hearing on the matter before the Director of Planning. Such person shall file in the office of the Director of Planning, a written request for an informal hearing and setting forth a brief statement of the grounds there for, within ten days after the day of the decision complained of. Upon receipt of such petition, the Director of Planning shall set a time and place for such informal hearing and shall give the petitioner written notice thereof. At such informal hearing, the petitioner shall be given an opportunity to be heard and to show why the determination of preservation planner should be modified or withdrawn. The informal hearing shall be commenced not later than five business days after the day on which the petition was filed. Upon application of the petitioner, the Planning Director may postpone the date of the informal hearing for a reasonable time beyond such five day period, if in his judgment the petitioner has submitted a good and sufficient reason for such postponement.

(g) The Director of Planning shall notify the individual of his or her decision in writing, stating the reasons such decision. Service of the decision shall be by certified mail, return receipt requested. Service of process by certified mail shall be considered obtained upon the delivery of the certified mail envelope.

(h) Any person dissatisfied with any order or determination of the Director of Planning made under his or her authority pursuant to this section may

appeal such order or determination to the City Council. An appeal must be filed with the City Clerk no more than ten business days from the date of the written order appealed from. The City Council will hear the appeal at its next regularly scheduled meeting, but in no case, not later than thirty days from the filing of such appeal."

SECTION 13. Section 2.12.1024.2 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Wichita Register Historic Property -- Demolition by Neglect.** In the event of Demolition by Neglect, as defined in Section 2.12.1016, of a Wichita Register Historic Property, or a building. site, land, area, object, or structure within a Wichita Register Historic District on public or private property, the following provisions shall apply:

(a) If a Wichita Register ~~H~~istoric property or a contributing feature within a designated Wichita Register Historic District has been determined by the Historic Preservation Board to be the subject of Demolition by Neglect, the board or staff shall notify the Superintendent of Central Inspection to issue a written notice specifying the conditions of deterioration and the minimum items of repair or maintenance necessary to correct or prevent further deterioration.

(b) Such notice shall be sent by certified mail, return receipt requested, addressed to the owner of the property, or other responsible person, at his or her last known address, or the address shown on the real property tax records in the clerk's office of the county. Such notice, when so addressed and deposited with the postal service with proper postage prepaid, shall be deemed complete and

sufficient. In the event that notification cannot be accomplished, as aforesaid, after reasonable efforts, notice shall be accomplished by posting a public notice on the property.

(c) The notice shall provide:

(1) that corrective action commence no later than thirty days from the receipt or posting of the notice, unless an extension is granted by the Historic Preservation Board or City Council.

(2) The owner shall demonstrate continual progress and all repairs shall be completed within a reasonable period of time.

(3) The owner(s) of record of the subject property, or any person therein, may, within ten days request a hearing before the Historic Preservation Board challenging the finding, of Demolition by Neglect and/or the notice to repair. If such request for a hearing is received within this time period, a hearing will be at the next regular meeting of the Historic Preservation Board.

(d) The board shall review all evidence of Demolition by Neglect at the scheduled hearing. The board shall review the options and procedures set forth in Section 18.16.070 to determine the appropriate action necessary.

(e) In the event that the Historic Preservation Board finds that the actions provided in subsections (a) and (c) of this section would impose a substantial hardship on the owner or any or all persons with any right, title or interest in the subject property, then the board shall establish a period of forty-five (45) days and direct staff to seek alternative methods to preserve the Wichita

Register Historic Property and any contributing structure located within the Wichita Register Historic District.

(f) If no alternative is found to preserve the structure without undue hardship to the owner, and the structure is determined a threat to human safety and is in violation of city code, a demolition permit may be issued.

(g) The provisions of this section shall supersede Sections 20.04.180 and 18.40.180 of this Code when applied to removal and demolition of Wichita Register Historic Properties. Any requirements imposed upon an applicant by the Historic Preservation Board under this section may be appealed to the city council."

SECTION 14. Section 2.12.1024.3 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Certificate of Economic Hardship.** (a) **Purpose.** A Certificate of Economic Hardship serves as an alternative to a Certificate of Appropriateness whenever a Certificate of Appropriateness would otherwise be required. The purpose of the Certificate of Economic Hardship is to provide relief where the application of this code would otherwise impose undue economic hardship.

(b) **Application for Certificate.** (i) An application for a Certificate of Economic Hardship shall be made on a form prepared by preservation staff. Such application may be made in conjunction with, or separately from, an Application for a Certificate of Appropriateness or upon the denial of a Certificate of Appropriateness. The Board shall schedule a public hearing concerning such applications within thirty days.

(ii) The notification and appeal provisions of Section 2.12.1023 shall apply to applications for Certificates of Economic Hardship.

(iii) The board may solicit expert testimony or request that the applicant produce any or all of the following information before it makes a determination on the application:

(A) Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the recommendations of the board for changes necessary for the issuance of a certificate of appropriateness;

(B) A report from a qualified or bonded person with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation;

(C) Estimated market value of the property in its current condition; after completion of the proposed construction, alteration, demolition, or removal; after any changes recommended by the board; and, in the case of a proposed demolition, after renovation of the existing property for continued use;

(D) In the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property;

(E) If the property is income-producing, the annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period;

(F) Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two years;

(G) All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;

(H) Any listing of the property for sale or rent, price asked and offers received, if any, within the previous two years;

(I) Assessed value of the property according to the two most recent assessments;

(J) Real estate taxes for the previous two years;

(K) Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other;

(L) Any other information considered necessary by the board to a determination as to whether the property does yield or may yield a reasonable return to the owners.

(c) **Determination.** The board shall review all the evidence and information required of an applicant for a Certificate of Economic Hardship and make a determination of whether the denial of the application will deprive the owner of the property or reasonable use of, or reasonable economic return on, the property. Written notice of the determination shall be provided in the same manner as notification of a determination concerning a Certificate of Appropriateness."

SECTION 15. Section 2.12.1024.5 of the Code of the City of Wichita, Kansas, is created to read as follows:

"**Notice of Hearing of Certified Local Government Review of Applications for State or National Listings and Environs Review of Major Projects.**

(a) Nomination forms for listing on the Register of Historic Kansas Places or the National Register of Historic Places must be submitted to the Planning Department not less than fifteen (15) days prior to the scheduled meeting of the Historic Preservation Board. The applicant for listing on the Register of Historic Kansas Places or National Register of Historic Places shall place a sign(s) on the property(ies) proposed for state or national listing informing the general public that a public hearing will be held on a specific date concerning the proposed listing. The sign(s) shall be provided by the City, and placed in a location designated by the City. Such signs must be placed and remain in place for a period of not less than ten (10) days preceding the public hearing. The sign may be removed at the conclusion of the public hearing or upon withdrawal of the

nomination. Failure to post the sign(s) in accordance with these procedures may result in a delay of the public hearing.

(b) Application forms for review of projects by the certified local government must be filed with Planning Department not less than fifteen (15) days prior to the scheduled meeting of the Historic Preservation Board. The applicant for major projects occurring within the environs of property listed on the Register of Historic Kansas Places or the National Register of Historic Places shall place a sign(s) on the property(ies) on which such projects are being proposed, informing the general public that a public hearing will be held on a specific date concerning the proposed listing. The sign(s) shall be provided by the City, and placed in a location designated by the City. Such signs must be placed and remain in place for a period of not less than ten (10) days preceding the public hearing. The sign may be removed at the conclusion of the public hearing and must be removed by the applicant at the end of all proceedings on the application or upon withdrawal of the application. Failure to post the sign(s) in accordance with these procedures may result in a delay of the public hearing."

SECTION 16. Section 2.12.1025 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Same -- Penalty.** (a) It is unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish, deface, move or maintain Wichita Register Historic Property, or a building, site, land, area, object, within a Wichita Register Historic District in violation of the provisions of this chapter.

(b) It is unlawful for any owner or individual in control of a Wichita Register Historic Property or a building, site, land, area, object, or structure within a Wichita Register Historic District to fail to provide reasonable care, appropriate maintenance and upkeep of such property for the protection, preservation, and enhancement of such property.

(c) It is unlawful for any person, owner, individual, firm or corporation to enlarge, alter, convert, demolish or change the use of any property listed on the Wichita Register Historic Property or a building or structure within a Wichita Register Historic District without first obtaining a building permit or other permit as required by the Code of the City of Wichita.

(d) In addition to other remedies, the City may institute any appropriate action or proceedings to prevent such unlawful construction, restoration, demolition, moving or maintenance to restrain, correct or abate such violation. Any person who violates any provision of the ordinance codified in the sections cited above shall be guilty of a separate offense for each day or portion thereof during which any such violation is committed, continued or permitted, and each offense shall be punishable by a fine of not more than five hundred dollars."

SECTION 17. The originals of Sections 2.12.1015, 2.12.1016, 2.12.1018, 2.12.1019, 2.12.1019.1, 2.12.1019.1, 2.12.1020, 2.12.1021, 2.12.1021.1, 2.12.1022, 2.12.1023, 2.12.1024, 2.12.1024.1, 2.12.1024.2 and 2.12.1025 of the Code of the City of Wichita, Kansas, are hereby repealed.

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

4. BOOKING POLICY

a. Intent

The City of Wichita recognizes that four very different clients book events at the Century II facility. These clients include: **New or Existing**, **Long-term**, **Cultural/Performing Arts, and Greater Wichita Convention and Visitor's Bureau (GWCVB) and Convention Clients**.

The intent of this policy is to define a course of action to be adhered to by those persons responsible for booking events into the Century II Performing Arts/Convention Center. The booking policy is meant to address the process of booking events at the Century II facility and the process for resolving contested event dates to ensure all options, opportunities and criteria are considered when making a decision concerning contested dates. It is designed to assure all clients and activities receive appropriate and fair consideration.

b. Background.

Century II's fundamental mission is to provide an outstanding, clean, safe venue for all private and public gatherings; encompassing the performing arts, conventions, trade shows, consumer shows, banquets, meetings, religious programs, civic and special behalf of the City of Wichita, seeks to maximize the cultural, social, entertainment and economic benefits to the community that enhances the quality of life for the Greater Wichita Area while providing outstanding client services at affordable, competitive rates.

c. Definitions

Tentative Booking - New or Existing Clients

When space and dates are available, clients may request tentative booking dates in writing via email, fax or letter. Tentative bookings are defined as space and dates reserved but not guaranteed by the facility or the client. The space and dates will be held by Century II for New or Existing Clients for a 30-day time period while the client decides to make one or all of the tentative booking dates definite or to cancel the dates in writing via email, fax or letter. After the 30-day period of time has lapsed, Century II will either confirm or cancel the tentative bookings in writing. It is essential that the purpose of tentative bookings remain confidential.

Tentative Booking – Long-term, GWCVB and Convention Clients

Long-term, GWCVB, and Convention clients may book tentative dates at their discretion. Conflicts for these tentative dates will be resolved following the **Contested Dates Policy.** The first client to tentatively reserve the date will have the opportunity to make the date definite following the **Contested Dates Policy**. If making the date definite does not resolve the conflict, the Contested Date will be treated under the **Priority Booking Conflict Policy.**

Definite Booking

A booking becomes definite upon receipt of a dually signed contract and deposit from the client and Century II Management.

Contested Dates

Contested dates occur when two different entities request the same dates during the same time period.

Long-term Clients

Long-term clients are defined as local promoters and consumer shows that have contracted with the facility for more than 10 consecutive years and use one or more halls in the facility. Long-term clients will receive **Priority Booking** for tentative and definite bookings.

GWCVB and Convention Clients

The Greater Wichita Convention and Visitor's Bureau actively seek to bring conventions and trade shows to the Wichita area as directed by the City of Wichita. GWCVB and Convention Clients will receive **Priority Booking** for tentative and definite bookings. GWCVB and Convention Clients may book definite dates at their discretion but will follow the **Contested Dates** and **Priority Booking Conflict Policies** should desired dates be contested.

Priority Booking – Long-term Clients

Long-term clients may book definite dates up to three (3) years in advance with assurance of contractual dates remaining unchanged by Century II. Definite bookings for Long-term clients will be renewed each year on an on-going basis until notification by written communication requesting cancellation is received from the Long-term client.

Long-term clients may book tentative dates at their discretion beyond the three (3) year definite bookings. Contested dates for Priority Bookings – Long-term Clients will be resolved following the **Priority Booking Conflict Policy.**

Priority Booking - GWCVB and Convention Clients

GWCVB and Convention Clients may book definite dates at their discretion but will follow the **Contested Dates** and **Priority Booking Conflict Policies** should desired dates be contested.

Priority Booking Conflicts

Contested dates for bookings that cannot be resolved using the **Contested Dates Policy** will be resolved by the Booking Review Steering Committee. It is essential that the purpose for the booked event for all contested dates remain confidential.

d. Booking Procedures.

All bookings must follow the policies as defined:

1. **Cultural/Performing Arts Events**
   Events scheduled for the Mary Jane Teall Theater or Concert Hall have the first priority on dates 24 months and out, and will be booked on a tentative basis, first come-first serve, during this period. This will allow performing arts groups time to plan their season series and contract ahead for guest artists. These events may be booked on a definite basis. Contested tentative dates will be resolved by using the **Contested Dates Policy.** Conflicts for definite dates will be resolved using the **Priority Booking Conflict Policy.**

2. **GWCVB and Convention Clients**
   GWCVB, Conventions and Trade shows will follow **Priority Booking Policy – GWCVB and Convention Clients** on all areas of Century II. Contested tentative and definite dates will be resolved using the **Contested Dates Policy** and **Priority Booking Conflicts Policy.**

3. **New or Existing Clients**
   Any event that draws people from within the Wichita area may be booked on a definite basis up to 18 months in advance. Contested dates for New or Existing Clients will be resolved using the **Contested Dates Policy.**

4. **Contracting the use of the Expo Hall Meeting Rooms (203-210)**
   Booking for these rooms must adhere to the "Promenade Rooms Booking Policy" as agreed to by the City of Wichita and the East Bank Hotel Associates (Hyatt).

5. **Contested Dates Policy**
   If a tentative booking is contested by another client, to ensure reservation, the first client must make the tentative booking definite within 10 business days of notification as would apply to the contested use of the building and forfeit the entire deposit if the event cancels. If the first client does not meet this requirement, the contesting party must make the tentative booking definite within the next 10 business days of notification as would apply to the contested use and forfeit the entire deposit if the event cancels. Long-term clients may use a Letter of Credit to secure the entire deposit if their event dates are contested. **It is essential that the purpose for events of contested bookings remain confidential.**

6. **Priority Booking Conflicts Policy**
   The General Manager of Century II or his/her designee will be required to notify all clients of contested dates and convene a meeting with the clients to discuss options and opportunities to resolve the conflict.

If no resolution can be agreed upon after an initial meeting, the General Manager of Century II or his/her designee will convene a meeting between the clients and the Booking Review Steering committee. The clients and the Booking Review Committee will attempt to resolve the contested dates and make a recommendation on resolution of the contested dates to City Council.

Clients who wish to contest the final recommendation after presentation to the Booking Review Steering Committee may request City Council review their protest.

The Booking Review Steering Committee will consist of:

(1) Division of Arts & Cultural Services – Ex-officio (non-voting)
(1) Century II Convention Center – Ex-officio (non-voting)

(2) City of Wichita – City Manager's Office
(1) City of Wichita – City Council member appointee

(3) Members At-large
(2) Long-Term Booking group representatives

(1) Greater Wichita Convention & Visitors Bureau – Director
(1) Greater Wichita Convention & Visitors Bureau – Board Chair

The Booking Review Steering Committee reserves the right to give preferential treatment to local events. The following criteria will be used by the committee to make recommendations for priority bookings:

- Economic impact on community; short-term and long-term
- Number of hotel rooms estimated to be used
- Estimated number of attendees, demographic of attendees, and value of attendees on the community at large.
- Overall benefit to community
- Number of halls and space at Century II occupied for event
- Number of consecutive years client has booked Century II for the event
- Negative impact on local, long-term client's event to remain viable year after year.

e. Deposit Policy.

1. A minimum of a 10% deposit is required on signing of the contract for the estimated use of space. For any customer without established credit with Century II, up to a 100% deposit may be required. Long-term clients may use a Letter of Credit to secure their definite booking requirements. The entire rent is due 14 days prior to the event, unless the client has made prior arrangements with Century II Management.

2. Deposits on any event are proof of sincerity by the customer that an event will take place and that the customer is not speculating on the event. Therefore, deposits are not returned on any event cancelled by the client.

f. Event Protection

Event protection will be provided on bookings. Competing events that will financially hurt each other, as well as Century II, will not be booked within a 60 day time period before or after the other.

g. Annual Review

The Booking Policy will be reviewed on an annual basis to ensure the policy is meeting the needs of the City of Wichita City Council, Century II management, staff, clients and the greater Wichita community.

Agenda Item No. ___

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council

SUBJECT: Century II Performing Arts & Convention Center Booking Policy (All Districts)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: New Business

- -

Recommendation: Approve the revised Century II Booking Policy.

Background: Century II's booking policy has not been revised since August 2000. Staff reviewed the booking policies from other similar sized facilities and convention centers and compared it to the recommended booking policy for Century II. Based on these findings, as well as input from promoters, the Greater Wichita Convention and Visitors Bureau, City Council members and community users, the revised Century II booking policy includes changes that eliminate booking rules that were left open to interpretation by clients and City staff. In addition, the new policy addresses the resolution procedures for booking conflicts.

Century II staff met with local trade show and consumer show promoters December 6, 2006 and January 8, 2007. The revised booking policy was presented to City Council on March 13, 2007. At that time, City Council members heard comments from local promoters and citizens and directed staff to revisit the policy. An action team with the concerned promoters was created to review and revise the policy. This action team met again to review the revised policy on September 30, 2008. During this time frame, they also met with the Greater Wichita Convention and Visitor's Bureau on April 12, 2007 and August 29, 2008.

Staff, through the direction of City Council members, once again has met with the action team on February 3, 2009 to revise and review the policy.

Analysis: The revised booking policy helps clarify the booking rules and regulations of Century II for all booking entities and City staff. The new policy addresses and sets forth the policy and procedure for the resolution of booking conflicts. The new Century II Booking Policy being proposed was developed and agreed upon by general consensus of the action team. A new policy for booking on the Promenade level is currently being developed and will be brought to City Council for approval at a future date.

Financial Consideration: The revised Century II Booking Policy is critical to improving customer service and streamlining the business practices at this public facility.

Goal Impact: This project will impact the Quality of Life by ensuring that citizens receive a positive return on all of their quality of life investments through improved business processes and financial management.

Legal Considerations: The City Attorney has approved the revised Century II Booking Policy as to form.

Recommendation/Action: It is recommended that the City Council approve the revised Century II Booking Policy.

Attachment: Revised Century II Booking Policy

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council

SUBJECT: Agreement Between the City of Wichita and the City of Kechi

INITIATED BY: Water Utilities

AGENDA: New Business

Recommendation: Approve the Agreement with the City of Kechi for a 16-inch connection for Kechi's future water requirements.

Background: Since 1985, Wichita has provided wholesale water service to the City of Kechi. Due to the growth in Kechi, the existing service line is inadequate to provide water service in the future. At their request, Wichita examined the possibility of providing an additional connection in order to supply Kechi's future needs. The recent construction of elevated storage in the area enables the Water Utility to provide this additional supply, capacity and improved water pressures to Kechi.

Analysis: Kechi requested that the Water Utility plan, obtain the necessary rights-of-way and easements and construct the water supply main. The main will be located in the area of 53rd Street North and Rock Road. Kechi has indicated it is their desire to reimburse Wichita one-hundred percent for the services. The ownership and maintenance would then revert to Kechi, and they will have full responsibility for the facilities.

Financial Considerations: The entire expense incurred for the services will be reimbursed by the City of Kechi, as outlined in the proposed Agreement. Construction of the facilities will result in additional revenues for the Water Utility and expanded service to Kechi.

Goal Impact: The project will ensure efficient infrastructure by accommodating growth in the City of Kechi and ensuring reliable water service to their customers. This provides an opportunity to coordinate infrastructure expansion with another local government.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachment: Agreement with the City of Kechi

AGREEMENT

THIS AGREEMENT, made and entered into this 10 day of April, 2008, by and between the City of Wichita, Kansas (hereinafter "Wichita") and the City of Kechi, Kansas (hereinafter "Kechi").

WITNESSETH:

WHEREAS, Kechi is desirous of obtaining from Wichita a new, sixteen inch, point of connection from Wichita's water distribution system to Kechi's water distribution system at a point and over a route mutually agreed upon by the two cities; and

WHEREAS there is a need to amend the previous Agreement entered into by and between Wichita and Kechi dated February 9, 2006 and to replace its contents with this Agreement; and

WHEREAS, Wichita is willing to construct and maintain such a connection, and Kechi is willing to reimburse Wichita for 100% of the costs of such construction through the payment of a surcharge on rates over a fifteen year period; and

NOW, THEREFORE, the parties hereto, for the mutual promises, covenants and considerations contained herein, do agree as follows:

1. As soon as practical after the parties agree to a route and connection point, Wichita will begin the process of designing, bidding and constructing a new, sixteen (16) inch water line from Wichita's water distribution system to a metered, point of connection with Kechi's water distribution system.

2. Wichita will be responsible for all matters relating to such construction, including the acquisition of any necessary rights-of-way or easements.

3. Wichita will construct such water line and connection with an approved metering facility that is properly equipped with backflow protection and that has remote read capabilities. Kechi will cooperate with Wichita in obtaining right of way for said line that is within the corporate limits of Kechi. If deemed necessary, Kechi and Wichita will jointly pursue obtaining any necessary franchise agreement.

4. Upon completion of construction, such water line, connection, and metering facility as referenced in (3) above will be owned by Kechi and maintained by Kechi at its sole cost and expense.

5. Within thirty (30) days after completion of the construction of such water line, Wichita will provide Kechi with written documentation of the costs incurred

by Wichita in the design, bidding and construction of such water line and associated facilities. Within thirty (30) days from receipt of such documentation, Kechi will pay to Wichita 100% of such costs.

6. Wichita will hold Kechi harmless from any and all claims, costs and expenses related in any way to the negligence of Wichita or its contractors in connection with the design, bidding, or construction of such water line.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

ATTEST:

CITY OF WICHITA, KANSAS

_____
Karen Sublett, City Clerk

By_____
Carl Brewer, Mayor

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

CITY OF KECHI, KANSAS

ATTEST:

Laura Hill

By Ed Parker
Ed Parker, Mayor

APPROVED AS TO FORM:

_____
Norman Manley, City Attorney

Agenda Item No. III-3.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: I-235 Freeway at 13th Street Flyover (Districts V & VI)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the Design Concept and authorize the issue of an R.F.P. for design services.

Background: Since the construction of the Wichita-Valley Center Floodway and the I-235 Freeway, the western area of Wichita has grown at a rapid pace. At present there are only 3 crossings of the Floodway/I-235 barrier between Kellogg and K-96 Highway, of which two crossings also function as interchanges with I-235. The limited crossings of the Floodway constitute the primary source of traffic congestion in the area. Public Works-Engineering Staff in cooperation with Kansas Department of Transportation Officials have developed a proposed design concept that will provide an additional crossing of the Floodway by connecting I-235 to west 13th Street. In 2002 the City Council considered three options for crossing the Floodway and approved a crossing at 29th. This new proposed concept was not considered in 2002. On October 8, 2008, a public information meeting was held at the Sedgwick County Extension Office to consider the new proposal. Explanations concerning this project were well received by the public.

Analysis: The proposed project will provide a flyover at the Wichita-Valley Center Floodway that will connect north bound traffic on the I-235 Freeway to west bound traffic on 13th Street and east bound traffic on 13th Street to south bound traffic on I-235. Staff is requesting authorization to issue a request for proposals to begin the process to select a consultant design engineer.

Financial Considerations: The design agreement and design funding will be returned to the City Council at a future date for approval.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing 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: None.

Recommendation/Action: It is recommended that the City Council approve the design concept, authorize the issuance of an R.F.P. for design services and authorize the signing of State/Federal agreements as required.

Attachment: Map.

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE:

To Initiate Project	X
To Revise Project	

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 Public Works	**2. Initiating Division** Storm Water Management (Flood Control)	**3. Date** 1/8/2009	**4. Project Description & Location** Wichita -Valley Center Flood Control Project Improvements
5. CIP Project Number 468 84562	**6. Accounting Number**	**7. CIP Project Date (Year)** 2009	**8. Approved by WCC Date**
9. Estimated Start Date January 10, 2009	**10. Estimated Completion Date** March 1, 2010	**11. Project Revised**	

12. Project Cost Estimate

ITEM	GO **	SA	OTHER *	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Culverts				
Drainage, design & const.	$5,050,000		$5,050,00	$10,100,000
Sanitary Sewer				
Sidewalk				
Water				
Railroad				
Totals	$5,050,000		$5,050,000	$10,100,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

* Sedgwick County will fund 50% of the total project cost of $10,100,000. Budget will be revised upon the County's commitment of balance.

** City's portion provided G.O. Bonds

13. Recommendation: Approve project

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Supplemental Agreement No. 1 – AMEC Earth and Environmental – Design Services - Wichita Valley Center Flood Control Levee Certification Rehabilitation

INITIATED BY: Department of Public Works

AGENDA: New Business

- -

Recommendation: Approve the project, supplemental agreement, resolution, City/County Agreement and CIP sheet.

Background: The City of Wichita and Sedgwick County signed a FEMA Provisional Accredited Levee (PAL) Agreement in 2007 as the owner and operator of the Wichita Valley Center Flood Control Project. The agreement requires the City and County to provide certification that the approximately 100 miles of levee surrounding the City meets FEMA levee standards. On February 5, 2008 the City approved an Agreement with AMEC Earth and Environmental to perform the necessary engineering studies for the certification and approved an agreement with Sedgwick County to jointly share the cost of the study.

Analysis: This Supplemental Agreement No. 1 between the City and AMEC Earth and Environmental will design the necessary improvements to levees P, L & S to satisfy the U.S. Army of Corps of Engineer's inspection concerns from last year and FEMA levee certification requirements. Staff recommends that AMEC be selected to do this design since they are doing our certification study and are most familiar with our system.

Financial Considerations: Payment to AMEC Earth and Environmental, for the design phase will be a not to exceed amount of $600,000. Total project budget for both design and construction is $10,100,000 to be shared equally between the City and County as follows:

	City	**County**	**Total**
Design (Phase 1)	300,000	300,000	600,000
ROW (Phase 1)	250,000	250,000	500,000
Construction (Phase 1)	4,500,000	4,500,000	9,000,000
Total	**5,050 ,000**	**5,050,000**	**10,100,000**

At this time, the County has budgeted $4,000,000 of their share. Later this year the County will increase their budget to $5,050,000. At that time, staff will bring a consent item before the Council for formal approval of the full project budget. However, it is requested that the City's full commitment be approved at this time. Funding for the City portion will come from money left over from the following projects:

Project	Amount Available
Central, Maize-Tyler	$700,000
Pawnee/Washington Int.	$625,000
Central, Woodlawn-Rock	$627,000
Hydraulic, 57th-47th	$1,050,000
Oliver, Harry-Kellogg	$472,000
Pawnee, Harry-Kellogg	$850,000
21st, Oliver-Woodlawn	$650,000
Greenwich, 13th-27th	$200,000
Total	**$5,174,000**

G.O. bond financing will then be utilized. A City/County Agreement is attached that will cover the funding arrangements for this project.

Goal Impact: The information received will help in providing a safe and secure community by ensuring our community's flood control project meets Federal safety requirements for the next fifty years.

Legal Considerations: The Agreement and resolution have been approved as to legal form by the Law Department.

Recommendations/Actions: It is recommended the City Council approve the project, supplemental agreement, resolution, City/County Agreement and CIP sheet and authorize the necessary signatures.

Attachments: Supplemental Agreement, City/County Agreement, CIP sheet and Resolution.

SUPPLEMENTAL AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

AMEC EARTH & ENVIRONMENTAL, INC.

for

LEVEE S & L IMPROVEMENTS
WICHITA VALLEY CENTER FLOOD CONTROL PROJECT

THIS AGREEMENT, made this _____ day of _____, 2009, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and AMEC EARTH & ENVIRONMENTAL, INC., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

Levee P, S & L Improvements of the Wichita Valley Center Flood Control Project
(Project No. 468 84562)

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

SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for certification of the Wichita Valley Center Flood Control levee system and to perform the PROJECT tasks outlined in Exhibit "A".

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit "A").

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to the method of payment, to make such material available to the CITY.
F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.
G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit "A"; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000 subject to a deductible of $10,000. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of

Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

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

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit "A".

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

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

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

IV. <u>PAYMENT PROVISIONS</u>

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

468 84562/OCA $562,078

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

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

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

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

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

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

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

_____

Carl Brewer, Mayor

SEAL:

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary Rebenstorf, Director of Law

AMEC EARTH & ENVIRONMENTAL, INC.

_____

(Name & Title)

ATTEST:

_____

Exhibit "A"

SCOPE OF SERVICES

LEVEE 'P', LEVEE 'S' AND LEVEE 'L' IMPROVEMENTS
(Project No. 468 84562)

The ENGINEER shall provide professional services for the design for reconstruction or rehabilitation of three sections of the existing Wichita Valley Center Local Flood Control Project. Of the three sections, one is an approximately 5000 foot long segment of Levee S, one is an approximately 9000 foot long segment of Levee P (WWTP Levee), and the other an approximately 600 foot long segment of Levee L. These were identified as "worst-first" locations for levee improvements as part of the Levee Certification Project. In general, the improvements to the levee system will consist of repairs to the existing levee or complete reconstruction of a portion of the levee. The appropriate repair or reconstruction strategies employed as part of the design will be evaluated during the concept phase with regards to their ability to achieve levee certification and overall construction costs and timeliness.

Upon award of this project the ENGINEER will contact utility companies directly and attempt to determine from existing records the location of utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve the conflicts.

Plan submittal at the various submittal stages shall be in accordance with the requirements of the City of Wichita and United States Army Corps of Engineers (USACE). These agencies will require the following number and type of drawings at the various submittal stages:

Concept Plans: Three (3) half-size plan sets with construction cost estimate
Field Check Plans: Three (3) half-size plan sets with construction cost estimate
Final Plans: One (1) full-size plan set, three (3) half-size plan sets with construction cost estimate and a diskette containing .pdf and .dwg drawings of each plan sheet and a .txt file containing coordinate geometry.

The ENGINEER will prepare a storm water pollution prevention plan (SWPPP) and Notice of Intent and submit to the Kansas Department of Health and Environment and include the SWPPP and construction details in the project plans.

Associated improvements as part of this project will include the design and plan preparation of of proposed levee improvements to Levee S, P and L. Also included is construction traffic control, construction phasing requirements, incidental drainage, identification of additional right-of-way and furnishing tract map drawings and legal descriptions for such right-of-way. Details and specifications will be provided for minor street reconstructions in areas damaged by construction traffic. Areas will be determined by City or County Staff. Details and specifications will be included for minor utility relocations necessary as part of this project. Utility relocations requiring additional plan/profile sheets are not included in this scope and fee.

The ENGINEER shall furnish engineering services for the development of the project and provide project alternatives, up to two where applicable, including; the project plans, supplemental specifications, quantities of work, and estimates of the cost for the PROJECT in the format and detail required by the City of Wichita. The items requiring alternatives will be defined by project team (city and consultant) during the concept phase.
In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

Not included in this proposal are construction material testing and inspection to be provided by ENGINEER during construction. These services are required for levee certification and are

dependent upon the approved repair/reconstruction strategy. Costs associated with these services will be provided under a separate Scope of Services developed for Construction Engineering & Inspection, Construction Staking, and other Construction Phased services. This will be provided with the final engineer's estimate of construction costs.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE 1 - CONCEPT PHASE

When authorized by the CITY, proceed with concept phase services which will include evaluating levee repair/reconstruction alternatives and the preparation of concept improvement plans (30% complete) right-of-way tract maps with legal descriptions and construction cost estimates.

1. Perform Surveys. Perform design surveys of the improvement areas. These services include topographic survey of planimetric features and utilities that can be tied into the existing LIDAR data (by others). Complete boundary surveying necessary to complete 29 tract maps and RW staking for existing/new RW. The boundary survey will include all necessary research, section corner recover and location, existing property monumentation recovery, computation of existing property lines and RW, land owner contacts, legal description preparation and tract map exhibits for the said 29 parcels.
2. Agency Coordination. Meet with City staff, the Corps. of Engineers and others, to confirm the project's goals, refine the design scope, establish design criteria and confirm submittal requirements and schedules. Coordination and permitting with the Kansas Department of Transportation will be required with this project. The City will coordinate all project activities on and abutting UP right-of-way with the UP Railroad or its agents.
3. Meet with Public. As requested by City/County staff, consultant will provide up to 2 opportunities to meet with interested neighborhood residents and property owners to ascertain neighborhood concerns and assess possible traffic control problems during construction.
4. Meet with Utility Companies. Meet with utility companies, including City staff to discuss utility conflict concerns. Gather utility maps and data from each utility. Establish a project contact with each utility company and provide a project schedule noting key project milestones including proposed dates of ULCC meetings.
5. Perform Hydrologic and Hydraulic Study. A hydrologic and hydraulic study will be performed as part of the certification project. Minor adjustments will be made to the hydraulic models to help determine and reflect proposed improvements. Approximately 2 miles of stream near levee P will require new hydraulic study, which was not part of the original certification project. Hydrology will be per the existing
6. Perform Geotechnical Services. Perform a geotechnical evaluation and study of the project site that consists of subsurface exploration, laboratory testing and engineering analyses. City/county will provide clearing required for access if required for the ATV mounted drill rig. Average levee height is assumed to be less than or equal to 10 feet. Borings will extend 2 times the levee height beneath ground surface (total depth/boring ~30'). Consultant shall evaluate the results of the investigation and prepare a design memorandum that recommends a levee cross section which includes foundation treatment and a determination of levee materials. We understand that no evaluation of potential borrow sources is desired at this time. Therefore, a cost associated with this service has not been included. Upon request, this service can be added as a supplemental service to this Scope for an additional fee. City will provide access to all exploration locations.
7. Develop Alternative Concepts. Develop up to three alternative concepts for levee repair/reconstruction at the stipulated location(s) which would successfully fulfill the project requirements of construction cost and schedule and ability to achieve levee certification. Evaluate these options and recommend a lead option that satisfies the

project's goals. Present the recommended option to the City of Wichita and the USACE and obtain concurrence.

8. Prepare Concept Plans. Prepare concept level construction drawings based on the selected and approved concepts and on the recommendations of the Hydrology and Hydraulics Report and the Geotechnical Review Report. Existing property information shall be accurately represented on the drawings with right-of-way acquisition requirements designated on the plans.
9. Prepare Tract Maps. Identify right-of-way requirements for the developed concept, prepare tract maps with legal descriptions and submit to Public Works Department staff.
10. Presentation to Public Works Staff. We will prepare one presentation of our findings of the discovery phase design, including drainage study, to the appropriate Public Works Department staff members. Prepare displays, drawings and materials, necessary to adequately present the findings to staff members.
11. Make Presentation. Assist Public Works staff with a presentation of the conceptual design alternatives to City staff, City Council, and District Advisory Boards. Prepare displays, drawings and materials, to adequately present concepts to the various boards and associations. One set of displays consisting of a plan view of each site, photos of existing conditions and a display of proposed improvements will be prepared for each site.

B. PHASE II – DESIGN PHASE

When authorized by the CITY, proceed with the development of final construction plans for the PROJECT based on the preliminary design concepts approved by the City of Wichita and the Corps of Engineers.

1. ULCC. The ENGINEER shall prepare Utility Check plans and schedule with ULCC subcommittee for review as early as the beginning of the design phase. A second ULCC review should be scheduled near completion of final plans. Utility coordination procedures shall conform to Administrative Regulation 75.
2. Prepare and Submit Field Check Plans. Prepare field check construction plans based on concept plan review comments received from the City and regulatory agencies. Submit plans and construction cost estimate to the City of Wichita and the USACE.
3. Prepare Permit Applications. ENGINEER shall complete the following permit applications, including all supporting documentation, for the Levee L, P and Levee S rehabilitation projects:
    1. Kansas Department of Agriculture, Division of Water Resources Levee Modification Applications. Prepare application for signature by the City of Wichita, and provide all required plans and specifications for this application
    2. Kansas Department of Agriculture, Division of Water Resources Stream Obstruction Application. Prepare application for signature by the City of Wichita, and provide all required plans and specifications for this application
    3. USACE 404 Permit Application. Prepare application for signature by the City of Wichita, along with all required supporting documentation. It is anticipated that these projects will be covered under nationwide permit. As such, it is assumed that the 401 water quality certification will have already been issued under the nationwide permit. If the COE determines that one or both of these projects are not covered under nationwide permit, additional services for obtaining an individual 404 permit and a 401 water quality certification shall be considered as supplemental services for an additional fee and adjust schedule accordingly.
    4. KDHE Notice of Intent. Prepare Notice of Intent to KDHE for signature by the City of Wichita. A Storm Water Pollution Prevention Plan (SWPPP) and Sediment and Erosion Control Plans will be prepared as part of this package. As part of this application, AMEC will notify the Kansas Department of Wildlife and Parks and the State of Kansas Historical Society of the project. If it is determined that threatened and endangered species permits are required, or if

potential archeological sites are determined, any additional services to address these issues shall be considered supplemental services for an additional fee.

All permit fees above an accumulative amount of $2000 will be the responsibility of the City of Wichita and are specifically excluded from the Scope of Services. No other permits other than those discussed in the Scope of Services are anticipated at this time. In the event that it is determined that additional permits are required, or additional investigations or analysis are required as a result of additional permit requirements, these services shall be considered as supplemental services which could be performed for an additional fee.

4. Final Plans. Prepare final plans and supplemental specifications for the project based on initial concepts and incorporating City and agency review comments. Major items of work included in development of final plans are:
   (a) Prepare final construction drawings. Prepare final engineering plans for the levee repair and/or reconstruction which shall include details for toe drain systems, revetment, localized storm drainage, construction sequencing, traffic control, wildlife and vegetation mitigation, structural details including structures through the levee, public utility relocations, street repair/reconstruction, and site restoration.
   (b) Technical construction specifications shall follow the City of Wichita's Standard Specifications supplemented as necessary to suit the project requirements.
   (c) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by the USACE. Pay items of work shall conform to CITY standards as applicable.
   (d) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.
   (e) Coordinate control points and related project staking information shall be furnished on the plans, as well as on a CD-ROM in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

5. Post Letting.
   (a) Shop drawings. Shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT. ENGINEER shall not review nor be responsible for any aspect of a shop drawing that affects or is affected by the means, methods, techniques, sequences, or operations of construction, or safety precautions and programs incidental thereto, all of which the contractor shall be required to review and approve. CITY shall make the contractor aware of contractor's responsibility to: review and approve shop drawings before submitting them to ENGINEER; call any design intent changes to ENGINEER'S attention.
   (b) Public information meeting. Along with City staff, the ENGINEER shall attend a preconstruction Public Information Meeting, as arranged by the City and the CONTRACTOR, to explain project design, including such issues as construction phasing and traffic control.
   (c) Right-of-way monumentation. The ENGINEER shall complete permanent monumentation of new Right-of-way and submit all necessary legal documentation for same.
6. Project Milestone. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including mylars), specifications and estimates to the CITY within the time allotted for the PROJECT as stipulated below and generally in accordance with the project bar chart EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.
   (a) Notice to Proceed given by February 2, 2009
   (b) Concepts Plans of the PROJECT are due March 4, 2009.
   (c) Field Check Review Plans of the PROJECT are due March 18, 2009
   (d) Completion of work required by this agreement with exception of the post-letting items described above (including submittal of final approved plan tracings, field notes, and related PROJECT documents) by May 6, 2009.

AGREEMENT
WICHITA-VALLEY CENTER FLOOD CONTROL PROJECT
IMPROVEMENTS

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between Sedgwick County, Kansas, hereinafter referred to as "County" and the City of Wichita, Kansas, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, County and City are authorized to enter into an agreement pursuant to K.S.A. 12-2908, as amended; and

WHEREAS, County and City desire to complete a Levee Certification for the Wichita-Valley Center Flood Control Project, hereinafter referred to as "Project"; and

WHEREAS, in order to achieve project certification, certain improvements are required to levees P, L, S and other project levees, the cost of which is estimated to be $10,100,000; and,

WHEREAS, the City and County mutually desire to construct these improvements and the County desires that City to be the lead agency for the Project;

NOW, THEREFORE, for and in consideration of the parties' mutual promises and covenants, it is agreed as follows:

1. City will manage the project.

2. City will enter into a contract with an engineering consultant to complete the design portion of the project for an amount not to exceed $600,000.00.

3. The City will purchase the necessary right of way to construct the levee improvements for an amount not to exceed $500,000.00.

4. City will enter into contracts to construct the improvements.

5. City and County will split the cost of the project equally after any contributions made to the project by other communities are deducted from the total project cost. County's share of the total project cost will not exceed $4,000,000.00 (including design and right of way costs) unless this agreement is amended by city and county based on final design estimates provided by the engineering consultant.

6. County will make payments to the City based upon the actual amounts billed by the City. Payments will be made within 30 days of receipt of an invoice from City.

7. City shall have final authority in regard to the bidding, contract administration and matters concerning the Project.

8. The duration of this Agreement is until the completion the Project.
9. The engineering consultant's proposed agreement including the project scope of services and the detailed cost estimate for the design portion is included in this agreement as Exhibit A.

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

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

_____

KELLY PARKS,
Chairman, Fourth District

ATTEST:

_____

KELLY B. ARNOLD,
County Clerk

APPROVED AS TO FORM:

_____

ROBERT W. PARNACOTT,
Assistant County Counselor

THE CITY OF WICHITA, KANSAS

_____

CARL BREWER
Mayor

ATTEST:

_____

KAREN SUBLETT
City Clerk

APPROVED AS TO FORM:

_____

GARY REBENSTORF
City Attorney

133116

First Published in the Wichita Eagle on March 13, 2009

RESOLUTION NO. 09-069

A RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE FOR LEVEE IMPROVEMENTS FOR THE WICHITA VALLEY CENTER FLOOD CONTROL PROJECT (468 84562)

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1. That the City of Wichita and Sedgwick County desires to evaluate, design and construct improvements to the Wichita Valley Center Flood Control Levee project protecting the Sedgwick County and certifying they meet FEMA's and the United States Corp of Engineers technical requirements for levee design, maintenance and operation. This project will design and construct improvements necessary to satisfy Federal requirements.

SECTION 2. That the cost of said levee study for the above-described improvements is estimated to be $10,100,000 exclusive of the cost of interest on borrowed money. Said cost, when ascertained, shall be borne by the City of Wichita at large by the issuance of general obligation bonds. Sedgwick County will reimburse the City of Wichita for 50% of the cost.

SECTION 3. That the advisability of said improvements is established as authorized by K.S.A. 13-1024c and the City of Wichita Charter Ordinance No. 156.

SECTION 4. That this Resolution shall take effect and be in force from and after its passage and shall be published in the official City paper.

ADOPTED at Wichita, Kansas, March 10, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED:

_____
GARY REBENSTORF, DIRECTOR OF LAW

Agenda Item No. III-5.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Public Hearing on Proposed Assessments for **Twenty-three (23)** Paving Projects in August 2009 Bond Sale Series 798 (Districts I, II, III, IV, V, VI)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the proposed assessments and ordinances.

Background: The Council was notified on *February 3, 2009* that the proposed assessment rolls were on file for public inspection in the Department of Finance.

Analysis: Notice of hearing letters were published *February 6, 2009,* in the Wichita Eagle being not less than ten days prior to the date of hearing. All affected property owners have been notified in writing. Department of Finance and Public Works staff held an informal hearing *February 23, 2009 at 11:00 a.m.* for the paving projects.

Financial Considerations: Statements of Special Assessment will be mailed to the property owners on *April 10, 2009*. The property owners have 30 days from date of statement to pay their assessment and avoid paying interest. The assessments not paid during this period will be in the July 2009 bond sale. The interest added to the principal amount will be determined by the rate at which the bonds sell. The principal and interest will then be spread and placed on the *2009* tax roll.

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

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

Paving Projects:

472-84300	55.8% Petition	Improving Zelta Drive, from Kellogg Drive to Waterman Street

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

Attachments: Special assessments projects list.

HEARING ON PROPOSED ASSESSMENTS FOR IMPROVING PAVING PROJECTS

On February 3, 2009, the Council was notified that the proposed assessment rolls for improving of paving projects had been prepared and were on file in the office of Debt Management in the Finance Department for public inspection:

PAVING PROJECTS:

a. (490-144/472-83868) IMPROVING VICTORIA CT., PATTIE, MAYWOOD, VICTORIA, MAYWOOD CT., INCLUDING THE CUL-DE-SAC & SIDEWALK (North of 55th St. South, West of Hydrualic), as authorized by Resolution No. 04-392, rescinded by 06-599,recinded by 07-039, adopted August 3, 2004, November 14, 2006, February 6,2007, and published August 6, 2004, November 17, 2006, February 8, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $654,000.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictIII)

b. (490-185/472-84052) IMPROVING SHADE CT., NORTH LINE OF SHADE LN. TO & INCLUDING THE CUL-DE-SAC (South of Central, East of Ridge), as authorized by Resolution No. 04-313, adopted June 8, 2004, and published June 11, 2004. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $126,500.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictV)

c. (490-203/472-84231) CONSTRUCTING A DECEL LANE ON 21ST. STREET (South of 21st. St., East of Greenwich), as authorized by Resolution No. 05-343 rescinded by 07-715, adopted June 28, 2005, December 11, 2007, and published July 1, 2005, December 14, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $43,800.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictII)

d. (490-204/472-84234) CONSTRUCTING A LEFT TURN LANE ON 21ST. STREET NORTH (South of 21st. St., East of Greenwich), as authorized by Resolution No. 05-346 rescinded by 07-717, adopted June 28, 2005, December 11, 2007, and published July 1, 2005, December 14, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $22,300.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictII)

e. (490-141/472-84286) IMPROVING MAIZE COURT FROM THE WEST LINE OF MAIZE ROAD, WEST TO & INCLUDING THE CUL-DE-SAC (South of Maple, West of Maize), as authorized by Resolution No. 05-534 recinded by 06-401, recinded by 07-370, adopted October 18, 2005, July 25, 2006, June 26, 2007, and published October 21, 2005, July 28, 2006, June 29, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $156,400.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictV)

f. (490-087/472-84300) IMPROVING ZELTA DRIVE FROM THE NORTH LINE OF KELLOGG DR. TO THE SOUTH LINE OF WATERMAN ST. (North of Kellogg, East of Greenwich), as authorized by Resolution No. 05-538, rescinded by 08-294, adopted November 1, 2005 & June 3, 2008, and published November 4, 2005 & June 6, 2008. Petition for this improvement was signed by owners representing 55.8% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $322,400.00 is to be apportioned $169,500 payable by the improvement district $15,500 payable by General Obligation Bond & $135,000 payable by the Local Sales Tax to the improvement district. The cost has been assessed on a square foot basis. (DistrictII)

g. (490-111/472-84406) IMPROVING BRACKEN/TROON/WOODRIDGE, BRACKEN CT., TROON CT., WHITE TAIL, CRESTLAKE & INCLUDING THE CUL-DE-SAC (North of Central, West of 127th St. East), as authorized by Resolution No. 06-186, adopted April 18, 2006, and published April 20, 2006. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $479,800.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictIII)

h. (490-126/472-84438) CONSTRUCTING ASPHALT PAVEMENT ON GROVE STREET (From 63rd St. S. to 1,350' S. of 63rd St. S.), as authorized by Resolution No. 06-453, adopted August 22, 2006, and published August 25, 2006. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $251,400.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a square foot basis. (DistrictIII)

i. (490-198/472-84447) IMPROVING MONUMENT, COWBOY, RED ROCK, CANYON (South of Pawnee, West of 119th St. West), as authorized by Resolution No. 07-023, adopted January 9, 2007, and published January 12, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $384,300.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictIV)

j. (490-143/472-84465) IMPROVING 58TH STREET NORTH, EDWARDS, 58TH CT. NORTH, INCLUDING THE CUL-DE-SAC AND SIDEWALK (North of 53rd St. North, West of Meridian), as authorized by Resolution No. 06-570, adopted October 24, 2006, and published October 26, 2006. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $559,000.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictVI)

k. (490-186/472-84496) IMPROVING HIGH PT., CONREY, HIGH CT., INCLUDING THE CUL-DE-SAC & SIDEWALK (South of 37th St. North, East of Tyler), as authorized by Resolution No. 07-006, adopted January 9, 2007, and published January 12, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $256,200.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictV)

l. (490-153/472-84502) IMPROVING GRAND MERE CT. (North of Kellogg, West of 159th St. East), as authorized by Resolution No. 07-058, adopted February 6, 2007, and published Februrary 13, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $49,800.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a square foot basis. (DistrictII)

m. (490-154/472-84527) IMPROVING 44TH STREET SOUTH, ST. PAUL, ST. PAUL CT., & CHASE, INCLUDING CUL-DE-SAC (North of 47th St. South, West of Meridian), as authorized by Resolution No. 07-196 rescinded by 07-494, adopted March 13, 2007 & September 11, 2007, and published March 16, 2007 & September 14, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $539,500.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictIV)

n. (490-156/472-84535) IMPROVING HERRINGTON, SALLY, FUNSTON, & LYNNRAE (East Greenwich, South of Harry), as authorized by Resolution No. 07-198, adopted March 13, 2007, and published March 16, 2007, Corrected and republished January 17, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $316,500.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictII)

o. (491-023/472-84563) IMPROVING THE FACADE AT HARRY & BROADWAY (North of Harry, East of Broadway), as authorized by Resolution No. 07-349, adopted June 12, 2007, and published June 15, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $82,200.00 is to be apportioned 75% payable by the improvement district; 25% payable by the City at Large to the improvement district. The cost has been assessed on a square foot basis. (DistrictIII)

p. (490-179/472-84576) IMPROVING FAWN GROVE/ MORRIS, FAWN GROVE CT., & INCLUDING CUL-DE-SAC (South of Kellogg, West of Greenwich), as authorized by Resolution No. 07-439, adopted August 7, 2007, and published August 10, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $225,500.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictII)

q. (490-192/472-84603) IMPROVING LORRAINE (North of 26th St. North, West of Hillside), as authorized by Resolution No. 07-545, adopted October 2, 2007, and published October 5, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $94,400.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a square foot basis. (DistrictII)

r. (490-209/472-84627) CONSTRUCTING A LEFT TURN LANE & RIGHT TURN LANE ON 13TH ST. AT LINDBERG (North of 13th, West of Greenwich), as authorized by Resolution No. 07-651, adopted November 6, 2007, and published November 10, 2007, Corrected and republished January 16, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $133,700.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictII)

s. (490-200/472-84630) IMPROVING NORTH IRON WOOD CIRCLE INCLUDING CUL-DE-SAC (East of Rock, North of 45th St. North), as authorized by Resolution No. 07-683 recinded by 08-126, adopted December 7, 2007, March 4, 2008, and published December 4, 2007, March 7,2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $155,200.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictII)

t. (490-202/472-84640) IMPROVING CROSSMARK PLACE FORM 21ST ST NORTH TO AND INCLUDING THE CUL-DE-SAC(APPROX. 700 FT) (South of 21st, East of Greenwich), as authorized by Resolution No. 07-718, adopted December 11, 2007, and published December 14,2007, corrected and republished January 23, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $266,300.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictII)

u. (490-208/472-84645) CONSTRUCTING A LEFT TURN LANE ON 13TH STREET FOR EASTBOUND TRAFFIC INTO VERANDA (North of 13th, East of Webb), as authorized by Resolution No. 08-004 rescinded by 08-310, adopted Jaunary 8, 2008 & June 17, 2008, and published January 11, 2008 & June 20, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $142,300.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictII)

v. (491-029/472-84724) IMPROVING AREA WALLS ON PUBLIC WAYS OR LAND ABUTTING PUBLIC WAYS CONSISTING OF FAÇADE IMPROVEMENTS TO THE PORTION OF 1716 E. DOUGLAS (North of Douglas, East of Hydraulic), as authorized by Resolution No. 08-292, adopted June 3, 2008, and published June 6, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $31,800.00 is to be apportioned 75% payable by the improvement district; 25% payable by the City at Large to the improvement district. The cost has been assessed on a square foot basis. (DistrictI)

w. (490-170/472-84459) IMPROVING JAMESBURG, NICKELTON, RIDGEPOINT, NICKELTON CIR., NICKELTON CT. (North of 13th St. North, West of 135th St. West), as authorized by Resolution No. 06-551, adopted October 17, 2006, and published October 20, 2006. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved December 9, 2008 in the amount of $558,900.00 is to be apportioned 100% payable by the improvement district to the improvement district. The cost has been assessed on a fractional basis. (DistrictV)

Agenda Item No. III-6.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Public Hearing on Proposed Assessments for Thirty Three (33) Water Projects, Twenty Six (26) Sewer Projects, and Twelve (12) Storm Sewer Projects in July 2009 Bond Sale Series 798 (All Districts)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the proposed assessments and ordinances.

Background: The City Council was notified on February 10, 2009 that the proposed assessment rolls were on file for public inspection in the Department of Finance.

Analysis: Notice of hearing letters were published February 13, 2009 in the Wichita Eagle being not less than ten days prior to the date of hearing. All affected property owners have been notified in writing. Department of Finance and Public Works staff held an informal hearing March 2, 2009 at 11:00 a.m. for the water and sewer projects.

Financial Considerations: Statements of Special Assessment will be mailed to the property owners on April 10, 2009. The property owners have 30 days from date of statement to pay their assessment and avoid paying interest. The assessments not paid during this period will be in the July 2009 Bond Sale. The interest added to the principal amount will be determined by the rate at which the bonds sell. The principal and interest will then be spread and placed on the 2009 tax roll.

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

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

470-737	**448- 89674**	**Water Distribution System (73.64% Petition)**
470-960	**448-90126**	**Water Distribution System (56% Petition)**
470-050	**448-90309**	**Water Distribution System (80%)**
480-337	**468-84451**	**Lateral 151, Main 4, Sanitary Sewer 23 (83%)**

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

Attachment: Special Assessments projects list.

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

On February 10, 2009 the Council was notified that the Proposed Assessment Rolls for construction of the following water, sewer and storm sewer projects has been prepared and was on file in the office of Debt Management in the Finance Department for public inspection:

WATER PROJECTS:

a. (470-737/448-89674) Construction of Water Distribution System No. 448-89674 TO SERVE UNCAPHER, BURLESON, ZOO BUSINESS PARK & U-NEEDA SELF STORAGE ADDITIONS, & UNPLATTED TRACTS, Along Hoover Road, North of Zoo Boulevard, as authorized by Resolution No. 02-239 rescinded by 06-212, adopted May 21, 2002 & May 9, 2006, and published May 25, 2002 & May 11, 2006 corrected & republished May 23, 2006. Petition for this improvement was signed by owners representing 73.64% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $1,045,800.00 is to be apportioned $160,535.00 payable by the improvement district & 885,265.00 payable by the Water Utility Fund. The cost has been assessed on a fractional basis. (District V)

b. (470-060/448-89823) Construction of Water Distribution System No. 448-89823 TO SERVE POWER CDC 3RD ADDITION, North of 26th Street North, West of Grove, as authorized by Resolution No. 03-278, adopted June 3, 2003, and published June 6, 2003. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $44,900.00 is to be apportioned 100%. The cost has been assessed on a fractional basis. (District I)

c. (470-950/448-90066) Construction of Water Distribution System No. 448-90066 TO SERVE OAK CREEK, OAK CREEK 2ND, CROSS POINTE & EASTSIDE COMMUNITY CHURCH ADDITIONS, TRACTS "A", "B" & "C", South of 21st, West of Greenwich, as authorized by Resolution No. 05-235 rescinded by 06-503, adopted May 3, 2005 & September 26, 2006, and published May 6, 2005 & September 29, 2006. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $316,400.00 is to be apportioned 18% payable by the improvement district & 82% payable by the Wichita Water Department Utility Fund. The cost has been assessed on a fractional basis. (District II)

d. (470-059/448-90123) Construction of Water Distribution System No. 448-90123 TO SERVE AUBURN HILLS 16TH ADDITION, South of Maple, East of 151st Street West, as authorized by Resolution No. 05-553 rescinded by 06-133, adopted November 1, 2005 & March 21, 2006, and published November 5, 2005 & March 23, 2006. Petition

for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $145,300.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District V)

e. (470-960/448-90126) Construction of Water Distribution System No. 448-90126 TO SERVE UNPLATTED TRACTS, South of 55th St. South, West of Broadway, as authorized by Resolution No. 05-545, adopted November 1, 2005, and published November 4, 2005 corrected & republished November 21, 2005. Petition for this improvement was signed by owners representing 56% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $15,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a square foot basis. (District IV)

f. (470-074/448-90147) Construction of Water Distribution System No. 448-90147 TO SERVE SOUTHERN RIDGE 4TH ADDTION, South of Pawnee, West of Maize, as authorized by Resolution No. 05-157, 05-645, 07-289, adopted March 22, 2005, December 13, 2005, May 8, 2007, and published March 28, 2005, December 15, 2005, May 17, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $39,100.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District IV)

g. (470-075/448-90148) Construction of Water Distribution System No. 448-90148 TO SERVE SOUTHERN RIDGE 3RD & 4TH ADDITIONS, South of Pawnee, West of Maize, as authorized by Resolution No. 05-158, 05-646, 07-290, adopted March 22, 2005, December 13, 2005, May 8, 2007, and published March 28, 2005, December 15, 2005, May 16, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $46,000.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District IV)

h. (470-072/448-90157) Construction of Water Distribution System No. 448-90157 TO SERVE COUNTRY HOLLOW ADDITION, South of Kellogg, East of 127th Street East, as authorized by Resolution No. 06-187 rescinded by 08-295, adopted April 25, 2006, June 3, 2008, and published April 27, 2006, June 6, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $87,700.00 is to be apportioned 98% payable by the improvement district; 2% payable by the City at Large.The cost has been assessed on a fractional basis. (District II)

i. (470-073/448-90163) Construction of Water Distribution System No. 448-90163 TO SERVE THE WOODS ADDITION, East of 151st Street West, North of Maple, as authorized by Resolution No. 06-073, adopted February 14, 2006, and published February 17, 2006. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $108,600.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District V)

j. (470-038/448-90185) Construction of Water Distribution System No. 448-90185 TO SERVE BLACKSTONE ADDITION, East of 151st Street West, North of 13th, as authorized by Resolution No. 06-375, adopted June 27, 2006, and published June 30, 2006. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $89,400.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District V)

k. (470-063/448-90260) Construction of Water Distribution System No. 448-90260 TO SERVE MESA VERDE ADDITION, South of 37th St. North, East of Meridian, as authorized by Resolution No. 07-024, adopted January 9, 2007, and published January 12, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $44,800.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District VI)

l. (470-092/448-90261) Construction of Water Distribution System No. 448-90261 TO SERVE MESA VERDE ADDITION, South of 37th St. North, East of Meridian, as authorized by Resolution No. 07-025, adopted January 9, 2007, and published January 12, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $24,900.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District VI)

m. (470-052/448-90262) Construction of Water Distribution System No. 448-90262 TO SERVE TURKEY CREEK 3RD ADDITION, North of Pawnee, East of 135th Street West, as authorized by Resolution No. 07-062, adopted February 6, 2007, and published February 8, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $94,200.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District IV)

n. (470-029/448-90274) Construction of Water Distribution System No. 448-90274 TO SERVE BELLE TERRE SOUTH 2ND ADDITION, North of Kellogg, West of 159th St. East, as authorized by Resolution No. 07-057, adopted February 6, 2007, and published February 13, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $9,400.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a square foot basis. (District II)

o. (470-027/448-90277) Construction of Water Distribution System No. 448-90277 TO SERVE KRUG SOUTH & KRUG SOUTH SECOND ADDITIONS, South of 21st, West of 143rd Street East, as authorized by Resolution No. 07-116 rescinded by 08-045, adopted February 13, 2007, February 5, 2008, and published February 15, 2007, February 8, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $197,800.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District II)

p. (470-090/448-90281) Construction of Water Distribution System No. 448-90281 TO SERVE NORTHGATE COMMERCIAL PARK 1ST ADD. & JOHNSON COMMERCIAL CENTRE, Along 53rd St. North, West of Meridian, as authorized by Resolution No. 07-148 rescinded by 08-092, adopted February 27, 2007, February 26, 2008, and published March 1, 2007, February 29, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $100,000.00 is to be apportioned 70.69% payable by the improvement district; 29.31% payable by the Water Utility Funds. The cost has been assessed on a fractional basis. (District VI)

q. (470-041/448-90285) Construction of Water Distribution System No. 448-90285 TO SERVE MEADOWLAKE BEACH ADDITION, North of 55th Street South, West of Clifton, as authorized by Resolution No. 07-179, adopted March 13, 2007, and published March 16, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $100,500.00 is to be apportioned 68.92% payable by the improvement district; 31.08% payable by the Water Utility Fund. The cost has been assessed on a fractional basis. (District III)

r. (470-042/448-90286) Construction of Water Distribution System No. 448-90286 TO SERVE MEADOW LAKE BEACH ADDITION, North of 55th Street South, West of Clifton, as authorized by Resolution No. 07-180, adopted March 13, 2007, published March 16, 2007, corrected & republished April 9, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $106,300.00 is to be apportioned 100%

payable by the improvement district. The cost has been assessed on a fractional basis. (District III)

s. (470-035/448-90290) Construction of Water Distribution System No. 448-90290 TO SERVE CHERYL'S HOLLOW 2ND ADDITION, North of 13th, West of 135th Street West, as authorized by Resolution No. 07-220, adopted April 3, 2007, and published April 5, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $87,500.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District V)

t. (470-076/448-90291) Construction of Water Distribution System No. 448-90291 TO SERVE HUNTER HEALTH CLINIC 2ND ADDITION, North of Central, East of Hydraulic, as authorized by Resolution No. 07-250, adopted April 17, 2007, and published April 19, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $22,500.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District I)

u. (470-049/448-90297) Construction of Water Distribution System No. 448-90297 TO SERVE TARA CREEK ADDITION, North of Pawnee, West of 127th Street East, as authorized by Resolution No. 07-359, adopted June 19, 2007, and published June 25, 2007 corrected & republished July 12, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $42,300.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District II)

v. (470-053/448-90303) Construction of Water Distribution System No. 448-90303 TO SERVE COLLEGE HILL & ROEMBACK'S ADDITIONS, North of Douglas, East of Hillside, as authorized by Resolution No. 07-407 rescinded by 07-589, rescinded by 08-164, adopted July 17, 2007, October 23, 2007, March 25, 2008, and published July 20, 2007 corrected & republished August 1, 2007, October 26, 2007, March 28, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $183,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District II)

w. (470-050/448-90309) Construction of Water Distribution System No. 448-90309 TO SERVE LOVEALL ADDITION & UNPLATTED TRACTS, South of 47th Street South, along West Street, as authorized by Resolution No. 07-442, adopted August 7, 2007, and published August 10, 2007. Petition for this improvement was signed by owners

representing 80% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $55,400.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a square foot basis. (District IV)

x. (470-048/448-90318) Construction of Water Distribution System No. 448-90318 TO SERVE MAPLE SHADE ADDITION, East of Webb, North of Pawnee, as authorized by Resolution No. 07-475, adopted August 14, 2007, and published August 17, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $33,000.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District II)

y. (470-061/448-90328) Construction of Water Distribution System No. 448-90328 TO SERVE AGEE-HUNTER & BRUCE JONES ADDITIONS, North of 26th St. North, West of Hillside, as authorized by Resolution No. 07-544, rescinded by 08-209, adopted October 2, 2007; April 15, 2008, and published October 5, 2007, April 18, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $14,800.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District I)

z. (470-067/448-90329) Construction of Water Distribution System No. 448-90329 TO SERVE WATERFRONT RESIDENTIAL ADDITION, North of 13th, West of Greenwich, as authorized by Resolution No. 07-637 rescinded by 08-286, adopted November 6, 2007, June 3, 2008, and published November 10, 2007, June 6, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $172,100.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (DistrictII)

aa. (470-071/448-90334) Construction of Water Distribution System No. 448-90334 TO SERVE MONARCH LANDING 2ND ADDITION, North of 21st, West of 159th Street East, as authorized by Resolution No. 07-568, adopted October 16, 2007, and published October 19, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $114,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District II)

bb. (470-056/448-90342) Construction of Water Distribution System No. 448-90342 TO SERVE WATERFRONT RESIDENTIAL, WATERFRONT 6TH & GREENWICH OFFICE PARK ADDITION, North of 13th, West of Greenwich, as authorized by Resolution No. 07-560 rescinded by 07-640, rescinded by 08-002, rescinded by 08-287, adopted October 16, 2007 & November 6, 2007, January 8, 2008, June 3, 2008, and published October 19, 2007 & November 10, 2007, January 11, 2008, corrected & republished February 25, 2008, corrected & republished August 5, 2008, June 6, 2008, corrected & republished January 23, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $234,700.00 is to be apportioned 63% payable by the improvement district, 37% payable by the Water Utility Fund; Utility Relocation to be 100% paid for by the improvement district. The cost has been assessed on a fractional basis. (District II)

cc. (470-069/448-90347) Construction of Water Distribution System No. 448-90347 TO SERVE THE PINES AT SAWMILL CREEK, East of Rock, North of 45th St. North, as authorized by Resolution No. 07-681, adopted December 4, 2007, and published December 7, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $26,500.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District II)

dd. (470-070/448-90352) Construction of Water Distribution System No. 448-90352 TO SERVE CROSS POINTE 2ND ADDITION, South of 21st, East of Greenwich, as authorized by Resolution No. 07-709, adopted December 11, 2007, and published December 14, 2007, corrected & republished July 21, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $31,200.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District II)

ee. (470-093/448-90359) Construction of Water Distribution System No. 448-90359 TO SERVE WOODLAND NORTH ADDITION, East of Hood, South of 29th St. North, as authorized by Resolution No. 08-050, adopted February 5, 2008, and published February 9, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $24,800.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District IV)

ff. (470-079/448-90367) Construction of Water Distribution System No. 448-90367 TO SERVE WHEATRIDGE ADDITION, North of Kellogg, West of 119th St. West, as authorized by Resolution No. 08-033, adopted February 5, 2008, and published February 8, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $67,100.00 is to be apportioned 74.51% payable by the improvement district, 25.49% payable by the Water Utility Fund. The cost has been assessed on a square foot basis.(District V)

gg. (470-094/448-90391) Construction of Water Distribution System No. 448-90391 TO SERVE FOLIAGE FOURTH ADDITION, North of 13th, West of Webb, as authorized by Resolution No. 08-272, adopted June 3, 2008, and published June 6, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $30,800.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. (District II)

SEWER PROJECTS:

hh.(480-828/468-83861) Construction of MAIN 22, SOUTHWEST INTERCEPTOR SEWER, West of West Street, North of MacArthur, as authorized by Resolution No. 04-475, rescinded by 06-429, rescinded by 06-525, rescinded by 07-585, adopted September 14, 2004, August 15, 2006, October 17, 2006 & October 16, 2007, and published September 17, 2004, August 18, 2006 corrected & republished September 6, 2006, October 20, 2006, & October 19, 2007 corrected & republished November 8, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $2,045,600.00 is to be apportioned $165,000.00 payable by the improvement district & $1,880,600.00 payable by the City of Wichita Sanitary Sewer Utility. The cost has been assessed on a fractional basis. District IV

ii. (480-958/468-83967) Construction of LATERAL 47, COWSKIN INTERCEPTOR SEWER, South of Pawnee, West of Maize, as authorized by Resolution No. 05-154, adopted March 22, 2005, and published March 28, 2005. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $274,600.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

jj. (480-938/468-84091) Construction of LATERAL 51, COWSKIN INTERCEPTOR SEWER, South of Maple, East of 151st Street West, as authorized by Resolution No. 05-556 rescinded by 06-135, adopted November 1, 2005 & March 21, 2006, and published November 5, 2005 & March 23, 2006. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $231,000.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

kk. (480-956/468-84103) Construction of LATERAL 387, FOUR MILE CREEK SEWER, South of Kellogg, East of 127th Street East, as authorized by Resolution No. 06-011 rescinded by 08-296, adopted January 10, 2006, June 3, 2008, and published January 13, 2006, June 6, 2008. corrected & republished February 4, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $139,100.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

ll. (480-957/468-84129) Construction of LATERAL 56, COWSKIN INTERCEPTOR SEWERL, East of 151st Street West, North of Maple, as authorized by Resolution No. 06-077, 06-076, rescinded by 07-674, rescinded by 08-211, adopted February 14, 2006, December 4, 2007, April 15, 2008, and published February 17, 2006, corrected & republished March 14, 2008, December 7, 2007, April 18, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The

Statement of Cost approved 12/16/2008 in the amount of $461,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

mm.(480-934/468-84287) Construction of LATERAL 4, MAIN 6, COWSKIN INTERCEPTOR SEWER, North of Pawnee, East of 135th Street West, as authorized by Resolution No. 07-071, adopted February 6, 2007, and published February 8, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $312,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

nn. (480-910/468-84311) Construction of LATERAL 403, FOUR MILE CREEK SEWER, North of Kellogg, West of 159th St. East, as authorized by Resolution No. 07-056. rescinded by 08-554, adopted February 6, 2007, December 16, 2008, and published February 13, 2007, corrected & republished March 8, 2007, December 19, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $22,400.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a square foot basis.

oo. (480-906/468-84321) Construction of LATERAL 7, MAIN 14, FOUR MILE CREEK SEWER, East of West Street, North of MacArthur, as authorized by Resolution No. 07-118 rescinded by 07-724, rescinded by 08-046, adopted February 13, 2007, December 18, 2007, February 5, 2008, and published February 15, 2007, corrected & republished February 25, 2008, December 21, 2007, February 8, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $952,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

pp. (480-959/468-84350) Construction of LATERAL 18, DISTRICT D, SANITARY SEWER # 12, North of Central, East of Hydraulic, as authorized by Resolution No. 07-251, adopted April 17, 2007, and published April 19, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $61,400.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

qq. (480-933/468-84357) Construction of LATERAL 4, MAIN 18, FOUR MILE CREEK SEWER, North of Pawnee, West of 127th Street East, as authorized by Resolution No. 07-361, adopted June 19, 2007, and published June 25, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $83,500.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

rr. (480-935/468-84376) Construction of RELOCATION OF PART OF DICTRICT B, SANITARY SEWER NO. 12, North of Douglas, East of Hillside, as authorized by Resolution No. 07-408 rescinded by , 07-590, 08-165, 08-367, adopted July 17, 2007, October 23, 2007 & March 25, 2008, July 15, 2008, and published July 20, 2007, corrected August 1, 2007, & October 26, 2007, March 28, 2008, August 6, 2008, corrected & republished August 12, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $339,500.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

ss. (480-932/468-84391) Construction of LATERAL 407, FOUR MILE CREEK SEWER, East of Webb, North of Pawnee, as authorized by Resolution No. 07-476, adopted August 14, 2007, and published August 17, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $40,500.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

tt. (480-952/468-84405) Construction of LATERAL 170, SANITARY SEWER, East of Sheridan, South of May, as authorized by Resolution No. 07-519, adopted September 18, 2007, and published September 21, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $43,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a square foot basis.

uu. (480-939/468-84408) Construction of LATERAL 53, MAIN 24, WAR INDUSTRIES SEWER, North of 13th, West of Greenwich, as authorized by Resolution No. 07-561, adopted October 16, 2007, and published October 16, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $62,900.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

vv. (480-926/468-84340) Construction of LATERAL 2, MAIN 3, BOEING SANITARY SEWER, North of 55th Street South, West of Clifton, as authorized by Resolution No. 07-184, adopted March 13, 2007, and published March 16, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $252,300.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

ww.(480-940/468-84422) Construction of LATERAL 54, MAIN 24, WAR INDUSTRIES SEWER, North of 13th, West of Greenwich, as authorized by Resolution No. 07-563 rescinded 08-289, adopted October 16, 2007, June 3, 2008, and published October 19,

2007, June 6, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $333,300.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

xx. (480-942/468-84427) Construction of LATERAL 55, MAIN 24, WAR INDUSTRIES SEWER, North of 13th, West of Greenwich, as authorized by Resolution No. 07-564 rescinded by 07-648, adopted October 16, 2007 & November 6, 2007, and published October 19, 2007 & November 10, 2007 corrected & republished November 23, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $50,600.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

yy. (480-943/468-84428) Construction of LATERAL 56, MAIN 24, WAR INDUSTRIES SEWER, North of 13th, West of Greenwich, as authorized by Resolution No. 07-565 rescinded by 07-649, adopted October 16, 2007 & November 6, 2007, and published October 19, 2007 & November 10, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $42,600.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

zz. (480-964/468-84430) Construction of LATERAL 123, SANITARY SEWER NO. 23, North of 37th Street North, West of Webb, as authorized by Resolution No. 07-580, adopted October 16, 2007, and published October 19, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $194,900.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a square foot basis.

aaa. (480-945/468-84432) Construction of LATERAL 1, MAIN 24, FOUR MILE CREEK SEWER, North of 21st, West of 159th Street East, as authorized by Resolution No. 07-570, adopted October 16, 2007, and published October 19, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $143,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

bbb. (480-955/468-84451) Construction of LATERAL 151, MAIN 4, SANITARY SEWER 23, South of 32nd St. North, West of Arkansas, as authorized by Resolution No. 07-694, adopted December 4, 2007, and published December 7, 2007. Petition for this improvement was signed by owners representing 83% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $51,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a square foot basis.

ccc. (480-953/468-84456) Construction of LATERAL 4, MAIN 11, SANITARY SEWER #23, East of Rock, North of 45th St. North, as authorized by Resolution No. 07-682, adopted December 4, 2007, and published December 7, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $70,800.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

ddd. (480-971/468-84479) Construction of LATERAL 152, MAIN 4, SANITARY SEWER 23, East of Hood, South of 29th St. North, as authorized by Resolution No. 08-051, adopted February 5, 2008, and published February 9, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $18,500.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

eee. (480-961/468-84491) Construction of LATERAL 43, MAIN 1, COWSKIN INTERCEPTOR SEWER, North of Kellogg, West of 119th Street West, as authorized by Resolution No. 08-034, adopted February 5, 2008, and published February 8, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $43,900.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a square foot basis.

fff. (480-973/468-84509) Construction of LATERAL 11, MAIN 26, WAR INDUSTRIES SEWER, North of 21st, West of Greenwich, as authorized by Resolution No. 08-240, adopted May 6, 2008, and published May 9, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $28,800.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

ggg. (480-794/468-84519) Construction of LATERAL 57, MAIN 23, WAR INDUSTRIES SEWER, North of 13th, West of Webb, as authorized by Resolution No. 08-273, adopted June 3, 2008, and published June 6, 2008, corrected & republished June 23, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008 in the amount of $63,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis.

<u>STORM WATER SEWER PROJECTS:</u>

hhh. (485-359/468-84114) Construction of SWD NO. 281, TO SERVE COUNTRY HOLLOW ADDITION, South of Kellogg, East of 127th Street East, as authorized by Resolution No. 05-581, rescinded by 06-657, rescinded by 08-297, adopted November 8, 2005, December 12, 2006, June 3, 2008, and published November 17, 2005, December 15, 2006, June 6, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $220,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

iii. (485-338/468-84330) Construction of SWD NO. 323, TO SERVE LEGACY 3RD ADDITION, North of 47th Street South, West of Meridian, as authorized by Resolution No. 07-195, adopted March 13, 2007, and published March 16, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $282,500.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District IV

jjj. (485-339/468-84339) Construction of SWD NO. 322, TO SERVE WILLOW CREEK EAST ADDITION, East of Greenwich, South of Harry, as authorized by Resolution No. 07-171, adopted March 13, 2007, and published March 16, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $250,000.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

kkk. (485-344/468-84358) Construction of SWD NO. 327, TO SERVE TARA CREEK AND CASA BELLA ADDITIONS AND UNPLATTED TRACT A, North of Pawnee, West of 127th Street East, as authorized by Resolution No. 07-362, adopted June 19, 2007, and published June 25, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $315,900.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

lll. (485-347/468-84411) Construction of SWS NO. 635, TO SERVE WATERFRONT RESIDENTIAL, 6TH AND GREENWICH OFFICE PARK ADDITIONS, North of 13th, West of Greenwich, as authorized by Resolution No. 07-562, rescinded by 07-644, rescinded by 08-291, adopted October 16, 2007, November 6, 2007, June 3, 2008, and published October 19, 2007, November 10, 2007, Corrected and Republished November 23, 2007, June 6, 2008, Corrected and Republished July 14, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $97,900.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

mmm. (485-367/468-84520) Construction of SWS NO. 644, TO SERVE FOLIAGE 4TH ADDITION, North of 13th, West of Webb, as authorized by Resolution No. 08-274, adopted June 3, 2008, and published June 6, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $52,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

nnn. (485-349/468-84285) Construction of SWS NO. 624, TO SERVE MESA VERDE ADDITION, South of 37th Street North, East of Meridian, as authorized by Resolution No. 07-027, adopted January 9, 2007, and published January 12, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $83,900.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District VI

ooo. (485-335/468-84302) Construction of SWD NO. 315, TO SERVE MEADOWLAKE BEACH ADDITION, West of Clifton, North of 63rd Street South, as authorized by Resolution No. 07-144, rescinded by 07-183, rescinded by 07-247, adopted February 27, 2007, March 13, 2007, April 17, 2007, and published March 1, 2007, March 16, 2007, April 19, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $797,500.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District III

ppp. (485-333/468-84318) Construction of SWD NO. 317, TO SERVE MONARCH LANDING AND MONARCH LANDING 2ND ADDITION, North of 21st, West of 159th Street East, as authorized by Resolution No. 07-110, rescinded by 08-380, adopted February 13, 2007, July 22, 2008, and published February 15, 2007, Corrected and Republished February 27, 2007, July 25, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $293,200.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

qqq. (485-334/468-84319) Construction of SWS NO. 627, TO SERVE MONARCH LANDING ADDITION AND UNPLATTED COMMERCIAL TRACT 2, North of 21st, West of 159th Street East, as authorized by Resolution No. 07-111, adopted February 13, 2007, and published February 15, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $431,400.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

rrr. (485-345/468-84395) Construction of SWD NO. 331, TO SERVE STONEBRIDGE 2ND ADDITION, North of 13th, West of 159th Street East, as authorized by Resolution No. 07-487, rescinded by 07-566, adopted August 28, 2007, October 16, 2007, and published August 31, 2007, October 19, 2007. Petition for this improvement was signed

by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $1,154,100.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

sss. (485-348/468-84446) Construction of SWS NO. 639, TO SERVE MEADOWLAKE BEACH ADDITION, West of Clifton, North of 63rd Street South, as authorized by Resolution No. 07-610, adopted November 6, 2007, and published November 9, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved 12/16/2008, in the amount of $282,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District III

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council

SUBJECT: General Obligation Refunding Bond and Temporary Note Sale

INITIATED BY: Finance Department

AGENDA: New Business

Recommendation: Approve the bids.

Background: The City is offering for sale two series of general obligation refunding bonds (Series 2009A and 2009B) in an amount not to exceed $49,250,000 and one series of general obligation temporary notes (Series 228) in an amount not to exceed $59,060,000 for the purpose of refunding previously issued and currently outstanding bonds and to provide interim financing for capital improvement projects of the City.

Analysis: The proceeds from the sale of the Series 2009A bonds will be used for the current refunding of the City's outstanding General Obligation Sales Tax Bonds, Series 2002, by providing the necessary funds to pay the principal and redemption premium, on the redemption date of May 15, 2009.

The proceeds of the Series 2009B bonds will be used for the current refunding of the City's outstanding General Obligation Bonds, Series 754, 763, 764 and Series 766, by providing the necessary funds to pay the principal and redemption premium, if any, on the redemption date of May 15, 2009.

The proceeds from the sale of the Series 228 General Obligation Improvement Temporary Notes will be used to provide interim financing for various City-at-large, improvement district and public improvement projects.

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

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

Financial Considerations: The Series 2009A Refunding Bonds will mature in 2017 and the Series 2009B Refunding Bonds will mature in 2016, with principal maturities structured to produce level and positive savings in all future years. The Series 2009A and 2009B Refunding Bonds are not callable.

The Series 228 Temporary Notes will mature April 8, 2010 and will be retired using cash, the proceeds of permanent financing bonds and/or renewal notes issued at that time. The Notes are callable on and after October 8, 2009.

Goal Impact: This item impacts the Economic Vitality/Affordable Living and Internal Perspectives through the temporary and permanent financing of capital improvements and offering the City's debt obligations through competitive sale. The sale of temporary notes allows short-term financing of improvements that shall be permanently financed through the issuance of bonds or pay-as-you-go financing. The refunding bonds are being used to refund previously issued special assessment and sales tax bonds in order to provide savings on future debt service costs to the City.

Legal Considerations: Bond Counsel will review and approve the bids and the Law Department will approve the authorizing Ordinances and Resolutions which have been prepared by Bond Counsel.

Recommendations/Actions: It is recommended that the City Council: (1) direct the opening and reading of the bids; (2) award the sale of the Bonds and Temporary Notes; and (3) find and declare, upon the request of the Mayor, that a public emergency exists, requiring the final passage of the Bond and Note Ordinances on the date of their introduction, adopt the Bond and Note Ordinances and Resolutions and authorize the publication of the Bond and Note Ordinances.

Attachments: For each bond and note series:

Request for Declaration of Emergency
Resolution Authorizing Issuance of Bonds/Notes
Ordinance Authorizing Issuance of Bonds/Notes

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,* March 10, 2009, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION SALES TAX REFUNDING BONDS, SERIES 2009A, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $29,230,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY THE COSTS OF REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION SALES TAX BONDS OF THE CITY; PLEDGING A PORTION OF THE COUNTY RETAILER'S SALES TAX REVENUES ALLOCATED TO THE CITY FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE BONDS AS THEY BECOME DUE; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF ANY PORTION OF THE PRINCIPAL OF AND THE INTEREST ON THE BONDS NOT PAID FROM SAID SALES TAX REVENUES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 2009A Bonds occur on the same day bids are received and to enable the City to deliver the Series 2009A Bonds authorized by said Ordinance on April 9, 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.

EXECUTED at Wichita, Kansas, on March 10, 2009.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

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,* March 10, 2009, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2009B, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $20,020,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 2009B Bonds occur on the same day bids are received and to enable the City to deliver the Series 2009B Bonds authorized by said Ordinance on April 9, 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.

EXECUTED at Wichita, Kansas, on March 10, 2009.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

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,* March 10, 2009, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION IMPROVEMENT TEMPORARY NOTES, SERIES 228, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $59,060,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 228 Notes occur on the same day bids are received and to enable the City to deliver the Series 228 Notes authorized by said Ordinance on April 9, 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.

EXECUTED at Wichita, Kansas, on March 10, 2009.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

ORDINANCE NO. . 48-297

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION SALES TAX REFUNDING BONDS, SERIES 2009A, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $29,230,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY THE COSTS OF REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION SALES TAX BONDS OF THE CITY; PLEDGING A PORTION OF THE COUNTY RETAILER'S SALES TAX REVENUES ALLOCATED TO THE CITY FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE BONDS AS THEY BECOME DUE; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF ANY PORTION OF THE PRINCIPAL OF AND THE INTEREST ON THE BONDS NOT PAID FROM SAID SALES TAX REVENUES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

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

WHEREAS, the City is the recipient of funds derived from a county-wide retailer's sales tax in Sedgwick County, Kansas, pursuant to K.S.A. 12-187 *et seq.*, and is authorized under K.S.A. 12-195b to issue general obligation bonds for the payment of the costs of public facilities or improvements and to pledge the revenues received by the City from a county-wide retailer's sales tax for the payment of such general obligation bonds; and

WHEREAS, the Governing Body of the City has heretofore adopted Ordinance No. 41-815 pledging one-half of the revenues received by the City from the county-wide retailer's sales tax for the purpose of financing the construction of roads, highways and bridges in the City (such portion of the sales tax revenue, plus investment earnings thereon, except for investment earnings required to be paid United States Treasury to meet the rebate requirements of Section 148(f) of the Code, are referred to herein as the "Pledged Revenue" as more fully defined in the hereinafter defined Bond Resolution); and

WHEREAS, the Governing Body of the City has heretofore issued the following general obligation bonds and has pledged the Pledged Revenue to pay the principal of and interest on such bonds:

(a) General Obligation Sales Tax Bonds, Series 2002 (the "Refunded Bonds"), issued in the original amount of $46,000,000;

(b) General Obligation Refunding and Sales Tax Bonds, Series 2003B (the "Series 2003B Bonds"), issued in the original amount of $48,855,000;

(c) General Obligation Sales Tax Bonds, Series 2004 (the "Series 2004 Bonds"), issued in the original amount of $36,000,000;

(d) General Obligation Sales Tax Bonds, Series 2007 (the "Series 2007 Bonds"), issued in the original amount of $40,500,000; and

WHEREAS, in order to achieve interest cost savings through early redemption of the Refunded Bonds and to provide an orderly plan of finance for the City, it has become desirable and in the best interest of the City and its inhabitants to refund the Refunded Bonds; and

WHEREAS, the City is authorized by K.S.A. 10-427 *et seq.*, to issue general obligation refunding bonds of the City for the purpose of refunding the Refunded Bonds; and

WHEREAS, the ordinances and resolutions of the City authorizing the issuance of the Series 2003B Bonds, the Series 2004 Bonds and the Series 2007 Bonds (collectively, the "Outstanding Bond Ordinances") authorize the issuance of additional general obligation bonds which may be on a parity with and co-equal in stature and priority to the lien of the Series 2003B Bonds, the Series 2004 Bonds and the Series 2007 Bonds (collectively, the "Outstanding Parity Bonds") on such portion of the revenues from the sales tax, if the issuance of such refunding bonds shall result in a reduction in the debt service requirements with respect to such refunded bonds; and

WHEREAS, the Governing Body hereby finds and determines that the refunding of the Refunded Bonds by the Bonds will result in a reduction in the debt service requirements; and

WHEREAS, the Governing Body, pursuant to Resolution No. R-09-057, duly adopted February 24, 2009, advertised for bids at a public sale for an amount not to exceed $29,230,000 of the City's General Obligation Sales Tax Refunding Bonds, Series 2009A (the "Bonds"); and such public sale has been duly held and the Governing Body has awarded the Bonds to the lowest bidder therefor; and

WHEREAS, the Governing Body, on February 27, 1996, adopted Ordinance No. 42-996 establishing a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation bonds in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12, and said Ordinance No. 42-996, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Bonds authorized hereby as though fully set forth herein; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Bonds, to prescribe the terms and details thereof, to pledge a portion of the revenues allocated to the City from the county-wide retailer's sales tax to the payment of the principal of and the interest on the Bonds on a parity with and co-equal to the pledge of such revenues to payment of the Outstanding Parity Bonds, to provide for the levy and collection of an annual tax in order to provide for the payment of any portion of the principal of and the interest on the Bonds not paid from the sales tax revenues, and to make certain other covenants and agreements with respect thereto;

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 Bond Resolution herein referenced.

Section 2. **Authorization and Security of the Bonds.** It is hereby authorized, ordered and directed that in order to provide the necessary funds to refund and redeem the Refunded Bonds, the Bonds shall be issued. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Governing Body hereby covenants and agrees to make provision for the payment of the principal of, premium, if any, and the interest on the Bonds as and when the same becomes due and payable from the Pledged Revenues; and, if not so paid, from ad valorem taxes levied upon all of the taxable tangible property located within the territorial limits of the City in such amounts, if any, as are necessary to pay any portion of the principal and interest on the Bonds not paid from the Pledged Revenues. The Bonds shall be and constitute valid and legally binding general obligations of the City; and the full faith, credit and resources of the City are hereby irrevocably pledged to secure the prompt payment of the principal of and the interest on the Bonds as the same severally becomes due and payable.

Section 3. **Terms, Details and Conditions of the Bonds.** The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Bond Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the 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. **Pledge of Pledged Revenues.** The principal of, premium, if any, and the interest on the Bonds is secured by and payable first from a first and prior lien on and an irrevocable pledge of the Pledged Revenues, which lien shall be on a parity with and co-equal to the lien of the Outstanding Parity Bonds on the Pledged Revenues; and the City hereby irrevocably pledges the Pledged Revenues solely and only to the payment of the principal of, premium, if any, and the interest on the Outstanding Parity Bonds and the Bonds. The pledge of the Pledged Revenues shall be valid and binding from and after the effective date of this Ordinance, and such Pledged Revenues so pledged and hereafter received by the City shall immediately be subject to the lien of such pledge without the physical delivery of such Pledged Revenues or any further action on the part of the City, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind against the City, irrespective of whether such parties have notice hereof.

The Bonds shall have no priority with respect to the payment of principal or interest over any general obligation bonds of the City hereafter issued in accordance with the provisions of this Ordinance and the Bond Resolution which are on a parity with the Bonds, nor shall any other

general obligation bonds of the City heretofore or hereafter issued have priority over the payment from the Pledged Revenues of the principal of or the interest on the Bonds. The Bonds are, however, on a parity with and co-equal to the Outstanding Parity Bonds respecting payment of the principal amount thereof and the interest thereon.

Section 5. **Covenant to Collect Sales Tax.** The City hereby covenants that, to the extent of its control, it will cause the Sales Tax to be maintained and collected as provided by the Act in order to generate Pledged Revenues sufficient to pay the principal of, premium, if any, and the interest on the Outstanding Parity Bonds and the Bonds, as and when the same shall become due and payable. The City hereby further covenants that it will take no action of any kind which would in any manner impair or delay the collection of the Sales Tax or which might otherwise adversely affect the Pledged Revenues, and in the event any litigation, claim or proceeding shall be commenced in any form or tribunal under which the Sales Tax may be challenged or the pledge of the Pledged Revenues pursuant to this Ordinance or the Bond Resolution, or which in any other way may adversely affect the collection of the Pledged Revenues by the City sufficient to pay the principal of, premium, if any, and the interest on the Outstanding Parity Bonds and the Bonds, the City shall take all action necessary to contest any such litigation or proceeding to the extent the City has standing to contest such litigation or proceedings and is otherwise permitted by law to take such action.

Section 6. **Tax Covenants.** The Governing Body hereby covenants and agrees that so long as any of the 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 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 Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the 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 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 Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code; and that 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 Bonds for so long as any of the 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 Bonds from time to time. This covenant shall survive payment in full or the defeasance of the 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, any rebate as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 7. **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 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 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 Bonds, an Escrow Letter of Instructions with the State Treasurer to provide for the escrow of the proceeds of the Bonds to be used to redeem the Refunded Bonds (the "Escrow Agreement"), and the Bonds. 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 Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the 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 Escrow 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, including notice of redemption of the Refunded Bonds, shall be conclusive as to the approval, correctness and completeness 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 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.

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on March 10, 2009.

(Seal) _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

ORDINANCE NO. 48-298

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2009B, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $20,020,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

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

WHEREAS, the City has previously issued the following bonds (referred to collectively herein as the "Refunded Bonds"):

(a) $12,500,000 original principal amount General Obligation Bonds, Series 754, dated as of February 1, 1999, of which $6,110,000 remains outstanding and unpaid and becomes due serially on September 1 in the years 2009 though 2014 inclusive (the "Series 754 Bonds");

(b) $7,255,000 original principal amount General Obligation Bonds, Series 763, dated August 1, 2000, of which $4,140,000 remains outstanding and unpaid and becomes due serially on December 1 in the years 2009 though 2015 inclusive (the "Series 763 Bonds");

(c) $7,765,000 original principal amount General Obligation Bonds, Series 764, dated February 1, 2001, of which $4,860,000 remains outstanding and unpaid and becomes due serially on September 1 in the years 2009 though 2016 inclusive (the "Series 764 Bonds");

(d) $6,980,000 original principal amount General Obligation Bonds, Series 766, dated August 1, 2001, of which $4,350,000 remains outstanding and unpaid and becomes due serially on September 1 in the years 2009 though 2016 inclusive (the "Series 766 Bonds"); and

WHEREAS, in order to achieve interest cost savings through early redemption of the Refunded Bonds and to provide an orderly plan of finance for the City, it has become desirable and in the best interest of the City and its inhabitants to refund the Refunded Bonds; and

WHEREAS, the City is authorized by K.S.A. 10-427 *et seq.*, to issue general obligation refunding bonds of the City for the purpose of refunding the Refunded Bonds; and

WHEREAS, the Governing Body, pursuant to Resolution No. 09-057 duly adopted on February 24, 2009, advertised for bids at a public sale for an amount not to exceed $20,020,000 of the City's General Obligation Refunding Bonds, Series 2009B (the "Bonds"), for the aforesaid purpose; and such public sale has been duly held and the Governing Body has awarded the Bonds to the best bidder therefor; and

WHEREAS, the Governing Body, on February 27, 1996, adopted Ordinance No. 42-996 establishing a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation bonds in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance No. 42-996, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the General Obligation Refunding Bonds authorized hereby as though fully set forth herein; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Bonds, to prescribe the terms and details thereof, to provide for the levy and collection of an annual tax in order to provide for the payment of the principal of and interest on the Bonds, and to make certain other covenants and agreements with respect thereto;

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 Bond Resolution herein referenced.

Section 2. **Authorization of and Security for the Bonds.** It is hereby authorized, ordered and directed that in order to provide the necessary funds to refund and redeem the Refunded Bonds, there shall be issued the Bonds. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon, in part, from the collection of special assessment taxes which have been levied against benefited real properties in the City, and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City, with the balance payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City.

Section 3. **Terms, Details and Conditions of the Bonds.** The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Bond Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the 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. **Levy and Collection of Annual Tax.** The Governing Body hereby covenants that it shall annually make provision for the payment of the principal of, premium, if any, and interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the maturing principal and interest on the Bonds when due, then the Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amount of special assessment taxes collected.

Section 5. **Tax Covenants.** The Governing Body hereby covenants and agrees that so long as any of the 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 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 Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the 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 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 Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that 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 Bonds for so long as any of the 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 Bonds from time to time. This covenant shall survive payment in full or the defeasance of the 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 Bond Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 6. **Designation of Paying Agent and Bond Registrar.** Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, 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 (the "State Treasurer"), 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 7. **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 Bonds, an Escrow Letter of Instructions with the State Treasurer to provide for the escrow of the proceeds of the Bonds to be used to redeem the Refunded Bonds (the "Escrow Agreement") and the Bonds in accordance with the provisions of the Bond 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 Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the 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 Escrow 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, including notices of redemption of the Refunded Bonds, 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 Bonds and the Official Statement.

Section 8. **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.

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on March 10, 2009.

(Seal) _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

ORDINANCE NO. 48-299

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION IMPROVEMENT TEMPORARY NOTES, SERIES 228, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $59,060,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

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

WHEREAS, K.S.A. 10-123, as amended and supplemented, provides that if a municipality has approved an improvement which is to be paid for in whole or in part by the issuance of general obligation bonds, the municipality may issue temporary notes for the purpose of financing the costs of the improvements until the issuance of such bonds; and

WHEREAS, pursuant to and under the authority of various laws of the State of Kansas, the Governing Body of the City has duly taken various actions, including the adoption, and publication where necessary, of resolutions, ordinances and other proceedings as required by said laws, and has authorized and caused to be commenced the construction of those certain capital improvements in the City and has provided that the costs thereof shall be paid, either in whole or in part, by the issuance of general obligation bonds of the City; and

WHEREAS, the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, temporary notes should be issued at this time for the purpose of providing interim financing for the costs of making the Improvements for which interim financing is now required; and

WHEREAS, the Governing Body, pursuant to Resolution No. 09-057 duly adopted on February 24, 2009, advertised for bids at a public sale for not to exceed $59,060,000 of the City's General Obligation Improvement Temporary Notes, Series 228, for the purpose of providing interim financing for the Improvements and such public sale has been duly held and the Governing Body has awarded the Notes to the best bidder therefor; and

WHEREAS, the Governing Body, on February 27, 1996, adopted Ordinance No. 42-997 establishing a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation temporary notes in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance No. 42-997, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the General Obligation Improvement Temporary Notes authorized hereby as though fully set forth herein; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Notes, to prescribe the terms and details thereof, to provide for the payment of the principal of and interest on the Notes, and to make certain other covenants and agreements with respect thereto;

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 Note Resolution herein referenced.

Section 2. Authorization of and Security for the Notes. It is hereby authorized, ordered and directed that in order to provide the necessary funds for the interim financing of the Improvement Costs, there shall be issued general obligation improvement temporary notes of the City (the "Notes"). In all matters relating to the issuance, registration and delivery of the Notes, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by this Note Ordinance to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the collection of special assessments taxes which will be levied against real properties in the City benefiting from certain of the Improvements, and from the proceeds of general obligation bonds which will subsequently be issued by the City for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose.

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

Section 4. Levy and Collection of Annual Tax. The Governing Body hereby covenants that it shall make provision for the payment of the principal of and interest on the Notes on the Maturity Date by the levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor upon the completion of the Improvements, as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the principal of and interest on the Notes on the Maturity Date, or if any of the Improvements are not completed by the Maturity Date or the Governing Body is otherwise hindered from then levying and collecting such special assessment taxes, and for any of the costs of the Improvements which are to be paid by the City-at-large, then said Governing Body shall provide for the payment of all or any portion of the principal of and/or interest on the

Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the amounts collected from such special assessment taxes and/or the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes. In lieu of issuing renewal temporary notes or general obligation bonds of the City to fund costs of the Improvements which are to be paid by the City-at-large, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

Section 5. **Tax Covenants.** The Governing Body hereby covenants and agrees that so long as any of the Notes 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 Notes 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 Notes.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Notes 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 Notes 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 Notes to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that 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 Notes for so long as any of the Notes 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 Notes from time to time. This covenant shall survive payment in full or the defeasance of the Notes 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 Note Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 6. **Designation of Paying Agent and Note Registrar.** Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Notes.

So long as the Notes remain issued in book-entry-only form, the City shall act as Note Registrar, through the Office of the City Clerk and shall act as Paying Agent through the

Department of Finance, and shall make payment directly to DTC, as the Owner, for the principal of and interest on the Notes, and DTC will remit such principal and interest to its Direct Participants for the distribution to the beneficial owners in the manner set forth in Section 2.04(A) of the Note Resolution and as governed by the terms of the Letter of Representation.

In the event the Notes should be issued and delivered in certificated form at any time after the initial delivery of the Notes, the City hereby designates and appoints the Treasurer of the State of Kansas, Topeka, Kansas (herein sometimes referred to as the "Fiscal Agent"), as the initial Paying Agent and Note Registrar for the Notes, and the Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the Fiscal Agent to effectuate this designation. The Fiscal Agent shall maintain Registration Books on behalf of the City.

Section 7. **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 Notes and the Notes in accordance with the provisions of the Note Resolution. The Governing Body hereby further authorizes, orders and directs the City Clerk of the City to countersign the Notes and 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 Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, 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 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 Notes and the Official Statement.

Section 8. **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.

[Remainder of Page Intentionally Left Blank]

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on March 10, 2009.

(Seal) _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

RESOLUTION NO. 09-064

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED MARCH 10, 2009

AUTHORIZING THE ISSUANCE OF

$29,230,000

GENERAL OBLIGATION SALES TAX REFUNDING BONDS
SERIES 2009A

DATED APRIL 1, 2009

4843-9691-9555.1

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Exhibit A Additional Terms of the Bonds

RESOLUTION NO. 09-064

A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION SALES TAX REFUNDING BONDS, SERIES 2009A, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF $29,230,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY THE COSTS OF REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION SALES TAX BONDS OF THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE BONDS; PLEDGING A PORTION OF THE COUNTY RETAILERS' SALES TAX REVENUES ALLOCATED TO THE CITY FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE BONDS AS THEY BECOME DUE; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF ANY PORTION OF THE PRINCIPAL OF AND THE INTEREST ON THE BONDS NOT PAID FROM SAID SALES TAX REVENUES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

WHEREAS, the City of Wichita, Kansas (the "City"), has adopted the Bond Ordinance (as herein defined) authorizing the issuance of the Bonds (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 to make certain covenants with respect to the issuance of the Bonds;

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

ARTICLE I

DEFINITIONS

Section 1.01 Definitions of Words and Terms. In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" shall mean the Constitution and Statutes of the State, including K.S.A. 10-101 *et seq.*, K.S.A. 10-427 *et seq.*, all as amended and supplemented.

"Authentication Date" shall mean the date on which a Bond is registered and authenticated by the Fiscal Agent as shown on a Certificate of Authentication 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 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 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 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 *"AA"* by Standard & Poor's, a Division of the McGraw-Hill Companies ("S&P") and *"Aa2"* by Moody's Investor Services ("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 the State which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been

given by the obligor to call on the date specified in the notice; and (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.

(C) The Value of the above investments shall be determined as of the end of each month.

"Bond Counsel" shall mean Kutak Rock LLC, 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 Ordinance" means the ordinance of the City authorizing the issuance of the Bonds as further described on **Exhibit A** to this Resolution.

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

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

"Bonds" shall mean $29,230,000 original principal amount of General Obligation Sales Tax Refunding Bonds, Series 2009A, dated April 1, 2009, of the City of Wichita, Kansas, which are authorized by and will be issued pursuant to the authority of the Bond Ordinance and this Resolution.

"Certificate as to Arbitrage and Related Tax Matters" shall mean the Certificate as to Arbitrage and Related Tax Matters, dated as of and delivered on the Date of Issuance, executed by the City, 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.

"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 City Clerk's absence (or in the event of a vacancy in such office) the 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 any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the Yield on the Bonds or investment of the proceeds of the Bonds, and in connection with receiving municipal bond insurance and/or ratings on the Bonds.

"Costs of Issuance Account" shall mean the Costs of Issuance Account for General Obligation Sales Tax Refunding Bonds, Series 2009A, created pursuant to **Article VI** hereof.

"Costs of Issuance Deposit" shall mean the amount of proceeds of the Bonds be deposited in the Costs of Issuance Account described on **Exhibit A** to this Resolution.

"Date of Issuance" shall mean the date on which the Bonds are delivered to the Original Purchaser and the City receives from the Original Purchaser the full purchase price therefor.

"Dated Date" shall mean the dated date of the Bonds which is April 1, 2009.

"Debt Service" shall mean the scheduled amount of interest and maturing principal payable on the Bonds for a single 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 Bonds issued in accordance with the terms and provisions of the Bond Ordinance and this Resolution.

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

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

"DTC" shall mean The Depository Trust Company.

"Escrow Account" shall mean the Escrow Account created under the Escrow Agreement and held by the State Treasurer.

"Escrow Agreement" means the Escrow Letter of Instructions dated as of April 1, 2009, from the City to the State Treasurer.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article VI** hereof.

"Existing Account Deposit" shall mean the amount of funds on deposit in the principal and interest accounts for the Refunded Bonds to be deposited in the Escrow Account described on **Exhibit A** to this Resolution.

"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.

"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 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 the gross amount of the revenues received by the City from the Sales Tax before any payments, disbursements or expenditures are made therefrom.

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

"Interest Payment Dates" shall be April 1 and October 1 of each year commencing April 1, 2010, and ending April 1, 2017, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Bonds.

"Local Sales Tax Capital Improvement Construction Fund" shall mean the Local Sales Tax Capital Improvement Construction Fund of the City created, held and administered solely for the purpose of receiving and disbursing funds for the payment of capital improvement projects authorized by the Governing Body to be paid from the Sales Tax.

"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.

"Resolution" shall mean this Resolution adopted by the Governing Body of the City on March 10, 2009, prescribing the terms and details of the Bonds.

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

"Original Purchaser" means the original purchaser of the Bonds described on **Exhibit A** to this Resolution.

"Outstanding", when used with reference to the Bonds, shall mean, as of a particular date, all Bonds theretofore authenticated and delivered under this Resolution, except (i) Bonds theretofore canceled by the Fiscal Agent or delivered to the Fiscal Agent for cancellation, (ii) Bonds for which payment or redemption moneys or Government Obligations (the principal of and the interest on which Government Obligations, if any, when due, provide sufficient moneys to pay, with such other moneys so deposited with the Fiscal Agent, the principal, redemption premium, if any, and interest on the Bonds being paid or redeemed), or both, in the necessary amount have theretofore been deposited with the Fiscal Agent, or other depository as provided in this Resolution, in trust for the Owners thereof (whether upon or prior to maturity or the redemption date of the Bonds), and (iii) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Resolution.

"Outstanding Bond Ordinances" shall mean the Series 2003B Ordinance, the Series 2004 Ordinance and the Series 2007 Ordinance.

"Outstanding Parity Bonds" shall mean the Series 2003B Bonds, the Series 2004 Bonds and the Series 2007 Bonds.

"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 Bond Principal and Interest Accounts" shall mean the Series 2003B Principal and Interest Account, the Series 2004 Principal and Interest Account, the Series 2007 Principal and Interest Account and the Principal and Interest Account established for the Bonds.

"Parity Bonds" shall mean any additional general obligation bonds, any revenue bonds or other obligations payable from the Pledged Revenues and issued in addition to and on a parity with the Bonds, pursuant to and in accordance with the provisions of **Article V** of this Resolution.

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

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

"Pledged Revenues" shall mean 50% of the Gross Revenues, including investment income (except investment earnings required to be paid United States Treasury to meet the rebate requirements of Section 148(f) of the Code).

"Principal and Interest Account" shall mean the Principal and Interest Account created within the City's Bond and Interest Fund pursuant to **Article VI** hereof, which is created and shall be held and administered solely for the purpose of receiving and disbursing funds for the payment of the Bonds.

"Principal Payment Date" shall mean April 1 of each year, commencing April 1, 2010 and ending April 1, 2017, or such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Purchase Price" means the original purchase price of the Bonds described on **Exhibit A** to this Resolution.

"Record Dates" shall mean the 15th day of the respective months next preceding the Interest Payment Dates.

"Refunded Bonds" means the City's General Obligation Sales Tax Bonds, Series 2002, dated February 1, 2002, becoming due serially on April 1 in the years 2010 through 2017, inclusive.

"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.

"Revenue Fund" shall mean the Local Sales Tax Road, Highway and Bridge Revenue Fund.

"Sales Tax" shall mean the one percent county-wide retailers' sales tax imposed by Sedgwick County, Kansas, pursuant to the authority of K.S.A. 12-187 *et seq.*, as amended and supplemented.

"Series 2003B Ordinance" shall mean the ordinance of the City authorizing the issuance of the Series 2003B Bonds.

"Series 2003B Bonds" shall mean the City's General Obligation Refunding and Improvement Sales Tax Bonds, Series 2003B, dated November 1, 2003, originally issued in the principal amount of $48,855,000.

"Series 2003B Principal and Interest Account" shall mean the Principal and Interest Account for the payment of the Series 2003B Bonds created within the City's Bond and Interest Fund pursuant to the Series 2003B Ordinance, which was created and is held and administered solely for the purpose of receiving and disbursing funds for the payment of the Series 2003B Bonds.

"Series 2004 Ordinance" shall mean the ordinance and resolution of the City authorizing the issuance of the Series 2004 Bonds.

"Series 2004 Bonds" shall mean the City's General Obligation Sales Tax Bonds, Series 2004, dated August 1, 2004, originally issued in the principal amount of $36,000,000.

"Series 2004 Principal and Interest Account" shall mean the Principal and Interest Account for the payment of the Series 2004 Bonds created within the City's Bond and Interest Fund pursuant to the Series 2004 Ordinance, which was created and is held and administered solely for the purpose of receiving and disbursing funds for the payment of the Series 2004 Bonds.

"Series 2007 Ordinance" shall mean the ordinance and resolution of the City authorizing the issuance of the Series 2007 Bonds.

"Series 2007 Bonds" shall mean the City's General Obligation Sales Tax Bonds, Series 2007, dated October 1, 2007, originally issued in the principal amount of $40,500,000.

"Series 2007 Principal and Interest Account" shall mean the Principal and Interest Account for the payment of the Series 2007 Bonds created within the City's Bond and Interest Fund pursuant to the Series 2007 Ordinance, which was created and is held and administered solely for the purpose of receiving and disbursing funds for the payment of the Series 2007 Bonds.

"State" shall mean the State of Kansas.

"State Treasurer" means the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

"Value" 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.

Section 1.02 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

AUTHORIZATION OF AND SECURITY FOR THE BONDS

Section 2.01 Authorization of and Security for Bonds. Pursuant to the Bond Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to pay the cost of refunding the Refunded Bonds, the Bonds shall be issued. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

Section 2.02 **Security for the Bonds.** The Governing Body has covenanted and agreed in the Bond Ordinance, to make provision for the payment of the principal of, premium, if any, and the interest on the Bonds as and when the same becomes due and payable from the Pledged Revenues; and if not so paid, from ad valorem taxes levied upon all of the taxable tangible property located within the territorial limits of the City in such amounts, if any, as are necessary to pay any portion of the principal and interest on the Bonds not paid from the Pledged Revenues. The Bonds shall be and constitute valid and legally binding general obligations of the City; and the full faith, credit and resources of the City are hereby irrevocably pledged to secure the prompt payment of the principal of and the interest on the Bonds as the same severally becomes due and payable.

Section 2.03 **Pledge of Pledged Revenues.** The principal of, premium, if any, and the interest on the Bonds is secured by and payable first from a first and prior lien on and an irrevocable pledge of the Pledged Revenues, which lien shall be on a parity with and co-equal to the lien of the Outstanding Bonds on the Pledged Revenues; and the City has in the Bond Ordinance irrevocably pledged the Pledged Revenues solely and only to the payment of the principal of, premium, if any, and the interest on the Outstanding Parity Bonds and the Bonds. The pledge of the Pledged Revenues shall be valid and binding from and after the effective date of the Bond Ordinance, and such Pledged Revenues so pledged and hereafter received by the City shall immediately be subject to the lien of such pledge without the physical delivery of such Pledged Revenues or any further action on the part of the City, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind against the City, irrespective of whether such parties have notice hereof.

The Bonds shall have no priority with respect to the payment of principal or interest over any general obligation bonds of the City hereafter issued in accordance with the provisions of the Bond Ordinance and this Resolution which are on a parity with the Bonds, nor shall any other general obligation bonds of the City heretofore or hereafter issued have priority over the payment from the Pledged Revenues of the principal of or the interest on the Bonds. The Bonds are, however, on a parity with and co-equal to the Outstanding Parity Bonds respecting payment of the principal amount thereof and the interest thereon.

Section 2.04 **Disposition of Pledged Revenues and Taxes; Untimely Receipt.** The proceeds derived from the Pledged Revenues and/or from the aforesaid annual ad valorem taxes shall be deposited into the Parity Bonds Principal and Interest Accounts when received; provided, if at any time the amount in the Parity Bonds Principal and Interest Accounts shall be insufficient to make the payments of the principal of and the interest on the Outstanding Parity Bonds and the Bonds when required because of an untimely collection and/or receipt of the Pledged Revenues and/or said ad valorem taxes, the Director of Finance is authorized to cause to be transferred to said Principal and Interest Accounts from the City's general funds, the amount required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of the Pledged Revenues and/or said ad valorem taxes.

ARTICLE III

DETAILS, ISSUANCE AND DELIVERY OF THE BONDS; DISPOSITION OF BOND PROCEEDS

Section 3.01 Description and Details of Bonds. It is hereby authorized, ordered and directed that the Bonds shall be issued in the total principal amount of $59,060,000; and shall be designated "City of Wichita, Kansas General Obligation Sales Tax Refunding Bonds, Series 2009A." The Bonds shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of Bonds maturing on the respective Principal Payment Dates, and shall be numbered in such manner as the Fiscal Agent shall determine. All of the Bonds shall be dated April 1, 2009, shall become due and bear interest at the rates per annum set forth on **Exhibit A** to this Resolution. The Bonds shall bear interest at the rates described on **Exhibit A** to this Resolution (computed on the basis of a 360-day year of 12 30-day months) from that date or from the most recent Interest Payment Date to which interest has been paid or provided for, shall be payable on the Interest Payment Dates.

The 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 Bonds maturing on the respective Principal Payment Dates as authorized herein. The manner of payment of the principal of and the interest on the Bonds to DTC, and other matters relating to the distribution of the Bonds in book-entry-only form through DTC, shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

Subject to the operational arrangements of DTC, in the event (i) DTC determines not to continue to act as securities depository for the Bonds, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Bonds would adversely affect the interests of the beneficial owners of the Bonds, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement 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 (to the extent such beneficial owners can be identified by the City). If issued in certificated form, the certificates representing the Bonds shall be numbered in such manner as the Bond Registrar shall determine.

Section 3.02 Designation of Paying Agent and Bond Registrar. Pursuant to K.S.A. 10-620 *et seq.*, the Governing Body has elected to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State, Topeka, Kansas, has been 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 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.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the 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 3.03(A)** and as governed by the terms of the Letter of Representation.

In the event that the Bonds should be issued and delivered in certificated form at any time after the initial delivery of the Bonds, the Fiscal Agent shall maintain Registration Books for the ownership of the Bonds on behalf of the City and the Paying Agent will make payment for the Bonds directly to the Owners as shown by said Registration Books in the manner set forth in the following **Section 3.03(B)**.

Section 3.03 Method and Place of Payment of Principal and Interest on the Bonds.

(A) 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 the 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 Bonds in denominations permitted by **Section 3.01** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each 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 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 Bonds are Subsequently Issued. The principal of, premium, if any, and the interest on the 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 Bonds shall be paid to the Owner of each Bond upon presentation and surrender of the Bond to the Paying Agent for payment and cancellation on the maturity date, or redemption date, as the case may be, of the Bond. The interest on the Bonds shall be mailed by the Paying Agent to the Owner of each 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 3.04 Method of Execution and Authentication of Bonds. The Bonds shall be executed for and on behalf of the City by the manual or facsimile signature of its Mayor and City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The 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, on a Certificate of Registration printed on the Bonds, attested by the City's official seal, or a facsimile

thereof, impressed or imprinted opposite said signature. The Bonds shall be registered by the State Treasurer in the municipal bond register in his office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State Treasurer on a Certificate of State Treasurer printed on Bonds, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature.

In case any officer of the City or of the State whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the actual delivery of the Bonds, such signature thereof shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

No Bond shall be valid or obligatory for any purpose unless and until the Certificate of Authentication thereon shall have been duly executed by the Fiscal Agent, and such duly executed Certificate of Authentication shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Certificate of Authentication shall be deemed to have been duly executed by the Fiscal Agent when manually signed by an authorized officer or signatory thereof, and it shall not be necessary that the same officer or signatory of the Fiscal Agent manually sign the Certificate of Authentication on all Bonds issued under this Resolution.

Section 3.05 **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 3.06 **Form of Bonds.** The definitive typewritten or printed form of the certificates representing the Bonds issued under 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 text of the approving legal opinion of Bond Counsel shall be included on the Bonds, together with a certificate of the City Clerk relating thereto which shall be signed by the manual or facsimile signature of the City Clerk. The Governing Body hereby approves the form and text of the certificates to be prepared for the Bonds, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Bonds; and hereby further authorizes, orders and directs Bond Counsel, in the event the Bonds in certificated form are issued at anytime after the initial issuance and delivery of the Bonds, to prepare the form of and cause such certificated Bonds to be printed.

Section 3.07 **Registration, Transfer and Exchange of Bonds.** In the event the 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 the Bonds remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Bonds, and such payments shall be made only to DTC in accordance with **Section 3.03(A)** of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 3.08 Mutilated, Lost, Stolen or Destroyed Bonds. In the event any certificate representing a Bond is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal Agent shall authenticate and deliver, 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 Bond, such mutilated Bond shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Bond there shall first be furnished to the Fiscal Agent and the City, evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Bond shall have matured or been called for redemption, instead of issuing a duplicate bond the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Bond their reasonable fees and expenses in connection with the replacement of such Bond or Bonds.

Section 3.09 **Surrender and Cancellation of Bonds.** Whenever any Outstanding Bond shall be delivered to the Fiscal Agent after full payment thereof or for replacement pursuant to this Resolution, such Bond shall be canceled and destroyed by the Fiscal Agent and counterparts of a Certificate of Destruction describing Bonds so destroyed and evidencing such destruction shall be furnished by the Fiscal Agent to the City, or, such Bond shall be canceled and the canceled Bond shall be returned to the City.

Section 3.10 **Execution and Delivery of the Bonds.** The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Bonds without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement bond certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution; and when executed the 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 the Bonds shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the full Purchase Price therefor; and the proceeds of the Bonds shall immediately be applied by the City as hereinafter in this Resolution provided.

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

(A) An executed original or certified copy of the Bond Ordinance, together with an affidavit of publication thereof;

(B) An executed original or certified copy of this Resolution;

(C) An opinion of Bond Counsel to the effect that the Bonds constitute valid and legally binding general obligations of the City and that the interest on the 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

(D) Such other certificates, opinions, statements, receipts and documents as are required by the Act or as Bond Counsel shall reasonably require for delivery of the Bonds.

Section 3.11 **Application of Bond Proceeds.** Upon the issuance and delivery of the Bonds, the proceeds thereof of the Bonds shall be deposited and credited to the various Funds and Accounts created by Article VI of this Resolution, as follows:

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest on the Bonds;

(B) To the Costs of Issuance Account, the Costs of Issuance Deposit; and

(C) The balance of the proceeds to the Escrow Account held by the State Treasurer.

Section 3.12 **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 Bonds, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Bonds. The lawful use of the final Official Statement in the reoffering of the Bonds by the Original Purchaser is hereby approved and authorized.

ARTICLE IV

REDEMPTION OF THE BONDS

Section 4.01 **No Optional Redemption.** The Bonds are not subject to optional redemption prior to maturity.

ARTICLE V

ADDITIONAL BONDS

Section 5.01 **Additional Bonds.** The City hereby covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, it will not issue any additional general obligations bonds, revenue bonds or other obligations payable from the Pledged Revenues, or any part thereof, which are superior in lien, security or otherwise to the first and prior lien of the Outstanding Parity Bonds and the Bonds on the Pledged Revenues.

The City may, however, issue additional bonds payable from the Pledged Revenues (the "Parity Bonds") for the payment of all or any portion of the costs of public facilities or improvements of the City for which it is authorized pursuant to the constitution or laws of the State to issue general obligation bonds, which shall be co-equal in stature and priority to the Outstanding Parity Bonds and the Bonds, but only if each and all of the following conditions are met:

(A) The issuance of Parity Bonds of equal stature and priority to the Outstanding Parity Bonds and the Bonds shall be permitted by State statutes; and the issuance of such Parity Bonds will not affect the exclusion of the interest on the Outstanding Parity Bonds and the Bonds from gross income for purposes of federal income taxation;

(B) 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 created by the Outstanding Bond Ordinances and this Resolution and no event of default shall have occurred and be subsisting in any covenants or procedures established in the Outstanding Bond Ordinances or any other ordinance of the City authorizing indebtedness secured by the Pledged Revenues;

(C) The Principal Payment Date for the Parity Bonds shall be as specified in the ordinance of the City which authorizes the issuance of the Parity Bonds;

(D) As long as any of the Series 2003B Bonds, the Series 2004 Bonds and the Series 2007 Bonds remain Outstanding, the ordinance and/or resolution authorizing such Parity Bonds shall additionally contain substantially the same terms, conditions, covenants and procedures as are established in and by the Outstanding Bond Ordinances, the Bond Ordinance and this Resolution; and

(E) The appropriate "earnings test" must be satisfied, as follows:

(1) If the Parity Bonds proposed to be issued by the City are to be issued as general obligation bonds secured by the full faith and credit of the City and by a specific pledge of the Pledged Revenues, pursuant to and for any of the purposes specified by the Act ("Parity General Obligation Bonds"), then the following specific condition must be met before the issuance of such Parity General Obligation Bonds: The Pledged Revenues generated by the Sales Tax for a 12-month period preceding the issuance of such Parity General Obligation Bonds shall be in an amount equal to at least 110% of the total combined average annual Debt Service Requirements for all ensuing years on (i) the Outstanding Parity Bonds, (ii) the Bonds, (iii) any Parity Bonds previously issued by the City pursuant to the Bond Ordinance and this Resolution, and (iv) the proposed Parity General Obligation Bonds; provided that, for the purposes of calculating the amount of such annual Pledged Revenues, that any period of twelve consecutive months out of the 18-month period next preceding the issuance of such Parity General Obligation Bonds may be used; and further provided that the amount of such Pledged Revenues shall be certified to by a Certificate executed by both the Mayor and the Director of Finance; provided, that if prior to the date of issuance of such Parity General Obligation Bonds there has been authorized and pledged to the payment of the Bonds additional revenues from the Sales Tax in excess of those authorized and pledged as of the commencement of such 18-month period, the Pledged Revenues may be increased for such period in an amount equal to 100% of the estimated increase in Pledged Revenues which would have been realized during such period had such increase been in effect during all of said 18-month period; or

(2) If the Parity Bonds proposed to be issued by the City are to be issued as revenue bonds secured by a specific pledge of the Pledged Revenues, pursuant to and for any of the purposes specified by K.S.A. 12-195(b), but not secured by the full faith and credit of the City ("Parity Revenue Bonds"), then the following specific condition must be met before the issuance of such Parity Revenue Bonds: The Pledged Revenues generated by the Sales Tax for a 12-month period preceding the issuance of such Parity Revenue Bonds shall be in an amount equal to at least 110% of the

total combined average annual Debt Service Requirements for all ensuing years on (i) the Outstanding Parity Bonds, (ii) the Bonds (iii) any Parity Bonds previously issued by the City pursuant to the Bond Ordinance and this Resolution, and (iv) the proposed Parity Revenue Bonds; provided that, for the purposes of calculating the amount of such annual Pledged Revenues, that any period of 12 consecutive months out of the 18-month period next preceding the issuance of such Parity Revenue Bonds may be used; and further provided that the amount of such Pledged Revenues shall be certified to by a Certificate executed by both the Mayor and the Director of Finance; provided, that if prior to the date of issuance of such Parity Revenue Bonds there has been authorized and pledged to the payment of the Bonds additional revenues from the Sales Tax in excess of those authorized and pledged as of the commencement of such 18-month period, the Pledged Revenues may be increased for such period in an amount equal to 100% of the estimated increase in Pledged Revenues which would have been realized during such period had such increase been in effect during all of said 18-month period.

Any Parity Bonds issued under the conditions set forth above and which are payable from the Pledged Revenues shall stand on a parity with the Outstanding Parity Bonds and the Bonds, and shall enjoy complete equality of the lien on and claim against the Pledged Revenues as the Outstanding Parity Bonds and the Bonds; and the City shall make equal provision for paying the Parity Bonds and the interest thereon out of the Pledged Revenues.

The City may issue additional bonds on a parity with and co-equal with the Outstanding Parity Bonds and the Bonds for the purpose of refunding outstanding Parity Bonds without meeting the requirement of subsection (E) above, if the issuance of such refunding bonds shall result in a reduction in the debt service requirements with respect to such refunded bonds.

Section 5.02 **Subordinate Lien Bonds.** Nothing contained in this Article prohibits or restricts the right of the City to issue revenue bonds payable from the Pledged Revenues for any of the purposes authorized by K.S.A. 12-195(b), and to provide that the principal of and the interest thereof shall be paid from the Pledged Revenues; provided that at the time such revenue bonds are issued, the City shall not be in default in the performance of any covenant or agreement contained in the Outstanding Bond Ordinances, the Bond Ordinance and this Resolution; and provided further that any such revenue bonds shall be junior and subordinate to the Outstanding Parity Bonds and the Bonds, so that if at any time the City shall be in default in the payment of either the interest on or the principal of the Outstanding Parity Bonds and the Bonds, or if the City shall be in default in making any other payments required to be made by it under the provisions of the Outstanding Bond Ordinances, the Bond Ordinance and this Resolution, it shall make no payments of either the principal of or the interest on the junior and subordinate revenue bonds until said default or defaults under the covenants, agreements and conditions contained in the Outstanding Bond Ordinances and the Bond Ordinance and this Resolution shall be cured and no longer existing on the part of the City. In the event of the issuance of any such junior and subordinate revenue bonds, the City, subject to the provisions

aforesaid, may make provision for the payment of the interest on and the principal of said junior and subordinate revenue bonds out of the Pledged Revenues.

ARTICLE VI

CREATION AND ADMINISTRATION OF FUNDS AND ACCOUNTS

Section 6.01 Confirmation of Existing and Creation of Additional Funds and Accounts. The Governing Body hereby confirms the existence of the "Local Sales Tax Road, Highway and Bridge Revenue Fund" (the "Revenue Fund"), heretofore authorized and ordered to be created and established in the Treasury of the City, and covenants that such Revenue Fund shall continue to be maintained and exist separate and apart from all other funds of the City, and be governed by the Outstanding Bond Ordinances and by this Resolution until the full and final payment of the Bonds.

The Governing Body hereby directs that simultaneously with the issuance and delivery of the Bonds, there shall be created within the Treasury of the City, the additional following designated funds and accounts:

(A) Costs of Issuance Account for General Obligation Sales Tax Refunding Bonds, Series 2009A;

(B) Principal and Interest Account for General Obligation Sales Tax Refunding Bonds, Series 2009A, to be created within the City's Bond and Interest Fund; and

(C) Excess Earnings Account for General Obligation Sales Tax Refunding Bonds, Series 2009A.

The Governing Body hereby confirms the existence of certain other funds and accounts authorized and ordered to be created and established by the Outstanding Bond Ordinances for the payment and security of the Outstanding Parity Bonds in the Treasury of the City; and covenants that such funds and accounts shall continue to be maintained and exist separate and apart from all other funds of the City, and shall be governed by the Outstanding Bond Ordinances until the full and final payment of the Outstanding Parity Bonds.

Section 6.02 Administration of Funds and Accounts. The City shall maintain a practice of keeping separate and distinct funds and accounts herein referred to and as created by this Resolution for budget and accounting purposes; provided, however, such segregation of funds and accounts for such purpose shall have no effect upon the pledge and lien of the Bonds on the Pledged Revenues.

ARTICLE VII

DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS; GROSS REVENUES AND PLEDGED REVENUES

Section 7.01 Escrow Account; Refunding. The Refunded Bonds are hereby authorized to be redeemed on May 15, 2009, and the City Clerk is hereby authorized to provide notice of such redemption in accordance with the ordinance and resolution of the City that authorized the issuance and prescribed the terms of the Refunded Bonds. An Escrow Account shall be established with the State Treasurer under the terms of the Escrow Agreement and shall be used solely to pay the principal of, premium, if any, and interest on the Refunded Bonds at their redemption date of May 15, 2009. A portion of the proceeds of the Bonds as set forth in **Section 3.11** of this Resolution and funds on deposit in the principal and interest accounts established for the Refunded Bonds in the amount of the Existing Account Deposit shall be deposited with the State Treasurer for deposit into the Escrow Account on or prior to the date the Bonds are delivered to the Original Purchaser. Any moneys remaining in the Escrow Account after the Refunded Bonds have been redeemed shall be transferred to the City and deposited into the Principal and Interest Account for the Bonds.

Section 7.02 Collection, Segregation and Disposition of Gross Revenues and Pledged Revenues. The City hereby covenants that immediately upon the issuance of the Bonds, and continuing so long as any of the Bonds remain Outstanding and unpaid, all of the Gross Revenues, promptly upon the receipt thereof by the City, and as frequently as received, shall be paid to and deposited as follows: (i) 50% of such Gross Revenues shall be deposited into the City's General Fund, and (ii) 50% of the Gross Revenues shall be deposited into the Revenue Fund ratified by this Resolution.

The City hereby further covenants that the Pledged Revenues deposited in the Revenue Fund as aforesaid shall be disbursed on the first day of each month (commencing the first day of the month following the issuance of the Bonds) as follows: (i) the amounts required by the Outstanding Bond Ordinances shall be transferred to the Outstanding Bond Principal and Interest Accounts; plus, (ii) an amount equal to the pro rata portion of the amount of interest which will become due on the Bonds on the next succeeding Interest Payment Date, plus an amount equal to the pro rata portion of the amount of principal that will become due on the Bonds on the next succeeding Principal Payment Date shall be transferred to and deposited in the Principal and Interest Account created by this Resolution for the payment of the Bonds, to the end that at all times 30 days prior to any Interest Payment Date and to any 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 Bonds to the Paying Agent for payment to the Owners when due; and (iii) the balance of the Pledged Revenues in the Revenue Fund, if any, shall be transferred to and deposited in the City's "Local Sales Tax Capital Improvement Construction Fund" for payment of the costs of other local road, highway and bridge projects, or otherwise as shall be determined by the Governing Body of the City.

In determining the respective monthly amounts to be so transferred to the Principal and Interest Account, moneys on hand in the Principal and Interest Account from accrued interest, investment income or other sources shall be taken into consideration and the amount of the monthly transfers thereto shall be reduced accordingly.

Section 7.03 Disposition of Principal and Interest Account. Moneys deposited in the Principal and Interest Account from the proceeds of the Bonds as provided by clause (A) of Section 3.11 of this Resolution, shall be used exclusively for the payment of interest on the

Bonds on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other sources, as provided by the preceding Section or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of, premium, if any, and the interest on the Bonds, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

Section 7.04 Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent. The Director of Finance is hereby authorized and directed to cause to be withdrawn from the Principal and Interest Account and forwarded to the Fiscal Agent, a sum sufficient in amount to pay the principal of, premium, if any, and the interest on the Bonds as and when the same become due and payable; together with such sum as may be required to pay the fees and charges of the Fiscal Agent, if any, for acting in such capacity, and the sum for charges of the Fiscal Agent shall be forwarded to the Fiscal Agent over and above the amount required to pay the Bonds as aforesaid. If, through the lapse of time or otherwise, the Owner of any Bond shall no longer be entitled to enforce payment of such Bond, it shall be the duty of the Fiscal Agent to forthwith return such unexpended funds to the City. All moneys transferred to the Fiscal Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution, and shall be deemed to be deposited with the Fiscal Agent in trust for and on behalf of the Owners of the Bonds.

Section 7.05 Surplus in Principal and Interest Account. Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all of the Bonds shall be transferred and paid into the General Fund of the City or otherwise at the direction of the Governing Body of the City.

Section 7.06 Costs of Issuance Account. Moneys in the Costs of Issuance shall be used solely for the purpose of paying the Costs of Issuance. All moneys remaining in the Costs of Issuance Account after the earlier of payment of all Costs of Issuance or August 1, 2009, shall be transferred to the Principal and Interest Account.

ARTICLE VIII

DEPOSITS AND INVESTMENT OF MONEYS

Section 8.01 Deposits. Cash moneys in each of the Funds and Accounts created and established by this Resolution shall be deposited in accordance with the laws of the State.

Section 8.02 Investments. Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, 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, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established; and provided further, that such moneys shall not be invested in such manner as will violate the provisions of the Certificate as to Arbitrage and Related Tax Matters. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall (except the amounts which are

required to be deposited into the Excess Earnings Account in accordance with the Certificate as to Arbitrage and Related Tax Matters) accrue to and become a part of such originating fund or account. In determining the amount held in any fund or account under the provisions of this Resolution, Authorized Investments shall be valued at their principal par value or at their then redemption value, whichever is less. All investments made pursuant hereto shall be made in accordance with the Certificate as to Arbitrage and Related Tax Matters.

Section 8.03 Deposits into and Application of Moneys in the Excess Earnings Account.

(A) The City shall deposit into the Excess Earnings Account such amounts as are required to be deposited therein pursuant to the Certificate as to Arbitrage and Related Tax Matters. All earnings on investments of moneys held in the Excess Earnings Account shall be retained in the Excess Earnings Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Excess Earnings Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Certificate as to Arbitrage and Related Tax Matters), for payment to the United States of America, and neither the City nor the Owner of any Bond shall have any right in or claim to such money. All amounts held in the Excess Earnings Account shall be governed by this Section and by the Certificate as to Arbitrage and Related Tax Matters.

(B) The City shall remit part or all of the balances in the Excess Earnings Account to the United States of America in accordance with the Certificate as to Arbitrage and Related Tax Matters. Any funds remaining in the Excess Earnings Account after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Excess Earnings Account and shall be deposited into the City's General Fund.

(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 Certificate as to Arbitrage and Related Tax Matters shall survive the defeasance or payment in full of the Bonds.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Certificate as to Arbitrage and Related Tax Matters for at least six (6) years after the date on which no Bonds shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Excess Earnings Account and any Rebate Amount are set forth in an "Certificate as to Arbitrage and Related Tax Matters," dated as of the Date of Issuance. The form and text of the Certificate as to Arbitrage and Related Tax Matters 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 Director of Finance, as appropriate, or such other officer as may be directed by the Mayor, shall be and are hereby authorized to execute and deliver the Certificate as to Arbitrage and

Related Tax Matters for and on behalf of the City. The entire text of the Certificate as to Arbitrage and Related Tax Matters is by reference hereby incorporated in and made a part of this Resolution as though fully set forth at this place.

ARTICLE IX

PROVISION FOR PAYMENT OF BONDS

Section 9.01 Covenants of the City. The City hereby covenants with each and all of the Owners of the Bonds that so long as any of the Bonds remain Outstanding and unpaid it will faithfully perform at all times any and all covenants, agreements, undertakings and provisions contained in this Resolution and in the Bonds.

Section 9.02 Financial Records and Reports; Annual Audit and Budget. So long as any of the Bonds remain Outstanding, the City will maintain proper books, records and accounts (entirely separate from all other books, records and accounts of the City) in which complete and correct entries will be made of all dealings and transactions of or in relation to the Sales Tax. Such books, records and accounts shall show the Gross Revenues received from the Sales Tax, and the application of the Pledged Revenues and all financial transactions in connection therewith. Said books shall be kept according to standard accounting practices as applicable to municipalities.

Quarterly comparative reports shall be made to the Governing Body relative to the Pledged Revenues; and the City will annually, at the end of each Fiscal Year, cause an audit of the transactions related to the Gross Revenues to be made by a qualified accountant experienced in the field of municipal accounting. Said annual audit shall include:

(A) A classified statement as to the Gross Revenues received during the Fiscal Year;

(B) A balance sheet as of the end of each Fiscal Year showing the amount on hand at the end of such year in each of the Funds created by the Outstanding Bond Ordinances and by this Resolution and in each of the funds or accounts created by any ordinance authorizing the issuance of any Parity Bonds under the provisions of the Bond Ordinance and this Resolution;

(C) An income statement showing excess or deficiency of Pledged Revenues over Debt Service Requirements for such Fiscal Year;

(D) A statement listing all Bonds issued under the provisions of the Bond Ordinance and this Resolution which have matured, been called, purchased, or paid during the preceding Fiscal Year, and of all interest paid during the preceding Fiscal Year on such Bonds; and

(E) The opinion of the auditor as to whether or not the requirements of the Outstanding Bond Ordinances, the Bond Ordinance and this Resolution and of

any ordinance or resolution authorizing any Parity Bonds are being met by the Pledged Revenues.

The annual audit shall be completed as soon as practicable after the end of each Fiscal Year and a copy shall be filed in the office of the City Clerk where it shall be open to public inspection.

Prior to the commencement of each Fiscal Year, there shall be prepared and filed in the office of the City Clerk a budget setting forth the estimated receipts and expenditures from the Pledged Revenues for the next succeeding Fiscal Year. Said annual budget shall contain:

(A) An estimate of the anticipated Pledged Revenues from the Sales Tax during the next ensuing Fiscal Year;

(B) A statement as to the amount of interest that will accrue during the next Fiscal Year on all Outstanding Bonds issued under the provisions of the Bond Ordinance and this Resolution;

(C) A statement as to the principal amount of such Outstanding Bonds which will become due by their terms during the next Fiscal Year;

(D) A statement as to the total estimated expenditures to be made from the Pledged Revenues during the next Fiscal Year; and

(E) A statement as to the amounts to be deposited from the Pledged Revenues during the next Fiscal Year into any Fund and Account created by the Outstanding Bond Ordinances and by this Resolution and into each of the funds or accounts created by any ordinance authorizing any Parity Bonds under the provisions of the Bond Ordinance and this Resolution.

Notwithstanding the foregoing, when the Series 2003B Bonds and the Series 2004 Bonds are no longer Outstanding, the preceding provisions of this Section 9.02 shall be deleted and replaced by the following provisions:

As long as any of the Bonds remain Outstanding, the City will maintain proper books, records and accounts in which complete and correct entries will be made of all transactions relating to the funds and accounts established or ratified by this Resolution. Said books shall be kept according to standard accounting practices as applicable to municipalities.

Section 9.03 **Inspection by Owners.** Any Owner shall have the right at all reasonable times to inspect the books, records, accounts and data relating to the Sales Tax and the Pledged Revenues therefrom, and shall be furnished by the City with all information concerning the Sales Tax and the Pledged Revenues therefrom which an Owner may reasonably request.

ARTICLE X

DEFAULT AND REMEDIES

Section 10.01 Ordinance Constitutes Contract; Remedies of Owners. The provisions of the Bond Ordinance and this Resolution, and all of the covenants and agreements herein contained, shall constitute a contract between the City and the Owners, and the Owner or Owners of any of the Bonds at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

(A) By mandamus or other suit, action or proceedings at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all duties and obligations required by the provisions of the Bond Ordinance and this Resolution or by the Constitution and laws of the State;

(B) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

Section 10.02 Rights of Owners; Limitations. The covenants and agreements of the City contained herein, in the Bond Ordinance and in the Bonds shall be for the equal benefit, protection and security of the Owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of any one Bond over any other Bond in the application of the moneys herein pledged to the payment of the principal of, premium, if any, and the interest on the Bonds, or otherwise, except as to the rate of interest, Principal Payment Date and right of prior redemption as provided in this Resolution.

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Outstanding Bonds. Nothing in this Resolution, in the Bond Ordinance or in the Bonds shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Bonds to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Bonds held by him, or to reduce to judgment his claim against the City for payment of the principal and interest on the Bonds without reference to or consent of any other Owner.

Section 10.03 Remedies Cumulative; Delay or Omission Not Waiver. No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be

exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Bond of any default or breach of duty or contract by the City shall extend to or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

ARTICLE XI

AMENDMENTS

Section 11.01 **Amendments.** The City may, without the consent of or notice to, the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to provide for the issuance of coupon bonds and the exchange of the fully registered Bonds for coupon bonds upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (iii) shall not 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 fully registered Bonds for such coupon bonds, will not cause the interest on the Bonds to be includable in the gross income of recipients thereof under the provisions of the applicable federal law, or (iv) to conform the Resolution to the Code or any future applicable federal law concerning tax-exempt obligations.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by an ordinance of the City with the consent of the Owners of not less than 75% in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by the Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of 100% of the Owners of the Bonds then Outstanding:

(A) Extend the maturity of any payment of principal or interest due upon any Bond;

(B) Effect a reduction in the amount which the City is required to pay by way of the principal of or the interest on any Bond;

(C) Permit a preference or priority of any Bond or Bonds over any other Bond or Bonds; or

(D) Reduce the percentage of the principal amount of the then Outstanding Bonds for which the written consent of the Owners is required for any modification or alteration of the provisions of this Resolution.

Section 11.02 **Written Evidence of Amendments.** Any and all modifications or amendments to this Resolution or of the Bonds shall be made in the manner hereinabove provided, and shall not become effective until there has been filed with the City Clerk a copy of the ordinance of the City authorizing said modifications or amendments, as hereinabove provided for, duly certified and published, as well as proof of consent to such modifications or amendments by the Owners of not less than the percentage of the principal amount of Bonds then Outstanding as hereinabove required. It shall not be necessary to note on any Outstanding Bond any reference to such amendment or modification.

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 Owner of any Bond or the prospective purchaser or owner of any Bond, and upon payment of the reasonable cost of preparing same, a certified copy of any such amendatory or supplemental ordinance resolution or of the Bond Ordinance or this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

ARTICLE XII

DEFEASANCE

Section 12.01 **Defeasance.** When all or any part of the principal of, premium, if any, and the interest on the Bonds shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Bond Ordinance or this Resolution shall cease and determine with respect to that so paid. The Bonds shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State and having full trust powers, at or prior to the maturity or redemption date of the Bonds, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Bonds, the premium, if any, and the interest thereon to the date of maturity or the redemption date, as the case may be, or if default in such payment shall have accrued on such date, then to the date of the tender of such payments, provided always that if any 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 by the terms of this Resolution. Any moneys which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank 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 so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 13.01 Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the 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 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 Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the 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 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 Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code; and that 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 Bonds for so long as any of the 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 Bonds from time to time. This covenant shall survive payment in full or the defeasance of the 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 Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 13.02 Severability. In case any one or more of the provisions of the Bond Ordinance or 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 this Resolution or the Bonds appertaining thereto, but the Bond Ordinance, this Resolution and the

Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Bonds or in the Bond Ordinance or 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 13.03 **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 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 Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the 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 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 Resolution and to give effect to the transactions contemplated hereby.

The execution and attestation of this Resolution 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 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 Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Bonds and the Official Statement.

Section 13.04 **Governing Law.** This Resolution and the Bonds shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

Section 13.05 **Effective Date.** This Resolution shall be in force and take effect from and after its passage and approval by the Governing Body of the City.

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on March 10, 2009.

(Seal)

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

EXHIBIT A

ADDITIONAL TERMS OF THE BONDS

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

"Bond Ordinance" shall mean Ordinance No. _____ of the City, passed by the Governing Body on March 10, 2009, and authorizing and providing for the issuance of the Bonds.

"Costs of Issuance Deposit" means $_____.

"Existing Account Deposit" means $_____ for the Refunded Bonds.

"Original Purchaser" means _____, _____, _____, the original purchaser of the Bonds.

"Purchase Price" for the Bonds shall be the par value of the Bonds plus accrued interest to the date of delivery, less a discount of $_____, plus a premium of $_____.

Maturity Schedule. All of the Bonds shall be become due on the dates, in the amounts and at the interest rates per annum shown below:

Maturity Date	Maturing Principal	Interest Rate
April 1, 2010	$3,390,000	
April 1, 2011	3,450,000	
April 1, 2012	3,525,000	
April 1, 2013	3,615,000	
April 1, 2014	3,685,000	
April 1, 2015	3,765,000	
April 1, 2016	3,850,000	
April 1, 2017	3,950,000	

RESOLUTION NO. 09-065

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED MARCH 10, 2009

AUTHORIZING THE ISSUANCE OF

$20,020,000

GENERAL OBLIGATION REFUNDING BONDS
SERIES 2009B

DATED APRIL 1, 2009

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Exhibit A	Additional Terms of the Bonds	

RESOLUTION NO. 09-065

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2009B, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF $20,020,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH REFUNDING CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE BONDS; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Bond Ordinance (as herein defined), has authorized the issuance of the Bonds in the aggregate principal amount of $20,020,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Bonds; and

WHEREAS, in accordance with the provisions of the Bond Ordinance, the Governing Body hereby finds and determines that it is necessary to prescribe the terms and details of the Bonds pursuant to this Resolution, and to make certain other covenants and agreements with respect thereto;

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

ARTICLE I
DEFINITIONS

Section 1.01 Definitions of Words and Terms. In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" shall mean K.S.A. 10-101 *et seq.*, and K.S.A. 10-427 *et seq.*, as amended and supplemented, under the authority of which statutes the Bonds are issued.

"Authentication Date" shall mean the date on which a Bond is registered and authenticated by the Fiscal Agent as shown on a Certificate of Authentication printed 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 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 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 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 *"AA"* by Standard & Poor's, a Division of the McGraw-Hill Companies ("S&P") and *"Aa2"* by Moody's Investor Services ("Moody's") issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding four 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 of Kansas 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 any 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.

(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 any issuer of a Municipal Bond Insurance Policy, if applicable, described on **Exhibit A** to this Resolution.

"Bond Ordinance" means the ordinance authorizing the issuance of the Bonds as further described on **Exhibit A** to this Resolution.

"Bond Registrar" shall mean the State Treasurer and its successors and assigns.

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

"Bonds" shall mean the $20,020,000 original principal amount of General Obligation Refunding Bonds, Series 2009B, dated April 1, 2009, of the City of Wichita, Kansas, which are authorized by and will be issued pursuant to the authority of the Bond Ordinance and this Resolution.

"Certificate as to Arbitrage and Related Tax Matters" shall mean the Certificate as to Arbitrage and Related Tax Matters, dated as of and delivered on the Date of Issuance, executed

by the City, 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.

"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 City Clerk's absence (or in the event of a vacancy in such office) any 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 any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the Yield on the Bonds or investment of the proceeds of the Bonds, and in connection with receiving municipal bond insurance and/or ratings on the Bonds.

"Costs of Issuance Account" shall mean the for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2009B created pursuant to **Article IV** hereof.

"Costs of Issuance Deposit" shall mean the amount of proceeds of the Bonds be deposited in the Costs of Issuance Account described on **Exhibit A** to this Resolution.

"Date of Issuance" shall mean the date on which the Bonds are delivered to the Original Purchaser and the City receives from the Original Purchaser the full purchase price therefor.

"Dated Date" shall mean the dated date of the Bonds which is April 1, 2009.

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

"Debt Service Fund" shall mean the Debt Service Fund of the City created, held and administered solely for the purpose of receiving and disbursing funds for the payment of the City's general obligation indebtedness.

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

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the Director of Finance's absence, the duly appointed Assistant Director of Finance or Acting Director of Finance of the City.

"DTC" shall mean The Depository Trust Company and its successors or assigns.

"Escrow Account" shall mean the Escrow Account created under the Escrow Agreement and held by the State Treasurer.

"Escrow Agreement" means the Escrow Letter of Instructions dated as of April 1, 2009, from the City to the State Treasurer.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article IV** hereof.

"Existing Account Deposit" shall mean the amount of funds on deposit in the principal and interest accounts for the Refunded Bonds to be deposited in the Escrow Account described on **Exhibit A** to this Resolution.

"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.

"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 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).

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

"Interest Payment Dates" shall be June 1 and December 1 of each year commencing December 1, 2009, and ending December 1, 2016, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Bonds.

"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 the Bonds as described on **Exhibit A** to this Resolution.

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

"Original Purchaser" means the original purchaser of the Bonds described on **Exhibit A** to this Resolution.

"Outstanding," when used with reference to the Bonds, shall mean, as of a particular date, all Bonds theretofore authenticated and delivered under this Resolution, except (i) Bonds theretofore canceled by the Fiscal Agent or delivered to the Fiscal Agent for cancellation, (ii) Bonds for which payment or redemption moneys or Government Obligations (the principal of and the interest on which Government Obligations, if any, when due, provide sufficient moneys to pay, with such other moneys so deposited with the Fiscal Agent, the principal, redemption premium, if any, and interest on the Bonds being paid or redeemed), or both, in the necessary amount have theretofore been deposited with the Fiscal Agent, or other depository as provided in this Resolution, in trust for the Owners thereof (whether upon or prior to maturity or the Redemption Date of the Bonds), and (iii) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Resolution.

"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.

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

"Paying Agent" shall mean the State Treasurer and its successors and assigns.

"Principal and Interest Account" shall mean the Principal and Interest Account created within the City's Debt Service Fund pursuant to **Article IV** hereof, which is created and shall be held and administered solely for the purpose of receiving and disbursing funds for the payment of the Bonds.

"Principal Payment Date" shall mean December 1 of each year, commencing December 1, 2009, and ending December 1, 2016, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Purchase Price" means the original purchase price of the Bonds described on **Exhibit A** to this Resolution.

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

"Redemption Date" shall mean the date of redemption of the Refunded Bonds on May 15, 2009.

"Refunded Bonds" shall mean the Refunded Bond as described in the recitals to the Bond Ordinance.

"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.

"Resolution" or "Bond Resolution" shall mean this Resolution, adopted by the Governing Body of the City on March 10, 2009, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

"State Treasurer" means the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

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

"Value" 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.

ARTICLE II
AUTHORIZATION, ISSUANCE AND DELIVERY OF BONDS

Section 2.01 Authorization of and Security for Bonds. Pursuant to the Bond Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to pay the refunding and redemption of the Refunded Bonds, there shall be issued the Bonds. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon, in part, from the collection of special assessment taxes which have been levied against benefited real properties in the City, and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City, with the balance payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City.

Section 2.02 Description and Details of Bonds. The Bonds shall be issued in the total principal amount of $20,020,000 and shall be designated "City of Wichita, Kansas, General

Obligation Refunding Bonds, Series 2009B." All of the Bonds shall be dated the Dated Date and shall become due on the dates set forth on **Exhibit A** to this Resolution (the "Principal Payment Dates"). The Bonds shall bear interest at the rates described on **Exhibit A** to this Resolution (computed on the basis of a 360-day year of 12 30-day months) and shall be payable on the Interest Payment Dates.

The Bonds shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of Bonds maturing on the respective Principal Payment Dates, and shall be numbered in such manner as the Fiscal Agent shall determine. The Bonds shall bear interest from the Interest Payment Date immediately preceding their effective Date of Authentication, unless such effective Date of Authentication shall be prior to the first Interest Payment Date in which case the Bonds shall bear interest from the Dated Date.

The Bonds will be issued and distributed in book-entry-only form through DTC, by depositing with DTC (or the Fiscal Agent as agent for 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 Bonds maturing on the respective Principal Payment Dates as authorized herein. The manner of payment of the principal of and the interest on the Bonds to DTC, and other matters relating to the distribution of the Bonds in book-entry-only form through DTC, shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

Subject to the operational arrangements of DTC, in the event (i) DTC determines not to continue to act as securities depository for the Bonds, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Bonds would adversely affect the interests of the beneficial owners of the Bonds, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement 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 (to the extent such beneficial owners can be identified by the City). If issued in certificated form, the certificates representing the Bonds shall be numbered in such manner as the Bond Registrar shall determine.

Section 2.03 **Designation of Paying Agent and Bond Registrar**. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body has elected to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The State Treasurer has been 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.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the 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 2.04(A)** and as governed by the terms of the Letter of Representation.

In the event that the Bonds should be issued and delivered in certificated form at any time after the initial delivery of the Bonds, the Fiscal Agent shall maintain Registration Books for the ownership of the Bonds on behalf of the City and the Paying Agent will make payment for the Bonds directly to the Owners as shown by said Registration Books in the manner set forth in the following **Section 2.04(B)**.

Section 2.04 Method and Place of Payment of Principal and Interest on Bonds.

(A) 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 the Bonds maturing on the respective Principal Payment Dates will be issued to DTC in New York, New York (or to the Fiscal Agent as agent for DTC) and such certificates will be immobilized in its custody. Purchases of the Bonds in denominations permitted by **Section 2.02** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each 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 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 Bonds are Subsequently Issued. The principal of, premium, if any, and the interest on the 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 premium, if any, on the Bonds shall be paid to the Owner of each Bond upon presentation and surrender of the Bond to the Paying Agent for payment and cancellation on the maturity date or redemption date, as the case may be, of the Bond. The interest on the Bonds shall be mailed by the Paying Agent to the Owner of each 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 2.05 Method of Execution and Authentication of Bonds. The Bonds shall be executed for and on behalf of the City by the manual or facsimile signatures of its Mayor and City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The 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, on a Certificate of Registration printed on the Bonds, with the City's official seal or a facsimile thereof, impressed or imprinted opposite said signature. The Bonds shall be registered by the State Treasurer in the municipal bond register in his office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State

Treasurer on a Certificate of State Treasurer printed on the Bonds, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature.

In case any officer of the City or of the State whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the actual delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

No Bond shall be valid or obligatory for any purpose unless and until the Certificate of Authentication thereon shall have been duly executed by the Fiscal Agent, and such duly executed Certificate of Authentication shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Certificate of Authentication shall be deemed to have been duly executed by the Fiscal Agent when manually signed by an authorized officer or signatory thereof, and it shall not be necessary that the same officer or signatory of the Fiscal Agent manually sign the Certificate of Authentication on all Bonds issued under the Bond Ordinance and this Resolution.

Section 2.06 **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 2.07 **Form of Bonds**. The definitive typewritten or printed form of the certificates representing the Bonds issued under this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State of Kansas, 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 Bonds, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Bonds and hereby further authorizes, orders and directs Bond Counsel, in the event the Bonds in certificated form are issued at any time after the initial issuance and delivery of the Bonds, to prepare the form of and cause such certificated Bonds to be printed.

Section 2.08 **Registration, Transfer and Exchange of Bonds**. In the event the 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 the Bonds remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Bonds, and such payments shall be made only to DTC in accordance with **Section 2.04(A)** of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 2.09 Mutilated, Lost, Stolen or Destroyed Bonds. In the event any certificate representing a Bond is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal Agent shall authenticate and deliver, 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 Bond, such mutilated Bond shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Bond there shall first be furnished to the Fiscal Agent and the City, evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Bond shall have matured or been called for redemption, instead of issuing a duplicate bond the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Bond their reasonable fees and expenses in connection with the replacement of such Bond or Bonds.

Section 2.10 Surrender and Cancellation of Bonds. Whenever any Outstanding Bond shall be delivered to the Fiscal Agent after full payment thereof or for replacement pursuant to this Resolution, such Bond shall be canceled and destroyed by the Fiscal Agent and counterparts of a Certificate of Destruction describing Bonds so destroyed and evidencing such destruction shall be furnished by the Fiscal Agent to the City, or such Bond shall be canceled and the canceled Bond shall be returned to the City.

Section 2.11 **Execution and Delivery of Bonds**. The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Bonds without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement bond certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution and when executed the 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 the Bonds shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the Purchase Price therefor and the proceeds of the Bonds shall immediately be applied by the City as hereinafter in this Resolution provided.

Section 2.12 **Official Statement**. The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared for use in the initial offering and sale of the Bonds, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Bonds. The lawful use of the final Official Statement in the reoffering of the Bonds by the Original Purchaser is hereby approved and authorized.

ARTICLE III
REDEMPTION OF BONDS

Section 3.01 **No Optional Redemption**. The Bonds are not subject to optional redemption prior to maturity.

ARTICLE IV
FUNDS AND ACCOUNTS

Section 4.01 **Creation of Funds and Accounts**. Simultaneously with the issuance and delivery of the Bonds, there shall be created within the Treasury of the City, the following designated funds and accounts:

(A) Costs of Issuance Account for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2009B;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2009B, to be created within the City's Debt Service Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Refunding Bonds, Series 2009B.

Section 4.02 **Administration of Funds and Accounts**. The funds and accounts established and created by this Article shall be administered in accordance with the provisions of this Resolution for so long as any of the Bonds remain Outstanding.

ARTICLE V
APPLICATION OF BOND PROCEEDS; DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

Section 5.01 Application of Bond Proceeds. Upon the issuance and delivery of the Bonds, the proceeds thereof shall be deposited and credited to the various funds and accounts created by **Article IV** of this Resolution, as follows:

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Bonds;

(B) To the Costs of Issuance Account, the Costs of Issuance Deposit; and

(C) The balance of the proceeds to the Escrow Account held by the State Treasurer.

Section 5.02 Disposition of Principal and Interest Account. Moneys deposited in the Principal and Interest Account from the proceeds of the Bonds as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Bonds on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of, premium, if any, and the interest on the Bonds, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

Section 5.03 Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent. The Director of Finance is hereby authorized and directed to cause to be withdrawn from the Principal and Interest Account and forwarded to the Fiscal Agent, a sum sufficient to pay the principal of, premium, if any, and the interest on the Bonds as and when the same become due and payable, together with such sum as may be required to pay the fees and charges of the Fiscal Agent, if any, for acting in such capacity, and the sum for charges of the Fiscal Agent shall be forwarded to the Fiscal Agent over and above the amount required to pay the Bonds as aforesaid. If, through the lapse of time or otherwise, the Owner of any Bond shall no longer be entitled to enforce payment of such Bond, it shall be the duty of the Fiscal Agent to forthwith return such unexpended funds to the City. All moneys transferred to the Fiscal Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution, and shall be deemed to be deposited with the Fiscal Agent in trust for and on behalf of the Owners of the Bonds.

Section 5.04 Surplus in Principal and Interest Account. Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all general obligation bond issues of the City shall be transferred and paid into the General Fund of the City.

Section 5.05 Costs of Issuance Account. Moneys in the Costs of Issuance shall be used solely for the purpose of paying the Costs of Issuance. All moneys remaining in the Costs of Issuance Account after the earlier of payment of all Costs of Issuance or August 1, 2009, shall be transferred to the Principal and Interest Account.

Section 5.06 **Escrow Account; Refunding**. The Refunded Bonds are hereby authorized to be redeemed on the Redemption Date and the City Clerk is hereby authorized to provide notice of such redemption in accordance with the ordinances and resolutions of the City that authorized the issuance and prescribed the terms of the Refunded Bonds. An Escrow Account shall be established with the State Treasurer under the terms of the Escrow Agreement and shall be used solely to pay the principal of, premium, if any, and interest on the Refunded Bonds at their Redemption Date. A portion of the proceeds of the Bonds as set forth in **Section 5.01** of this Resolution and funds on deposit in the principal and interest accounts established for the Refunded Bonds in the amount of the Existing Account Deposits shall be deposited with the State Treasurer for deposit into the Escrow Account on or prior to the date the Bonds are delivered to the Original Purchaser. Any moneys remaining in the Escrow Account after the Refunded Bonds have been redeemed shall be transferred to the City and deposited into the Principal and Interest Account for the Bonds.

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

Section 6.01 **Deposits**. Cash moneys in each of the funds and accounts created and established by this Resolution shall be deposited in a bank(s) or Federal or state chartered savings and loan association(s) with offices located within Sedgwick County, Kansas, whose deposits are insured by the Federal Deposit Insurance Corporation, and all such deposits shall be adequately secured by the bank(s) or savings and loan association(s) holding such deposits in accordance with the laws of the State.

Section 6.02 **Investments**. Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, 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, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established; and provided further, that such moneys shall not be invested in such manner as will violate the provisions of the Certificate as to Arbitrage and Related Tax Matters. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall (except the amounts which are required to be deposited into the Excess Earnings Account in accordance with the Certificate as to Arbitrage and Related Tax Matters) accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month. All investments made pursuant hereto shall be made in accordance with the Certificate as to Arbitrage and Related Tax Matters.

Section 6.03 Deposits into and Application of Moneys in Excess Earnings Account.

(A) The City shall deposit into the Excess Earnings Account such amounts as are required to be deposited therein pursuant to the Certificate as to Arbitrage and Related Tax Matters. All earnings on investments of moneys held in the Excess Earnings Account shall be retained in the Excess Earnings Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Excess Earnings Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Certificate as to Arbitrage and Related Tax Matters), for payment to the United States of America, and neither the City nor the Owner of any Bond shall have any right in or claim to such money. All amounts held in the Excess Earnings Account shall be governed by this Section and by the Certificate as to Arbitrage and Related Tax Matters.

(B) The City shall remit part or all of the balances in the Excess Earnings Account to the United States of America in accordance with the Certificate as to Arbitrage and Related Tax Matters (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Excess Earnings Account after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Excess Earnings Account and shall be deposited into the City's General Fund.

(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 Certificate as to Arbitrage and Related Tax Matters shall survive the defeasance or payment in full of the Bonds.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Certificate as to Arbitrage and Related Tax Matters for at least six (6) years after the date on which no Bonds shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Excess Earnings Account and any Rebate Amount are set forth in a Certificate as to Arbitrage and Related Tax Matters dated as of the Date of Issuance. The form and text of the Certificate as to Arbitrage and Related Tax Matters 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 Director of Finance, as appropriate, or such other officer as may be directed by the Mayor, shall be and are hereby authorized to execute and deliver the Certificate as to Arbitrage and Related Tax Matters for and on behalf of the City. The entire text of the Certificate as to Arbitrage and Related Tax Matters is by reference hereby incorporated in and made a part of this Resolution as though fully set forth at this place.

ARTICLE VII
PROVISION FOR PAYMENT OF BONDS

Section 7.01 Levy and Collection of Annual Taxes. Pursuant to the Bond Ordinance, the Governing Body covenants that it shall annually make provision for the payment of the principal of, premium, if any, and the interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the maturing principal and interest on the Bonds when due, then the Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amount of special assessment taxes collected.

Section 7.02 Disposition of Taxes; Untimely Receipt. The proceeds derived from the aforesaid annual taxes shall be deposited into the Principal and Interest Account when received; provided, if at any time the amount in the Principal and Interest Account shall be insufficient to make the payments of the principal of and the interest on the Bonds when required because of an untimely collection and/or receipt of said taxes, the Director of Finance is authorized to cause to be transferred to the Principal and Interest Account from the City's general funds, the amount required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said taxes.

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.01 Resolution Constitutes Contract; Remedies of Owners. The provisions of the Bond Ordinance and this Resolution, and all of the covenants and agreements therein and herein contained, shall constitute a contract between the City and the Owners, and the Owner or Owners of any of the Bonds at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

(A) By mandamus or other suit, action or proceedings at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all duties and obligations required by the provisions of the Bond Ordinance and this Resolution or by the constitution and laws of the State;

(B) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

Section 8.02 Rights of Owners; Limitations. The covenants and agreements of the City contained herein, in the Bond Ordinance and in the Bonds shall be for the equal benefit, protection and security of the Owners of any or all of the Bonds, all of which Bonds shall be of

equal rank and without preference or priority of any one Bond over any other Bond in the application of the moneys herein pledged to the payment of the principal of, premium, if any, and the interest on the Bonds, or otherwise, except as to the rate of interest, Principal Payment Date and right of prior redemption as provided in this Resolution.

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Outstanding Bonds. Nothing in this Resolution, in the Bond Ordinance or in the Bonds shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Bonds to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Bonds held by such Owner, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Bonds without reference to or consent of any other Owner.

Section 8.03 **Remedies Cumulative; Delay or Omission Not Waiver**. No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Bond of any default or breach of duty or contract by the City shall extend to or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

ARTICLE IX
AMENDMENTS

Section 9.01 **Amendments**. The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to provide for the issuance of coupon bonds and the exchange of the fully registered Bonds for coupon bonds upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (iii) shall not 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 fully registered Bonds for such coupon bonds, will not cause the interest on the Bonds to be includable in the gross income of recipients thereof under the provisions of the applicable Federal law, or (iv) to conform this Resolution to the Code or any future applicable Federal law concerning tax-exempt obligations.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent of the Owners of not less than seventy-five percent (75%) in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by the Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of one hundred percent (100%) of the Owners of the Bonds then Outstanding:

(A) Extend the maturity of any payment of principal or interest due upon any Bond;

(B) Effect a reduction in the amount which the City is required to pay by way of the principal of or the interest on any Bond;

(C) Permit a preference or priority of any Bond or Bonds over any other Bond or Bonds; or

(D) Reduce the percentage of the principal amount of the then Outstanding Bonds for which the written consent of the Owners is required for any modification or alteration of the provisions of this Resolution.

Section 9.02 **Written Evidence of Amendments**. Any and all modifications or amendments to this Resolution or of the Bonds shall be made in the manner hereinabove provided, and shall not become effective until there has been filed with the City Clerk a copy of the resolution of the City authorizing said modifications or amendments, as hereinabove provided for, duly certified, as well as proof of consent to such modifications or amendments by the Owners of not less than the percentage of the principal amount of Bonds then Outstanding as hereinabove required. It shall not be necessary to note on any Outstanding Bond any reference to such amendment or modification.

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 Owner of any Bond or the prospective purchaser or owner of any Bond, and upon payment of the reasonable cost of preparing same, a certified copy of any such amendatory or supplemental ordinance or resolution of the Bond Ordinance or this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

ARTICLE X
DEFEASANCE

Section 10.01 Defeasance. When all or any part of the principal of, premium, if any, and the interest on the Bonds shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Bond Ordinance and this Resolution shall cease and determine with respect to that principal, premium and interest so paid. The Bonds shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State of Kansas and having full trust power; at or prior to the maturity or redemption date of the Bonds, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Bonds, the premium, if any, and the interest thereon to the date of maturity or the Redemption Date, 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 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 by the terms of this Resolution. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank 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 and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the 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 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 Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the 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 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 Bonds to be “arbitrage bonds” within the meaning of Section 103(b)(2) of the Code and that 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 Bonds for so long as any of the 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 Bonds from time to time. This covenant shall survive payment in full or the defeasance of the 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 Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 11.02 Severability. In case any one or more of the provisions of the Bond Ordinance, this Resolution or of the Bonds issued thereunder 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 the Bonds appertaining thereto, but the Bond Ordinance, this Resolution and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Bonds or in the Bond Ordinance or 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 11.03 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 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 Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the 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 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 Resolution and to give effect to the transactions contemplated hereby.

The execution and attestation of this Resolution 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 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 Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Bonds and the Official Statement.

Section 11.04 **Governing Law**. This Resolution, the Bond Ordinance and the Bonds shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

Section 11.05 **Effective Date**. This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

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ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on March 10, 2009.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

EXHIBIT A
ADDITIONAL TERMS OF THE 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 March 10, 2009, and authorizing and providing for the issuance of the Bonds.

"Costs of Issuance Deposit" means $_____.

"Existing Account Deposit" means $_____ for the Series 754 Bonds, $____ for the Series 763 Bonds, $_____ for the Series 764 Bonds and $_____ for the Series 766 Bonds.

"Original Purchaser" means _____, the original purchaser of the Bonds.

"Purchase Price" for the Bonds shall be the par value of the Bonds plus accrued interest to the date of delivery, less a discount of $_____, plus a premium of $_____.

Maturity Schedule. All of the Bonds shall be become due on the dates and shall bear interest as the rates per annum as follows:

Maturity Date	Maturing Principal	Interest Rate
December 1, 2009	$2,470,000	
December 1, 2010	2,735,000	
December 1, 2011	2,790,000	
December 1, 2012	2,860,000	
December 1, 2013	2,925,000	
December 1, 2014	2,995,000	
December 1, 2015	1,935,000	
December 1, 2016	1,310,000	

RESOLUTION NO. 09-066

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED MARCH 10, 2009

AUTHORIZING THE ISSUANCE OF

$59,060,000

GENERAL OBLIGATION IMPROVEMENT
TEMPORARY NOTES
SERIES 228

DATED APRIL 9, 2009

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RESOLUTION NO. 09-066

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION IMPROVEMENT TEMPORARY NOTES, SERIES 228, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF $59,060,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE NOTES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE NOTES, AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Note Ordinance (as herein defined), has authorized the issuance of the Notes in the aggregate principal amount of $59,060,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Notes; and

WHEREAS, pursuant to and under the authority of various laws of the State of Kansas, the Governing Body of the City has duly taken various actions, including the adoption, and publication where necessary, of resolutions, ordinances and other proceedings as required by said laws, and has authorized and caused to be commenced the construction of those certain capital improvements in the City described in **Schedule I** which is attached to this Resolution and made a part hereof by reference as though fully set forth herein (which capital improvements as listed on **Schedule I** and any Substitute Improvements as defined herein are collectively referred to as the "Improvements") and has provided that the costs thereof shall be paid, either in whole or in part, by the issuance of general obligation bonds of the City; and

WHEREAS, the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, temporary notes should be issued at this time for the purpose of providing interim financing for the costs of making the Improvements which are or will be newly commenced or for which additional interim financing is now required; and

WHEREAS, in accordance with the provisions of the Note Ordinance, the Governing Body hereby finds and determines that it is necessary to prescribe the terms and details of the Notes pursuant to this Resolution, and to make certain other covenants and agreements with respect thereto;

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

ARTICLE I
DEFINITIONS

Section 1.01 Definitions of Words and Terms. In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use

indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" shall mean the Constitution of the State of Kansas (including particularly Article 12, Section 5 thereof), Charter Ordinance No. 156 of the City, K.S.A. 10-101 *et seq.*, K.S.A. 10-123, K.S.A. 12-6a01 *et seq.*, K.S.A. 12-685 *et seq.*, K.S.A. 12-1770 et seq., and K.S.A. 13-1024c, all as amended and supplemented, under the authority of which ordinances and statutes the Improvements were authorized and the Notes are issued.

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

"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 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 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 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 *"AA"* by Standard & Poor's, a Division of the McGraw-Hill Companies ("S&P") and *"Aa2"* by Moody's Investor Services ("Moody's") issued by the Federal National

Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding four 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 of Kansas 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 any 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.

(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.

"Certificate as to Arbitrage and Related Tax Matters" shall mean the Certificate as to Arbitrage and Related Tax Matters, dated as of and delivered on the Date of Issuance, executed by the City, 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.

"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 City Clerk's absence (or in the event of a vacancy in such office) any 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 any and all expenses of whatever nature incurred in connection with the issuance and sale of the Notes, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the Yield on the Notes or investment of the proceeds of the Notes, and in connection with receiving municipal bond insurance and/or ratings on the Notes. An amount for Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements.

"Date of Issuance" shall mean the date on which the Notes are delivered to the Original Purchaser and the City receives from the Original Purchaser the full purchase price therefor.

"Dated Date" shall mean the dated date of the Notes, which is April 9, 2009.

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

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

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the Director of Finance's absence, the duly appointed Assistant Director of Finance or Acting Director of Finance of the City.

"DTC" shall mean The Depository Trust Company and its successors or assigns.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article IV** hereof.

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

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

"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 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).

"Improvement Account" shall mean the Improvement Account for the Improvements created by **Article IV** hereof.

"Improvement Costs" shall mean the amount of capital expenditures for an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Notes, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds unless such amounts are entitled to be reimbursed under State and Federal law.

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

"Interest Payment Date" shall be April 8, 2010.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Notes.

"Maturity Date" means April 8, 2010.

"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 Note Insurer insuring the payment when due of the principal of and interest on the Notes as described on **Exhibit A** to this Resolution.

"Note Insurer" mean any issuer of a Municipal Bond Insurance Policy described on **Exhibit A** to this Resolution.

"Note Ordinance" means the ordinance of the City authorizing the issuance of the Notes as further described on **Exhibit A** to this Resolution.

"Note Registrar" shall mean the City, or such other entity maintaining Registration Books on behalf of the City as set forth in **Section 2.03** hereof, and its successors and assigns.

"Noteowner(s)" shall mean the Owner(s) of the Notes.

"Notes" shall mean the $59,060,000 original principal amount of General Obligation Improvement Temporary Notes, Series 228, dated April 9, 2009, of the City of Wichita, Kansas, which are authorized by and will be issued pursuant to the authority of the Note Ordinance and this Resolution.

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

"Original Purchaser" means the original purchaser of the Notes described on **Exhibit A** to this Resolution.

"Outstanding," when used with reference to the Notes, shall mean, as of a particular date, all Notes theretofore authenticated and delivered under this Resolution, except (i) Notes theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation, (ii) Notes for which moneys for payment or Government Obligations (the principal of and the interest on which Government Obligations, if any, when due, provide sufficient moneys to pay, with such other moneys so deposited with the Paying Agent, the principal of and interest on the Notes being paid), or both, in the necessary amount have theretofore been deposited with the Paying Agent, or other depository as provided in this Resolution, in trust for the Owners thereof (whether upon or prior to the Maturity Date of the Notes), and (iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Resolution.

"Owner(s)" or "Registered Owner(s)" shall mean, when used with respect to any Note, the person or entity in whose name the Note is registered as shown on the Registration Books maintained on behalf of the City.

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

"Paying Agent" shall mean the City, or such other entity acting on behalf of the City as Paying Agent for the Notes as set forth in **Section 2.03** hereof, and its successors and assigns.

"Principal and Interest Account" shall mean the Principal and Interest Account created within the City's Capital Project Fund pursuant to **Article IV** hereof, which is created and shall be held and administered solely for the purpose of receiving and disbursing funds for the payment of the Notes.

"Principal Payment Date" shall mean the Maturity Date.

"Purchase Price" means the original purchase price of the Notes described on **Exhibit A** to this Resolution.

"Record Date" shall mean fifteen days prior to the Maturity Date.

"Registration Books" shall mean the books maintained on behalf of the City by the Note Registrar for the registration and transfer from time to time of the ownership of the Notes.

"Resolution" or "Note Resolution" shall mean this Resolution adopted by the Governing Body of the City on March 10, 2009, prescribing the terms and details of the Notes.

"State" shall mean the State of Kansas.

"Substitute Improvements" means the substitute or additional improvements authorized pursuant to **Section 5.08** of this Resolution.

"Value" 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 banker's acceptances — the face amount thereof, plus accrued interest.

ARTICLE II
AUTHORIZATION, ISSUANCE AND DELIVERY OF NOTES

Section 2.01 Authorization of and Security for Notes. Pursuant to the Note Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to provide interim financing for a portion of the Improvements, there shall be issued general obligation temporary notes of the City (the "Notes"). In all matters relating to the issuance, registration and delivery of the Notes, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by the Note Ordinance and this Note Resolution to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the collection of special assessment taxes which will be levied against real properties in the City benefiting from certain of the Improvements, and from the proceeds of general obligation bonds which will subsequently be issued by the City for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose.

Section 2.02 **Description and Details of Notes.** The Notes shall be issued in the total principal amount of $59,060,000, and shall be designated "City of Wichita, Kansas, General Obligation Improvement Temporary Notes, Series 228." The Notes shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of the Notes. The Notes shall be dated the Dated Date, shall mature on the Maturity Date, and shall bear interest at the rate set forth on **Exhibit A** to this Resolution. The Notes shall bear interest from their Dated Date (computed on the basis of a 360-day year of 12 30-day months) and such interest shall become due and payable on the Interest Payment Date.

The Notes will initially be distributed in book-entry-only form through DTC, by depositing with DTC one certificate, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Notes. The manner of payment of the principal of and the interest on the Notes to DTC, and other matters relating to the distribution of the Notes in book-entry-only form through DTC, shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

Subject to the operational arrangements of DTC, in the event (i) DTC determines not to continue to act as securities depository for the Notes, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Notes would adversely affect the interests of the beneficial owners of the Notes, 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 Notes in the form of fully registered certificates to be authenticated and delivered to the beneficial owners (to the extent such beneficial owners can be identified by the City). If issued in certificated form, the certificates representing the Notes shall be numbered in such manner as the Fiscal Agent shall determine.

Section 2.03 **Designation of Paying Agent and Note Registrar.** Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body has elected to have the provisions of the Kansas Bond Registration Law apply to the Notes.

So long as the Notes remain in book-entry-only form, the City shall act as the Note Registrar, through the Office of the City Clerk and shall act as Paying Agent through the Department of Finance, and shall make payment directly to DTC, as the Owner, for the principal of and the interest on the Notes 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 2.04(A)** and as governed by the terms of the Letter of Representation.

In the event that the Notes should be issued and delivered in certificated form at any time after the initial delivery of the Notes, the City has designated and appointed the Kansas State Treasurer, Topeka, Kansas (herein sometimes referred to as the "Fiscal Agent"), as Note Registrar and Paying Agent for the Notes and the Mayor and City Clerk, or such other officer of the City as may be directed by the Mayor, are authorized to execute on behalf of the City any necessary agreements with the Fiscal Agent to effectuate this designation. The Fiscal Agent shall maintain Registration Books for the ownership of the Notes on behalf of the City.

Section 2.04 Method and Place of Payment of Principal and Interest on Notes.

(A) Notes Issued and Delivered in Book-Entry-Only Form. One certificate registered in the name of DTC's nominee, Cede & Co., for the total principal amount of the Notes will be issued to DTC in New York, New York (or to the Fiscal Agent as agent for DTC) and such certificates will be immobilized in its custody. Purchases of the Notes in denominations permitted by **Section 2.02** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Notes on DTC's records. The ownership interest of each actual purchaser of each Note (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 Notes 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 Note 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 Notes are Subsequently Issued. Principal of and interest on the Notes shall be payable in any coin or currency which, on the date of payment thereof, is legal tender for the payment of debts due in the United States of America. Principal of and interest on the Notes shall be paid to the owner of each Note upon presentation and surrender of the Note on the Maturity Date at the principal office of the Fiscal Agent. The Fiscal Agent shall maintain at its offices a record of the payment of principal and interest on the Notes.

Section 2.05 Method of Execution and Authentication of Notes. The Notes shall be executed for and on behalf of the City by the manual or facsimile signatures of its Mayor and City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The Notes 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, on a Certificate of Registration printed on the Notes, with the City's official seal or a facsimile thereof, impressed or imprinted opposite said signature. The Notes shall be registered by the State Treasurer in the municipal bond register in his office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State Treasurer on a Certificate of State Treasurer printed on the Notes, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature. Additionally, the Notes shall be countersigned by the manual or facsimile signature of the City Clerk, which countersignature shall be attested by the City's official seal affixed or imprinted opposite said countersignature.

Notwithstanding the provisions of the foregoing paragraph regarding the manner of and the method for the execution, registration and countersigning of the Notes, as a condition precedent to the authentication of the Notes by the Note Registrar and the issuance and delivery of the Notes to the Original Purchaser, one or more of the aforesaid signatures required to appear on the Notes shall be by manual signature of one or more of the aforementioned officials.

In case any officer of the City or of the State whose manual or facsimile signature shall appear on the Notes shall cease to be such officer before the actual delivery of the Notes, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

No Note shall be valid or obligatory for any purpose unless and until the Certificate of Authentication thereon shall have been duly executed by the Fiscal Agent, and such duly executed Certificate of Authentication shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Certificate of Authentication shall be deemed to have been duly executed by the Fiscal Agent when manually signed by an authorized officer or signatory thereof, and it shall not be necessary that the same officer or signatory of the Fiscal Agent manually sign the Certificate of Authentication on all Notes issued under the Note Ordinance and this Resolution. For the initial delivery of the Notes, which will consist of one certificate in book-entry-only form as described in **Section 2.04(A)** hereof, the Notes shall be authenticated by the City Clerk.

Section 2.06 **Payment of Costs of Notes.** The City shall pay all fees and expenses incurred in connection with the printing, issuance, transfer, exchange, registration and payment of the Notes except (i) reasonable fees and expenses in connection with the replacement of a Note or Notes mutilated, stolen, lost or destroyed, or (ii) any tax or other governmental charge imposed in relation to the transfer, exchange, registration or payment of the Notes, or (iii) any additional costs or fees that might be incurred in the secondary market.

Section 2.07 **Form of Notes.** The definitive typewritten or printed form of the certificates representing the Notes issued under this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State of Kansas, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act for the purpose of providing interim financing of costs in connection with the Improvements. The Governing Body hereby approves the form and text of the certificates to be prepared for the Notes, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Notes and hereby further authorizes, orders and directs Bond Counsel, in the event the Notes in certificated form are issued at any time after the initial issuance and delivery of the Notes, to prepare the form of and cause such certificated Notes to be printed.

Section 2.08 **Registration, Transfer and Exchange of Notes.** The Notes may be transferred only upon the Registration Books and upon the surrender thereof to the Fiscal Agent 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 Fiscal Agent. Upon the surrender for transfer of any certificated Note at its office, the Fiscal Agent shall authenticate and deliver in the name of the transferee or transferees a new certificated Note or Notes of authorized denominations in the aggregate principal amount of the surrendered certificated Note. The Fiscal Agent 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 Fiscal Agent, the Fiscal Agent shall transfer or exchange any Note(s) for

new Note(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Note(s) presented for transfer or exchange. All Notes presented for transfer or exchange shall be surrendered to the Fiscal Agent for cancellation. Prior to delivery of any new Note(s) to the transferee, the Fiscal Agent shall register the same in the Registration Books and shall authenticate each such new Note.

The City and the Fiscal Agent shall not be required to issue, register, transfer or exchange any Notes 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.

Notes delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Notes surrendered, shall be secured by the Note 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 Notes surrendered. The person(s) in whose name any Note 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 Note shall be made only to or upon the order of the Owner or his duly authorized agent; except that, so long as the Notes remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Notes, and such payments shall be made only to DTC in accordance with **Section 2.04(A)** of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such Note, including the interest thereon, to the extent of the sum or sums so paid.

Section 2.09 **Mutilated, Lost, Stolen or Destroyed Notes.** In the event any certificate representing a Note is mutilated, lost, stolen or destroyed, the City shall execute, and the Note Registrar shall authenticate and deliver, 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 Note, such mutilated Note shall first be surrendered to the Note Registrar, and, in the case of any lost, stolen or destroyed Note there shall first be furnished to the Note Registrar and the City, evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Note Registrar. In the event any such Note shall have matured, instead of issuing a duplicate note the City may pay the same without the surrender thereof. The City and the Note Registrar may charge to the Owner of such Note their reasonable fees and expenses in connection with the replacement of such Note or Notes.

Section 2.10 **Surrender and Cancellation of Notes.** Whenever any Outstanding Note shall be delivered to the Note Registrar after full payment thereof or for replacement pursuant to this Resolution, such Note shall be canceled and destroyed by the Note Registrar and counterparts of a Certificate of Destruction describing Notes so destroyed and evidencing such destruction shall be furnished by the Note Registrar to the City, or such Note shall be canceled and the canceled Note shall be returned to the City.

Section 2.11 **Execution and Delivery of Notes.** The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Notes without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement note certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution and when executed the Notes 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 Note Registrar for authentication. When the Notes shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the Purchase Price therefor and the proceeds of the Notes shall immediately be applied by the City as hereinafter in this Resolution provided.

Section 2.12 Official Statement. The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared for use in the initial offering and sale of the Notes, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Notes. The lawful use of the final Official Statement in the reoffering of the Notes by the Original Purchaser is hereby approved and authorized.

ARTICLE III
REDEMPTION OF NOTES

Section 3.01 Optional Redemption. At the option of the City, the Notes may be called for redemption and payment prior to their stated maturity, in whole or in part, on and after October 8, 2009 (the date being so set for redemption and payment being referred to as the "Redemption Date"). Notes called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount), of 100% of the principal amount, plus accrued interest to the Redemption Date.

Section 3.02 Selection of Notes to be Redeemed. The Notes shall be redeemed only in face amounts of $5,000 or integral multiples thereof and if the City elects to call for redemption less than all of the Notes at the time Outstanding, the Notes shall be redeemed in such equitable manner as the City shall determine, with Notes of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Notes by lot when Notes of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Note shall be treated as though it were a separate Note 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 Note has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Note to the Fiscal Agent (i) for payment of the redemption price and accrued interest to the Redemption Date of the $5,000 unit or units of face value of the Note called for redemption, and (ii) for exchange, without charge to the Owner, for a new Note or Notes of the aggregate principal amount of the unredeemed portion of the principal amount of such Note. If the Owner of any Note of a denomination greater than $5,000 of which one or more, but not all, of the $5,000 units of face value thereof has been selected for redemption shall fail to present such Note as aforesaid, the $5,000 units of the face value of such Note which have been selected for redemption shall, nevertheless, become due and payable on the Redemption Date, and no further interest shall

accrue on such redeemed but unpresented $5,000 units of face value from and after the Redemption Date.

Section 3.03 **Notice of Redemption**. The City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than sixty (60) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Notes so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. 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.

All notices of redemption given under the provisions of this Article shall state (i) the Redemption Date, (ii) the redemption price, (iii) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Notes to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Note or portion thereof which has been selected for redemption, and that the interest thereon shall cease to accrue from and after the Redemption Date, and (v) that the Notes so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

Section 3.04 **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Notes or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Notes selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000 units of face value represented by any Note is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Note or Notes in the amount of the unredeemed portion of such Note as provided by **Section 3.02** above. All Notes selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

Section 3.05 **Effect of Call for Redemption**. Whenever any Note, or one or more of the $5,000 units of face value represented by any Note, has been selected for redemption and payment as provided in this Article, all interest on such Note, or such one or more of the $5,000 units of face value represented by any such Note, shall cease from and after the Redemption Date, provided funds are then available for its payment at the price hereinbefore specified.

ARTICLE IV
FUNDS AND ACCOUNTS

Section 4.01 **Creation of Funds and Accounts.** Simultaneously with the issuance and delivery of the Notes, there shall be created within the Treasury of the City, the following designated funds and accounts:

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Improvement Temporary Notes, Series 228;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Improvement Temporary Notes, Series 228, to be created within the City's Capital Project Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Improvement Temporary Notes, Series 228.

Section 4.02 Administration of Funds and Accounts. The funds and accounts established and created by this Article shall be administered in accordance with the provisions of this Resolution for so long as any of the Notes remain Outstanding.

ARTICLE V
APPLICATION OF NOTE PROCEEDS; DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

Section 5.01 Application of Note Proceeds. Upon the issuance and delivery of the Notes, the proceeds thereof shall be deposited into the Treasury of the City and credited to the various funds and accounts created by **Article IV** of this Resolution, as follows:

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Notes, and the portion of the Purchase Price which represents the premium, if any, paid on the Notes; and

(B) To the Improvement Account, the balance of the proceeds.

Section 5.02 Disposition of Principal and Interest Account. Moneys deposited in the Principal and Interest Account from the proceeds of the Notes as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Notes on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of and the interest on the Notes, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

Upon the completion of the Improvements and the levying of special assessments against the real properties benefited thereby, any of such special assessments which are collected during the pay-in period shall be deposited into the Principal and Interest Account. Additionally, upon the issuance of the City's general obligation bonds and/or future renewal temporary notes, as the case may be, for the purpose of paying the Notes, or any portion thereof, the proceeds from such general obligation bonds and/or renewal temporary notes shall be deposited into the Principal and Interest Account. Any other sums of moneys which are designed for payment of the costs of the Improvements, if any, shall likewise be deposited into the Principal and Interest Account.

Section 5.03 Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent. The Director of Finance is hereby authorized and directed to cause to be withdrawn from the Principal and Interest Account and forwarded to the Paying Agent, a sum sufficient in amount to pay the principal of and the interest on the Notes on the Maturity Date, together with such sum as may be required to pay the fees and charges of the Fiscal Agent, if any, for acting in such capacity, and the sum for charges of the Fiscal Agent shall be forwarded

to the Fiscal Agent over and above the amount required to pay the Notes as aforesaid. If, through the lapse of time or otherwise, the Owner of any Note shall no longer be entitled to enforce payment of such Note, it shall be the duty of the Paying Agent to forthwith return such unexpended funds to the City. All moneys transferred to the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution, and shall be deemed to be deposited with the Paying Agent in trust for and on behalf of the Owners of the Notes.

Section 5.04 Surplus in Principal and Interest Account. Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all general obligation Note issues of the City shall be transferred and paid into the General Fund of the City.

Section 5.05 Disposition of Improvement Account. Moneys in the Improvement Account shall be used solely for the purpose of paying the Improvement Costs. The City covenants that in the making of the Improvements, it will perform all duties and obligations relative to such Improvements as are now or may be hereafter imposed by the Act and the provisions of this Resolution.

Section 5.06 Withdrawals from Improvement Account. Withdrawals from the Improvement Account shall be made only for a purpose within the scope of the Improvements, and as payment for Improvement Costs and the amount of such payments shall represent only the contract price or reasonable value of the property, labor, materials, service or obligations being paid for, or if such payment is not being made pursuant to an express contract, such payments shall not be in excess of the reasonable value thereof.

Section 5.07 Surplus in Improvement Account. All moneys remaining in the Improvement Account after the completion of the Improvements and the payment of all Improvement Costs shall be immediately transferred to the Principal and Interest Account.

Section 5.08 Substitution of Improvements. The City may elect to substitute or add other improvements paid for with the proceeds of the Notes pursuant to this Section provided the following conditions are met: (a) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) a resolution or ordinance authorizing the use of the proceeds of the Notes to pay the Improvement Costs of the Substitute Improvement has been adopted by the Governing Body of the City, (c) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Bonds to include the Substitute Improvements and (d) the City has received an opinion of Bond Counsel to the effect that the Substitute Improvement will not adversely affect the tax-exempt status of the Notes under State or federal law and the Substitute Improvement has been authorized pursuant to this Section and the laws of the State.

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

Section 6.01 Deposits. Cash moneys in each of the funds and accounts created and established by this Resolution shall be deposited in a bank(s) or Federal or state chartered

savings and loan association(s) with offices located within Sedgwick County, Kansas, whose deposits are insured by Federal Deposit Insurance Corporation, and all such deposits shall be adequately secured by the bank(s) or savings and loan association(s) holding such deposits in accordance with the laws of the State.

Section 6.02 Investments. Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, 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, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established; and provided further, that such moneys shall not be invested in such manner as will violate the provisions of the Certificate as to Arbitrage and Related Tax Matters. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall (except the amounts which are required to be deposited into the Excess Earnings Account in accordance with the Certificate as to Arbitrage and Related Tax Matters) accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month. All investments made pursuant hereto shall be made in accordance with the Certificate as to Arbitrage and Related Tax Matters.

Section 6.03 Deposits Into and Application of Moneys in Excess Earnings Account.

(A) The City shall deposit into the Excess Earnings Account such amounts as are required to be deposited therein pursuant to the Certificate as to Arbitrage and Related Tax Matters. All earnings on investments of moneys held in the Excess Earnings Account shall be retained in the Excess Earnings Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Excess Earnings Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Certificate as to Arbitrage and Related Tax Matters), for payment to the United States of America, and neither the City nor the Owner of any Note shall have any right in or claim to such money. All amounts held in the Excess Earnings Account shall be governed by this Section and by the Certificate as to Arbitrage and Related Tax Matters.

(B) The City shall remit part or all of the balances in the Excess Earnings Account to the United States of America in accordance with the Certificate as to Arbitrage and Related Tax Matters (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Excess Earnings Account after payment of all of the Notes and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Excess Earnings Account and shall be deposited into the City's General Fund.

(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 Certificate as to Arbitrage and Related Tax Matters shall survive the defeasance or payment in full of the Notes.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Certificate as to Arbitrage and Related Tax Matters for at least six (6) years after the date on which no Notes shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Excess Earnings Account and any Rebate Amount are set forth in a Certificate as to Arbitrage and Related Tax Matters dated as of the Date of Issuance. The form and text of the Certificate as to Arbitrage and Related Tax Matters 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 Director of Finance, as appropriate, or such other officer as may be directed by the Mayor, shall be and are hereby authorized to execute and deliver the Certificate as to Arbitrage and Related Tax Matters for and on behalf of the City. The entire text of the Certificate as to Arbitrage and Related Tax Matters is by reference hereby incorporated in and made a part of this Resolution as though fully set forth at this place.

ARTICLE VII
PROVISION FOR PAYMENT OF NOTES

Section 7.01 Levy and Collection of Annual Taxes. Pursuant to the Note Ordinance, the Governing Body covenants that it shall make provision for the payment of the principal of and the interest on the Notes on the Maturity Date by the levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor upon the completion of the Improvements, as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the principal of and interest on the Notes on the Maturity Date, or if any of the Improvements are not completed by the Maturity Date or the Governing Body is otherwise hindered from then levying and collecting such special assessment taxes, and for any of the costs of the Improvements which are to be paid by the City-at-large, then said Governing Body shall provide for the payment of all or any portion of the principal of and/or interest on the Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the amounts collected from such special assessment taxes and/or the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes. In lieu of issuing renewal temporary notes or general obligation bonds of the City to fund costs of the Improvements which are to be paid by the City-at-large, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

Section 7.02 Disposition of Taxes; Untimely Receipt. The proceeds derived from the various sources identified in the preceding Section shall be deposited into the Principal and Interest Account when received; and shall be used to pay the principal of and the interest on the Notes on the Maturity Date; provided, if on the Maturity Date the amount in the Principal and

Interest Account shall be insufficient to make the payments of the principal of and the interest on the Notes because of an untimely collection and/or receipt of moneys from said sources, the Director of Finance is authorized to cause to be transferred to the Principal and Interest Account from the City's general funds, the amount required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said moneys.

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.01 Resolution Constitutes Contract; Remedies of Owners. The provisions of the Note Ordinance and this Resolution, and all of the covenants and agreements therein and herein contained, shall constitute a contract between the City and the Owners, and the Owner or Owners of any of the Notes at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

(A) By mandamus or other suit, action or proceedings at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all duties and obligations required by the provisions of the Note Ordinance and this Resolution or by the constitution and laws of the State;

(B) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

Section 8.02 Rights of Owners; Limitations. The covenants and agreements of the City contained herein, in the Note Ordinance and in the Notes shall be for the equal benefit, protection and security of the Owners of any or all of the Notes, all of which Notes shall be of equal rank and without preference or priority of any one Note over any other Note in the application of the moneys herein pledged to the payment of the principal of and the interest on the Notes, or otherwise, except as provided in this Resolution.

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Outstanding Notes. Nothing in this Resolution, in the Note Ordinance or in the Notes shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Notes to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Notes held by him, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Notes without reference to or consent of any other Owner.

Section 8.03 **Remedies Cumulative; Delay or Omission Not Waiver.** No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Note of any default or breach of duty or contract by the City shall extend to or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

ARTICLE IX
AMENDMENTS

Section 9.01 **Amendments.** The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to more precisely identify an improvements, or (iv) to provide for the issuance of coupon Notes and the exchange of the fully registered Notes for coupon Notes upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (iv) shall not 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 notes or the exchange of the fully registered Notes for such coupon notes, will not cause the interest on the Notes to be includable in the gross income of recipients thereof under the provisions of the applicable Federal law, or (v) to conform this Resolution to the Code or any future applicable Federal law concerning tax-exempt obligations.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent of the Owners of not less than seventy-five percent (75%) in principal amount of the Notes then Outstanding, such consent to be evidenced by an instrument or instruments executed by the Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of one hundred percent (100%) of the Owners of the Notes then Outstanding:

(A) Extend the Maturity Date of any Note;

(B) Effect a reduction in the amount which the City is required to pay by way of the principal of or the interest on any Note;

(C) Permit a preference or priority of any Note or Notes over any other Note or Notes; or

(D) Reduce the percentage of the principal amount of the then Outstanding Notes for which the written consent of the Owners is required for any modification or alteration of the provisions of this Resolution.

Section 9.02 Written Evidence of Amendments. Any and all modifications or amendments to this Resolution or of the Notes shall be made in the manner hereinabove provided, and shall not become effective until there has been filed with the City Clerk a copy of the resolution of the City authorizing said modifications or amendments, as hereinabove provided for, duly certified, as well as proof of consent to such modifications or amendments by the Owners of not less than the percentage of the principal amount of Notes then Outstanding as hereinabove required. It shall not be necessary to note on any Outstanding Note any reference to such amendment or modification.

A certified copy of every such amendatory or supplemental ordinance or resolution, if any, and a certified copy of the Note 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 Owner of any Note or the prospective purchaser or owner of any Note, and upon payment of the reasonable cost of preparing same, a certified copy of any such amendatory or supplemental ordinance or resolution of the Note Ordinance or this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

ARTICLE X
DEFEASANCE

Section 10.01 Defeasance. When all or any part of the principal of and the interest on the Notes shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Note Ordinance and this Resolution shall cease and determine with respect to that principal and interest so paid. The Notes 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 with a bank located in the State of Kansas and having full trust power; at or prior to the Maturity Date of the Notes, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Notes and the interest thereon to the Maturity Date; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments. Any moneys and Government Obligations which at any time shall be deposited with the Paying Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Notes or interest thereon, shall be and are hereby assigned, transferred and set over to the Paying

Agent or such Kansas bank in trust for the respective Owners of the Notes, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Paying Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01 Tax Covenants. The Governing Body hereby covenants and agrees that so long as any of the Notes 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 Notes 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 Notes.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Notes 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 Notes 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 Notes to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that 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 Notes for so long as any of the Notes 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 Notes from time to time. This covenant shall survive payment in full or the defeasance of the Notes 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 Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

Section 11.02 Severability. In case any one or more of the provisions of the Note Ordinance, this Resolution or of the Notes issued thereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Note Ordinance, this Resolution or the Notes appertaining thereto, but the Note Ordinance, this Resolution and the Notes shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Notes or in the Note Ordinance or 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 11.03 **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 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 Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, 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 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 Resolution and to give effect to the transactions contemplated hereby.

The execution and attestation of this Resolution 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 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 Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Notes and the Official Statement.

Section 11.04 **Governing Law.** This Resolution, the Note Ordinance and the Notes shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

Section 11.05 **Effective Date.** This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

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ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on March 10, 2009.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

4839-0985-6003.1

SCHEDULE I
CITY OF WICHITA
GENERAL OBLIGATION TEMPORARY NOTES, SERIES 228
CAPITAL IMPROVEMENTS

		Amount Required	4/8/2009
Description Of Project	Project / Index Number	Preliminary Estimate	New Money
ARTERIAL PAVING			
21st & Rock Road (83438)	201295	$ 2,130,000	$ 26,000
Webb @ 25th & K-96 472-83008	202306	300,000	1,000
Douglas/Oliver Intersection 472-83755	203319	60,000	15,000
Hillside, Kellogg-Central 472-83862	204333	5,640,000	210,000
Seneca, I-235 - 31st S - D 472-84005	204358	210,000	55,000
Oliver, Harry - Kellogg Imp. - D 472-84010	204361	725,000	30,000
Harry, Kansas Turnpike & Rock Rd 472-83955	204363	40,000	6,000
17th St. Grove to Hillside 472-84015	204374	160,000	114,000
28th St Imp Tyler-Ridge 472-83803	204380	2,700,000	23,000
Gyp Creek Bikepath D 472-84164	205307	1,451,000	806,000
Hydraulic, 13th St. 47th St. 472-84118	205388	2,500,000	26,000
13th/Broadway Intrsct. Imp. 472-84179	205391	2,435,000	136,000
13th/Mosley Intrst. Imp. 472-84259	205397	1,700,000	62,000
21st/Broadway Intrsctn 472-84295	205400	2,000,000	1,291,000
47th St. S. Meridian-Seneca 472-84296	205401	215,000	84,000
55th St. S./Broadway Intrsctn 472-84305	205402	85,000	1,900
Central/Tyler Intrsctn 472-84311	205406	145,000	22,000
Greenwich, Harry-Kellogg 472-84301	205407	355,000	36,000
Hydraulic, Harry Kellogg 472-84310	205408	277,500	151,000
Meridian, 47th St. S.-31st St. S. 472-84302	205410	1,400,000	304,000
Meridian, Pawnee Orient 472-84309	205411	960,000	476,000
Mt. Vernon, Broadway-Wilk Road 472-84299	205412	4,750,000	3,801,000
17th St. N. Broadway - I-135 472-84392	206419	1,600,000	436,000
2006-07 Traffic Signalization 472-84424	206422	1,050,000	557,000
Greenwich Rd, Central-13th (Design) 472-84435	206425	3,279,995	402,000
Int. Trans Syst. Traffic Signals 472-84448	206426	2,779,403	78,000
Tyler Imp. K-42 to Harry 472-84475	206427	700,000	70,000
Bike Path, Central-13th 472-84405	207429	919,000	127,000
2007 Street Rehab Program 472-84576	207431	400,000	397,000
MacArthur, Meridian Seneca 472-84580	207432	5,520,000	1,146,000
55th St S/Broadway Intersectn 472-84581	207433	1,170,000	106,000
Midtown Bike Path 472-84562	207434	1,915,000	1,213,000

SCHEDULE I
CITY OF WICHITA
GENERAL OBLIGATION TEMPORARY NOTES SERIES 2008
CAPITAL IMPROVEMENTS

		Amount Received	4/8/2009
Description Of Project	Project/ Index Number	Preliminary Estimate	New Money
Harry Turnpike - Rock 472-84577	207436	$ 200,000	$ 110,000
Douglas - Over Intersection 472-84609	207436	2,700,000	1,385,000
37-08 Sidewalk & Wheelchair Ramp 472-84604	207437	900,000	263,000
Central West VoLean 472-82903	200222	4,500,000	41,000
Arterial Contiguous 472-82937	208224	1,750,000	37,000
Central/Tyler Intimpr 472-84655	208440	3,000,000	2,012,000
Maize/ Pawnee - Kellogg 472-84680	208442	740,000	221,000
37th St N. Tyler - Maize 472-84693	208445	210,000	106,000
Greenwich, Pawnee - Harry 472-84695	208450	207,000	198,000
Harry Greenwich - 127th 472-84628	208451	215,000	201,000
29th, Ridge - Hoover 472-84651	208454	30,000	24,000
Tyler, 29th -37th 472-84700	208456	162,000	152,000
River Corridor - Ark River imp PH I GO	405209	35,798,214	482,000
TOTAL ARTERIAL PAVING		101,464,207	17,038,100
BRIDGES			
Ark River Ped Bridges 472-83116	212107	35,798,214	231,000
Murdock Bridge @ Little Ark River 472-83095	244114	1,650,000	22,000
21st St Bridge @ Ark River - D - 472-84019	244116	45,000	1,000
13th St. Bridge@ LAR 472-84314	245121	2,205,000	1,372,000
21st St Bridge @ LAR 472-84313	245123	55,000	27,000
25th St Bridge @ LAR 472-07316	245124	55,000	25,000
Hillside Bridge @ Gypsum Crk 472-84386	246127	2,069,254	388,000
21st S. Bridge at Ark River 472-84569	247129	3,200,000	434,000
S. Broadway Viaduct 472-84597	247130	900,000	408,000
Lincoln St Bridge @ Ark River 472-84605	247132	360,000	285,000
13th St. Bridge @ Glenn 472-84702	248134	90,000	48,000
TOTAL BRIDGES		46,962,468	3,245,000
PUBLIC IMPROVEMENTS			
Water Walk - Eastbank Development	436562	26,000,000	152,000
City Facilities ADA Compliance	436579	750,000	465,000
Library ADA Improv.	436580	100,000	15,000

4839-0985-6003.1

SCHEDULE I
CITY OF WICHITA
GENERAL OBLIGATION TEMPORARY NOTES SERIES 2008
CAPITAL IMPROVEMENTS

Description Of Project	Project/Index Number	Amount Received Preliminary Estimate	4/8/2009 New Money
City Hall Garage Repairs	435392	$ 550,000	$ 11,000
CMF Expansion	435405	4,400,000	1,378,000
Facilities Space Utilization	435408	2,000,000	1,036,000
CIP Planned Savings	435411	2,750,000	106,000
Indian Center Remodel	435414	600,000	421,000
Wichita Art Museum	435416	165,000	2,000
Cultural Facility Enhancements	435427	2,100,000	761,000
Century II Cooling Tower Replacement	435429	200,000	25,000
Expo Hall HVAC Equip Repairs & Replacement	435430	135,000	45,000
Project Management System - 472-84938	435434	750,000	520,000
Fleet Heavy Equipment Replacement	435440	2,000,000	241,000
Fuel Management and Dispensing System	435441	1,400,000	1,136,000
Fire Apparatus Replacement	435604	5,434,000	6,000
TOTAL PUBLIC IMPROVEMENTS		53,034,000	6,901,000
PARK IMPROVEMENTS			
Grove Park	395140	2,388,000	200,000
Central Riverside Park Imp/Mod	395148	5,450,000	32,000
Park 05/06 - Athletic Courts - CO	395186	440,000	5,000
Garvey Park - Dunes Habitat Improvements	395187	100,000	51,000
Park 05 - Schweiter Park - CO	395188	510,000	2,000
Park 05 - Watson Park Const.	395191	540,000	247,000
Park 05 - Lincoln Park	395194	110,000	108,000
Park 05/06 - Plainview Park Football Field	395197	500,000	162,000
Park 05 - N.E. Sports Complex Parking	395198	300,000	287,000
Park 06 - Pathways/Sidewalks @ Some Parks	395199	40,000	6,000
Park 06 - Park Facilities Renovation	395202	400,000	17,000
Park 06 - Parking Lots/Entry Drives	395203	365,000	10,000
Restoration of Sim Park Memorial Entry	395205	100,000	1,000
Park 06 - Chapin Park Design - CO	395206	70,000	24,000
Park 06 - Wichita Ice Center	395207	105,000	2,000
Park 06 - Master Planning & Dev.	395209	350,000	106,000
Park 07 - Athletic Court Repair	395210	220,000	1,000

4839-0985-6003.1

SCHEDULE I

CITY OF WICHITA
GENERAL OBLIGATION TEMPORARY NOTES, SERIES 228
CAPITAL IMPROVEMENTS

		Amount Required	4/9/2009
Description Of Project	Project / Index Number	Preliminary Estimate	New Money
Park 07 - Park Facilities Renovation - GO	397212	$ 400,000	$ 5,000
Park 07 - Swimming Pool Imp. Aley, Boston, Harvest	397213	100,000	10,000
Outdoor Lights at Country Acres Park	397215	40,000	45,000
Park 07 - Playground Rehab /Development	397217	200,000	176,000
Park 07 - Central Irrigation Control	397218	200,000	93,000
Park 06 - Irrigation Replace/Upgrade	397221	200,000	27,000
Park 07 - Orchard Park Improv. / Hockey	397226	300,000	173,000
TOTAL PARK IMPROVEMENTS		13,228,000	1,836,000
NEIGHBORHOOD IMPROVEMENTS - PAVING			
Kellogg Frontage Rd. - NI Paving 472-83962	490064	200,250	1,000
Lodi Lemond - NI paving 472-84084	490118	667,000	40,000
19th St North - 472-84446	490133	938,000	11,000
13th St. 472-84454	490134	178,000	160,000
37th N. Flora & York Paving 472-84443	490139	360,000	515,000
Castle Rock/Hoechst St Paving 472-84321	490146	1,090,740	405,000
Kentucky Street Paving 472-84544	490157	529,000	337,000
Greenwich Accel/Decel 472-83457	490159	260,000	8,000
Greenwich/S 13th Signals 472-84516	490160	150,000	27,000
51st N. Meridian Athenian 472-84545	490167	334,060	30,000
51st N. Athenian-Delaware 472-84551	490168	305,250	15,000
Blackstone Street Paving 472-84397	490169	542,000	336,000
Lake Ridge Street Paving 472-84441	490171	610,000	38,000
55th Street S Paving 472-84540	490172	784,000	420,000
Mead, 3rd-Central Paving 472-84561	490176	650,000	341,000
Alta, Hydraulic-Fallie Circle 472-84437	490177	452,160	315,000
13th Akserben-Blackstone 472-84400	490178	174,000	15,000
Cherry Creek Street 472-84557	490180	215,000	105,000
Ridgehurst Street 472-84594	490182	145,000	178,000
Greystone Street 472-84591	490183	469,000	364,000
Victor Street 472-84571	490184	2,700,000	1,086,000
Marblefalls Street 472-84293	490188	546,000	124,000
29th Street North 472-83774	490189	426,000	301,000

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CAPITAL IMPROVEMENTS

		Amount Required	4/9/2009
Description Of Project	Project / Index Number	Preliminary Estimate	New Money
Fawnwood Street 472-84292	490190	$ 833,000	$ 567,000
Mario St 472 04491	490193	169,000	151,000
Driftwood St 472-84582	490194	1,460,000	1,033,000
Veranda Street 472 84580	490199	491,000	302,000
Berkley Square Parkway 472-84544	490207	302,000	242,000
Cambria St. Paving 472 84950	490211	530,000	431,000
Goebel Circle St Paving 472-84666	490212	753,000	205,000
Woodridge St. Paving 472-84651	490213	743,000	574,000
Topeka St. Paving 472-84611	490215	772,500	655,000
Pueblo St. Paving 472-84646	490216	765,000	53,000
24th St. Paving 472-84612	490220	703,740	429,000
Westport St. Paving 472-84461	490221	626,400	586,000
Cherry Creek St. Paving 472 84690	490222	204,000	186,000
Ridgepoint St. Paving 472-84460	490223	664,300	573,000
Laguna St. Paving 472 84351	490224	479,900	371,000
Kellogg Dr. Paving 472-84689	490225	206,000	184,000
Webb Left Turn Lane Paving 472 84689	490227	170,000	163,000
Bristol Circle Paving 472-84637	490228	197,000	165,000
Mario St. Paving 472-84462	490229	136,400	120,000
Wheatland St. Paving 472-84488	490230	771,000	681,000
Douglas / Oliver St. Lights 472-84715	490232	150,000	141,000
Hollywood St. Paving 472-83933	490233	601,120	558,000
New Jersey St. Paving 472-84718	490234	340,000	35,000
Country View St. Paving 472 84359	490236	533,330	444,000
TOTAL NEIGHBORHOOD IMPROVEMENTS - PAVING		24,647,150	14,926,000
NEIGHBORHOOD IMPROVEMENTS - WATER			
WDS Edgewater 448-90313	470064	258,000	35,000
TOTAL NEIGHBORHOOD IMPROVEMENTS - WATER		258,000	35,000
NEIGHBORHOOD IMPROVEMENTS - SANITARY SEWERS			
Lat 109, SSA23 489-83978	480776	1,000,000	1,481,000
Lat 5, Main 22, SWI 488-83980	480801	170,000	146,000

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CAPITAL IMPROVEMENTS

		Amount Required	4/9/2009
Description Of Project	Project / Index Number	Preliminary Estimate	New Money
Lat 274, MS, SS 22 468-84016	480824	$ 34,000	$ 17,000
Lateral 1, Main 16, SS#23 *WB**439 04149	480860	036,400	420,000
Main 23 FMC 468-84319	480899	203,000	6,000
Lat. Main 7, CIS 460 84025	480913	327,250	147,000
Lat 7, Main 4, NWI 468-84173	480920	643,000	46,000
Main 21, FMC 468 84240	480923	2,600,000	566,000
Lat 23, Main 13, SWI 468-84391	480924	370,000	1,000
Lat 3, Main 5, CIS 468-83661	480947	182,000	15,000
Lat 43, Submain 21, SS#22 468-84284	480948	164,000	41,000
Lat 1, Main 24, SWI 468-84365	480949	1,145,000	796,000
Main 24, SWI 468-84284	480951	2,200,000	2,048,000
Lateral 1, Main 21, FMC Cambria Acc. 468-84160	480960	373,240	256,000
Lat 408, 460 84482	480962	77,000	60,000
Lateral 1, Main 26, FMC & Main 26 FMC 468-84485	480963	424,000	199,000
Lat 14, Main 15, SS#23 468 84467	480965	603,000	487,000
Lat 11, Main 4, NWI 468-84244	480967	246,300	161,000
Lat 12, Main 4, NWI 468 84245	480968	286,000	195,000
Lat 412, FMC 468-84499	480969	71,000	63,000
Lat 406, FMC 468-84462	480970	135,000	106,000
Lat 10, Main 5, NWI 468-84424	480976	320,000	190,000
Lat 13, FMC 468-84512	480977	20,500	17,000
Lat 2, Main 21, FMC 468-84518	480981	267,000	20,000
TOTAL NEIGHBORHOOD IMPROVEMENTS - SANITARY SEWERS		13,588,190	7,515,000
NEIGHBORHOOD IMPROVEMENTS - STORM SEWERS			
SWD 272 468-84047	485306	579,400	1,000
SWD Harry/Wood 468-84210	485320	211384	2,000
SWD 320 468-84327	485331	387,000	21,000
SWD 620 439-04325	485332	534,000	31,000
SWD 342 468-84449	485350	255,000	234,000
SWD 334 439 04409	485351	325,000	176,000
SWD 330 468-84410	485352	118,000	16,000
SWS 636 460 84423	485353	042,000	706,000

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CITY OF WICHITA
GENERAL OBLIGATION TEMPORARY NOTES, SERIES 228
CAPITAL IMPROVEMENTS

		Amount Required	4/9/2009
Description Of Project	Project / Index Number	Preliminary Estimate	New Money
SWD 332 458-84395	485354	$ 3,460,000	$ 2,101,000
SWD 330 438 04434	485355	914,000	207,000
SWD 287 458-84131	485356	940,000	892,000
SWD 345 438 04481	485357	575,000	481,000
SWD 340 458-84487	485358	822,000	695,000
SWD 337 498 84431	485360	419,000	266,000
SWD 625 498-84266	485366	96,000	41,000
SWD 349 498-84513	485368	534,000	40,000
TOTAL NEIGHBORHOOD IMPROVEMENTS - STORM SEWERS		10,912,284	6,108,000
FACADE IMPROVEMENTS			
Facade @ 125 N. Market 472-84676	491048	1,078,801	857,900
TOTAL FACADE IMPROVEMENTS		1,078,801	857,900
TOTAL TEMPORARY NOTES SERIES 228		$ 275,163,092	$ 59,060,000
TOTAL NEW MONEY		59,060,000	
TOTAL TEMPORARY NOTES SERIES 228		$ 59,060,000	

EXHIBIT A

ADDITIONAL TERMS OF THE NOTES

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

"Note Ordinance" shall mean Ordinance No. _____ of the City, passed by the Governing Body on March 10, 2009, and authorizing and providing for the issuance of the Notes.

"Original Purchaser" means _____, the original purchaser of the Notes.

"Purchase Price" for the Notes shall be the par value of the Notes plus accrued interest to the date of delivery.

Interest Rate. The Notes shall bear interest at the rate of _____% per annum.

Agenda Item No.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and Members of the City Council

SUBJECT: Revision of Chapter 6.04 (Animal Control and Protection); Deleting Chapter 6.12 (Keeping Animals and Fowl) and Chapter 6.16 (Cats)

INITIATED BY: Environmental Services Department

AGENDA: New Business

Recommendation: Approve City Code Revisions to Chapter 6.04; Delete Chapter 6.12 and 6.16; incorporate those chapters into Chapter 6.04.

Background: The Environmental Services (ES) Department administers Title Six of the City Code, which includes regulations for animal control and protection, keeping animals and fowl and cats. Animal Control Officers and a Public Health Sanitarian are assigned to enforce these chapters. In the fourth quarter of 2006, the City Council strengthened the dangerous dog ordinance by approving an ordinance revision. At that time, the City Council also requested that the ES Department track pit bull information for a year and report on the results to determine whether or not additional measures were needed to address pit bull concerns.

ES investigated 733 dog bites and attacks in 2008 and 246 of those were from pit bulls. The Wichita Animal Shelter housed over 6,000 dogs and almost 1,800 of those dogs were pit bulls. Almost 1,300 pit bulls were found running at large in 2008. ES believes these statistics demonstrate a need to implement regulatory improvements for pit bull ownership. A letter to the Mayor and City Council dated January 22, 2009 is attached below along with Animal Services 2008 Dog Statistics and Wichita Pit Bull Statistics for 2008 are provided in three attachments below. These statistics demonstrate that 25% - 30% of all dog-related Animal Services activities involve pit bulls. Other code revisions changes have been requested by the public or are being proposed as a result of recent situations that require regulatory improvement.

Analysis: Proposed changes to Chapter 6.04 are shown in the attached delineated code, and summarized in the attached chart. A clean version of the code changes is also attached. These revisions include among other things 1) New pit bull ownership restrictions; 2) Amendments to allow flexibility with rabies vaccination schedule; 3) New animal nuisance provisions; 4) Additional requirements for Commercial Animal Establishments; 5) Comprehensive changes to Animal Maintenance Permit system with increased fees; 6) Changes to Breeder's License requirements including alignment with Unified Zoning Code; 7) Amendments to owning livestock including mandatory acreage requirements; and 8) New regulations for dog parks. Also, Chapters 6.12 and 6.16 were deleted and incorporated into Chapter 6.04.

Goal Impact: The proposed ordinance revisions further the City Council's "Provide a Safe and Secure Community" goal.

Financial Considerations: The proposed revision of Animal Maintenance Permit (AMP) fees will help offset program costs. Domestic dog and cat AMP fees will increase from $20 to $25. Livestock AMP fees will increase from either $20 or $50 to $100. Revenue projections are based on 567 AMPs for domestic animals and 61 AMPs for livestock in 2008. Revenue will increase from $11,292 to $20,695.

Legal Considerations: The Department of Law has approved the code revisions as to form.

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

Attachments: Proposed revised delineated code and clean copy dated 3/5/2009; Executive Summary; Copy of 1/22/2009 Letter to Mayor/City Council RE: Animal Control; Animal Services Dog Statistics 2008; and Wichita Pit Bull Statistics 2008.

First Published in the Wichita Eagle on _____

03/05/2009

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 6.04.010, 6.04.020, 6.04.035, 6.04.036, 6.04.040, 6.04.045, 6.04.046, 6.04.048, 6.04.055, 6.04.060, 6.04.110, 6.04.120, 6.04.140, 6.04.155, 6.04.156, 6.04.170, 6.04.190, 6.04.210, CREATING SECTIONS 6.04.025, 6.04.052, 6.04.157, 6.04.158. 6.04.159, 6.,04.165, 6.04.171, 6.04.172, 6.04.173, 6.04.175, 6.04.176, 6.04.177, 6.04.215 AND 6.04.218 OF THE CODE OF THE CITY OF WICHITA, KANSAS PERTAINING TO ANIMAL CONTROL AND PROTECTION AND REPEALING THE ORIGINALS OF SECTIONS 6.04.010, 6.04.020, 6.04.035, 6.04.036, 6.04.040, 6.04.045, 6.04.046, 6.04.048, 6.04.055, 6.04.060, 6.04.110, 6.04.120, 6.04.130, 6.04.140, 6.04.155, 6.04.156, 6.04.170. 6.04.190, 6.04.210, AND CHAPTERS 6.12 AND 6.16 OF THE CODE OF THE CITY OF WICHITA.

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

SECTION 1. Section 6.04.010 of the Code of the City of Wichita is hereby amended to read as follows:

"**Definitions.** As used in this chapter:

(a) 'Abandoned cat' means a cat which has returned to the feral state or which does not have a collar.

(b) 'Adequate Care' means normal care and prudent attention to the needs and welfare of an animal, including that care normally needed to maintain good health of the animal, including clean and dry bedding and resting surfaces, grooming , removal of manure, and:

1. Adequate Food means wholesome foodstuffs suitable for the animal provided at suitable intervals in a sanitary manner in quantities

sufficient to maintain good health of the animal considering its age and condition; and

2. Adequate Health Care means the provision to an animal of all immunizations and preventive care required to maintain good health; space adequate to allow the animal to rest and exercise sufficient to maintain good health; and the provision to each sick, diseased or injured animal of necessary veterinary care or humane death; and

3. Adequate Shelter means a structurally sound, properly ventilated, sanitary and weatherproof shelter suitable for the animal, considering the condition and age of the animal which provides access to shade from direct sunlight and regress from exposure to inclement weather conditions; and

4. Adequate Water means a continual access to or access at suitable intervals to a supply of clean, fresh, potable water provided in a sanitary manner suitable for the condition of the animal.

(c) 'Adult Animal' means an animal that has reached sexual maturity. For the purposes of this title, unless otherwise specified, an animal will be considered to be an adult at five (5) months of age.

(d) 'Animals' means all vertebrate and invertebrate animals such as, but not limited to, dogs, cats, bovine cattle, horses and other equines, hogs, goats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl or wild animals, reptiles, fish, or birds that have been tamed, domesticated or captivated.

Such term does not include exotic or dangerous wild animals, as defined by Chapter 6.08.

(e) 'Animal fighting paraphernalia' means equipment, animals, or commodities designed or capable of use for the purpose of training animals to attack other animals, as in dogfighting or cockfighting, including but not limited to: animal treadmills, drugs for healing animals such as anti-inflammatories, antibiotics or steroids, spurs, equipment used to threaten animals for the purpose of training for aggressive behavior, and/or equipment used to strengthen animal bodies. In determining whether an object is animal fighting paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or person in control of the object concerning its use.

2. Prior convictions, if any, of an owner or person in control of the object under any state law or city ordinance relating to animal fighting, animal cruelty or gambling.

3. The proximity of the object, in time and space, to a direct violation of an animal fighting, animal cruelty or gambling statute or ordinance.

4. The proximity of the object, in time and space, to other objects also susceptible for use as animal fighting paraphernalia.

5. The existence of bloodstains or blood spatters on the object.

6. The manner in which the object is displayed for sale or is described in written material on the subject of animal fighting.

7. The existence and scope of legitimate uses for the object in the community.

8. Expert testimony concerning the object's use.

9. The proximity of the object, in time and space, to dogs showing evidence of wounds or scarring.

(f) 'Animal Shelter' means the facility or facilities authorized to care for animals impounded or held under the authority of the ordinances of the City of Wichita or the State of Kansas.

(g) 'Attack' means violent or aggressive physical contact with a person or domestic animal or violent or aggressive behavior that confines the movement of a person, including, but not limited to, cornering, chasing, or circling a person.

(h) 'Bite' means any actual or suspected abrasion, scratch, puncture, tear, bruise or piercing of the skin, caused by any animal, which is actually or suspected of being contaminated or inoculated with the saliva from the animal, directly or indirectly, regardless of the health of the animal causing such bite.

(i) 'Cat' means any of the small carnivorous mammal varieties of Felis Catus which are domesticated. Such term shall not include hybrid breeds of cats which have been bred to a wild animal.

(j) ‘Cattery’ means any premises where there is being maintained or harbored a total of five of more cats or more than two unspayed female cats, except veterinary hospitals. This term does not include foster homes operated under the auspices of rescue organizations licensed by the Kansas Department of Animal Health.

(k) ‘City Treasurer’ means the duly appointed treasurer of the city or his/her authorized representative.

(l) ‘Commercial Animal Establishment’ means any pet shop, animal day care, grooming shop, auction, riding school, stable, kennel, guard dog service, dog trainer or other business which keeps or maintains animals in stock for retail or wholesale trade or sale.

(m) ‘Dangerous dog’ means:

1. Any dog which has exhibited a vicious propensity toward persons or domestic animals and is capable of inflicting serious physical harm or death or damage to property; or

2. Any dog which, without provocation, attacks or bites, or has attacked or bitten a human being or domestic animal. This shall not apply if the victim was committing a willful trespass on the property where the dog was harbored at the time of the attack or bite; or

3. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting; or

4. Any dog which chases or menaces any person in an aggressive manner, except that a dog shall not be deemed dangerous if the complainant was committing a willful trespass at the time.

5. Any dog that poses a threat to public safety or constitutes a danger to human life or property based upon criteria described in Section 6.04.045, as determined by the Health Officer.

(n) 'Defecate' means to excrete waste matter from the bowels.

(o) 'Dog' means any animal which is of the species Canis Familiaris. Such term shall not include hybrid breeds of dogs which have been bred to a wild animal.

(p) 'Dog Breeder' means a person who raises or produces dogs or puppies for sale or profit.

It is presumed that a person who advertises the sale of dogs or puppies or a person who owns two or more unaltered female dogs is a dog breeder. Such term shall include persons who are licensed by the State of Kansas as an Animal Dealer, Retailer Breeder, Animal Breeder, Hobby Breeder or Hobby Kennel. Such term shall include a person who owns one or more unaltered pit bulls.

(q) 'Animal Day Care' means a commercial establishment that takes temporary possession of an animal, at the request of an owner, to provide safety, comfort and/or socialization of the animal.

(r) ‘Domestic Animals’ means all animals that have been domesticated, such as, but not limited to, dogs, cats, cattle, horses, swine, goats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons or other fowl.

(s) ‘Domestic Animal Structure’’ means all pens, houses or structures where domestic animals are confined, such as, but not limited to: hutches, cotes, lofts, kennels, dog runs, warrens, feed lots, barns or other buildings and enclosures. The term does not apply to perimeter fencing surrounding the property.

(t) ‘Exotic animal’ means those animals not normally occurring in North America and animals of any species the majority of whose populations are wild.

(u) ‘Ferret’ means a domesticated, small, elongated carnivorous mammal which belongs to the Mustelidae Family (Mustela putorius furo).

(v) ‘Foster Care, Group Home or Rescue’ means a person or organization, whether for profit or non-profit, which provides temporary care for animals from a licensed animal shelter at a private residence. Temporary care is a period of time not to exceed six (6) months. Such term shall include foster, group and rescue homes operated under the auspices of rescue organizations licensed by the Kansas Animal Health Department.

(w) ‘Fowl’ means any domesticated or wild bird, including but not limited to: chickens, hens, ducks, geese, pheasants, turkeys, doves, pigeons, parrots, parakeet and exotic birds.

(x) ‘Garbage’ means the putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food for human beings.

(y) ‘Groomer’ means a person or establishment which provides animal grooming services.

(z) ‘Health Officer’ means the director of the City of Wichita Department of Environmental Services or authorized representative.

(aa) ‘Inhumane treatment’ means any treatment to any animal which deprives the animal of necessary sustenance, including food, water and protection from the weather; any treatment such as overloading, overworking, tormenting; beating, mutilating, teasing or other abnormal treatment; or causing or allowing the animal to fight with any other animal.

(bb) ‘Kennel’ means any premises where there is being maintained a total of five or more adult dogs owned by the property resident.

(cc) <u>‘Livestock’ means any cow, ox or other bovine, goat, sheep, horse, ratites, donkey, swine, mule or other animal of similar or larger size.</u>

(dd) ‘Microchip’ means a passive transponder which can be implanted in an animal and which is a component of a radio frequency identification (RFID) system.

(ee) ‘Neighbor’ means any person residing within two hundred feet (200’) from the outermost property line of the property where a domestic animal is owned, kept or harbored.

(ff) 'Owner, keeper or harborer' means any person who possesses, harbors, keeps, feeds, shelters, maintains, offers refuge or asylum to any animal, or who professes to keeping, owning or harboring of such animal. In addition, any person who signs a receipt as owner, keeper or harborer for the return of an animal from any shelter or animal holding facility, shall be presumed to be the owner, keeper or harborer of the animal. A parent or legal guardian shall be deemed to be an owner, keeper or harborer of animals owned, kept or harbored upon their premises by minor children who are less than eighteen (18) years of age. Such term shall also include any person who exercises control over or is in possession of any such animal.

(gg) 'Person' means any individual, firm, association, joint stock company, syndicate, partnership, corporation, other state franchised business entity such as a professional association, limited liability company, or limited liability partnership, or other organization of any kind.

(hh) 'Picket' means attaching a leash, rope, chain, lead, tether or other similar apparatus or device to the body of an animal and another inanimate or immovable object for the purpose of confining the animal or limiting the movement of the animal.

(ii) 'Pit bull dog' is defined to mean any and all of the following dogs:

1. The Staffordshire Bull Terrier breed of dogs;
2. The American Staffordshire Terrier breed of dogs;
3. The American Pit Bull Terrier breed of dogs;

4. Dogs which have the appearance and physical characteristics of being predominately of the breeds of dogs known as Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier.

A dog which possesses five out of the following eight characteristics shall be considered to be a pit bull:

1. Head is medium length, with a broad skull and very pronounced cheek muscles, a wide, deep muzzle, a well-defined, moderately deep stop, and strong under jaw. Viewed from the front the head is shaped like a broad, blunt wedge.
2. Eyes are round to almond shaped, are low in the skull and set far apart.
3. Ears are set high. Un-cropped ears are short and usually held rose or half prick, though some hold them at full prick.
4. Neck is heavy and muscular, attached to strong, muscular shoulders.
5. Body is muscular, with a deep, broad chest, a wide front, deep brisket, well-sprung ribs, and slightly tucked loins.
6. Tail is medium length and set low, thick at the base, tapering to a point.
7. Hindquarters are well muscled, with hocks, set low on the legs.
8. Coat is a single coat, smooth, short and close to the skin.

Pit bull puppies have the same characteristics, though in juvenile or adolescent form. Muscles, along with breadth and depth of head and chest may be less developed.

Specifically excepted from this definition is any dog with proof, by by a written certification from a veterinarian licensed by the State of Kansas, that the dog does not contain in its lineage any American Pit Bull Terrier, American Staffordshire Terrier or Staffordshire Bull Terrier.

(ii) 'Premises' means a lot, plot or parcel of land including structures located thereon.

(jj) 'Public Nuisance' means any repeated acts of an animal that irritates, perturbs or damages rights and privileges common to the public or enjoyment of private property or indirectly injures or threatens the safety of a member of the general public. Such actions include, but are not limited to:

1. Damages public or private property to include, but not be limited to, breaking, bruising, tearing up, digging up, crushing or injuring any lawn, garden, flower bed, plant, shrub or tree in any manner;

2. Rips any trash bag or tips any solid waste collection container which spills or scatters trash, debris, refuse or waste.

3. Repeatedly defecates upon any public place or upon premises not owned or controlled by the animal's owner, keeper or harborer, provided that this definition shall not apply where such waste is

immediately removed and properly disposed of by the owner of such animal.

4. Allowing or permitting an animal to be maintained in an unsanitary condition so as to be offensive to sight or smell.

5. Causes a condition which endangers public health or safety.

(kk) 'Ratites' means all creatures of the ratite family that are not indigenous to this state, including but not limited to, ostriches, emus and rheas.

(ll) 'Refuse means all putrescible and non-putrescible waste materials (except animal body discharges) such as trash, garbage, dead animals, paper, cardboard, tin cans, grass, wood, metals, salvage or inert materials produced or accumulated in connection with the maintenance of domestic animals.

(mm) 'Retail' means any transaction where the animal is sold to the final consumer.

(nn) 'Running at large' means any animal, with the exception of a cat, that is not confined within a fenced enclosure or shelter capable of preventing the animal from exiting at will, unless under the control of a person, either by lead, cord, rope or chain; provided that an animal may be considered confined if it is on a leash, rope or chain which is sufficient to keep the animal on the premises where picketed in accordance with section 6.04.040(c)(14). For the purposes of this chapter, an animal shall not be considered running at large when on the owner's property and confined by an operating electronic fencing system when the premises are clearly and prominently marked to show the existence of the electronic fencing system and the animal is equipped with the necessary and

operating components of the system required to confine the animal to the owner's property. Further, a dog shall not be considered to be running at large when it is unleashed inside a dog park owned or operated by the City of Wichita.

(oo) 'Sale or offer for sale' includes transfers by sale or exchange.

(pp) 'Sanitary' means clean, free from waste and free from infectious influences.

(qq) 'Secure enclosure' means a locked enclosure or structure measuring at least 6 feet in width, 12 feet in length, and 6 feet in height, capped if there is a dog house inside or if the dog can climb fence, with secure sides, which provides proper protection from the elements for the dog, is suitable to prevent the entry of young children, and is designed to prevent the animal from escaping while on the owner's property, which has been inspected and approved by the Health Officer. Such enclosure shall have a concrete or wire floor to prevent the dog from digging out or escaping from the enclosure.

(rr) 'Service animal' means any animal recognized as a qualified service animal pursuant to the Americans with Disability Act of 1990. A qualified service animal is defined as, but not limited: to a dog which has been specially selected, trained and tested to perform a variety of tasks for persons with disabilities. These tasks include, but are not limited to: pulling wheelchairs, lending balance support, picking up dropped objects or providing assistance in, or to avoid, a medical crisis or to otherwise mitigate the effects of a disability. The presence of a dog for comfort, protection or personal defense does not qualify a

dog as being trained to mitigate an individual's disability and, therefore, does not qualify the dog as a service dog.

(ss) 'Stockyard means a public terminal stockyard posted by the packers and stockyards divisions of the United States Department of Agriculture.

(tt) 'Unaltered' means an animal which has not been surgically sterilized.

(uu) 'Veterinarian' means a doctor of veterinary medicine licensed by the State of Kansas.

(vv) 'Veterinarian hospitals' means a domestic animal hospital operated by a doctor of veterinary medicine, licensed by the State.

(ww) 'Vicious propensity' means a known tendency or disposition to approach any individual or domestic animal in an attitude of attack when there is no provocation.

(xx) 'Waste or Wastes' means manure or the bodily discharge of all domestic animals, spilled feed or unconsumed feed and liquid cleaning wastes, including suspended solids resulting from cleaning operations.

(yy) 'Wild Animal' means any species that has established breeding populations currently within North America, which is self sufficient in the natural environment, and the majority of whose populations are not domesticated."

SECTION 2. Section 6.04.020 of the Code of the City of Wichita is hereby amended to read as follows:

"**Responsibilities of the health officer.** (a) The Health Officer shall be responsible for the enforcement of this title and is hereby authorized to make

investigations and to serve notices and orders as necessary for enforcement of the provisions of this title, to pick up animals on public or private property, and to arrange and pay for confinement of such animals at an animal shelter in accordance with K.S.A. 47-1701, et seq., and amendments thereto, and to operate an animal shelter to aid the department's animal control functions, including charging the owner of any animal confined for the care thereof, and to seek reimbursement from the owner of any animal confined, whether the confinement is at the animal shelter operated by the department or by a third party. Such authority shall include, subject to budgetary control, authorization for formalization of an agreement with such animal shelter.

(b) The Health Officer shall have the authority to sign complaints and serve notices to appear before the Municipal Court upon any person when the Health Officer has probable cause to believe such person has or is violating a section of this Code. Such officer shall have the authority to issue, suspend or revoke licenses and permits as provided for by this title.

(c) In addition to fees provided for in this title, the Director of the Wichita Department of Environmental Services, is authorized to establish a schedule of user or service fees and collect such fees for services performed, including but not limited to:

1. Animal shelter boarding and animal redemption;

2. Shelter services provided to other jurisdictions;

3. Animal care and control items sold at the Wichita Animal Shelter;

4. Adoption fees for the adoption of animals from the Wichita Animal Shelter.

5. Research and copying of documents not subject to the Kansas Open Records Act requests;

6. Inspection services provided to other jurisdictions.

7. Enter into interlocal agreements with other jurisdictions to provide Animal Control services.

(d) The Director of Environmental Services is authorized to adjust fees during instances of moratoriums, special events or special adoption programs."

SECTION 3. Section 6.04.025 of the Code of the City of Wichita is created to read as follows:

"**Trapping of abandoned cats by health officer.** (a) Abandoned cats located within the corporate limits of the city are declared a nuisance and menace to the public health which is to be abated by the Health Officer.

(b) A cat that has reverted to a feral state or has no collar is presumed to be an abandoned cat. Such cat may be confined by a person on whose property such cat strays for pick-up by the Health Officer, or be trapped by the health officer.

(c) The Health Officer may utilize humane-type cage traps to apprehend any abandoned cat with such humane trap being placed by the health officer on public property or private property with the consent of the owner.

(d) The Health Officer shall transport cats that have been trapped, picked up, confined or relinquished to the animal shelter with such cat being impounded as provided by K.S.A. 47-1701 et seq., as amended, unless sooner redeemed by an owner upon payment of a service charge and boarding fee to the city. Identification information, if available on a trapped cat, shall be utilized by the Health Officer or animal shelter to inform such owner that his cat has been impounded."

SECTION 4. Section 6.04.035 of the Code of the City of Wichita is hereby amended to read as follows:

"Cruelty to animals. (a) It is unlawful for any person to commit the crime of cruelty to animals. Cruelty to animals is:

1. Intentionally causing any physical injury, other than the following acts, described in K.S.A. 21-4310(a)(10) and amendments thereto: by intentionally and maliciously killing, injuring, maiming, torturing, burning or mutilating any animal;

2. Recklessly causing physical injury to any animal;

3. Intentionally abandoning or leaving any animal in any place without making provisions for its proper care;

4. Having physical custody of any animal and intentionally failing to provide adequate care, such as food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal, or to carry any animal in

or upon any vehicle in a cruel or inhumane manner. Any animal kept outside shall be provided with a structurally sound, weatherproof enclosure, large enough to accommodate the animal;

5. For any person, by any means, to make accessible to any animal, with the intent to cause harm, any substance which has in any manner been treated or prepared with a harmful or poisonous substance, except that this section shall not prohibit the use of poisonous substances for the control of vermin of significance to the public health.

6. Every operator of a motor vehicle or other self-propelled vehicle upon the streets and ways of the City, except emergency vehicles, shall immediately, upon injuring, striking, maiming or running down any animal, notify the police department (911) of the location, and the police department will notify such agency as may be providing injury services;

7. For any person to have, keep or harbor any animal which is infected with any dangerous or incurable and/or painfully crippling condition except as hereinafter provided. A Municipal Court Judge may order a person convicted under this section to turn the animal involved over to the Environmental Services Department. All such animals taken by the Environmental Services Department may be destroyed humanely as soon thereafter as is conveniently possible. This section shall not be construed to include veterinary hospitals or animals under active veterinary care;

8. Intentionally using a wire, pole, stick, rope or any other object to cause any equine, bovine or swine to lose its balance or fall, for the purpose of sport or entertainment.

9. It is unlawful for any person to leave an animal in a standing or parked vehicle under conditions constituting an imminent threat to the safety of the animal. The Health Officer may remove and impound an animal left under what reasonably appears to be such conditions. Removal and impoundment of an animal shall not limit the Health Officer's ability to pursue charges or animal cruelty in Municipal Court.

10. It is unlawful for any person to subject any animal to inhumane treatment, as defined by Section 6.04.010 of this Code.

(b) The provisions of this section shall not apply to:

1. Normal or accepted veterinary practices;

2. Bona fide experiments carried on by commonly recognized research facilities;

3. Rodeo practices as described in the Professional Rodeo Cowboys Association Rules Governing the Care and Treatment of Livestock in PRCA Sanctioned Rodeos;

4. The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by a licensed veterinarian at the request of

the owner thereof, or by any officer or agent of an incorporated humane society, the operator of an animal shelter or pound, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound.

5. With respect to livestock, normal or accepted practices of animal husbandry, including the normal and accepted practices for the slaughter of such animals for food or by-products and the careful or thrifty management of ones herd or animals, including animal care practices common in the industry or region;

6. The killing or injury of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, livestock or property;

7. An animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods;

8. Laying an equine down for medical or identification purposes;

9. Normal or accepted practices of pest control, as defined in K.S.A. 2-2438a and amendments thereto; or

10. Accepted practices of animal husbandry pursuant to regulations promulgated by the United States Department of Agriculture

for domestic pet animals under the Animal Welfare Act, and amendments thereto.

(c) As used in this section,

1. equine means a horse, pony, mule, jenny, donkey, or hinny.

2. bovine means a cow, calf, bull or steer.

3. swine means a pig, shoat, piglet, boar, barrow, gilt or sow.

(d) Cruelty to animals as described in this section is a misdemeanor punishable by a fine or not more than $2,500.00 and/or imprisonment of not more than 12 months, or any combination of such fine and imprisonment."

SECTION 5. Section 6.04.036 of the Code of the City of Wichita is hereby amended to read as follows:

"Cruelty complaint--Municipal court hearing. (a) The Health Officer or the representative of a duly incorporated humane society may, if a report has been made which shows evidence of cruelty or inhumane treatment of an animal against an individual before or after the individual has been convicted of such violation, sign an affidavit petitioning the Municipal Court Judge to immediately take custody and control of such animal if it appears to the Health Officer or the representative of the duly incorporated humane society that it would be in the best interest of such animal to have the Municipal Court seize such animal.

(b) The Municipal Court Judge, upon receiving such affidavit and petition, shall set the matter for hearing within five business days from the date that the petition and affidavit are filed. If it appears from the affidavit that there is

an imminent threat to the life of the animal, then the Municipal Court may set the hearing as soon as practical. The Municipal Court shall direct notice of the violation be served on the owner or harborer of such animal by serving such person with a summons to appear and a copy of the affidavit filed with the court. This summons and affidavit shall be served in the same manner as is required for serving a Notice to Appear under K.S.A. 12-4207.

(c) The Municipal Court Judge, after a hearing has been held, may order that an animal be seized and held in the animal shelter of the City of Wichita, or placed in the custody of a duly incorporated humane society if the following findings are made:

1. The person summoned to appear is the owner or harborer of the animal in question;

2. That there is probable cause to believe that a violation of any provision of Section 6.04.035 has occurred or is occurring; and

3. Based upon that violation, it appears that it would be in the best interest of the animal, to remove that animal from the control and custody of the owner or harborer.

(d) If the Municipal Court Judge orders that such animal shall be seized and brought into custody, then the Health Officer or a representative of a duly incorporated humane society shall take such animal into custody and shall inspect such animal, care for or treat such animal or place such animal under the care of a licensed veterinarian for treatment, boarding or other care. If the Health Officer determines, based on information from his or her staff, an officer of a

humane society, or a licensed veterinarian, that the animal is diseased or disabled beyond recovery for any useful purpose, then such animal may be destroyed humanely as soon thereafter as is conveniently possible, subject to the right of appeal stated below in subsection (i). The City of Wichita shall not be responsible for any costs that are incurred by an incorporated humane society as to the care of an animal placed in the custody of a humane society or as to treatment of an animal under the custody of a humane society received from a licensed veterinarian.

(e) If the owner or harborer of such an animal is convicted of violating any provision of Section 6.04.035 of this code and if the Municipal Court Judge finds that such animal would in the future be subjected to treatment or actions by the owner or harborer which violates any provision of Section 6.04.035, such animal shall not be returned to or remain with such person. Such animal may be turned over to the Health Officer, humane society or licensed veterinarian for sale or other disposition.

(f) Expenses incurred for the care, treatment or boarding of any animal taken into custody pursuant to subsection (d) pending prosecution of the owner or harborer of such animal for cruelty to animals shall be assessed to the owner or harborer as a cost of the case if the owner or harborer is adjudicated guilty of such crime.

(g) If the Health Officer has taken possession of the animal, the Health Officer may petition the Municipal Court to be allowed to place the animal for adoption or euthanize the animal after five (5) business days following

notification to the owner or harborer of such animal, unless the owner or harborer files a renewable cash or performance bond with the Clerk of the Municipal Court where the animal is being held, in an amount equal to not less than the cost of care and treatment of the animal for thirty (30) days. If the animal remains in the custody of the Health Officer for a period exceeding thirty days, after written notice to the owner or harborer, the Health Officer may request the Municipal Court Judge to increase the amount of the bond to cover the costs of care for the animal.

(h) If the owner or harborer of such animal is adjudicated not guilty or if the Municipal Court Judge, after an adjudication of guilt~~y~~ is made, finds that such animal should be returned, such person may redeem such animal within seventy-two hours. If such animal is not redeemed within seventy-two hours, then the entity operating the animal shelter caring for the animal shall have ownership of such animal and shall determine the disposition of such animal. Any proceeds derived from such sale or disposition shall be paid directly to the treasurer of the entity operating the animal shelter, and no part of such proceeds shall accrue to any individual.

(i) An order issued by the Municipal Court Judge under this section may be appealed to the district court pursuant to the provisions contained in K.S.A. 60-2101(d) and amendments thereto."

SECTION 6. Section 6.04.040 of the Code of the City of Wichita is hereby amended to read as follows:

"Control and protection of animals in general. (a) Any owner or harborer of any animal, other than cats, found running at large within the corporate limits of the city shall be deemed guilty of a misdemeanor. Knowledge or intention on the part of the owner or harborer shall not be elements of this offense. The Health Officer may seize, impound and cause to be destroyed any such animal, including those animals not within the definitions of the Kansas Pet Animal Act, using the procedures set out at K.S.A. 47-1710. The Health Officer may return~~ed~~ the animal to its rightful owner upon request and may require the payment of a service charge and a boarding fee for days spent in confinement at the shelter prior to return of the animal. If any animal impounded for any reason is determined by the Health Officer to require confinement separate from other like animals in order to protect the health and well being of that animal, staff, the public, or other animals being housed at the animal holding facility due to any aggressive behavior and/or any disease or medical conditions, the boarding fee for such animal shall be twice the normal boarding fee established by the animal shelter. Any person who is convicted of the charge of animal running at large shall be punished as set forth below:

1. Upon a first conviction, a fine of not less than $50.00 nor more than $1,000.00 shall be assessed.

2. Upon a second conviction a fine of not less than $100.00 nor more than $1,000.00 shall be assessed.

3. Upon a third or subsequent conviction, a fine of not less than $200.00 nor more than $1,000.00 shall be assessed and the owner must appear in Municipal Court.

(b) In addition to the penalties set forth in paragraph (a), the owner or harborer of any unaltered dog that has been impounded for running at-large shall be required to:

1. have an identification microchip implanted in the dog traceable to the current owner, and registered with the City of Wichita, and

2. have the dog surgically sterilized by a licensed veterinarian within thirty days of redemption of said dog, at his or her own expense. It shall be a violation of this ordinance to fail to have the dog surgically sterilized, or provide proof from a licensed veterinarian that said dog has previously been surgically sterilized, or has been surgically sterilized and micro-chipped within thirty days after redemption of said dog as indicated in this ordinance, or

3. The owner or harborer may maintain the aforementioned dog intact by paying an additional unaltered animal fee, the amount of which shall be established by the Health Officer, to redeem such dog from the Animal Shelter. Such dog may be maintained intact provided that the

dog is not found to be running at large on any subsequent occurrence within the dog's lifetime.

4. For any dog required to be surgically sterilized, the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner or harborer shall provide documentation of the sterilization upon completion. Such voucher shall remain valid for thirty (30) days. Any owner or harborer failing to provide documentation of the sterilization procedure within thirty days of impoundment shall be deemed guilty of a misdemeanor. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

(c) Upon the second occurrence of any intact dog impounded by the Health Officer for running at large, the owner of such dog shall be required to have the animal surgically sterilized by a licensed veterinarian within thirty days of redemption of said dog at his or her own expense. For any animal required to be surgically sterilized the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner or harborer shall provide documentation of the sterilization upon completion. Any owner or harborer failing to provide documentation of the sterilization procedure within thirty days of impoundment shall be deemed guilty of a misdemeanor.

(d) Animals which are kept on the premises of any pet store shall not be allowed, by the storeowner or any employee, to run at large inside the store or on the external premises of the pet store during business hours, and no person shall allow any animal under their care or control to run at large on the premises of any store during business hours. This provision shall not apply to animals participating in supervised training classes within an enclosed area of the store.

(e) It is unlawful for any person to:

1. Kill any squirrel or songbird within the corporate limits of the city; provided, that it shall be permissible for the Health Officer to kill squirrels, skunks, birds, or other animals that have become so numerous as to cause destruction or nuisance to property or in the event of disease occurring among such squirrels, skunks, birds, or other animals that may be considered contagious to human beings;

2. Interfere with or molest an animal used by the police or fire department of the city or other governmental agency or department in the performance of its lawful functions and duties or interfere with the handler of such animal in such a way that the handler is deprived of or inhibited in his control of such animal;

3. Promote, stage, hold, manage, conduct, carry on, participate in or attend any game, exhibition, contest or fight in which one or more animals are engaged for the purposes of injuring, killing, maiming

or destroying themselves or any other animals, including but not limited to cock fighting or dog fighting;

4. Knowingly permit animal fighting as defined by subsection (3) on the premises under one's ownership, charge or control.

5. Own, maintain, or have in his or her possession animal fighting paraphernalia;

6. Own or keep on one's premises any animal, by a person convicted of animal fighting, pursuant to this section or K.S.A. 21-4315 or convicted of cruelty to animals as defined by Section 6.04.035 of the Code of the City of Wichita or K.S.A. 21-4310 and amendments thereto.

7. Keep or harbor any animal, which, by loud, frequent, excessive or habitual barking, howling, yelping or other noise or action, unreasonably interferes with the use or enjoyment of property of any person of reasonable sensibilities residing in or occupying the area. To effect legal relief, persons so affected directly may sign a complaint at the Department of Environmental Services or contact the Wichita Police Department to file a report regarding such nuisance.

8. Allow any unspayed female dog in season to be in an area where there is access by an unconfined male dog;

9. Allow an unconfined male dog in an area where there is access to any unspayed female dog in season;

10. Keep or harbor a dog over five months of age within the corporate limits of the city without such dog having a current vaccination

against rabies performed by a veterinarian, and the owner thereof securing an annual license for such dog issued by the City Treasurer. The Director of Environmental Services shall have the authority to establish appropriate licensing fees for such animals.

11. Keep or harbor a cat over five months of age within the corporate limits of the city without such cat having a current vaccination against rabies performed by a veterinarian licensed by the State of Kansas.

12. Sell or offer for sale, barter or give away any living baby chicks, rabbits, ducklings, or other fowl except pigeons, under two months of age or to sell, offer for sale, barter, give away or display animals or fowl as specified in this subsection which have been dyed, colored or otherwise treated so as to impart to them an artificial or unnatural color; provided, however, that this section shall not be construed to prohibit the sale of animals or fowl, as specified in this subsection, in proper brooder facilities by hatchers or persons engaged in the raising and selling of such animals and fowls for recognized animal husbandry or commercial purposes;

(13) Keep, maintain, sell or offer for sale, barter or give away any animal whose possession is prohibited by federal or state law; or any exotic animal as defined in by this title. This section shall not apply to: tropical or other fishes; birds, except those prohibited by federal or state law; animals such as gerbils, rats, mice, hamsters, guinea pigs, and ferrets; small mammals raised for harvesting of fur salable into an existing market,

such as chinchillas, nutria and mink; nonpoisonous amphibians and reptiles, not including pythons, anacondas, boa constrictors, monitor lizards, iguanas, alligators, caiman, crocodiles and turtles. This section shall not apply to exhibitions authorized by and conducted in accordance with Chapter 6.08.

(14) Continuously picket a dog for more than one continuous hour, except that picketing of the same dog may resume after a hiatus of three continuous hours. A dog may not be picketed for a total time period exceeding three hours, <u>in any twenty-four-hour period</u>.

For the purpose of picketing a dog, a chain, leash, rope, or tether shall be at least 10 feet in length.

(i) A chain, leash, rope, collaring device, tether, or any assembly or attachments thereto used to picket a dog shall not weigh more than one-eighth (1/8) of the animal's body weight, or due to weight, inhibit the free movement of the animal within the area picketed.

(ii) Dogs shall be picketed in such a manner as to prevent injury, strangulation, or entanglement on fences, trees, or other man made or natural obstacles;

(iii) It is unlawful to attach chains or other tether restraint implements directly to a dog without the proper use of a collar, harness, or other device designed for that purpose and made from a material that prevents injury to the animal.

15. Permit or allow any animal to be a public nuisance.

16. Own, possess, harbor or maintain more animals than is permitted by the requirements of this title.

(f) Health Officers and other law enforcement officers may issue the owner or owners of animals creating a public nuisance, as defined in this title, a citation to appear in municipal court to answer the offense charged. To effect legal relief, persons affected directly may sign a complaint at the Department of Environmental Services or contact the Wichita Police Department to file a report regarding such nuisance.

SECTION 7. Section 6.04.045 of the Code of the City of Wichita is hereby amended to read as follows:

"Dangerous dog-Determination--Notice and hearing-confinement or destruction. (a) The Health Officer may declare a dog to be dangerous based on:

1. The nature of any attack committed or wound inflicted by the animal;

2. The past history and seriousness of any attacks or wounds inflicted by the animal;

3. The potential propensity of the animal to inflict wounds or engage in aggressive or menacing behavior in the future;

4. The conditions under which the animal is kept and maintained which could contribute to, encourage, or facilitate aggressive

behavior, such as, but not limited to, allowing the animal to run at large, tethering in excess of legal limits as defined in this chapter, physical property conditions, presence of young children, the elderly, or infirm within or residing near the home, any past violations of this chapter, and/or failing to provide proper care, food, shelter, or water.

If the Health Officer determines that the animal is dangerous, he or she will determine an appropriate disposition based on the known facts and consistent with the provisions of this chapter. The Health Officer may impound the dog and shall notify the owner of such determination by personal service, residential service at the person's usual place of abode by leaving a copy of the notice with some person of suitable age and discretion residing therein, or by certified mail addressed to the owner's last known address, or addressed to the location where the dog is maintained. Service by certified mail, shall request return receipt, with instructions to the delivering postal employee to show to whom delivered, the date of delivery, and address where delivered. Service of process by certified mail shall be considered obtained upon the delivery of the certified mail envelope. If the certified mail envelope is returned with an endorsement showing refusal of delivery, the Health Officer shall send a copy of the notice to the defendant by ordinary, first class mail. This first class mailing shall be evidenced by a certificate of mailing. Service shall be considered obtained upon the mailing of this additional notice by first class mail. The owner of a dog declared dangerous may request an administrative review of the determination by filing a written request with the Health Officer within ten days of receipt of such notification.

(b) The Health Officer will conduct a hearing within ten days of receipt of the owner's request. At such hearing, testimony may be offered by the owner of the dog, the Health Officer, victims of any bite or attack, neighbors or other affected persons, and veterinarians concerning the vicious propensity of the dog. In making a determination, the Health Officer shall consider the factors listed in subsections (1) through (4) above. It shall be an affirmative defense that at the time of a bite, attack, or threatening behavior:

1. The dog was actively being used by a law enforcement official for legitimate law enforcement purposes; or

2. The threat, injury, or damage was sustained by a person:

(i) Who was committing, at the time, a willful trespass or other tort upon the premises lawfully occupied by the owner of the dog; or

(ii) Who was provoking, tormenting, abusing, or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, abused or assaulted the dog; or

(iii) Who was committing or attempting to commit a crime; or

3. The dog was responding to pain or injury.

If the Health Officer determines that the dog is dangerous, he or she shall determine an appropriate disposition based on the facts determined at the hearing

and the provisions of this chapter, and will notify the owner in writing of the outcome of the hearing within five business days. The owner may appeal the hearing outcome as provided for in Section 6.04.210. Absent such appeal, the Health Officer may pick up and cause the animal to be destroyed, or in lieu of such destruction he or she may permit the confinement of the animal in a manner and location that he or she deems appropriate or as provided in Section 6.04.046. The dog's owner shall be responsible for standard boarding charges at the Wichita Animal Shelter and veterinary expenses incurred during impoundment of the animal."

SECTION 8. Section 6.04.046 of the Code of the City of Wichita is hereby amended to read as follows:

"Dangerous dog--Failure to confine--Destruction and defenses.

(a) It is unlawful for an owner of a dangerous dog to permit the dog to be outside an approved or secure enclosure unless the dog is restrained by a substantial chain or leash and under physical restraint by a responsible person who is eighteen years of age or older and possesses sufficient strength for physical control of the animal for the purpose of transportation to and from a veterinarian for medical treatment. In such event, the dangerous dog shall be securely muzzled and restrained with a chain or leash not exceeding four (4) feet in length, and shall be under the direct control and supervision of the owner or harborer of the dangerous dog. The muzzle shall be made and used in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

(b) Secure or approved enclosures required under this section must be approved by the Health Officer and be adequately lighted and kept in a clean and sanitary condition.

(c) The owner or harborer shall allow the Health Officer access to the property where the dangerous animal is being harbored to facilitate inspections and insure compliance for the duration of the life of the animal.

(d) The owner or harborer of any dog that has been determined to be dangerous shall be required to have the animal surgically sterilized by a licensed veterinarian within thirty days of the dangerous animal determination, at his or her own expense. For any animal required to be surgically sterilized, the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner or harborer shall provide documentation of the sterilization upon completion. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

Any owner or harborer failing to provide documentation of the sterilization procedure as required by this section shall be deemed guilty of a misdemeanor.

(e) The owner or harborer of any dog that has been determined to be dangerous shall be required to have a microchip, traceable to the dangerous dog and the current owner, inserted into the dog and copies of documentation of said

procedure available for review by the Health Officer. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

Any owner of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor.

(f) It is unlawful for anyone having prior felony convictions defined in articles 34, 35, 36, and 43 of Chapter 21, and article 41 of Chapter 65 of the Kansas Statutes Annotated to possess, harbor, own or reside on any premises with a~~ny~~ dangerous dog.

(g) It shall be unlawful for any person to:

(1) harbor, keep or maintain a dangerous dog on property not owned by the person without the written consent of the land owner; or

(2) sell, barter or give away to another person a dog which has been deemed dangerous; or

(3) own, possess or harbor more than two dogs which have been declared dangerous by this title.

The provisions of subsection(g)(3) shall not apply to individuals, who at the time of the passage of the ordinance, owned two or more dogs which were declared dangerous prior to the date of passage of this ordinance.

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(h) Should a previously determined dangerous dog be found running at large in violation of this section attack or inflict injury upon any person, the judge of the Municipal Court shall, in addition to any other penalty provided in Section 6.04.190, order the dog destroyed. Provided, however, the judge of the Municipal Court may, at his or her discretion, consider whether the attack or injury was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises of the owner of the dog, or was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, aroused, or assaulted the dog or was committing or attempting to commit a crime."

SECTION 9. Section 6.04.048 of the Code of the City of Wichita is hereby amended to read as follows:

"Registration and Insurance. (a) The owner or person harboring a dangerous dog shall annually register the dangerous dog with the Health Officer on such forms designated by the Health Officer, and shall have a microchip, traceable to the dangerous dog and the current owner of the dog, inserted into the dog. The owner or harborer shall complete an application and shall pay a $100.00 annual registration fee to the City Treasurer and shall pay all costs associated with the microchip procedure. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

The owner or person harboring a dangerous dog shall notify the Health Officer in writing a minimum of seven days prior to any change in the address of the owner or person harboring the dog or the location of the dangerous dog. Any owner of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor.

(b) The owner or person harboring a dangerous dog required to be registered under this Section shall maintain liability insurance in the amount of one hundred thousand dollars for each such dog against the potential injury or damage liabilities and hazards associated with the ownership or possession of such dog. The owner or person harboring a dangerous dog shall file with the Health Officer a certificate of insurance reflecting the required minimum insurance and naming the City of Wichita as an additional insured. Any owner of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor.**"**

SECTION 10. Section 6.04.052 of the Code of the City of Wichita is created to read as follows:

'**Restrictions on the Ownership of Pit Bulls.**

(a) All adult pit bulls within the City of Wichita are required to have an identification microchip implanted in the dog traceable to the current owner and registered with the City of Wichita. Such microchip information shall be included in the dog's annual license application with the City of Wichita. The owner or harborer shall pay all costs associated with the microchip procedure.

(b) It shall be unlawful for any person to own, possess or harbor an adult unaltered pit bull, unless such person is licensed as a dog breeder pursuant to Section 6.04.155. No licensed dog breeder shall own, harbor, possess or maintain more than two unaltered adult pit bulls. Such dogs must be micro-chipped as required by this title. The provisions of this section shall not apply to any unaltered pit bull which was located within the City of Wichita, at the time the ordinance was enacted and such dog was being utilized to accommodate an individual with a disability recognized by the Americans with Disabilities Act. Any such service dog must be micro-chipped as required by this title. Such person shall be required to obtain a breeder's license for such animal(s). Service dogs shall comply with all other provisions of this title. Sterilization of a pit bull shall not be required upon certification, presented to the Director of Environmental Services, by a veterinarian licensed by the state of Kansas, that such sterilization would be injurious to such dog due to its health or age.

(c) It shall be unlawful for any person to own, keep, maintain or harbor more than two pit bulls.

(d) It shall be unlawful for more than two adult pit bulls, to be kept, harbored or maintained on the same premises or dwelling.

(e) Any person who owns a pit bull, at the time of passage of this ordinance, shall have six months from the date of the passage of the ordinance to microchip and surgically sterilize such animal or apply for a breeder's license pursuant to this title. Sterilization of the pit bull shall not be required upon

certification, presented to the Director of Environmental Services, by a veterinarian licensed by the State of Kansas that such sterilization would be injurious to such dog due to its health or age.

(f) Any person who had a current animal maintenance permit for three or more pit bulls, at the time of passage of the ordinance shall be permitted to keep, but not replace such dogs until their number equals no more than two dogs. Such dogs must be registered, micro-chipped and surgically sterilized in accordance with this title.

(g) Any person aggrieved by the determination of the Health Officer that a dog is a pit bull as defined by Section 6.04.010 of this title, shall have the right to appeal such determination as set forth in Section 6.04.158.

(h) The provisions of this section shall not apply to dogs which are temporarily located within the City of Wichita for participation in dog shows which are sanctioned by the American Kennel Club, United Kennel Club, the Wichita Kennel Club or the American Dog Breeders Association.

(i) Any individual who fails to comply with the requirements of this section shall be guilty of a misdemeanor.

SECTION 11. Section 6.04.055 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Animals prohibited--Exceptions. It is unlawful for any person to have any animal at any festival or community event authorized under a permit issued pursuant to the city code and occurring within the city, unless such animal is a specially trained service dog and actually in the control of the disabled person.

For purposes of this section "festival event" means community events approved pursuant to Chapter 3.11 of the Code of the City of Wichita, and any other events held on city property wherein the City of Wichita issues a permit or license for the activity; provided, however, that such prohibition shall not apply to events where animals are required to be present as part of the event."

SECTION 12. Section 6.04.060 of the Code of the City of Wichita is hereby amended to read as follows:

"Animal bite violations. (a) No person who owns, possesses, harbors or exercises control over any animal shall do the following:

1. Permit or allow the animal to attack or bite any person or domestic animal not on the premises of such owner, possessor or keeper;

2. Permit or allow the animal to attack or bite any person or domestic animal upon the premises of the residence of such owner, possessor or keeper or upon the premises of any business establishment not then open to the public. It is an affirmative defense to this paragraph if such premises are previously posted at each entrance with a prominent and conspicuous sign warning all persons of the animal, and the animal is confined in a proper enclosure. It is also an affirmative defense to this paragraph that the attack or bite by the animal was necessary to prevent or apprehend a person engaged in committing an act of violence, robbery, theft or other crime upon the property;

3. Permit or allow the animal to attack or bite any person or animal upon the premises of any business establishment that is open to the

public. It is an affirmative defense to this paragraph that the attack or bite by the animal was necessary to prevent or apprehend a person engaged in committing an act of violence, robbery, theft or other crime upon the property.

(b) For purposes of this section, the word "permit" shall mean allow or let happen. Knowledge or intention on the part of the person who owns, possesses, harbors or exercises control over the animal shall not be elements of this offense.

(c) An enclosure for purposes of this section means the dog is securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the animal. The pen or structure must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot.

(d) The provisions of this section shall not apply to any law enforcement officer who uses an animal while engaged in law enforcement activities, nor to any owner, possessor or keeper of any animal which attacks or bites a person engaged in physically attacking or striking such owner, possessor or keeper.

(e) 1. Upon a first conviction of any violation of the provisions of this section, a minimum fine of $150.00 shall be assessed.

2. Upon a second conviction within a twelve-month period, of any violation of the provisions of this section, a minimum fine of $250.00 shall be assessed.

3. Upon a third or subsequent conviction, of a violation of any provisions of this section, a minimum fine of $500.00 shall be assessed. In addition to the minimum fines set forth above, the Municipal Court Judge may impose a term of imprisonment not to exceed six months, and a fine not to exceed one thousand dollars."

SECTION 13. Section 6.04.110 of the Code of the City of Wichita is hereby amended to read as follows:

"Procedure on registration, vaccination certificate and issuance of a license to keep a dog; vaccination requirements for cats and ferrets.

(a) The owner or harborer of a dog over five months old is required to annually register such dog with the City Treasurer, and to make application for and obtain a license to keep such dog as herein provided. Said license shall be valid for a period not to exceed twelve months. So long as animals are not maintained for a period exceeding one hundred and eighty days, animals maintained in foster care or with a rescue organization, as defined in this title, shall not be required to be licensed until adopted or permanently placed. All dogs placed in foster care or with a rescue organization must be properly vaccinated within seven days of being placed in such foster care or rescue organization.

(b) The owner or harborer of a dog, cat or ferret over five months old is required to have such dog cat, or ferret inoculated as set forth below:

1. Inoculation must be performed by a person licensed to practice veterinary medicine in the State of Kansas.

2. Inoculation must be with a prophylactic vaccine approved by the United States Department of Agriculture and listed in the current National Association of State and Public Health Veteranarian's Compendium of Rabies Control.

3. Annually, a veterinarian must certify to the City Treasurer, on forms provided by the Treasurer, that such dog has been properly vaccinated in accordance with the current compendium of rabies control. Annually, a new vaccination tag shall be assigned to such animal.

4. Unless a licensed veterinarian certifies to the Director of Environmental Services that such vaccination would be injurious to such dog due to its age or health, all dogs, cats or ferrets must be vaccinated for rabies by a licensed veterinarian at least every three years.

(c) The City Treasurer, in consultation with the Health Officer, shall provide suitable forms to veterinarians practicing in metropolitan Wichita for the licensing and rabies vaccination of such dogs. Such forms are to be designed to receive information on the dog's name, breed, and description, date, of rabies vaccination, veterinary tag number, microchip number, information whether the dog is spayed or neutered, whether a fenced yard or fenced run is available for

confinement of the dog, and owner's name, address and telephone number. The veterinarian shall certify that the dog is properly vaccinated for rabies, or that it is injurious to the dog's health to receive such vaccination due to its age or health. Such forms will serve as the vaccination certificate, the application to keep a dog, and the actual license when validated. The forms are to be completed by the veterinarian at the time of vaccination and distributed as follows: one copy - city treasurer, one copy - veterinarian; and one copy - dog owner. The dog owner has the opportunity to make payment for the license fee at the veterinarian's office. However, the dog owner may elect to remit the license fee at the city treasurer's office, in which case the form shall be validated by an appropriate City Treasurer stamp. If the license fee payment is submitted to the veterinarian, all form copies shall be validated with a numbered City of Wichita stamp which shall be supplied by the City Treasurer. The veterinarian shall retain his or her copy for two years for his or her own use and for possible reference use by the City Treasurer. The City Treasurer shall provide postage-guarantee addressed envelopes to veterinarians for their use in facilitating payment of license fees to the city. All such license fees collected by veterinarians shall be submitted to the City Treasurer not later than thirty days following the last day of the month in which the license fee was collected.

(d) The premises of the dog owners shall be available for inspection by the Health Officer to insure a fenced yard or fenced run is available that can adequately confine the dog, if so stated in the license application, and to insure that such animals are maintained on premises which are sanitary.

(e) The owner of a dog will provide, upon request of the Health Officer, proof of current licensure and vaccination.

(f) The owner of a cat or ferret will provide, upon request from the Health Officer, proof of current vaccination."

SECTION 14. Section 6.04.120 of the Code of the City of Wichita is hereby amended to read as follows:

"False statements. (a) Any false statement in a rabies certification or application for a license to keep a dog or a dog breeder license shall render null and void the license issued to the owner for keeping such dog or breeding dogs.

(b) Any false statement in an application for an Animal Maintenance Permit or variance shall render null and void the permit issued to the owner to keep such animals.

(c) Any person who makes a false statement in any application, affidavit or other document required by this chapter, or any regulation prescribed thereby, is guilty of a misdemeanor."

SECTION 15. Section 6.04.140 of the Code of the City of Wichita is hereby amended to read as follows:

"Vaccination and identification tags. ~~(a)~~ The veterinarian administering the rabies vaccination shall issue a metallic tag for the particular dog vaccinated, on which tag shall be distinctly marked the veterinarian's name or veterinary clinic's name, address, and tag identification number. The year of issuance also shall be distinctly marked, which shall be the same as the year of

vaccination or rabies certification for such animal. A new vaccination tag shall be issued each year. The owner of any dog which is determined by the Health Officer to be running at large while not wearing a collar with identification consisting of the owner's name and current address or, if such dog is over five months old, a current rabies vaccination tag, is guilty of a misdemeanor."

SECTION 16. Section 6.04.155 of the Code of the City of Wichita is hereby amended to read as follows:

"Section 6.04.155 Dog breeder license; ~~and~~ breeder inspections.

(a) No person shall be a dog breeder, as defined by Section 6.04.010, unless such person is properly licensed by the City of Wichita as a breeder.

(b) All dog breeders, shall make an application for, and obtain an annual dog breeder's license as established and described by this section.

1. An application for a breeder's license shall be obtained from the City Treasurer's Office, Environmental Services, Animal Services or the City of Wichita's website. The application shall contain the following information:

a. The name, date of birth and address of the applicant;

b. The name, breed, color, sex and age of all dogs owned by the applicant;

c. Documentation that all animals are properly vaccinated and licensed;

d. Name and address of the licensed veterinarian who is responsible for the care and treatment of the animals;

e. A signed statement by the applicant that the information is true and correct;

f. The permanent ID or microchip number of all animals owned, if available;

g. A statement as to whether there is a fenced yard or fenced run available for the confinement of the dogs.

h. A statement as to whether the applicant has ever had a licensed suspended or revoked which was issued by the State of Kansas pursuant to the Kansas Pet Animal Act. Such statement shall contain the date of any such suspension or revocation.

i. The zoning classification for the premises where the animals will be maintained.

j. A copy of any current license issued to the applicant by the State of Kansas pursuant to the Kansas Pet Animal Act.

2. The Health Officer is empowered to establish administrative requirements for obtaining dog breeder licenses. Application forms and administrative requirements can be obtained through Animal Services, Environmental Services, City Treasurer, or the City website.

(c) Approval of dog breeder licenses shall be contingent upon the applicant's compliance with all administrative requirements set forth by the Health Officer including, but not limited to, proper veterinary care, health certification of breeding stock and offspring, and compliance with all applicable requirements, and/or regulations of the City of Wichita and the State of Kansas.

(d) The Health Officer may refuse to approve issuance or renewal of a breeder's license for one or more of the following conditions:

1. Failure of the applicant to provide proof that the animals are properly licensed and vaccinated.

2. The making of any false statement as to any material matter in the application for a license, or a license renewal, or in a hearing concerning the license;

3. Violation by the applicant of a provision of this title, the Kansas Pet Animal Act or any state or federal law relating to the care and treatment of animals.

4. Suspension or revocation of a license issued by the State of Kansas pursuant to the Kansas Pet Animal Act

~~(e)~~ 5. The applicant has a history of allowing animals to run loose or escape, has otherwise been found to be neglectful, has had an animal identified as a nuisance, or has previously been determined to have violated the provisions of this title.

(e) No breeder's license shall be approved for premises zoned residential by the Wichita/Sedgwick County Unified Zoning Code.

(f) No breeder's license shall be approved for an individual who owns more than two unaltered pit bulls.

If the Health Officer refuses to issue or renew a license under this section, such individual shall have the appeal rights established by Section 6.04.158.

(e) The fee for a breeder license is established at fifty dollars annually. Such licenses shall expire one year from the date of issue. The City Treasurer shall impose a penalty of fifty dollars annually on all delinquent license renewals beginning thirty days following the expiration of the previous license. Failure by a person to obtain a breeder license as required by this section shall constitute a misdemeanor. Conviction of two or more violations of this code within a two-year period may result in revocation of the breeders' license~~s~~. The individual shall be precluded from obtaining a breeder's license for a period of twenty-four (24) months following the revocation.

(f) All places and premises by licensed breeders or persons seeking approval for a breeder license as described by this chapter shall be open during reasonable hours for inspection by the Health Officer in order to ensure the health, safety, and welfare of the animals on said property. If upon such an inspection by the Health Officer any person who has been granted or applied for a license is found violating any of the regulations prescribed in this chapter, or any provisions within the Unified Zoning Code, or any administrative regulation established by

the Health Officer, such person shall be given a written notice of such violation. If such violation or violations of this code do not or can not cease within twenty-four hours of such notification, the permit, or license may be revoked or canceled by action of the Health Officer, pursuant to the procedures set forth in Section 6.04.159 of this code.

(g) It shall be unlawful for any breeder of pit bulls, as defined by this title, to engage in the breeding of such animals with an owner, keeper or harborer of a pit bull involved in the breeding process who is not also licensed as a breeder.

(h) Upon a first conviction of a violation of the provisions of this section, a minimum fine of $100.00 shall be imposed. Upon a second or subsequent conviction, of a violation of the provisions of this section, a minimum fine of $250.00 shall be imposed. In addition, the Municipal Court Judge may impose a term of imprisonment not to exceed six months and/or a fine not to exceed one thousand dollars."

SECTION 17. Section 6.04.156 of the Code of the City of Wichita, is hereby amended to read as follows:

Sale of Animals. It is unlawful for any person to offer any animal for sale, or to sell, exchange, barter or give away, or to accept any animal on any property not owned or rented by the seller or buyer unless the property is a pet shop, animal shelter licensed by the State of Kansas, or that property is licensed for the breeding or sale of animals and is in compliance with all city of Wichita zoning and licensing regulations. No person shall sell, barter, exchange, give away or accept animals on any shelter property unless authorized by the director.

All printed documents, electronic or print media, advertisements, radio, and video, pertaining to the sale, exchange, or transfer of dogs for or produced by licensed breeders shall include the name of the breeder and his or her City of Wichita breeder license number. Violations of any provision of this section shall be considered a misdemeanor."

SECTION 18. Section 6.04.157 of the Code of the City of Wichita is created to read as follows:

"**Maximum number of dogs and cats and maintaining livestock.**

(a) No person shall keep, own, harbor or maintain upon any premises or property, or in any dwelling of any type within the city:

1. livestock;
2. more than two dogs;
3. more than two cats;
4. more than two rabbits;
5. more than three fowl; or
6. more than three pigeons;

unless such person has a current Animal Maintenance Permit issued by the Health Officer authorizing the maintenance of such animals. The provisions of this section shall not apply to common carriers transporting domestic animals to or through the City. Permits shall not be required for indoor non-commercial maintenance of fish, nonpoisonous amphibians and reptiles allowed by Section 6.04.040, birds and small rodents. Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

(b) No person shall keep, own, harbor or maintain, upon any premises or property or in any dwelling of any type within the city, more than three different kinds of domestic animals or livestock unless such person has a current animal maintenance permit issued by the Health Officer authorizing the maintenance of such animals. Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

1. Any person, rescue organization or foster care home, who desires to own, keep, or harbor livestock, or more than two dogs or more than two cats or more than two rabbits, or more than three fowl or pigeons, may apply to the City Treasurer for an 'animal maintenance permit' that shall permit the applicant to own, keep or harbor the animals specifically allowed in that permit.

2. Any person, rescue organization or foster care home, who desires to own, harbor or maintain more than three different kinds of domestic animals may apply to the City Treasurer for an animal maintenance permit that shall permit the applicant to own, harbor or maintain more than three different kinds of domestic animals.

Table 1:

KIND OF ANIMAL	**MINIMUM REQUIRED FOR PERMIT**	**MAXIMUM ALLOWED WITH PERMIT**	**PERMIT FEE**
Dogs, excluding pit bulls	3	4	$25.00
Cats	3	4	$25.00

Fowl	4	12 (25 pigeons)	$25.00
Sheep	1	One animal per acre	$100.00
Goats - (Nannies only)	1	One animal per acre	$100.00
Horses	1	One animal per acre	$100.00
Cattle	1	One animal per acre	$100.00
Ratites	1	One animal per acre	$100.00
Pig – Neutered, miniature Vietnamese Pot-Bellied)	1	1	$25.00
Rabbits	4	12	$25.00
Other	3	(25 fur-bearing animals, i.e. chinchilla, mink)	$100.00

Owning more than three kinds of animals, regardless of number of animals, requires the owner to obtain an Animal Maintenance Permit.

3. It is unlawful for any person to own, harbor or maintain more animals or different types animals than is allowed by the Animal Maintenance Permit issued to such person by the Health Officer.

4. The Health Officer is empowered to establish administrative requirements for obtaining an Animal Maintenance Permit. Application forms and administrative requirements can be obtained through Animal Services, Environmental Services, City Treasurer or the City website.

The application shall contain the following information:

a. The name, date of birth and address of the applicant;

b. The name, breed, color, sex and age of all animals owned by the applicant;

c. Documentation that all animals are properly vaccinated and licensed;

d. Name and address of the licensed veterinarian who is responsible for the care and treatment of these animals;

e. A signed statement by the applicant that the information is true and correct;

f. The permanent ID or microchip number of all animals owned, if available;

g. A statement as to whether the animals are spayed or neutered and whether there is a fenced yard or fenced run available for the confinement of the animals.

h. The size of the premises in which the animals may be maintained.

i. A diagram of the location of any and all domestic animal structures in which animals will be maintained.

j. A signed statement on behalf of the applicant that maintenance of the animals will be in compliance with the animal control and sanitary waste requirements of the City of Wichita.

k. A statement by the applicant that the zoning requirements of the Unified Zoning Code of the City of Wichita and Sedgwick County will be complied with.

l. A statement as to whether the applicant has ever had a licensed suspended or revoked which was issued by the State of Kansas pursuant to the Kansas Pet Animal Act. Such statement shall contain the date of any such suspension or revocation.

m. A copy of any current license issued to the applicant by the State of Kansas pursuant to the Kansas Pet Animal Act.

4. Approval of an Animal Maintenance Permit shall be contingent upon the applicant's compliance with all administrative requirements set forth by the Health Officer, the provisions of this title and the rules and the rules and regulations of the City of Wichita and the State of Kansas. Such applicant must show:

a. that the keeping of additional animals will not create a nuisance in the surrounding neighborhood, that humane care will be provided and that the premises where the animals are kept is suitable for the keeping of multiple animals and is in

conformity with all City zoning requirements. The criteria to be evaluated include, without being limited to, the following:

1) That the animals will be kept or maintained at all times in a safe and sanitary manner.

2) That the quarters in which such animals are kept or confined will be adequately lighted and ventilated and are so constructed and maintained that they can be kept in a clean and sanitary condition.

3) That the health and well-being of the animals will not in any way be endangered by the manner of keeping or confinement.

4) That the keeping of such animals will not harm the surrounding neighborhood or disturb the peace and quiet of the surrounding neighborhood.

5) That the keeping of such animals will not cause fouling or the air by offensive odors and thereby create or cause unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animals are kept or harbored.

6) That the animals will not unreasonably annoy humans, endanger the life, health or safety of other animals or persons or substantially interfere with the rights of citizens to the enjoyment of life or property.

7) That the animals will not make disturbing noises, including but not limited to, continued and repeated or untimely howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to neighbors and others in close proximity to the premises where the animals are kept or harbored, or otherwise be offensive or dangerous to the public health, safety or welfare, by virtue of their behavior, number, type or manner of keeping.

8) That the applicant, or any person who will share in the care, custody and control of the animals, is not currently in violation of, or has not previously violated any applicable City, state or federal laws, codes, rules or regulations, including, but not limited to, those pertaining to the care and control of animals and the maintenance of their property, which would reflect adversely on their ability to fully comply with the conditions of the subject permit.

b. The Health Officer may deny any application where any one or more of the following conditions exist:

1) The applicant fails to show proof of the aforementioned requirements or an examination of the documentation submitted by the applicant;

2) An investigation by Animal Services reveals that the applicant has failed to meet the requirements of this section.

3) The applicant made a false statement as to any material matter in the application for a license of a license renewal, or in a hearing concerning the license.

4) Violation by the licensee or applicant of a provision of this title, the Kansas Pet Animal Act or any state or federal law relating to the care and treatment of animals.

5) If the applicant has had a breeder's license or animal maintenance permit revoked within eighteen (18) months prior to the application.

6) If the applicant has had a license issued by the Kansas Department of Animal Health suspended or revoked within eighteen (18) months prior to the application.

7) Maintenance of the animals would be in violation of the Unified Zoning Code of the City of Wichita.

8) No Animal Maintenance Permit shall be issued to keep, own or harbor more than two adult pit bull dogs.

9) No Animal Maintenance Permit shall be issued to keep, own or harbor, by the owner of the property, more than four adult dogs, as defined by the Unified Zoning Code, on premises which are zoned residential, without a zoning variance for such kennel being granted by the Board of Zoning Appeals.

10) The applicant has a history of allowing animals to run loose or escape, has otherwise been found to be neglectful, has had an animal identified as a nuisance, or has previously been determined to have violated the provisions of this title.

c. The Health Officer shall state, in writing, the factual basis for his or her recommendation to grant or deny any application. The Health Officer shall consider past violations, the size, condition and location of the area where the animals will be kept, the size of the animals to be kept, past complaints concerning

the applicant, the burden of proof and the criteria set forth in this section, or any other factors relative to the issue of keeping additional animals.

The permit shall be issued for the period not to exceed twelve (12) months.

d. The fee for such Animal Maintenance Permit shall be paid in accordance with Table 1 of Subsection (b)(2). All fees shall be nonrefundable and nontransferable. The Animal Maintenance Permit shall be issued for the individual animals listed on the application and shall not be transferable to other animals. The fact an individual has previously been issued an animal maintenance permit may be considered but shall not be controlling to the Health Officer's decision to issue animal maintenance permit for a different animal.

The denial of any Animal Maintenance Permit shall be subject to the appeal procedures set forth in Section 16.04.158.

e. Any applicant who had more than two cats or more than two dogs or livestock prior to annexation of their property by the City, or the passage of this ordinance, shall be permitted to keep but not replace said animals until their number equals the number of animals permitted by Section 6.04.157(a). Any such applicant shall be required to apply for an Animal Maintenance

Permit and be required to pay a yearly renewal fee, provided that nothing in this section shall exempt or except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

f. Any individual who had a current Animal Maintenance Permit at the time of passage of this ordinance shall be permitted to keep but not replace said animals until their number equals the number of animals permitted by Section 6.04.157(a). Any such applicant shall be required to apply for an Animal Maintenance Permit and be required to pay a yearly renewal fee, provided that nothing in this section shall exempt or except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

g. Any individual who had a current Animal Maintenance Permit for livestock at the time of passage of this ordinance shall be permitted to keep but not replace said animals. Any such applicant shall be required to apply for an Animal Maintenance Permit and be required to pay a yearly renewal fee, provided that nothing in this section shall exempt or except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

h. For the purposes of this section:

1) ‘Nuisance,’ for the purposes of this section, shall be defined as any act which is unreasonably annoying or vexatious to another or substantially interferes with the rights of others and shall include, but not be limited to, obnoxious odors, excessive noise, and creation of an environment attractive to other animals or insects. More than three substantiated violations of this title within a twelve-month period will automatically constitute a nuisance.

2) ‘Humane standards of care‘ shall be defined to include, but not be limited to, accessibility of the animal to food and water, proper medical attention, proper shelter from the elements, and cleanliness in animal waste areas with regular waste removal.

3). ‘Livestock’ includes, but is not limited to: horses, mules, cattle, sheep, llamas, ratites and goats.

i. Not more than one head of livestock shall be kept for each one acre of contiguous unbuilt land area, provided that the limitation shall not apply to a commercial riding stable, a riding academy, or a commercial stockyard with an approved manure disposal plan.

j. Owners of livestock within the City without an Animal Maintenance Permit on the date of the passage of this ordinance shall be allowed twelve months from the date of adoption to come into compliance with the acreage requirements set forth in subsection (1).

k. Owners of livestock within the City with a current Animal Maintenance Permit at the date of the adoption of the ordinance shall be permitted to keep, but not replace said animals.

l. All owners or harborers of livestock must comply with the provisions of Section 6.04.173 regarding the maintenance of all domestic animal structures.

m. The holder of an Animal Maintenance Permit will provide, upon request of the Health Officer, proof of licensure where applicable, and vaccination of any animals subject to the Animal Maintenance Permit.

n. The premises designated in the animal maintenance permit shall be available for inspection by the Health Officer to ensure compliance with the provisions of this code and the laws of the State of Kansas.

o. The holder of an animal maintenance permit will notify the Health Officer if any of the animals subject to the animal maintenance permit is no longer owned by the individual. Any

individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

5. Variances: Any application for a variance to own, keep, harbor or possess more than four (4) dogs or four (4) cats or any combination thereof in excess of four (4) or for a variance to the requirements of this chapter based on physical or geographical features of the site, or required acreage for livestock, may be granted by the Director of Environmental Services if he or she determines that the variance will not adversely affect public health and safety or the environment, pose a threat to the environment or constitute a nuisance to neighbors.

a. The applicant shall complete an application form and pay all applicable fees for an animal maintenance variance. Such application shall include the information set forth in the application for an Animal Maintenance Permit. In addition to the fees set forth in Subsection (b)(2), the applicant shall pay an initial inspection fee of $50.00 to the City Treasurer. No inspection fee shall be assessed for subsequent renewals of any variance.

b. In making the determination as to whether the variance request should be granted, the Director of Environmental Services shall rely on the criteria set forth in subsection (4) of this section.

c. No variance shall be issued to keep, own or harbor by the owner of the property, more than four adult dogs, as defined by the Unified Zoning Code on premises which are zoned

residential, without a zoning variance for such kennel being granted by the Board of Zoning Appeals.

d. The Director shall notify the applicant for the variance of his or her determination of the request in writing stating the basis for any denial and any conditions placed on any granted variance request. Individuals aggrieved by any decision of the Director of Environmental Services relative to waivers may appeal to the City Council within ten days of the notice of such decision pursuant to Section 6.04.210 of this code."

SECTION 19. Section 6.04.158 of the Code of the City of Wichita is created to read as follows:

"**Appeal from Denial of Breeder's License, Animal Maintenance Permit, or Determination that Dog is a Pit Bull.** (a) If the Health Officer has determined that an applicant is not eligible for a Breeder's License or Animal Maintenance Permit, he or she will make an appropriate determination based on the known facts and consistent with the provisions of this title.

(b) The Health Officer shall notify the individual of the denial in writing, stating the reasons for the denial of such application. Service of the notice shall be by certified mail, return receipt requested. Service of process by certified mail shall be considered obtained upon the delivery of the certified mail envelope.

(c) The applicant of a denied application or the owner of a dog deemed to be a pit bull may request an administrative review of the determination

by filing a written request with the Health Officer within ten days of receipt of such notification.

(d) The Health Officer will conduct a hearing within ten days of receipt of the owner's request. At such hearing, testimony may be offered by the owner of the dog(s) or animals, the Health Officer, neighbors, or other affected persons, and veterinarians concerning the lineage of the dog, or the care and maintenance of the dog.

(e) The Health Officer shall determine an appropriate disposition based on the facts determined at the hearing and the provisions of this chapter and will notify the applicant in writing of the outcome of the hearing within five business days. The owner may appeal the hearing outcome as provided in Section 6.04.210 of this code."

SECTION 20. Section 6.04.159 of the Code of the City of Wichita is created to read as follows:

"**Revocation or Suspension of License or Permit.** (a) The Health Officer, upon written notice to the licensee or permit holder, shall have the authority to suspend or revoke any permit, license or variance granted by the Health Officer or the Director of Environmental Services for one or more of the following reasons:

(1) Violation by the licensee or permit holder of the provisions of this title, the Kansas Pet Animal Act, or other state or federal laws relating to the care and maintenance of animals.

(2) Obtaining the license or permit by fraudulent conduct, false statements or has otherwise made a material misrepresentation of fact in the application.

(3) Upon inspection, the Health Officer observes premises which are not in a clean and sanitary condition in compliance with the health standards set forth in this title.

(4) The licensee or permit holder has violated any terms or conditions of the license, permit or variance.

(5) The animal's place of keeping constitutes a nuisance to the surrounding neighbors;

(6) Humane standards of care are not being met by the permittee;

(7) A violation of Unified Zoning Code has occurred;

(8) The licensee or permit holder had provided false information in their application.

(9) The licensee or permit holder has had a license issued by the State of Kansas pursuant to the Kansas Pet Animal Act or any other governmental agency related to the care of animals suspended or revoked.

(10) The licensee or permit holder cannot be contacted for an inspection within two weeks of an initial request for an inspection of such premises or the licensee or permit holder refuses the animal control officer access for an inspection.

(b) Individuals aggrieved by the suspension or revocation of any permit, license or variance may appeal to the City Council within ten days of the notice of such decision as set forth in Section 6.04.210 of this code.

(c) An appeal taken from an order of suspension or revocation shall not suspend the order of suspension or revocation during the pendency of such appeal.

(d) For the purposes of subsection (a) above, written notice shall be deemed sufficient upon the mailing of the notice to the applicant for the permit or license on file in the Office of the City Treasurer."

SECTION 21. Section 6.04.165 of the Code of the City of Wichita is created to read as follows:

'**Catteries.** All cats maintained at a cattery located on any residentially zoned lot as defined by the Unified Zoning Code shall be confined inside a structure."

SECTION 22. Section 6.04.170 of the Code of the City of Wichita is hereby amended to read as follows:

"Dog and Cat Census. Whenever deemed necessary, the Health Officer may conduct a dog and cat census of any or all areas of the city as needed to insure that all dogs over five months old harbored in the city are vaccinated and licensed and that all cats over five months old harbored in the city are properly vaccinated."

SECTION 23. Section 6.04.171 of the Code of the City of Wichita is created to read as follows:

"**Keeping of certain fowl prohibited.** It is unlawful for any person to keep or maintain roosters (male chickens), guinea cocks, peacocks or other birds that by nature exhibit loud calls, within the corporate limits of the city, except for stockyards or packing house operations, special scientific operations in industrial areas or activities in conjunction with livestock shows; provided further, that other commercial, industrial or agricultural maintenance of roosters may be approved if the commercial, industrial or agricultural premises is located five hundred or more feet from any residentially zoned lot as defined by the Unified Zoning Code."

SECTION 24. Section 6.04.172 of the Code of the City of Wichita is created to read as follows:

"**Swine and Goat Maintenance.** (a) Except as provided in subsection (b) of this section, it is unlawful for any person to keep or maintain any swine or male goats within the corporate limits of the city, except for stockyards or packing house operations, special scientific operations in industrial areas or activities in conjunction with livestock shows. Other industrial or agricultural maintenance of swine may be approved, if the industrial or agricultural premises is located five hundred or more feet from any residentially zoned lot as defined by the Unified Zoning Code. This distance requirement may be waived by the Director of Environmental Services.

(b) Registered purebred miniature Vietnamese potbelly pigs and other similar registered purebred miniature pigs may be kept within the city limits, subject to the conditions stated in subsections (c) and (d) of this section.

(c) It is unlawful for any person to maintain a registered purebred miniature pig which:

(1) Weighs more than eighty pounds;

(2) Is not spayed or neutered upon reaching maturity;

(3) Has not undergone a blood test to show the animal is free from pseudo rabies; or

(4) Is maintained as a food source.

(d) It is unlawful for any person to:

(1) Keep a registered purebred miniature pig without a current animal maintenance permit as required by Section 6.04.157 of the Code of the City of Wichita;

(2) Maintain more than one registered purebred miniature pig on any licensed premises."

SECTION 25. Section 6.04.173 of the Code of the City of Wichita is created to read as follows:

"Domestic animal structures and enclosures. (a) Domestic animal structures used for livestock and livestock feeding and watering troughs shall not be less than two hundred feet from any adjacent dwelling and not less than twenty feet from any property line.

(b) Stables, coops, pens and other structures for the housing of animals shall comply with all zoning requirements of the City of Wichita-Sedgwick County Unified Zoning Code.

(c) The Director of Environmental Services will evaluate properties and may issue waivers of distance and setback requirements for domestic animal structures where such waivers do not adversely affect public health and safety, pose a threat to the environment or constitute a nuisance to neighbors. Criteria for review for such variance will include, in addition to site-specific requirements, the following requirements:

(1) That the animals will be kept or maintained at all times in a safe and sanitary manner;

(2) That the quarters in which such animals are kept or confined will be adequately lighted and ventilated and are so constructed and maintained that they can be kept in a clean and sanitary condition;

(3) That the health and well-being of the animals will not in any way be endangered by the manner of keeping or confinement;

(4) That the animals will not unreasonably annoy humans, endanger the life, health or safety of other animals or persons or substantially interfere with the rights of citizens to the enjoyment of life or property;

(5) That the keeping of such animals will not harm the surrounding neighborhood or unreasonably disturb the peace and quiet of the surrounding neighborhood;

(6) That the keeping of such animals will not cause fouling of the air by offensive odors and thereby create or cause unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animals are kept or harbored;

(7) That the animals will not repeatedly run or be found at large, will not damage property or deposit excretory matter upon the property of anyone other than their owner;

(8) That the animals will not make disturbing noises, i.e., continued and repeated or untimely howling, barking, whining or other similar utterances causing unreasonable annoyance, disturbance or discomfort to neighbors where the animals are kept or harbored, or otherwise be unreasonably offensive or dangerous to the public health, safety or welfare, by virtue of their behavior, number, type or manner of keeping;

(9) That the applicant or any person who will share in the care, custody and control of the animals, is not currently in violation of, or has not previously violated any applicable city, state or federal laws, codes, rules or regulations, including, but not limited to, those pertaining to the care and control of animals and the maintenance of their property, which

would reflect adversely on their ability to fully comply with the conditions of the subject permit.

(e) In considering waivers for Domestic Animal Structures, the Director of Environmental Services will consider:

(1) Specific location of the animal structure or enclosure on the property in question;

(2) The size of the lot and distance of the structure or enclosure to adjacent property lines and dwellings;

(3) Structures located on or uses made of the adjacent property and the likelihood that a waiver would adversely affect the use of the adjacent property;

(4) Type and number of animals to be maintained and the potential for creation of a nuisance;

(5) Any history of complaints and violations concerning the permit holder's compliance with this code or violations of local, state or federal law;

(6) Any comments of neighbors; and

(7) Any other available information concerning the potential for creation of a nuisance.

The Director shall notify the applicant for the variance of his or her determination of the request in writing stating the basis for any denial and any conditions placed on any granted variance request. Individuals aggrieved by any decision of the Director of Environmental Services relative to waivers may appeal

to the City Council within ten days' of notice of such decision as set forth in Section 6.04.210 of this code."

SECTION 26. Section 6.04.175 of the Code of the City of Wichita is created to read as follows:

"**Health standards--Minimum listed.** That the following minimum environmental health standards shall be observed and followed by persons subject to the terms of this title:

(a) All domestic animal structures shall be cleaned at least once each week or as often as necessary to prevent or control odors, fly breeding and rodent infestation; provided, however, that this shall not apply to grazing areas or to stockyards.

(b) Domestic animal structures owned or operated by a stockyard shall be cleaned as often as is necessary, as determined by the Health Officer, to control fly breeding or to control other conditions adversely affecting the public health.

(c) Collected fecal material and other solid organic waste shall be disposed of at a sanitary landfill or transfer station, fertilizer processing plant, by property dispersal on land used for agricultural purposes or other method approved by the Health Officer.

(d) Grain or protein feed shall be stored in tightly covered rodent-proof metal containers or rodent-proof bins.

(e) Premises subject to the terms of this code shall be maintained free of rodent harborage.

(f) Use shall be made of effective chemical or other approved means for the control of rodents and flies.

(g) Use shall be made of soil sterilants and herbicides or other effective means for the control of weeds and grass around structures and buildings.

(h) All domestic animal structures and fences shall be maintained in good repair.

(i) Enclosures, including fences, for livestock shall be constructed in a manner to prevent domestic animals from breaking out or causing hazard to persons or property.

(j) Garbage shall not be fed to fowl.

(k) Refuse shall be stored in a manner approved by the Health Officer and disposed of at least once each week or as frequently as may be required by the health officer.

(l) Wastes accumulated from the cleaning of domestic animal structures shall be stored in suitable containers, with tight-fitting metal lids, and all such stored or accumulated wastes shall be disposed of at least once each week.

(m) Barbed-wire fences and electrically charged fences shall not be permitted in residentially zoned districts except in situations where the barbed wire fence or electrically charged fence is protected by an exterior fence.

(n) Holding lots, pens and floors of sheds and buildings where animals are held shall be surfaced with concrete or asphaltic materials and the drainage system of such surfaced areas shall include proper retaining walls and traps to control the waste from draining into water courses. Such drainage systems shall be subject to the approval of the Health Officer. The Health Officer may waive this standard for animal holding operations where such animal holding is longer than twenty-four hours or where dirt lots are more appropriate to the proper care of cattle, horses, sheep or other livestock.

(o) Wastes accumulated from the cleaning of domestic animal structures in commercial or industrial operations shall be stored on concrete slabs or on an area with an impermeable barrier as approved by the Health Officer. All solid wastes shall be properly disposed of at least once each week or as often as necessary to prevent any associated nuisances, or as approved by the Health Officer.

(p) Slaughter of animals is prohibited on residentially zoned lots or lots utilized for residential purposes. This prohibition shall not apply to processing of fish or game lawfully taken for individual consumption, nor shall it apply to the slaughter of animals as part of religious practices to be conducted on the property on which the slaughter occurs."

Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

SECTION 27. Section 6.04.176 of the Code of the City of Wichita is created to read as follows:

“Pet shop, stables, kennel, commercial animal facilities, and animal "day care" regulations.

It shall be unlawful for any pet shop, rescue organization, animal foster care organization, commercial animal facility, groomer, breeder, kennel, stable or animal "day care" business to fail to:

(a) Maintain and retain records for a two-year period on all animals maintained in such facility. Such records shall show breed, color, markings, sex and age; date received and source, including name and address of owner or previous owner; date and disposition of animal, including name and address of new owner if applicable; disease prevention and/or treatment and by whom. Such records shall be made available to the Health Officer upon request for inspection;

(b) Provide cages and pens constructed of nontoxic, easily cleanable, water-impervious materials if used for confining animals and shall keep such cages and pens clean and sanitary at all times;

(c) Provide adequate space and ventilation to prevent overcrowding, odors, and minimize contagion;

(d) Provide general environmental conditions including endoparasite and ectoparasite control, clean wholesome food and water, weather protection and clean and sanitary facilities so as to enhance the health and well-being of such animals.

(e) Maintain a building temperature at a comfortable level. Maintain adequate ventilation by means of windows, doors, vents and fans.

(f) Provide each animal with sufficient space to stand up, lie down and turn around in a natural position without touching the sides or top of the enclosure. If additional space is not provided, either indoor or outdoor, then this enclosure must provide an adequate exercise area.

(g) All enclosures shall be kept clean and dry.

(h) Provide food which is free from contamination, and of sufficient quantity and nutritive value to meet the normal daily requirements for the condition and size of the animal.

(i) Provide all animals with fresh water available at all times, except as part of a veterinary treatment regimen.

(j) Provide veterinary care to maintain good health and general welfare.

(k) Maintain the premises of such business, and any domestic animal structures on such premises, in a clean and sanitary condition in compliance with the health standards set forth in this chapter.

(l) Comply with all provisions of the Unified Zoning Code.

Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor. “

SECTION 28. Section 6.04.177 of the Code of the City of Wichita is created to read as follows:

"Pigeons--Conditions for keeping--Letting loose in city. Every person who owns, controls, keeps, maintains or harbors any pigeons in the city shall at all times keep them confined in proper cages or pens; provided, however, that what are generally known as seamless banded pigeons, being pigeons banded by a recognized association of pigeon fanciers, may be released in compliance with this section. This section shall not apply to common carriers of interstate commerce who have received shipments of such seamless banded pigeons in releasing such pigeons within the corporate limits of the city for the purpose of starting such pigeons in a pigeon race. Any person owning or keeping any seamless banded pigeons such as flying tipplers, tumblers, homing pigeons or rollers may release such pigeons for exercise or performance, upon the condition that the owner or person who has possession of such pigeons shall not permit them to alight upon the buildings or property of others."

SECTION 29. Section 6.04.190 of the Code of the City of Wichita is hereby amended to read as follows:

"Violation--Penalty. (a) Except as otherwise provided for by the Code, a person violating any provision of this chapter is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars or by imprisonment of not more than one year, or both such fine and imprisonment,

provided the minimum fine for the following enumerated sections of this chapter shall be assessed as follows:

Section	**Violation**	**Fine**
6.04.040(a)(1)	Violation of Leash Law. 1st offense within a 12-month period	$50.00
6.04.040(a)(2)	2nd offense within a 12-month period	$100.00
6.04.040(a)(3)	3 or more offenses within a 12-month period	$200.00/ court appearance
6.04.040(b)	Failure to microchip after 1st appearance	$50.00/court impound
6.04.040(b)(1)	Sterilization Violations after 1st impound	$100.00/(must show proof of sterilization, or court appearance)
6.04.040(c)	Fail to show proof of sterilization after 2nd impound)	$150.00/court appearance
6.04.060	Dog Bite Violations.	
6.04.060(a)(1)	1st offense within a 12-month period	$150.00/court appearance
6.04.060(a)(2)	2nd offense within a 12-month period	$250.00/court appearance
6.04.060(a)(3)	3 or more offenses within a 12-month period	$500.00/court appearance
6.04.080	Failure to confine rabies suspect animal	$250.00/court appearance

6.04.110	Failure to obtain a license to keep a dog	$50.00
6.04.140	No identification tags	$35.00
6.04.155	No required breeding license	Mandatory Court appearance and:
6.04.155(a)(1)	1st offense	$100.00
6.04.155(a)(2)	2nd offense	$250.00

(b) Each day that any violation of this chapter occurs shall constitute a separate offense and shall be punishable under this chapter as a separate violation.

(c) In addition to the penalties enumerated in subsections (a) and (b) of this section, the judge of the Municipal Court may, upon a person's third conviction of Section 6.04.040 (a), 6.04.040(a)(1), and 6.04.040(a)(2), involving the same animal within any twelve-month period, order such person's license to keep said animal revoked.

(d) Any person who continues to own or harbor an animal after the license for said animal has been revoked is guilty of a misdemeanor."

SECTION 30. Section 6.04.210 of the Code of the City of Wichita is hereby amended to read as follows:

"Appeal from Health Officer Rulings. Unless otherwise specified, ~~A~~any person dissatisfied with any order or determination of the Health Officer made under his or her authority pursuant to this chapter may appeal such order or determination to the City Council. An appeal shall be a de novo quasi-judicial proceeding from which further appeal may be taken to the district court. An

appeal must be filed with the City Clerk no more than ten business days from the date of the written order appealed from. The City Council will hear the appeal no later than thirty days from the filing of such appeal."

SECTION 31. Section 6.04.215 of the Code of the City of Wichita is created to read as follows:

"**Dogs prohibited in parks; exceptions.** Except as otherwise allowed for by this title, it is unlawful for any person to allow or permit any dog to run at large in any park or to permit any dog, with or without a leash, except for service dogs or dogs used by public law enforcement agencies and under the control of a law enforcement officer, to enter any public beach, wading area, pond, fountain, stream or designated children's play area. The Director of Parks and Recreation and the Director of Environmental Services may ban dogs or other animals, or a specific dog or other animal from areas of any park where he or she determines the same to be a nuisance."

SECTION 32. Section 6.04.218 of the Code of the City of Wichita is created to read as follows:

"Designation of Dog Parks, Off-leash Areas; Rules and Regulations; Penalties for Offenses. (a) Dogs may be allowed to run at large only in dog parks and off-leash areas as designated by the Wichita City Council. The designation of such parks and off-leash areas shall be made at the recommendation of the Director of Park and Recreation and the Director of Environmental Services.

(b) It shall be unlawful for any dog owner to violate any of the following regulations regarding the use of any City designated dog park or off-leash area in a park owned by the City of Wichita:

(1) All dogs that enter the park must be over five months of age, not in heat, and have a valid license and current rabies vaccination with an accompanying tag. The tag must be securely affixed to the dog's collar at all times.

(2) All dogs must be leashed when entering or leaving the park's fenced enclosures and owners must retain possession of the leash at all times when within the parks fenced enclosure.

(3) Owners must be at least 14 years of age and remain within the park's fenced enclosure and in control of all dogs under their care at all times when within the park. Owners are limited to 3 dogs per visit.

(4) Owners shall immediately pick up their dogs' excrement and deposit it in the designated receptacle.

(5) Aggressive, vicious or contagious dogs are prohibited from use of the park.

(6) Owners shall immediately close and secure the gate upon entering or exiting the confines of the park's fenced enclosure.

(7) Entrance within the park in violation of its posted hours or when closed is prohibited.

(8) No animals, other than dogs, may be brought into the dog parks.

(9) Dogs must never be left unattended. The dog owner must be in reasonable control of his or her dog(s) at all times and keep a leash available at all times.

(10) Dogs may not be brought into the park if they are sick or unhealthy, have a history of aggressiveness, or have been adjudicated a dangerous dog.

(11) No food or treats for human or animal consumption, rawhide chews, alcoholic beverages, glass containers, bicycles, skateboards, motorbikes, scooters, or roller blades will be allowed in the dog park area. Littering is prohibited. Smoking is prohibited inside the park and within ten feet of the park's parameter.

(12) Dog owners must immediately fill any holes their dogs dig.

(13) Professional dog trainers and behaviorists are not permitted to use the park to conduct their business.

(14) All owners must have in his or her possession a baggy or some other form of equipment to clean up after his or her dog(s). All waste must be placed in a bag and placed in a waste receptacle provided at the park.

(15) No large dogs (over 25 pounds) will be allowed in the small-dog areas of the dog park. Such areas will be clearly marked.

(16) No small dogs (under 25 pounds) will be allowed in the large dog areas of the dog parks. Such areas will be clearly marked.

(17) All dog bites must be reported to Animal Services. If a bite occurs, the dog's owner must exchange his or her name and phone number with the victim of the bite.

(18) The City of Wichita, the Director of Parks and Recreation, and the Director of Environmental Services reserve the right to close a dog park for maintenance and repair, public safety reasons or for special events.

(c) It is unlawful for any person to:

(1) Enter or remain in a dog park at such time as such park is closed to the public as set out herein or at such time as provided for under the rules and regulations adopted by the Director of Environmental Services and Director of Parks and Recreation.

(2) Fail to immediately leash and restrain a dog in the dog park when advised to do so by the Health Officer or the Director of Parks and Recreation or his or her designee.

(3) Fail to immediately leave the dog park when ordered to do so by a law enforcement officer, Health Officer or the Director of Parks and Recreation or his or her designee.

(d) (1) Owners assume all risks, loss or injury for themselves or their dog(s) associated with or resulting from the use of the park.

(2) Owners making use of the dog park shall be responsible for injuries caused by their dogs to other persons and dogs. Persons responsible for any injuries or property damage shall hold the City of Wichita harmless for any such damage.

(e) Enforcement of the above rules and regulations is under the immediate supervision of the Director of Environmental Services and the Director of Parks and Recreation. Violators of dog park rules and regulations may be subject to one or more of the following:

(1) Removal from the park;

(2) Suspension of park privileges;

(3) Issuance of a Uniform Criminal Complaint or Notice to Appear.

(f) If an owner or individual is found guilty of violating the rules and regulations of a city-owned dog park of any other provisions of this section, such owner or individual shall be guilty of a misdemeanor.

(g) The Director of Parks and Recreation and the Director of Environmental Services shall promulgate additional regulations as are necessary to address health and safety concerns related to the operation of such parks. A copy of such regulations shall be available for inspection at Animal Services and the Office of the Director of Parks and Recreation during regular office hours.

SECTION 33. The originals of Sections 6.04.010, 6.04.020, 6.04.035, 6.04.036, 6.04.040, 6.04.045, 6.04.046, 6.04.048, 6.04.055, 6.04.060, 6.04.110, 6.04.120, 6.04.130,

6.04.140, 6.04.155, 6.04.156, 6.04.170. 6.04.190, 6.04.210, and chapters 6.12 and 6.16 of the Code of the City of Wichita, Kansas are hereby repealed.

SECTION 34. This ordinance shall be included in the Code of the City of Wichita, Kansas, upon its passage and publication once in the official city paper, and shall become effective on July 1, 2009.

PASSED by the governing body of the City of Wichita, Kansas, this _____, 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 03/05/2009

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 6.04.010, 6.04.020, 6.04.035, 6.04.036, 6.04.040, 6.04.045, 6.04.046, 6.04.048, 6.04.055, 6.04.060, 6.04.110, 6.04.120, 6.04.140, 6.04.155, 6.04.156, 6.04.170, 6.04.190, 6.04.210, CREATING SECTIONS 6.04.025, 6.04.052, 6.04.157, 6.04.158. 6.04.159, 6.,04.165, 6.04.171, 6.04.172, 6.04.173, 6.04.175, 6.04.176, 6.04.177, 6.04.215 AND 6.04.218 OF THE CODE OF THE CITY OF WICHITA, KANSAS PERTAINING TO ANIMAL CONTROL AND PROTECTION AND REPEALING THE ORIGINALS OF SECTIONS 6.04.010, 6.04.020, 6.04.035, 6.04.036, 6.04.040, 6.04.045, 6.04.046, 6.04.048, 6.04.055, 6.04.060, 6.04.110, 6.04.120, 6.04.130, 6.04.140, 6.04.155, 6.04.156, 6.04.170. 6.04.190, 6.04.210, AND CHAPTERS 6.12 AND 6.16 OF THE CODE OF THE CITY OF WICHITA.

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

SECTION 1. Section 6.04.010 of the Code of the City of Wichita is hereby amended to read as follows:

"**Definitions.** As used in this chapter:

(a) 'Abandoned cat' means a cat which has returned to the feral state or which does not have a collar.

(b) 'Adequate Care' means normal care and prudent attention to the needs and welfare of an animal, including that care normally needed to maintain good health of the animal, including clean and dry bedding and resting surfaces, grooming , removal of manure, and:

1. Adequate Food means wholesome foodstuffs suitable for the animal provided at suitable intervals in a sanitary manner in quantities

sufficient to maintain good health of the animal considering its age and condition; and

2. Adequate Health Care means the provision to an animal of all immunizations and preventive care required to maintain good health; space adequate to allow the animal to rest and exercise sufficient to maintain good health; and the provision to each sick, diseased or injured animal of necessary veterinary care or humane death; and

3. Adequate Shelter means a structurally sound, properly ventilated, sanitary and weatherproof shelter suitable for the animal, considering the condition and age of the animal which provides access to shade from direct sunlight and regress from exposure to inclement weather conditions; and

4. Adequate Water means a continual access to or access at suitable intervals to a supply of clean, fresh, potable water provided in a sanitary manner suitable for the condition of the animal.

(c) 'Adult Animal' means an animal that has reached sexual maturity. For the purposes of this title, unless otherwise specified, an animal will be considered to be an adult at five (5) months of age.

~~(a)~~ (d) 'Animals' means all vertebrate and invertebrate animals such as, but not limited to, dogs, cats, bovine cattle, horses and other equines, hogs, goats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons, and other fowl or wild animals, reptiles, fish, ~~bees~~ or birds that have been tamed, domesticated or

captivated. Such term does not include exotic or dangerous wild animals, as defined by Chapter 6.08.

~~(b)~~ (e) 'Animal fighting paraphernalia' means equipment, animals, or commodities designed or capable of use for the purpose of training animals to attack other animals, as in dogfighting or cockfighting, including but not limited to: animal treadmills, drugs for healing animals such as anti-inflammatories, antibiotics or steroids, spurs, equipment used to threaten animals for the purpose of training for aggressive behavior, and/or equipment used to strengthen animal bodies. In determining whether an object is animal fighting paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or person in control of the object concerning its use.

2. Prior convictions, if any, of an owner or person in control of the object under any state law or city ordinance relating to animal fighting, animal cruelty or gambling.

3. The proximity of the object, in time and space, to a direct violation of an animal fighting, animal cruelty or gambling statute or ordinance.

4. The proximity of the object, in time and space, to other objects also susceptible for use as animal fighting paraphernalia.

5. The existence of bloodstains or blood spatters on the object.

6. The manner in which the object is displayed for sale or is described in written material on the subject of animal fighting.

7. The existence and scope of legitimate uses for the object in the community.

8. Expert testimony concerning the object's use.

9. The proximity of the object, in time and space, to dogs showing evidence of wounds or scarring.

(f) 'Animal Shelter' means the facility or facilities authorized to care for animals impounded or held under the authority of the ordinances of the City of Wichita or the State of Kansas.

~~(e)~~ (g) 'Attack' means violent or aggressive physical contact with a person or domestic animal or violent or aggressive behavior that confines the movement of a person, including, but not limited to, cornering, chasing, or circling a person.

~~(d)~~ (h) 'Bite' means any actual or suspected abrasion, scratch, puncture, tear, bruise or piercing of the skin, caused by any animal, which is actually or suspected of being contaminated or inoculated with the saliva from the animal, directly or indirectly, regardless of the health of the animal causing such bite.

(i) 'Cat' means any of the small carnivorous mammal varieties of Felis Catus which are domesticated. Such term shall not include hybrid breeds of cats which have been bred to a wild animal.

(j) 'Cattery' means any premises where there is being maintained or harbored a total of five of more cats or more than two unspayed female cats,

except veterinary hospitals. This term does not include foster homes operated under the auspices of rescue organizations licensed by the Kansas Department of Animal Health.

~~(e)~~ (k) 'City Treasurer' means the duly appointed treasurer of the city or his/her authorized representative.

(l) 'Commercial Animal Establishment' means any pet shop, animal day care, grooming shop, auction, riding school, stable, kennel, guard dog service, dog trainer or other business which keeps or maintains animals in stock for retail or wholesale trade or sale.

~~(f)~~ (m) 'Dangerous dog' means:

1. Any dog which has exhibited a vicious propensity toward persons or domestic animals and is capable of inflicting serious physical harm or death or damage to property; or

2. Any dog which, without provocation, attacks or bites, or has attacked or bitten a human being or domestic animal. This shall not apply if the victim was committing a willful trespass on the property where the dog was harbored at the time of the attack or bite; or

3. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting; or

4. Any dog which chases or menaces any person in an aggressive manner, except that a dog shall not be deemed dangerous if the complainant was committing a willful trespass at the time.

5. Any dog that poses a threat to public safety or constitutes a danger to human life or property based upon criteria described in Section 6.04.045, as determined by the Health Officer.

(n) 'Defecate means to excrete waste matter from the bowels.

(o) 'Dog' means any animal which is of the species Canis Familiaris. Such term shall not include hybrid breeds of dogs which have been bred to a wild animal.

~~(g)~~ (p) 'Dog Breeder' means a person who raises or produces dogs or puppies for sale or profit.

It is presumed that a person who advertises the sale of dogs or puppies or a person who owns two or more unaltered female dogs is a dog breeder. Such term shall include persons who are licensed by the State of Kansas as an Animal Dealer, Retailer Breeder, Animal Breeder, Hobby Breeder or Hobby Kennel. Such term shall include a person who owns one or more unaltered pit bulls.

(q) 'Animal Day Care' means a commercial establishment that takes temporary possession of an animal, at the request of an owner, to provide safety, comfort and/or socialization of the animal.

~~(p)~~ (r) 'Domestic Animals' means all animals that have been domesticated, such as, but not limited to, dogs, cats, cattle, horses, swine, goats, rabbits, sheep, chickens, ducks, geese, turkeys, pigeons or other fowl.

~~(q)~~ (s) 'Domestic Animal Structure'' means all pens, houses or structures where domestic animals are confined, such as, but not limited to: hutches, cotes, lofts, kennels, dog runs, warrens, feed lots, barns or other buildings and

enclosures. The term does not apply to perimeter fencing surrounding the property.

~~(g)~~ (t) 'Exotic animal' means those animals not normally occurring in North America and animals of any species the majority of whose populations are wild.

(u) 'Ferret' means a domesticated, small, elongated carnivorous mammal which belongs to the Mustelidae Family (Mustela putorius furo).

(v) 'Foster Care, Group Home or Rescue' means a person or organization, whether for profit or non-profit, which provides temporary care for animals from a licensed animal shelter at a private residence. Temporary care is a period of time not to exceed six (6) months. Such term shall include foster, group and rescue homes operated under the auspices of rescue organizations licensed by the Kansas Animal Health Department.

~~(h)~~ (w) 'Fowl' means ~~all animals that are included in the zoological class Aves~~ any domesticated or wild bird, including but not limited to: chickens, hens, ducks, geese, pheasants, turkeys, doves, pigeons, parrots, parakeet and exotic birds.

~~(u)~~ (x) 'Garbage' means the putrescible animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food for human beings.

~~(v) 'Harboring' means allowing any animal to habitually remain or lodge or to be fed within one's home, store, yard, enclosure or place of business or any other premises where one works, resides or has control.~~

(y) 'Groomer' means a person or establishment which provides animal grooming services.

~~(j)~~ (z) 'Health Officer' means the director of the City of Wichita Department of Environmental Services or ~~his or her~~ authorized representative.

~~(k)~~ (aa) 'Inhumane treatment' means any treatment to any animal which deprives the animal of necessary sustenance, including food, water and protection from the weather; any treatment such as overloading, overworking, tormenting; beating, mutilating, teasing or other abnormal treatment; or causing or allowing the animal to fight with any other animal.

~~(y)~~ (bb) 'Kennel' means any premises where there is being maintained a total of five or more adult dogs owned by the property resident.

~~(z)~~ (cc) 'Livestock' means any cow, ox or other bovine, goat, sheep, horse, ratites, donkey, swine, mule or other animal of similar or larger size.

~~(m)~~ (dd) 'Microchip' means a passive transponder which can be implanted in an animal and which is a component of a radio frequency identification (RFID) system.

~~(bb)~~ (ee) 'Neighbor' means any person residing within two hundred feet (200') from the outermost property line of the property where a domestic animal is owned, kept or harbored.

~~(l)~~ (ff) 'Owner, keeper or harborer' means any person who ~~harbors, has an interest in, has control over or custody of an animal, and/or has a license to keep the animal~~ possesses, harbors, keeps, feeds, shelters, maintains, offers refuge or asylum to any animal, or who professes to keeping, owning or harboring of such

animal. In addition, any person who signs a receipt as owner, keeper or harborer for the return of an animal from any shelter or animal holding facility, shall be presumed to be the owner, keeper or harborer of the animal. A parent or legal guardian shall be deemed to be an owner, keeper or harborer of animals owned, kept or harbored upon their premises by minor children who are less than eighteen (18) years of age. Such term shall also include any person who exercises control over or is in possession of any such animal.

~~(m)~~ (gg) 'Person' means any individual, firm, association, joint stock company, syndicate, partnership, corporation, other state franchised business entity such as a professional association, limited liability company, or limited liability partnership, or other organization of any kind.

~~(n)~~ (hh) 'Picket' means attaching a leash, rope, chain, lead, tether or other similar apparatus or device to the body of an animal and another inanimate or immovable object for the purpose of confining the animal or limiting the movement of the animal.

~~(o)~~ (ii) 'Pit bull dog' is defined to mean any and all of the following dogs:

1. The Staffordshire Bull Terrier breed of dogs;

2. The American Staffordshire Terrier breed of dogs;

3. The American Pit Bull Terrier breed of dogs;

4. Dogs which have the appearance and physical characteristics of being predominately of the breeds of dogs known as

Staffordshire Bull Terrier, American Pit Bull Terrier or American Staffordshire Terrier.

A dog which possesses five out of the following eight characteristics shall be considered to be a pit bull:

1. Head is medium length, with a broad skull and very pronounced cheek muscles, a wide, deep muzzle, a well-defined, moderately deep stop, and strong under jaw. Viewed from the front the head is shaped like a broad, blunt wedge.
2. Eyes are round to almond shaped, are low in the skull and set far apart.
3. Ears are set high. Un-cropped ears are short and usually held rose or half prick, though some hold them at full prick.
4. Neck is heavy and muscular, attached to strong, muscular shoulders.
5. Body is muscular, with a deep, broad chest, a wide front, deep brisket, well-sprung ribs, and slightly tucked loins.
6. Tail is medium length and set low, thick at the base, tapering to a point.
7. Hindquarters are well muscled, with hocks, set low on the legs.
8. Coat is a single coat, smooth, short and close to the skin.

   Pit bull puppies have the same characteristics, though in juvenile or adolescent form. Muscles, along with breadth and depth of head and chest may be less developed.

Specifically excepted from this definition is any dog with proof, by by a written certification from a veterinarian licensed by the State of Kansas, that the dog does not contain in its lineage any American Pit Bull Terrier, American Staffordshire Terrier or Staffordshire Bull Terrier.

(ii) 'Premises' means a lot, plot or parcel of land including structures located thereon.

(jj) 'Public Nuisance' means any repeated acts of an animal that irritates, perturbs or damages rights and privileges common to the public or enjoyment of private property or indirectly injures or threatens the safety of a member of the general public. Such actions include, but are not limited to:

1. Damages public or private property to include, but not be limited to, breaking, bruising, tearing up, digging up, crushing or injuring any lawn, garden, flower bed, plant, shrub or tree in any manner;

2. Rips any trash bag or tips any solid waste collection container which spills or scatters trash, debris, refuse or waste.

3. Repeatedly defecates upon any public place or upon premises not owned or controlled by the animal's owner, keeper or harborer, provided that this definition shall not apply where such waste is immediately removed and properly disposed of by the owner of such animal.

4. Allowing or permitting an animal to be maintained in an unsanitary condition so as to be offensive to sight or smell.

5. Causes a condition which endangers public health or safety.

(kk) 'Ratites' means all creatures of the ratite family that are not indigenous to this state, including but not limited to, ostriches, emus and rheas.

(ll) 'Refuse means all putrescible and non-putrescible waste materials (except animal body discharges) such as trash, garbage, dead animals, paper, cardboard, tin cans, grass, wood, metals, salvage or inert materials produced or accumulated in connection with the maintenance of domestic animals.

(mm) 'Retail' means any transaction where the animal is sold to the final consumer.

~~(o)~~ (nn) 'Running at large' means any animal, with the exception of a cat, that is not confined within a fenced enclosure or shelter capable of preventing the animal from exiting at will, unless under the control of a person, either by lead, cord, rope or chain; provided that an animal may be considered confined if it is on a leash, rope or chain which is sufficient to keep the animal on the premises where picketed in accordance with section 6.04.040(c)(14). For the purposes of this chapter, an animal shall not be considered running at large when on the owner's property and confined by an operating electronic fencing system when the premises are clearly and prominently marked to show the existence of the electronic fencing system and the animal is equipped with the necessary and operating components of the system required to confine the animal to the owner's property. Further, a dog shall not be considered to be running at large when it is unleashed inside a dog park owned or operated by the City of Wichita.

(oo) ‘Sale or offer for sale’ includes transfers by sale or exchange. (oo)

(pp) ‘Sanitary’ means clean, free from waste and free from infectious influences.

~~(p)~~ (qq) ‘Secure enclosure’ means a locked enclosure or structure measuring at least 6 feet in width, 12 feet in length, and 6 feet in height, capped if there is a dog house inside or if the dog can climb fence, with secure sides, which provides proper protection from the elements for the dog, is suitable to prevent the entry of young children, and is designed to prevent the animal from escaping while on the owner's property, which has been inspected and approved by the Health Officer. Such enclosure shall have a concrete or wire floor to prevent the dog from digging out or escaping from the enclosure.

~~(q) ‘Shelter’ means all pens, houses or fenced enclosures where animals are confined, such as, but not limited to, hutches, cotes, lofts, kennels, warrens, feed lots, barns, stables, or other buildings or enclosures.~~

(rr) ‘Service animal’ means any animal recognized as a qualified service animal pursuant to the Americans with Disability Act of 1990. A qualified service animal is defined as, but not limited: to a dog which has been specially selected, trained and tested to perform a variety of tasks for persons with disabilities. These tasks include, but are not limited to: pulling wheelchairs, lending balance support, picking up dropped objects or providing assistance in, or to avoid, a medical crisis or to otherwise mitigate the effects of a disability. The presence of a dog for comfort, protection or personal defense does not qualify a

dog as being trained to mitigate an individual's disability and, therefore, does not qualify the dog as a service dog.

~~(nn)~~ (ss) 'Stockyard means a public terminal stockyard posted by the packers and stockyards divisions of the United States Department of Agriculture.

~~(r)~~ (tt) 'Unaltered' means an animal which has not been surgically sterilized.

~~(r)~~ (uu) 'Veterinarian' means a doctor of veterinary medicine licensed by the State of Kansas.

~~(s)~~ (vv) 'Veterinarian hospitals' means a domestic animal hospital operated by a doctor of veterinary medicine, licensed by the State.

(ww) 'Vicious propensity' means a known tendency or disposition to approach any individual or domestic animal in an attitude of attack when there is no provocation.

(xx) 'Waste or Wastes' means manure or the bodily discharge of all domestic animals, spilled feed or unconsumed feed and liquid cleaning wastes, including suspended solids resulting from cleaning operations.

~~(t)~~ (yy) 'Wild Animal' means any species that has established breeding populations currently within North America, which is self sufficient in the natural environment, and the majority of whose populations are not domesticated."

SECTION 2. Section 6.04.020 of the Code of the City of Wichita is hereby amended to read as follows:

"**Responsibilities of the health officer.** (a) The Health Officer shall be responsible for the enforcement of this ~~chapter~~ title and is hereby authorized to

make investigations and to serve notices and orders as necessary for enforcement of the provisions of this ~~chapter~~ title, to pick up animals on public or private property, and to arrange and pay for confinement of such animals at an animal shelter in accordance with K.S.A. 47-1701, et seq., and amendments thereto, and to operate an animal shelter to aid the department's animal control functions, including charging the owner of any animal confined for the care thereof, and to seek reimbursement from the owner of any animal confined, whether the confinement is at the animal shelter operated by the department or by a third party. Such authority shall include, subject to budgetary control, authorization for formalization of an agreement with such animal shelter.

(b) The Health Officer shall have the authority to sign complaints and serve notices to appear before the Municipal Court upon any person when the Health Officer has probable cause to believe such person has or is violating a section of this Code. Such officer shall have the authority to issue, suspend or revoke licenses and permits as provided for by this title.

(c) In addition to fees provided for in this title, the Director of the Wichita Department of Environmental Services, is authorized to establish a schedule of user or service fees and collect such fees for services performed, including but not limited to:

1. Animal shelter boarding and animal redemption;

2. Shelter services provided to other jurisdictions;

3. Animal care and control items sold at the Wichita Animal Shelter;

4. Adoption fees for the adoption of animals from the Wichita Animal Shelter.

5. Research and copying of documents not subject to the Kansas Open Records Act requests;

6. Inspection services provided to other jurisdictions.

7. Enter into interlocal agreements with other jurisdictions to provide Animal Control services.

(d) The Director of Environmental Services is authorized to adjust fees during instances of moratoriums, special events or special adoption programs."

SECTION 3. Section 6.04.025 of the Code of the City of Wichita is created to read as follows:

"**Trapping of abandoned cats by health officer.** (a) Abandoned cats located within the corporate limits of the city are declared a nuisance and menace to the public health which is to be abated by the Health Officer.

(b) A cat that has reverted to a feral state or has no collar is presumed to be an abandoned cat. Such cat may be confined by a person on whose property such cat strays for pick-up by the Health Officer, or be trapped by the health officer.

(c) The Health Officer may utilize humane-type cage traps to apprehend any abandoned cat with such humane trap being placed by the health officer on public property or private property with the consent of the owner.

(d) The Health Officer shall transport cats that have been trapped, picked up, confined or relinquished to the animal shelter with such cat being

impounded as provided by K.S.A. 47-1701 et seq., as amended, unless sooner redeemed by an owner upon payment of a service charge and boarding fee to the city. Identification information, if available on a trapped cat, shall be utilized by the Health Officer or animal shelter to inform such owner that his cat has been impounded."

SECTION 4. Section 6.04.035 of the Code of the City of Wichita is hereby amended to read as follows:

"Cruelty to animals. (a) ~~Any person who witnesses a violation of this section may sign a complaint at the Department of Environmental Services.~~ It is unlawful for any person to commit the crime of cruelty to animals. Cruelty to animals is:

1. Intentionally causing any physical injury, other than the following acts, described in K.S.A. 21-4310(a)(10) and amendments thereto: by intentionally and maliciously killing, injuring, maiming, torturing, burning or mutilating any animal;

~~(1)~~ 2. Recklessly causing physical injury to any animal;

~~(2)~~ 3. Intentionally abandoning or leaving any animal in any place without making provisions for its proper care;

~~(3)~~ 4. Having physical custody of any animal and intentionally failing to provide adequate care, such as food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal, or to carry any animal in or upon any vehicle in a cruel or inhumane manner. Any animal kept

outside shall be provided with a structurally sound, weatherproof enclosure, large enough to accommodate the animal;

~~(4)~~ 5. For any person, by any means, to make accessible to any animal, with the intent to cause harm, any substance which has in any manner been treated or prepared with a harmful or poisonous substance, except that this section shall not prohibit the use of poisonous substances for the control of vermin of significance to the public health.

~~(5)~~ 6. Every operator of a motor vehicle or other self-propelled vehicle upon the streets and ways of the City, except emergency vehicles, shall immediately, upon injuring, striking, maiming or running down any animal, notify the police department (911) of the location, and the police department will notify such agency as may be providing injury services;

~~(6)~~ 7. For any person to have, keep or harbor any animal which is infected with any dangerous or incurable and/or painfully crippling condition except as hereinafter provided. A Municipal Court Judge may order a person convicted under this section to turn the animal involved over to the ~~health~~ Environmental Services Department. All such animals taken by the ~~health~~ Environmental Services Department may be destroyed humanely as soon thereafter as is conveniently possible. This section shall not be construed to include veterinary hospitals or animals under active veterinary care;

~~(7)~~ 8. Intentionally using a wire, pole, stick, rope or any other object to cause any equine, bovine or swine to lose its balance or fall, for the purpose of sport or entertainment.

~~(8)~~ 9. It is unlawful for any person to leave an animal in a standing or parked vehicle under conditions constituting an imminent threat to the safety of the animal. The Health Officer may remove and impound an animal left under what reasonably appears to be such conditions. Removal and impoundment of an animal shall not limit the Health Officer's ability to pursue charges or animal cruelty in Municipal Court.

10. It is unlawful for any person to subject any animal to inhumane treatment, as defined by Section 6.04.010 of this Code.

(b) The provisions of this section shall not apply to:

1. Normal or accepted veterinary practices;

2. Bona fide experiments carried on by commonly recognized research facilities;

3. Rodeo practices as described in the Professional Rodeo Cowboys Association Rules Governing the Care and Treatment of Livestock in PRCA Sanctioned Rodeos;

4. The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an incorporated humane

society, the operator of an animal shelter or pound, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound.

5. With respect to ~~farm animals~~ livestock, normal or accepted practices of animal husbandry, including the normal and accepted practices for the slaughter of such animals for food or by-products and the careful or thrifty management of ones herd or animals, including animal care practices common in the industry or region;

6. The killing or injury of any animal by any person at any time which may be found outside of the owned or rented property of the ~~of the~~ owner or custodian of such animal and which is found injuring or posing a threat to any person, ~~farm animal~~ livestock or property;

7. An animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods;

8. Laying an equine down for medical or identification purposes;

9. Normal or accepted practices of pest control, as defined in K.S.A. 2-2438a and amendments thereto; or

10. Accepted practices of animal husbandry pursuant to regulations promulgated by the United States Department of Agriculture

for domestic pet animals under the Animal Welfare Act, ~~public law 89-544 as amended and in effect on July 1, 2006.~~ and amendments thereto.

(c) As used in this section,

1. equine means a horse, pony, mule, jenny, donkey, or hinny.

2. bovine means a cow, calf, bull or steer.

3. swine means a ~~hog~~, pig, shoat, piglet, boar, barrow, gilt or sow.

(d) Cruelty to animals as described in this section is a misdemeanor punishable by a fine or not more than $2,500.00 and/or imprisonment of not more than 12 months, or any combination of such fine and imprisonment."

SECTION 5. Section 6.04.036 of the Code of the City of Wichita is hereby amended to read as follows:

"~~Section 6.04.036~~ Cruelty complaint--Municipal court hearing.

(a) The Health Officer or the representative of a duly incorporated humane society may, if a ~~complaint~~ report has been ~~signed~~ made which shows evidence of cruelty or inhumane treatment of an animal against an individual ~~pursuant to any provision of Section 6.04.035 of this code~~ before or after the individual has been convicted of such violation ~~of such section~~, sign an affidavit petitioning the Municipal Court Judge to immediately take custody and control of such animal if it appears to the Health Officer or the representative of the duly incorporated humane society that it would be in the best interest of such animal to have the Municipal Court seize such animal.

(b) The Municipal Court Judge, upon receiving such affidavit and petition, shall set the matter ~~involving the custody or control of an animal~~ for hearing within ~~ten~~ five business days from the date that the petition and affidavit are filed. If it appears from the affidavit that there is an imminent threat to the life of the animal, then the Municipal Court may set the hearing as soon as practical. The Municipal Court shall direct notice of the violation be served on the owner or harborer of such animal ~~person having control or custody of such animal~~ by serving such person with a summons to appear and a copy of the affidavit filed with the court. This summons and affidavit shall be served in the same manner as is required for serving a Notice to Appear under K.S.A. 12-4207.

(c) The Municipal Court Judge, after a hearing has been held, may order that an animal be seized and held in the animal shelter of the ~~Department of Environmental Services~~ City of Wichita, or placed in the custody of a duly incorporated humane society if the following findings are made:

1. The person summoned to appear is the owner or ~~person having possession or custody~~ harborer of the animal in question;

2. That there is probable cause to believe that a violation of any provision of Section 6.04.035 has occurred or is occurring; and

3. ~~b~~Based upon that violation, it appears that it would be in the best interest of the animal, to remove that animal from the ~~possession~~ control and custody of the owner ~~of the animal or the person having possession or custody of the animal~~ or harborer.

(d) If the Municipal Court Judge orders that such animal shall be seized and brought into custody, then the Health Officer or a representative of a duly incorporated humane society shall take such animal into custody and shall inspect such animal, care for or treat such animal or place such animal under the care of a licensed veterinarian for treatment, boarding or other care. If the Health Officer determines, based on information from his or her staff, an officer of a humane society, or a licensed veterinarian, that the animal is diseased or disabled beyond recovery for any useful purpose, then such animal may be destroyed humanely as soon thereafter as is conveniently possible, subject to the right of appeal stated below in subsection ~~(g)~~ (i). The City of Wichita shall not be responsible for any costs that are incurred by an incorporated humane society as to the care of an animal placed in the custody of a humane society or as to treatment of an animal under the custody of a humane society received from a licensed veterinarian.

(e) If the owner or ~~person having control or custody~~ harborer of such an animal is convicted of violating any provision of Section 6.04.035 of this code and if the Municipal Court Judge finds that such animal would in the future be subjected to treatment or actions by the owner or harborer which violates any provision of Section 6.04.035, such animal shall not be returned to or remain with such person. Such animal may be turned over to the Health Officer, humane society or licensed veterinarian for sale or other disposition.

(f) Expenses incurred for the care, treatment or boarding of any animal taken into custody pursuant to subsection (d) pending prosecution of the

owner or harborer of such animal for cruelty to animals shall be assessed to the owner or harborer as a cost of the case if the owner or harborer is adjudicated guilty of such crime.

(g) If the Health Officer has taken possession of the animal, the Health Officer may petition the Municipal Court to be allowed to place the animal for adoption or euthanize the animal after five (5) business days following notification to the owner or harborer of such animal, unless the owner or harborer files a renewable cash or performance bond with the Clerk of the Municipal Court where the animal is being held, in an amount equal to not less than the cost of care and treatment of the animal for thirty (30) days. If the animal remains in the custody of the Health Officer for a period exceeding thirty days, after written notice to the owner or harborer, the Health Officer may request the Municipal Court Judge to increase the amount of the bond to cover the costs of care for the animal.

~~(f)~~ (h) If the owner or ~~persons having control or custody~~ harborer of such animal is adjudicated not guilty or if the Municipal Court Judge, after an adjudication of guilt~~y~~ is made, finds that such animal should be returned, such person may redeem such animal within seventy-two hours. If such animal is not redeemed within seventy-two hours, then the entity operating the animal shelter caring for the animal shall have ownership of such animal and shall determine the disposition of such animal. Any proceeds derived from such sale or disposition shall be paid directly to the treasurer of the entity operating the animal shelter, and no part of such proceeds shall accrue to any individual.

~~(g)~~ (i) An order issued by the Municipal Court Judge under this section may be appealed to the district court pursuant to the provisions contained in K.S.A. 60-2101(d) and amendments thereto."

SECTION 6. Section 6.04.040 of the Code of the City of Wichita is hereby amended to read as follows:

"~~Section~~ **Control and protection of animals in general.** (a) Any owner or harborer of any animal, other than cats, found running at large within the corporate limits of the city shall be deemed guilty of a misdemeanor. ~~Upon conviction, in addition to any applicable fines and/or imprisonment, the court may require surgical sterilization of any animal found running at large within the City of Wichita at the expense of said owner.~~ Knowledge or intention on the part of the owner or harborer shall not be elements of this offense. The Health Officer may seize, impound and cause to be destroyed any such animal, including those animals not within the definitions of the Kansas Pet Animal Act, using the procedures set out at K.S.A. 47-1710. The Health Officer may ~~cause any such impounded animal to be~~ return~~ed~~ the animal to its rightful owner upon ~~petition therefore~~ request and may require the payment of a service charge and a boarding fee for days spent in confinement at the shelter prior to return of the animal. If any animal impounded for any reason is determined by the Health Officer to require confinement separate from other like animals in order to protect the health and well being of that animal, staff, the public, or other animals being housed at the animal holding facility due to any aggressive behavior and/or any disease or medical conditions, the boarding fee for such animal shall be twice the normal

boarding fee established by the animal shelter. Any person who is convicted of the charge of animal running at large shall be punished as set forth below:

1. Upon a first conviction, a fine of not less than $50.00 nor more than $1,000.00 shall be assessed.

2. Upon a second conviction a fine of not less than $100.00 nor more than $1,000.00 shall be assessed.

3. Upon a third or subsequent conviction, a fine of not less than $200.00 nor more than $1,000.00 shall be assessed and the owner must appear in Municipal Court.

(b) In addition to the penalties set forth in paragraph (a), ~~T~~the owner or harborer of any unaltered dog that has been impounded for running at-large shall be required to:

1. have an identification microchip implanted in the dog traceable to the current owner, and registered with the City of Wichita~~.~~, and ~~Failure to comply with this requirement within 30 days shall be a misdemeanor. In addition, upon the first occurrence of any dog impounded for running at large by the Health Officer, the owner of such dog shall be required to take the following action:~~

~~(1)~~ 2 ~~The owner shall be required to~~ have the dog surgically sterilized by a licensed veterinarian within thirty days of redemption of said dog, at his or her own expense. It shall be a violation of this ordinance to fail to have the dog surgically sterilized, or provide proof from a licensed veterinarian that said dog has previously been surgically

sterilized, or has been surgically sterilized and micro-chipped within thirty days after redemption of said ~~animal~~ dog as indicated in this ordinance, or

~~(2)~~ 3. The owner or harborer may maintain the aforementioned dog intact ~~and shall be required to~~ by paying an additional unaltered animal fee, the amount of which shall be established by the Health Officer, to redeem such dog from the Animal Shelter. Such dog may be maintained intact provided that the dog is not found to be running at large on any subsequent occurrence within the dog's lifetime.

4. For any dog required to be surgically sterilized, the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner or harborer shall provide documentation of the sterilization upon completion. Such voucher shall remain valid for thirty (30) days. Any owner or harborer failing to provide documentation of the sterilization procedure within thirty days of impoundment shall be deemed guilty of a misdemeanor. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

~~(3) Upon release of the animal, the owner may apply for a breeder license for said dog, and may maintain the dog intact for legal breeding purposes provided the dog owner can demonstrate that they can comply with all breeder license requirements established by the Health~~

~~Officer, and the breeder license application is approved by the Health Officer and remains continuously valid throughout the lifetime of the dog. Such dog may be maintained intact provided that dog is not found to be running at large on any subsequent occurrence within the dog's lifetime. Failure to maintain a breeder's license in order to comply with this chapter shall be a misdemeanor.~~

(c) Upon the second occurrence of any intact dog impounded by the Health Officer for running at large ~~by the Health Officer~~, the owner of such dog shall be required to have the animal surgically sterilized by a licensed veterinarian within thirty days of redemption of said dog at his or her own expense. For any animal required to be surgically sterilized the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner or harborer shall provide documentation of the sterilization upon completion. Any owner or harborer failing to provide documentation of the sterilization procedure within thirty days of impoundment shall be deemed guilty of a misdemeanor.

(d) Animals which are kept on the premises of any pet store shall not be allowed, by the storeowner or any employee, to run at large inside the store or on the external premises of the pet store during business hours, and no person shall allow any animal under their care or control to run at large on the premises of any store during business hours. This provision shall not apply to animals participating in supervised training classes within an enclosed area of the store.

~~(e) Any owner of any fowl except racing pigeons as prescribed in Section 6.12.090, found running at large within the corporate limits of the city shall be deemed guilty of a misdemeanor. Knowledge or intent on the part of the owner shall not be elements of this offense.~~

~~(f)~~ (e) It is unlawful for any person to:

~~(1) Break or train any horse or other animal on property which abuts any street, sidewalk or other public place within the corporate limits of the city;~~

~~(2) Picket any horse, cow or other animal on or on property which abuts any street, sidewalk or other public place within the corporate limits of the city;~~

~~(3)~~ 1. Kill any squirrel or songbird within the corporate limits of the city; provided, that it shall be permissible for the Health Officer to kill squirrels, skunks, ~~or~~ birds, or other animals that have become so numerous as to cause destruction or nuisance to property or in the event of disease occurring among such squirrels, skunks, ~~or~~ birds, or other animals that may be considered contagious to human beings;

~~(4)~~ 2. Interfere with or molest an animal used by the police or fire department of the city or other governmental agency or department in the performance of its lawful functions and duties or interfere with the handler of such animal in such a way that the handler is deprived of or inhibited in his control of such animal;

~~(5)~~ 3. Promote, stage, hold, manage, conduct, carry on, participate in or attend any game, exhibition, contest or fight in which one or more animals are engaged for the purposes of injuring, killing, maiming or destroying themselves or any other animals, including but not limited to cock fighting or dog fighting;

~~(4)~~ 4. Knowingly permit animal fighting as defined by subsection (3) on the premises under one's ownership, charge or control.

~~(6)~~ 5. Own, maintain, or have in his or her possession animal fighting paraphernalia;

6. Own or keep on one's premises any animal, by a person convicted of animal fighting, pursuant to this section or K.S.A. 21-4315 or convicted of cruelty to animals as defined by Section 6.04.035 of the Code of the City of Wichita or K.S.A. 21-4310 and amendments thereto.

7. Keep or harbor any animal, which, by loud, frequent, excessive or habitual barking, howling, yelping or other noise or action, unreasonably ~~disturbs any person or neighborhood within the corporate limits of the city~~ interferes with the use or enjoyment of property of any person of reasonable sensibilities residing in or occupying the area. To effect legal relief, persons so affected directly may sign a complaint at the Department of Environmental Services or contact the Wichita Police Department to file a report regarding such nuisance.

8. Allow any unspayed female dog in season to be in an area where there is access by an unconfined male dog;

9. Allow an unconfined male dog in an area where there is access to any unspayed female dog in season;

10. Keep or harbor a dog over five months of age within the corporate limits of the city without such dog having a current vaccination against rabies performed by a veterinarian, and the owner thereof securing an annual license for such dog issued by the City Treasurer ~~for a twelve-month period beginning at the date of the vaccination~~. The Director of Environmental Services shall have the authority to establish appropriate licensing fees for such animals.

11. Keep or harbor a cat over five months of age within the corporate limits of the city without such cat having a current vaccination against rabies performed by a veterinarian licensed by the State of Kansas.

~~(11)~~ 12. Sell or offer for sale, barter or give away any living baby chicks, rabbits, ducklings, or other fowl except pigeons, under two months of age ~~in any quantity less than twelve~~; or to sell, offer for sale, barter, give away or display animals or fowl as specified in this subsection which have been dyed, colored or otherwise treated so as to impart to them an artificial or unnatural color; provided, however, that this section shall not be construed to prohibit the sale of animals or fowl, as specified in this subsection, in proper brooder facilities by hatchers or persons engaged in the raising and selling of such animals and fowls for recognized animal husbandry or commercial purposes;

~~(12) Keep hives or colonies of bees; provided, that bees may be kept on any property during the months from November through May;~~. ~~and provided further, that bees may be kept at any time on properties for which a current agricultural classification permit is held in accordance with section6.12.010 when such permit has been issued for the purpose of keeping bees;~~

13. Keep, ~~or~~ maintain, sell or offer for sale, barter or give away any animal whose possession is prohibited by federal or state law; or any exotic animal as defined in ~~Title 6: provided,~~ by this title. ~~t~~This section shall not apply to: tropical or other fishes; birds, except those prohibited by federal or state law; ~~small mammals which will not exceed five pounds in total weight when fully grown, and customarily kept as pets,~~ animals such as gerbils, rats, mice, hamsters, guinea pigs, and ferrets; small mammals raised for harvesting of fur salable into an existing market, such as chinchillas, nutria and mink; nonpoisonous amphibians and reptiles, not including pythons, anacondas, boa constrictors, monitor lizards, iguanas, alligators, caiman, crocodiles and turtles~~; provided further, that t~~This section shall not apply to exhibitions authorized by and conducted in accordance with Chapter 6.08. ~~The definition of exotic animal also shall not apply to any mammal belonging to the family Macropodidae that is registered with the Department of Environmental Services by the owner on or before December 20, 2007. The owner of any mammal belonging to the family Macropodidae shall have a microchip placed in the animal for~~

~~the purposes of identifying the animal and the owner of the animal, and shall have the animal surgically sterilized to prevent breeding, and shall provide written proof of such micro chipping procedure and surgical sterilization from a licensed Doctor of Veterinarian Medicine to the Health Officer on or before February 5, 2008. It is unlawful for any person to own, harbor, or maintain any mammal belonging to the family Macropodidae within the corporate city limits of Wichita, unless such mammal has been registered with the Department of Environmental Services, micro chipped for the purpose of identification, and surgically sterilized to prevent breeding according to the requirements of this subsection.~~

14. Continuously picket a dog for more than one continuous hour, except that picketing of the same dog may resume after a hiatus of three continuous hours~~,~~. ~~for up to~~ A dog may not be picketed for a total time period exceeding three hours, ~~total time on picket per~~ in any twenty-four-hour period ~~day~~.

For the purpose of picketing a dog, a chain, leash, rope, or tether shall be at least 10 feet in length.

(i) A chain, leash, rope, collaring device, tether, or any assembly or attachments thereto used to picket a dog shall not weigh more than one-eighth (1/8) of the animal's body weight, or due to weight, inhibit the free movement of the animal within the area picketed.

(ii) Dogs shall be picketed in such a manner as to prevent injury, strangulation, or entanglement on fences, trees, or other man made or natural obstacles;

(iii) It is unlawful to attach chains or other tether restraint implements directly to a dog without the proper use of a collar, harness, or other device designed for that purpose and made from a material that prevents injury to the animal.

15. Permit or allow any animal to be a public nuisance.

16. Own, possess, harbor or maintain more animals than is permitted by the requirements of this title.

(f) Health Officers and other law enforcement officers may issue the owner or owners of animals creating a public nuisance, as defined in this title, a citation to appear in municipal court to answer the offense charged. To effect legal relief, persons affected directly may sign a complaint at the Department of Environmental Services or contact the Wichita Police Department to file a report regarding such nuisance.

SECTION 7. Section 6.04.045 of the Code of the City of Wichita is hereby amended to read as follows:

"~~Section 6.04.045~~ Dangerous dog-Determination--Notice and hearing-confinement or destruction. (a) The Health Officer may declare a dog to be dangerous based on:

~~(a)~~ 1. The nature of any attack committed or wound inflicted by the animal;

~~(b)~~ 2. The past history and seriousness of any attacks or wounds inflicted by the animal;

~~(c)~~ 3. The potential propensity of the animal to inflict wounds or engage in aggressive or menacing behavior in the future;

~~(d)~~ 4. The conditions under which the animal is kept and maintained which could contribute to, encourage, or facilitate aggressive behavior, such as, but not limited to, allowing the animal to run at large, tethering in excess of legal limits as defined in this chapter, physical property conditions, presence of young children, the elderly, or infirm within or residing near the home, any past violations of this chapter, and/or failing to provide proper care, food, shelter, or water.

If the Health Officer determines that the animal is dangerous, he or she will determine an appropriate disposition based on the known facts and consistent with the provisions of this chapter. The Health Officer may impound the dog and shall notify the owner of such determination by personal service, residential service at the person's usual place of abode by leaving a copy of the notice with some person of suitable age and discretion residing therein, or by certified mail addressed to the owner's last known address, or addressed to the location where the dog is maintained. Service by certified mail, shall request return receipt, with instructions to the delivering postal employee to show to whom delivered, the date of delivery, and address where delivered. Service of process by certified mail shall be considered obtained upon the delivery of the certified mail envelope. If the certified mail envelope is returned with an endorsement showing refusal of

delivery, the Health Officer shall send a copy of the notice to the defendant by ordinary, first class mail. This first class mailing shall be evidenced by a certificate of mailing. Service shall be considered obtained upon the mailing of this additional notice by first class mail. The owner of a dog declared dangerous may request an administrative review of the determination by filing a written request with the Health Officer within ten days of receipt of such notification.

(b) The Health Officer will conduct a hearing within ten days of receipt of the owner's request. At such hearing, testimony may be offered by the owner of the dog, the Health Officer, victims of any bite or attack, neighbors or other affected persons, and veterinarians concerning the vicious propensity of the dog. In making a determination, the Health Officer shall consider the factors listed in subsections (1) through (4) above. It shall be an affirmative defense that at the time of a bite, attack, or threatening behavior:

1. The dog was actively being used by a law enforcement official for legitimate law enforcement purposes; or

2. The threat, injury, or damage was sustained by a person:

(i) Who was committing, at the time, a willful trespass or other tort upon the premises lawfully occupied by the owner of the dog; or

(ii) Who was provoking, tormenting, abusing, or assaulting the dog or who can be shown to have repeatedly, in the past, provoked, tormented, abused or assaulted the dog; or

(iii) Who was committing or attempting to commit a crime; or

3. The dog was responding to pain or injury.

If the Health Officer determines that the dog is dangerous, he or she shall determine an appropriate disposition based on the facts determined at the hearing and the provisions of this chapter, and will notify the owner ~~of the hearing~~ in writing of the outcome of the hearing within five business days. The owner may appeal the hearing outcome as provided for in Section 6.04.210. Absent such appeal, the Health Officer may pick up and cause the animal to be destroyed, or in lieu of such destruction he or she may permit the confinement of the animal in a manner and location that he or she deems appropriate or as provided in Section 6.04.046. The dog's owner shall be responsible for standard boarding charges at the Wichita Animal Shelter and veterinary expenses incurred during impoundment of the animal."

SECTION 8. Section 6.04.046 of the Code of the City of Wichita is hereby amended to read as follows:

"~~**Section 6.04.046**~~ **Dangerous dog--Failure to confine--Destruction and defenses.** (a) It is unlawful for an owner of a dangerous dog to permit the dog to be outside ~~a proper~~ an approved or secure enclosure unless the dog is restrained by a substantial chain or leash and under physical restraint by a responsible person who is eighteen years of age or older and possesses sufficient strength for physical control of the animal for the purpose of transportation to and from a veterinarian for medical treatment. In such event, the dangerous dog shall

be securely muzzled and restrained with a chain or leash not exceeding four (4) feet in length, and shall be under the direct control and supervision of the owner or ~~keeper~~ harborer of the dangerous dog. The muzzle shall be made and used in a manner that will not cause injury to the dog or interfere with its vision or respiration, but shall prevent it from biting any human or animal. ~~A proper enclosure for purposes of this section means a secure enclosure as defined in Section 6.04.010, or secure confinement indoors.~~

(b) Secure or approved enclosures required under this section must be approved by the Health Officer and be adequately lighted and kept in a clean and sanitary condition.

(c) The owner or harborer shall allow the Health Officer access to the property where the dangerous animal is being harbored to facilitate inspections and insure compliance for the duration of the life of the animal.

(d) The owner or harborer of any dog that has been determined to be dangerous shall be required to have the animal surgically sterilized by a licensed veterinarian within thirty days of the dangerous animal determination, at his or her own expense. For any animal required to be surgically sterilized, the Health Officer shall collect payment for and issue a spay/neuter voucher at the time of the animal's redemption, and the owner or harborer shall provide documentation of the sterilization upon completion. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

Any owner or harborer failing to provide documentation of the sterilization procedure as required by this section shall be deemed guilty of a misdemeanor.

(e) The owner or harborer of any dog that has been determined to be dangerous shall be required to have a microchip, traceable to the dangerous dog and the current owner, inserted into the dog and copies of documentation of said procedure available for review by the Health Officer. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

Any owner of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor.

(f) It is unlawful for anyone having prior felony convictions defined in articles 34, 35, 36, and 43 of Chapter ~~22~~ 21, and article 41 of Chapter 65 of the Kansas Statutes Annotated to possess, harbor, own or reside on any premises with a~~ny~~ dangerous dog.

(g) It shall be unlawful for any person to:

1. harbor, keep or maintain a dangerous dog on property not owned by the person without the written consent of the land owner; or

2. sell, barter or give away to another person a dog which has .been deemed dangerous; or

3. own, possess or harbor more than two dogs which have been declared dangerous by this title.

The provisions of subsection(g)(3) shall not apply to individuals, who at the time of the passage of the ordinance, owned two or more dogs which were declared dangerous prior to the date of passage of this ordinance.

~~(g)~~ (h) Should a previously determined dangerous dog be found running at large in violation of this section attack or inflict injury upon any person, the judge of the Municipal Court shall, in addition to any other penalty provided in Section 6.04.190, order the dog destroyed. Provided, however, the judge of the Municipal Court may, at his or her discretion, consider whether the attack or injury was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises of the owner of the dog, or was tormenting, abusing, or assaulting the dog, or has, in the past, been observed or reported to have tormented, aroused, or assaulted the dog or was committing or attempting to commit a crime."

SECTION 9. Section 6.04.048 of the Code of the City of Wichita is hereby amended to read as follows:

"~~Section 6.04.048~~ Registration and Insurance. (a) ~~Upon determination by the Health Officer, t~~The owner or person harboring a dangerous dog shall annually register the dangerous dog with the Health Officer on such forms designated by the Health Officer, and shall have a microchip, traceable to the dangerous dog and the current owner of the dog, inserted into the dog. The owner or ~~harboring person~~ harborer shall complete an application and shall pay a $100.00 annual registration fee to the ~~City of Wichita~~ City Treasurer and shall pay

all costs associated with the microchip procedure. If the dog's owner had a valid dog license, such owner shall not receive a refund of the licensing fees paid for the altering or micro chipping of the dog. Upon the renewal of the license, the amount will be changed to reflect the altering and micro chipping of the dog.

The owner or person harboring a dangerous dog shall notify the Health Officer in writing a minimum of seven days prior to any change in the address of the owner or person harboring the dog or the location of the dangerous dog. Any owner of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor.

(b) The owner or person harboring a dangerous dog required to be registered under this Section shall maintain liability insurance in the amount of one hundred thousand dollars for each such dog against the potential injury or damage liabilities and hazards associated with the ownership or possession of such dog. The owner or person harboring a dangerous dog shall file with the Health Officer a certificate of insurance reflecting the required minimum insurance and naming the City of Wichita as an additional insured. Any owner of a dangerous dog who fails to comply with this provision shall be deemed guilty of a misdemeanor."

SECTION 10. Section 6.04.052 of the Code of the City of Wichita is created to read as follows:

'**Restrictions on the Ownership of Pit Bulls.**

(a) All adult pit bulls within the City of Wichita are required to have an identification microchip implanted in the dog traceable to the current owner

and registered with the City of Wichita. Such microchip information shall be included in the dog's annual license application with the City of Wichita. The owner or harborer shall pay all costs associated with the microchip procedure.

(b) It shall be unlawful for any person to own, possess or harbor an adult unaltered pit bull, unless such person is licensed as a dog breeder pursuant to Section 6.04.155. No licensed dog breeder shall own, harbor, possess or maintain more than two unaltered adult pit bulls. Such dogs must be micro-chipped as required by this title. The provisions of this section shall not apply to any unaltered pit bull which was located within the City of Wichita, at the time the ordinance was enacted and such dog was being utilized to accommodate an individual with a disability recognized by the Americans with Disabilities Act. Any such service dog must be micro-chipped as required by this title. Such person shall be required to obtain a breeder's license for such animal(s). Service dogs shall comply with all other provisions of this title. Sterilization of a pit bull shall not be required upon certification, presented to the Director of Environmental Services, by a veterinarian licensed by the state of Kansas, that such sterilization would be injurious to such dog due to its health or age.

(c) It shall be unlawful for any person to own, keep, maintain or harbor more than two pit bulls.

(d) It shall be unlawful for more than two adult pit bulls, to be kept, harbored or maintained on the same premises or dwelling.

(e) Any person who owns a pit bull, at the time of passage of this ordinance, shall have six months from the date of the passage of the ordinance to

microchip and surgically sterilize such animal or apply for a breeder's license pursuant to this title. Sterilization of the pit bull shall not be required upon certification, presented to the Director of Environmental Services, by a veterinarian licensed by the State of Kansas that such sterilization would be injurious to such dog due to its health or age.

(f) Any person who had a current animal maintenance permit for three or more pit bulls, at the time of passage of the ordinance shall be permitted to keep, but not replace such dogs until their number equals no more than two dogs. Such dogs must be registered, micro-chipped and surgically sterilized in accordance with this title.

(g) Any person aggrieved by the determination of the Health Officer that a dog is a pit bull as defined by Section 6.04.010 of this title, shall have the right to appeal such determination as set forth in Section 6.04.158.

(h) The provisions of this section shall not apply to dogs which are temporarily located within the City of Wichita for participation in dog shows which are sanctioned by the American Kennel Club, United Kennel Club, the Wichita Kennel Club or the American Dog Breeders Association.

(i) Any individual who fails to comply with the requirements of this section shall be guilty of a misdemeanor.

SECTION 11. Section 6.04.055 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"~~Section 6.04.055~~ ~~Dogs~~ Animals prohibited--Exceptions. It is unlawful for any person to have ~~a dog or any exotic animal as defined by Section~~

~~6.04.010 of this code~~ any animal at any festival or community event authorized under a permit issued pursuant to the city code and occurring within the city, unless such animal is a specially trained ~~as a seeing eye or hearing ear dog or otherwise specially trained to assist disabled persons~~ service dog and actually in the control of the disabled person. For purposes of this section "festival event" means ~~all events and activities included within the Wichita River Festival permit issued pursuant to Chapter 3.14 of this code,~~ community events approved pursuant to Chapter 3.11 of the Code of the City of Wichita, and any other events held on city property wherein the City of Wichita issues a permit or license for the activity; provided, however, that such prohibition shall not apply to events where ~~dogs~~ animals are required to be present as part of the event~~, such as a dog show~~."

SECTION 12. Section 6.04.060 of the Code of the City of Wichita is hereby amended to read as follows:

"**~~Section 6.04.060~~ ~~Dog~~ Animal bite violations.** (a) No person who owns, possesses, harbors or exercises control over any ~~dog~~ animal shall do the following:

1. Permit or allow the ~~dog~~ animal to attack or bite any person or domestic animal not on the premises of such owner, possessor or keeper;

2. Permit or allow the ~~dog~~ animal to attack or bite any person or domestic animal upon the premises of the residence of such owner, possessor or keeper or upon the premises of any business establishment not then open to the public. It is an affirmative defense to this paragraph if

such premises are previously posted at each entrance with a prominent and conspicuous sign warning all persons of the ~~dog~~ animal, and the ~~dog~~ animal is confined in a proper enclosure. It is also an affirmative defense to this paragraph that the attack or bite by the ~~dog~~ animal was necessary to prevent or apprehend a person engaged in committing an act of violence, robbery, ~~or~~ theft or other crime upon the property;

3. Permit or allow the ~~dog~~ animal to attack or bite any person or ~~domestic~~ animal upon the premises of any business establishment that is open to the public. It is an affirmative defense to this paragraph that the attack or bite by the ~~dog~~ animal was necessary to prevent or apprehend a person engaged in committing an act of violence, robbery, ~~or~~ theft or other crime upon the property.

(b) For purposes of this section, the word "permit" shall mean allow or let happen. Knowledge or intention on the part of the person who owns, possesses, harbors or exercises control over the ~~dog~~ animal shall not be elements of this offense.

(c) An ~~proper~~ enclosure for purposes of this section means the dog is securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the ~~dog~~ animal. The pen or structure must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground no less than one foot.

(d) The provisions of this section shall not apply to any law enforcement officer who uses an ~~dog~~ animal while engaged in law enforcement activities, nor to any owner, possessor or keeper of any ~~dog~~ animal which attacks or bites a person engaged in physically attacking or striking such owner, possessor or keeper.

(e) 1. Upon a first conviction of any violation of the provisions of this section, a minimum fine of $150.00 shall be assessed.

2. Upon a second conviction within a twelve-month period, of any violation of the provisions of this section, a minimum fine of $250.00 shall be assessed.

3. Upon a third or subsequent conviction, of a violation of any provisions of this section, a minimum fine of $500.00 shall be assessed. In addition to the minimum fines set forth above, the Municipal Court Judge may impose a term of imprisonment not to exceed six months, and a fine not to exceed one thousand dollars."

SECTION 13. Section 6.04.110 of the Code of the City of Wichita is hereby amended to read as follows:

"**~~Section 6.04.110~~ Procedure on registration, vaccination certificate and issuance of a license to keep a dog; vaccination requirements for cats and ferrets.** (a) The owner or harborer of a dog over five months old is required to annually register such dog with the City Treasurer, and to make application for and obtain a license to keep such dog as herein provided. Said license shall be valid for a period not to exceed twelve months. ~~In no case shall more than four~~

~~dogs over five months old be harbored at any one premises, except at a kennel as provided in Chapter 6.12 of this Code~~. So long as animals are not maintained for a period exceeding one hundred and eighty days, animals maintained in foster care or with a rescue organization, as defined in this title, shall not be required to be licensed until adopted or permanently placed. All dogs placed in foster care or with a rescue organization must be properly vaccinated within seven days of being placed in such foster care or rescue organization.

(b) ~~Rabies vaccination is considered current for twelve months following the date of the vaccination; provided that a rabies vaccination may not be required if the owner of such dog shall exhibit to the City Treasurer a statement from a veterinarian certifying that for a defined time period such vaccination would be injurious to such dog due to its health.~~ The owner or harborer of a dog, cat or ferret over five months old is required to have such dog cat, or ferret inoculated as set forth below:

1. Inoculation must be performed by a person licensed to practice veterinary medicine in the State of Kansas.

2. Inoculation must be with a prophylactic vaccine approved by the United States Department of Agriculture and listed in the current National Association of State and Public Health Veteranarian's Compendium of Rabies Control.

3. Annually, a veterinarian must certify to the City Treasurer, on forms provided by the Treasurer, that such dog has been

properly vaccinated in accordance with the current compendium of rabies control. Annually, a new vaccination tag shall be assigned to such animal.

4. Unless a licensed veterinarian certifies to the Director of Environmental Services that such vaccination would be injurious to such dog due to its age or health, all dogs, cats or ferrets must be vaccinated for rabies by a licensed veterinarian at least every three years.

~~(b)~~ (c) The City Treasurer, in consultation with the Health Officer, shall provide suitable forms to veterinarians practicing in metropolitan Wichita for the licensing and rabies vaccination of such dogs. Such forms are to be designed to receive information on the dog's name, breed, and description, date, of rabies vaccination, veterinary tag number, microchip number ~~and signature~~, information whether the dog is spayed or neutered, ~~type of dwelling~~, whether a fenced yard or fenced run is available for confinement of the dog, and owner's name, address and telephone number. The veterinarian shall certify that the dog is properly vaccinated for rabies, or that it is injurious to the dog's health to receive such vaccination due to its age or health. Such forms will serve as the vaccination certificate, the application to keep a dog, and the actual license when validated. The forms are to be completed by the veterinarian at the time of vaccination and distributed as follows: one copy - city treasurer, one copy - veterinarian; and one copy - dog owner. The dog owner has the opportunity to make payment for the license fee at the veterinarian's office. However, the dog owner may elect to remit the license fee at the city treasurer's office, in which case the form shall be validated by an appropriate City Treasurer stamp. If the license fee payment is

submitted to the veterinarian, all form copies shall be validated with a numbered City of Wichita stamp which shall be supplied by the City Treasurer. The veterinarian shall retain his or her copy for two years for his or her own use and for possible reference use by the City Treasurer. The City Treasurer shall provide postage-guarantee addressed envelopes to veterinarians for their use in facilitating payment of license fees to the city. All such license fees collected by veterinarians shall be submitted to the City Treasurer not later than ~~five~~ thirty days following the last day of the month in which the license fee was collected.

~~(c)~~ (d) The premises of the dog owners shall be available for inspection by the Health Officer to insure a fenced yard or fenced run is available that can adequately confine the dog, if so stated in the license application, and to insure that such animals are maintained on premises which are sanitary.

~~(d)~~ (e) The owner of a dog will provide, upon request of the Health Officer, proof of current licensure and vaccination.

(f) The owner of a cat or ferret will provide, upon request from the Health Officer, proof of current vaccination."

SECTION 14. Section 6.04.120 of the Code of the City of Wichita is hereby amended to read as follows:

"False statements. (a) Any false statement in a rabies certification or application for a license to keep a dog or a dog breeder license shall render null and void the license issued to the owner for keeping such dog or breeding dogs.

(b) Any false statement in an application for an Animal Maintenance Permit or variance shall render null and void the permit issued to the owner to keep such animals.

(c) Any person who makes a false statement in any application, affidavit or other document required by this chapter, or any regulation prescribed thereby, is guilty of a misdemeanor."

SECTION 15. Section 6.04.140 of the Code of the City of Wichita is hereby amended to read as follows:

~~Section 6.04.140~~ Vaccination and identification tags.

~~(a)~~ The veterinarian administering the rabies vaccination shall issue a metallic tag for the particular dog vaccinated, on which tag shall be distinctly marked the veterinarian's name or veterinary clinic's name, address, and tag identification number. The year of issuance also shall be distinctly marked, which shall be the same as the year of vaccination or rabies certification for such animal. A new vaccination tag shall be issued each year. The owner of any dog which is determined by the Health Officer to be running at large while not wearing a collar with identification consisting of the owner's name and current address or, if such dog is over five months old, a current rabies vaccination tag, is guilty of a misdemeanor.

~~(b) Provided, this section will not apply if the owner has identification markings tattooed on the dog by a licensed veterinarian and such identification markings are registered with the Health Officer.~~"

SECTION 16. Section 6.04.155 of the Code of the City of Wichita is hereby amended to read as follows:

"Section 6.04.155 Dog breeder license; ~~and~~ breeder inspections.

(a) No person shall be a dog breeder, as defined by Section 6.04.010, unless such person is properly licensed by the City of Wichita as a breeder.

~~(a)~~ (b) All ~~persons breeding dogs~~ dog breeders, shall make an application for, and obtain an annual dog breeder's license as established and described by this section.

1. An application for a breeder's license shall be obtained from the City Treasurer's Office, Environmental Services, Animal Services or the City of Wichita's website. The application shall contain the following information:

a. The name, date of birth and address of the applicant;

b. The name, breed, color, sex and age of all dogs owned by the applicant;

c. Documentation that all animals are properly vaccinated and licensed;

d. Name and address of the licensed veterinarian who is responsible for the care and treatment of the animals;

e. A signed statement by the applicant that the information is true and correct;

f. The permanent ID or microchip number of all animals owned, if available;

g. A statement as to whether there is a fenced yard or fenced run available for the confinement of the dogs.

h. A statement as to whether the applicant has ever had a licensed suspended or revoked which was issued by the State of Kansas pursuant to the Kansas Pet Animal Act. Such statement shall contain the date of any such suspension or revocation.

i. The zoning classification for the premises where the animals will be maintained.

j. A copy of any current license issued to the applicant by the State of Kansas pursuant to the Kansas Pet Animal Act.

2. The Health Officer is empowered to establish administrative requirements for obtaining dog breeder licenses. Application forms and administrative requirements can be obtained through Animal Services, Environmental Services, City Treasurer, or the City website.

~~(b)~~ (c) Approval of dog breeder licenses shall be contingent upon the applicant's compliance with all administrative requirements set forth by the Health Officer including, but not limited to, proper veterinary care, health certification of breeding stock and offspring, and compliance with all applicable ~~City and State of Kansas ordinances, statutes,~~ requirements, and/or regulations of the City of Wichita and the State of Kansas.

~~(c)~~ (d) The Health Officer may refuse to approve issuance or renewal of a breeder's license for one or more of the following conditions:

1. Failure of the applicant to provide proof that the animals are properly licensed and vaccinated.

2. The making of any false statement as to any material matter in the application for a license, or a license renewal, or in a hearing concerning the license;

3. Violation by the applicant of a provision of this title, the Kansas Pet Animal Act or any state or federal law relating to the care and treatment of animals.

4. Suspension or revocation of a license issued by the State of Kansas pursuant to the Kansas Pet Animal Act

~~(c)~~ 5. The applicant has a history of allowing animals to run loose or escape, has otherwise been found to be neglectful, has had an animal identified as a nuisance, or has previously been determined to have violated the provisions of this title.

(e) No breeder's license shall be approved for premises zoned residential by the Wichita/Sedgwick County Unified Zoning Code.

(f) No breeder's license shall be approved for an individual who owns more than two unaltered pit bulls.

If the Health Officer refuses to issue or renew a license under this section, such individual shall have the appeal rights established by Section 6.04.158.

~~(c)~~ (e) The fee for a ~~dog~~ breeder license is established at fifty dollars annually. Such licenses shall expire one year from the date of issue. The City Treasurer shall impose a penalty of fifty dollars annually on all delinquent license renewals beginning thirty days following the expiration of the previous license. Failure by a person to obtain a ~~dog~~ breeder license as required by this section ~~is~~ shall constitute a ~~violation of this section~~ misdemeanor. Conviction of ~~that person of~~ two or more ~~than one~~ violations of this code within a two-year period ~~will~~ may result in revocation of ~~any current~~ the breeders' licenses. ~~and prohibition~~ The individual shall be precluded from obtaining a breeder's license ~~by that person, whether or not animals are for sale~~, for ~~the next~~ a period of twenty-four (24) months following the revocation.

~~(d)~~ (f) All places and premises ~~on which any domestic animals are housed~~ utilized by licensed breeders or persons seeking approval for a breeder license as described by this chapter shall be open during reasonable hours for inspection by the Health Officer in order to ensure the health, safety, and welfare of the animals on said property. If upon such an inspection by the Health Officer any person who has been granted or applied for a ~~permit, or~~ license is found violating any of the regulations prescribed in this chapter, ~~or within chapter 6.12 of The City of Wichita Code,~~ or any provisions within the Unified Zoning Code, or any administrative regulation established by the Health Officer, such person shall be given a written notice of such violation. ~~and~~ ~~i~~If such violation or violations of this code do not or can not cease within twenty-four hours of such notification, the permit, or license may be revoked or canceled by action of the

Health Officer, pursuant to the procedures set forth in Section 6.04.159 of this code ~~subject to the right of appeal to the City Council within ten days~~.

(g) It shall be unlawful for any breeder of pit bulls, as defined by this title, to engage in the breeding of such animals with an owner, keeper or harborer of a pit bull involved in the breeding process who is not also licensed as a breeder.

(h) Upon a first conviction of a violation of the provisions of this section, a minimum fine of $100.00 shall be imposed. Upon a second or subsequent conviction, of a violation of the provisions of this section, a minimum fine of $250.00 shall be imposed. In addition, the Municipal Court Judge may impose a term of imprisonment not to exceed six months and/or a fine not to exceed one thousand dollars."

SECTION 17. Section 6.04.156 of the Code of the City of Wichita, is hereby amended to read as follows:

Sale of ~~dogs~~ Animals. It is unlawful for any person to offer any animal for sale, or to sell, exchange, barter or give away, or to accept any animal on any property not owned or rented by the seller or buyer unless the property is a pet shop, animal shelter licensed by the State of Kansas, or that property is licensed for the breeding or sale of animals and is in compliance with all city of Wichita zoning and licensing regulations. No person shall sell, barter, exchange, give away or accept animals on any shelter property unless authorized by the director. All printed documents, electronic or print media, advertisements, radio, and video, pertaining to the sale, exchange, or transfer of dogs for or produced by licensed breeders shall include the name of the breeder and his or her City of

Wichita breeder license number. Violations of any provision of this section shall be considered a misdemeanor."

SECTION 18. Section 6.04.157 of the Code of the City of Wichita is created to read as follows:

"**Maximum number of dogs and cats and maintaining livestock.**

(a) No person shall keep, own, harbor or maintain upon any premises or property, or in any dwelling of any type within the city:

1. livestock;
2. more than two dogs;
3. more than two cats;
4. more than two rabbits;
5. more than three fowl; or
6. more than three pigeons;

unless such person has a current Animal Maintenance Permit issued by the Health Officer authorizing the maintenance of such animals. The provisions of this section shall not apply to common carriers transporting domestic animals to or through the City. Permits shall not be required for indoor non-commercial maintenance of fish, nonpoisonous amphibians and reptiles allowed by Section 6.04.040, birds and small rodents. Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

(b) No person shall keep, own, harbor or maintain, upon any premises or property or in any dwelling of any type within the city, more than three different kinds of domestic animals or livestock unless such person has a current

animal maintenance permit issued by the Health Officer authorizing the maintenance of such animals. Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

1. Any person, rescue organization or foster care home, who desires to own, keep, or harbor livestock, or more than two dogs or more than two cats or more than two rabbits, or more than three fowl or pigeons, may apply to the City Treasurer for an 'animal maintenance permit' that shall permit the applicant to own, keep or harbor the animals specifically allowed in that permit.

2. Any person, rescue organization or foster care home, who desires to own, harbor or maintain more than three different kinds of domestic animals may apply to the City Treasurer for an animal maintenance permit that shall permit the applicant to own, harbor or maintain more than three different kinds of domestic animals.

Table 1:

KIND OF ANIMAL	**MINIMUM REQUIRED FOR PERMIT**	**MAXIMUM ALLOWED WITH PERMIT**	**PERMIT FEE**
Dogs, excluding pit bulls	3	4	$25.00
Cats	3	4	$25.00
Fowl	4	12 (25 pigeons)	$25.00
Sheep	1	One animal per acre	$100.00
Goats - (Nannies only)	1	One animal per acre	$100.00

Horses	1	One animal per acre	$100.00
Cattle	1	One animal per acre	$100.00
Ratites	1	One animal per acre	$100.00
Pig – Neutered, miniature Vietnamese Pot-Bellied)	1	1	$25.00
Rabbits	4	12	$25.00
Other	3	(25 fur-bearing animals, i.e. chinchilla, mink)	$100.00

Owning more than three kinds of animals, regardless of number of animals, requires the owner to obtain an Animal Maintenance Permit.

3. It is unlawful for any person to own, harbor or maintain more animals or different types animals than is allowed by the Animal Maintenance Permit issued to such person by the Health Officer.

4. The Health Officer is empowered to establish administrative requirements for obtaining an Animal Maintenance Permit. Application forms and administrative requirements can be obtained through Animal Services, Environmental Services, City Treasurer or the City website.

The application shall contain the following information:

a. The name, date of birth and address of the applicant;

b. The name, breed, color, sex and age of all animals owned by the applicant;

c. Documentation that all animals are properly vaccinated and licensed;

d. Name and address of the licensed veterinarian who is responsible for the care and treatment of these animals;

e. A signed statement by the applicant that the information is true and correct;

f. The permanent ID or microchip number of all animals owned, if available;

g. A statement as to whether the animals are spayed or neutered and whether there is a fenced yard or fenced run available for the confinement of the animals.

h. The size of the premises in which the animals may be maintained.

i. A diagram of the location of any and all domestic animal structures in which animals will be maintained.

j. A signed statement on behalf of the applicant that maintenance of the animals will be in compliance with the animal control and sanitary waste requirements of the City of Wichita.

k. A statement by the applicant that the zoning requirements of the Unified Zoning Code of the City of Wichita and Sedgwick County will be complied with.

l. A statement as to whether the applicant has ever had a licensed suspended or revoked which was issued by the State of Kansas pursuant to the Kansas Pet Animal Act. Such statement shall contain the date of any such suspension or revocation.

m. A copy of any current license issued to the applicant by the State of Kansas pursuant to the Kansas Pet Animal Act.

4. Approval of an Animal Maintenance Permit shall be contingent upon the applicant's compliance with all administrative requirements set forth by the Health Officer, the provisions of this title and the rules and the rules and regulations of the City of Wichita and the State of Kansas. Such applicant must show:

a. that the keeping of additional animals will not create a nuisance in the surrounding neighborhood, that humane care will be provided and that the premises where the animals are kept is suitable for the keeping of multiple animals and is in conformity with all City zoning requirements. The criteria to be evaluated include, without being limited to, the following:

1) That the animals will be kept or maintained at all times in a safe and sanitary manner.

2) That the quarters in which such animals are kept or confined will be adequately lighted and ventilated and are so constructed and maintained that they can be kept in a clean and sanitary condition.

3) That the health and well-being of the animals will not in any way be endangered by the manner of keeping or confinement.

4) That the keeping of such animals will not harm the surrounding neighborhood or disturb the peace and quiet of the surrounding neighborhood.

5) That the keeping of such animals will not cause fouling or the air by offensive odors and thereby create or cause unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animals are kept or harbored.

6) That the animals will not unreasonably annoy humans, endanger the life, health or safety of other animals or persons or substantially interfere with the rights of citizens to the enjoyment of life or property.

7) That the animals will not make disturbing noises, including but not limited to, continued and repeated or untimely howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to neighbors and others in close proximity to the premises where the animals are kept or harbored, or otherwise be offensive or dangerous to the public health, safety or

welfare, by virtue of their behavior, number, type or manner of keeping.

8) That the applicant, or any person who will share in the care, custody and control of the animals, is not currently in violation of, or has not previously violated any applicable City, state or federal laws, codes, rules or regulations, including, but not limited to, those pertaining to the care and control of animals and the maintenance of their property, which would reflect adversely on their ability to fully comply with the conditions of the subject permit.

b. The Health Officer may deny any application where any one or more of the following conditions exist:

1) The applicant fails to show proof of the aforementioned requirements or an examination of the documentation submitted by the applicant;

2) An investigation by Animal Services reveals that the applicant has failed to meet the requirements of this section.

3) The applicant made a false statement as to any material matter in the application for a license of a license renewal, or in a hearing concerning the license.

4) Violation by the licensee or applicant of a provision of this title, the Kansas Pet Animal Act or any state or federal law relating to the care and treatment of animals.

5) If the applicant has had a breeder's license or animal maintenance permit revoked within eighteen (18) months prior to the application.

6) If the applicant has had a license issued by the Kansas Department of Animal Health suspended or revoked within eighteen (18) months prior to the application.

7) Maintenance of the animals would be in violation of the Unified Zoning Code of the City of Wichita.

8) No Animal Maintenance Permit shall be issued to keep, own or harbor more than two adult pit bull dogs.

9) No Animal Maintenance Permit shall be issued to keep, own or harbor, by the owner of the property, more than four adult dogs, as defined by the Unified Zoning Code, on premises which are zoned residential, without a zoning variance for such kennel being granted by the Board of Zoning Appeals.

10) The applicant has a history of allowing animals to run loose or escape, has otherwise been found to be neglectful, has had an animal identified as a nuisance, or has previously been determined to have violated the provisions of this title.

c. The Health Officer shall state, in writing, the factual basis for his or her recommendation to grant or deny any application. The Health Officer shall consider past violations, the size, condition and location of the area where the animals will be kept, the size of the animals to be kept, past complaints concerning the applicant, the burden of proof and the criteria set forth in this section, or any other factors relative to the issue of keeping additional animals.

The permit shall be issued for the period not to exceed twelve (12) months.

d. The fee for such Animal Maintenance Permit shall be paid in accordance with Table 1 of Subsection (b)(2). All fees shall be nonrefundable and nontransferable. The Animal Maintenance Permit shall be issued for the individual animals listed on the application and shall not be transferable to other animals. The fact an individual has previously been issued an animal maintenance permit may be considered but shall not be

controlling to the Health Officer's decision to issue animal maintenance permit for a different animal.

The denial of any Animal Maintenance Permit shall be subject to the appeal procedures set forth in Section 16.04.158.

e. Any applicant who had more than two cats or more than two dogs or livestock prior to annexation of their property by the City, or the passage of this ordinance, shall be permitted to keep but not replace said animals until their number equals the number of animals permitted by Section 6.04.157(a). Any such applicant shall be required to apply for an Animal Maintenance Permit and be required to pay a yearly renewal fee, provided that nothing in this section shall exempt or except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

f. Any individual who had a current Animal Maintenance Permit at the time of passage of this ordinance shall be permitted to keep but not replace said animals until their number equals the number of animals permitted by Section 6.04.157(a). Any such applicant shall be required to apply for an Animal Maintenance Permit and be required to pay a yearly renewal fee, provided that nothing in this section shall exempt or

except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

g. Any individual who had a current Animal Maintenance Permit for livestock at the time of passage of this ordinance shall be permitted to keep but not replace said animals. Any such applicant shall be required to apply for an Animal Maintenance Permit and be required to pay a yearly renewal fee, provided that nothing in this section shall exempt or except any applicant or any other person from the registration, vaccination or any other requirement of this chapter.

h. For the purposes of this section:

1) 'Nuisance,' for the purposes of this section, shall be defined as any act which is unreasonably annoying or vexatious to another or substantially interferes with the rights of others and shall include, but not be limited to, obnoxious odors, excessive noise, and creation of an environment attractive to other animals or insects. More than three substantiated violations of this title within a twelve-month period will automatically constitute a nuisance.

2) 'Humane standards of care' shall be defined to include, but not be limited to, accessibility of the animal to food and water, proper medical attention, proper shelter

from the elements, and cleanliness in animal waste areas with regular waste removal.

3). 'Livestock' includes, but is not limited to: horses, mules, cattle, sheep, llamas, ratites and goats.

i. Not more than one head of livestock shall be kept for each one acre of contiguous unbuilt land area, provided that the limitation shall not apply to a commercial riding stable, a riding academy, or a commercial stockyard with an approved manure disposal plan.

j. Owners of livestock within the City without an Animal Maintenance Permit on the date of the passage of this ordinance shall be allowed twelve months from the date of adoption to come into compliance with the acreage requirements set forth in subsection (1).

k. Owners of livestock within the City with a current Animal Maintenance Permit at the date of the adoption of the ordinance shall be permitted to keep, but not replace said animals.

l. All owners or harborers of livestock must comply with the provisions of Section 6.04.173 regarding the maintenance of all domestic animal structures.

m. The holder of an Animal Maintenance Permit will provide, upon request of the Health Officer, proof of licensure

where applicable, and vaccination of any animals subject to the Animal Maintenance Permit.

n. The premises designated in the animal maintenance permit shall be available for inspection by the Health Officer to ensure compliance with the provisions of this code and the laws of the State of Kansas.

o. The holder of an animal maintenance permit will notify the Health Officer if any of the animals subject to the animal maintenance permit is no longer owned by the individual. Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

5. Variances: Any application for a variance to own, keep, harbor or possess more than four (4) dogs or four (4) cats or any combination thereof in excess of four (4) or for a variance to the requirements of this chapter based on physical or geographical features of the site, or required acreage for livestock, may be granted by the Director of Environmental Services if he or she determines that the variance will not adversely affect public health and safety or the environment, pose a threat to the environment or constitute a nuisance to neighbors.

a. The applicant shall complete an application form and pay all applicable fees for an animal maintenance variance. Such application shall include the information set forth in the application

for an Animal Maintenance Permit. In addition to the fees set forth in Subsection (b)(2), the applicant shall pay an initial inspection fee of $50.00 to the City Treasurer. No inspection fee shall be assessed for subsequent renewals of any variance.

b. In making the determination as to whether the variance request should be granted, the Director of Environmental Services shall rely on the criteria set forth in subsection (4) of this section.

c. No variance shall be issued to keep, own or harbor by the owner of the property, more than four adult dogs, as defined by the Unified Zoning Code on premises which are zoned residential, without a zoning variance for such kennel being granted by the Board of Zoning Appeals.

d. The Director shall notify the applicant for the variance of his or her determination of the request in writing stating the basis for any denial and any conditions placed on any granted variance request. Individuals aggrieved by any decision of the Director of Environmental Services relative to waivers may appeal to the City Council within ten days of the notice of such decision pursuant to Section 6.04.210 of this code."

SECTION 19. Section 6.04.158 of the Code of the City of Wichita is created to read as follows:

"**Appeal from Denial of Breeder's License, Animal Maintenance Permit, or Determination that Dog is a Pit Bull.** (a) If the Health Officer

has determined that an applicant is not eligible for a Breeder's License or Animal Maintenance Permit, he or she will make an appropriate determination based on the known facts and consistent with the provisions of this title.

(b) The Health Officer shall notify the individual of the denial in writing, stating the reasons for the denial of such application. Service of the notice shall be by certified mail, return receipt requested. Service of process by certified mail shall be considered obtained upon the delivery of the certified mail envelope.

(c) The applicant of a denied application or the owner of a dog deemed to be a pit bull may request an administrative review of the determination by filing a written request with the Health Officer within ten days of receipt of such notification.

(d) The Health Officer will conduct a hearing within ten days of receipt of the owner's request. At such hearing, testimony may be offered by the owner of the dog(s) or animals, the Health Officer, neighbors, or other affected persons, and veterinarians concerning the lineage of the dog, or the care and maintenance of the dog.

(e) The Health Officer shall determine an appropriate disposition based on the facts determined at the hearing and the provisions of this chapter and will notify the applicant in writing of the outcome of the hearing within five business days. The owner may appeal the hearing outcome as provided in Section 6.04.210 of this code."

SECTION 20. Section 6.04.159 of the Code of the City of Wichita is created to read as follows:

"**Revocation or Suspension of License or Permit.** (a) The Health Officer, upon written notice to the licensee or permit holder, shall have the authority to suspend or revoke any permit, license or variance granted by the Health Officer or the Director of Environmental Services for one or more of the following reasons:

1. Violation by the licensee or permit holder of the provisions of this title, the Kansas Pet Animal Act, or other state or federal laws relating to the care and maintenance of animals.

2. Obtaining the license or permit by fraudulent conduct, false statements or has otherwise made a material misrepresentation of fact in the application.

3. Upon inspection, the Health Officer observes premises which are not in a clean and sanitary condition in compliance with the health standards set forth in this title.

4. The licensee or permit holder has violated any terms or conditions of the license, permit or variance.

5. The animal's place of keeping constitutes a nuisance to the surrounding neighbors;

6. Humane standards of care are not being met by the permittee;

7. A violation of Unified Zoning Code has occurred;

8. The licensee or permit holder had provided false information in their application.

9. The licensee or permit holder has had a license issued by the State of Kansas pursuant to the Kansas Pet Animal Act or any other governmental agency related to the care of animals suspended or revoked.

10. The licensee or permit holder cannot be contacted for an inspection within two weeks of an initial request for an inspection of such premises or the licensee or permit holder refuses the animal control officer access for an inspection.

(b) Individuals aggrieved by the suspension or revocation of any permit, license or variance may appeal to the City Council within ten days of the notice of such decision as set forth in Section 6.04.210 of this code.

(c) An appeal taken from an order of suspension or revocation shall not suspend the order of suspension or revocation during the pendency of such appeal.

(d) For the purposes of subsection (a) above, written notice shall be deemed sufficient upon the mailing of the notice to the applicant for the permit or license on file in the Office of the City Treasurer."

SECTION 21. Section 6.04.165 of the Code of the City of Wichita is created to read as follows:

'**Catteries.** All cats maintained at a cattery located on any residentially zoned lot as defined by the Unified Zoning Code shall be confined inside a structure."

SECTION 22. Section 6.04.170 of the Code of the City of Wichita is hereby amended to read as follows:

"Dog and Cat Census. Whenever deemed necessary, the Health Officer may conduct a dog and cat census of any or all areas of the city as needed to insure that all dogs over five months old harbored in the city are vaccinated and licensed and that all cats over five months old harbored in the city are properly vaccinated."

SECTION 23. Section 6.04.171 of the Code of the City of Wichita is created to read as follows:

"**Keeping of certain fowl prohibited.** It is unlawful for any person to keep or maintain roosters (male chickens), guinea cocks, peacocks or other birds that by nature exhibit loud calls, within the corporate limits of the city, except for stockyards or packing house operations, special scientific operations in industrial areas or activities in conjunction with livestock shows; provided further, that other commercial, industrial or agricultural maintenance of roosters may be approved if the commercial, industrial or agricultural premises is located five hundred or more feet from any residentially zoned lot as defined by the Unified Zoning Code."

SECTION 24. Section 6.04.172 of the Code of the City of Wichita is created to read as follows:

"**Swine and Goat Maintenance.** (a) Except as provided in subsection (b) of this section, it is unlawful for any person to keep or maintain any swine or male goats within the corporate limits of the city, except for stockyards or packing house operations, special scientific operations in industrial areas or

activities in conjunction with livestock shows. Other industrial or agricultural maintenance of swine may be approved, if the industrial or agricultural premises is located five hundred or more feet from any residentially zoned lot as defined by the Unified Zoning Code. This distance requirement may be waived by the Director of Environmental Services.

(b) Registered purebred miniature Vietnamese potbelly pigs and other similar registered purebred miniature pigs may be kept within the city limits, subject to the conditions stated in subsections (c) and (d) of this section.

(c) It is unlawful for any person to maintain a registered purebred miniature pig which:

(1) Weighs more than eighty pounds;

(2) Is not spayed or neutered upon reaching maturity;

(3) Has not undergone a blood test to show the animal is free from pseudo rabies; or

(4) Is maintained as a food source.

(d) It is unlawful for any person to:

1. Keep a registered purebred miniature pig without a current animal maintenance permit as required by Section 6.04.157 of the Code of the City of Wichita;

2. Maintain more than one registered purebred miniature pig on any licensed premises."

SECTION 25. Section 6.04.173 of the Code of the City of Wichita is created to read as follows:

"Domestic animal structures and enclosures. (a) Domestic animal structures used for livestock and livestock feeding and watering troughs shall not be less than two hundred feet from any adjacent dwelling and not less than twenty feet from any property line.

(b) Stables, coops, pens and other structures for the housing of animals shall comply with all zoning requirements of the City of Wichita-Sedgwick County Unified Zoning Code.

(c) The Director of Environmental Services will evaluate properties and may issue waivers of distance and setback requirements for domestic animal structures where such waivers do not adversely affect public health and safety, pose a threat to the environment or constitute a nuisance to neighbors. Criteria for review for such variance will include, in addition to site-specific requirements, the following requirements:

1. That the animals will be kept or maintained at all times in a safe and sanitary manner;

2. That the quarters in which such animals are kept or confined will be adequately lighted and ventilated and are so constructed and maintained that they can be kept in a clean and sanitary condition;

3. That the health and well-being of the animals will not in any way be endangered by the manner of keeping or confinement;

4. That the animals will not unreasonably annoy humans, endanger the life, health or safety of other animals or persons or

substantially interfere with the rights of citizens to the enjoyment of life or property;

5. That the keeping of such animals will not harm the surrounding neighborhood or unreasonably disturb the peace and quiet of the surrounding neighborhood;

6. That the keeping of such animals will not cause fouling of the air by offensive odors and thereby create or cause unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animals are kept or harbored;

7. That the animals will not repeatedly run or be found at large, will not damage property or deposit excretory matter upon the property of anyone other than their owner;

8. That the animals will not make disturbing noises, i.e., continued and repeated or untimely howling, barking, whining or other similar utterances causing unreasonable annoyance, disturbance or discomfort to neighbors where the animals are kept or harbored, or otherwise be unreasonably offensive or dangerous to the public health, safety or welfare, by virtue of their behavior, number, type or manner of keeping;

9. That the applicant or any person who will share in the care, custody and control of the animals, is not currently in violation of, or has not previously violated any applicable city, state or federal laws, codes, rules or regulations, including, but not limited to, those pertaining to the

care and control of animals and the maintenance of their property, which would reflect adversely on their ability to fully comply with the conditions of the subject permit.

(e) In considering waivers for Domestic Animal Structures, the Director of Environmental Services will consider:

1. Specific location of the animal structure or enclosure on the .property in question;

2. The size of the lot and distance of the structure or enclosure to adjacent property lines and dwellings;

3. Structures located on or uses made of the adjacent property and the likelihood that a waiver would adversely affect the use of the adjacent property;

4. Type and number of animals to be maintained and the potential for creation of a nuisance;

5. Any history of complaints and violations concerning the permit holder's compliance with this code or violations of local, state or federal law;

6. Any comments of neighbors; and

7. Any other available information concerning the potential for creation of a nuisance.

The Director shall notify the applicant for the variance of his or her determination of the request in writing stating the basis for any denial and any conditions placed on any granted variance request. Individuals aggrieved by any

decision of the Director of Environmental Services relative to waivers may appeal to the City Council within ten days' of notice of such decision as set forth in Section 6.04.210 of this code."

SECTION 26. Section 6.04.175 of the Code of the City of Wichita is created to read as follows:

"**Health standards--Minimum listed.** That the following minimum environmental health standards shall be observed and followed by persons subject to the terms of this title:

(a) All domestic animal structures shall be cleaned at least once each week or as often as necessary to prevent or control odors, fly breeding and rodent infestation; provided, however, that this shall not apply to grazing areas or to stockyards.

(b) Domestic animal structures owned or operated by a stockyard shall be cleaned as often as is necessary, as determined by the Health Officer, to control fly breeding or to control other conditions adversely affecting the public health.

(c) Collected fecal material and other solid organic waste shall be disposed of at a sanitary landfill or transfer station, fertilizer processing plant, by property dispersal on land used for agricultural purposes or other method approved by the Health Officer.

(d) Grain or protein feed shall be stored in tightly covered rodent-proof metal containers or rodent-proof bins.

(e) Premises subject to the terms of this code shall be maintained free of rodent harborage.

(f) Use shall be made of effective chemical or other approved means for the control of rodents and flies.

(g) Use shall be made of soil sterilants and herbicides or other effective means for the control of weeds and grass around structures and buildings.

(h) All domestic animal structures and fences shall be maintained in good repair.

(i) Enclosures, including fences, for livestock shall be constructed in a manner to prevent domestic animals from breaking out or causing hazard to persons or property.

(j) Garbage shall not be fed to fowl.

(k) Refuse shall be stored in a manner approved by the Health Officer and disposed of at least once each week or as frequently as may be required by the health officer.

(l) Wastes accumulated from the cleaning of domestic animal structures shall be stored in suitable containers, with tight-fitting metal lids, and all such stored or accumulated wastes shall be disposed of at least once each week.

(m) Barbed-wire fences and electrically charged fences shall not be permitted in residentially zoned districts except in situations where the barbed wire fence or electrically charged fence is protected by an exterior fence.

(n) Holding lots, pens and floors of sheds and buildings where animals are held shall be surfaced with concrete or asphaltic materials and the drainage system of such surfaced areas shall include proper retaining walls and traps to control the waste from draining into water courses. Such drainage systems shall be subject to the approval of the Health Officer. The Health Officer may waive this standard for animal holding operations where such animal holding is longer than twenty-four hours or where dirt lots are more appropriate to the proper care of cattle, horses, sheep or other livestock.

(o) Wastes accumulated from the cleaning of domestic animal structures in commercial or industrial operations shall be stored on concrete slabs or on an area with an impermeable barrier as approved by the Health Officer. All solid wastes shall be properly disposed of at least once each week or as often as necessary to prevent any associated nuisances, or as approved by the Health Officer.

(p) Slaughter of animals is prohibited on residentially zoned lots or lots utilized for residential purposes. This prohibition shall not apply to processing of fish or game lawfully taken for individual consumption, nor shall it apply to the slaughter of animals as part of religious practices to be conducted on the property on which the slaughter occurs."

Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor.

SECTION 27. Section 6.04.176 of the Code of the City of Wichita is created to read as follows:

“Pet shop, stables, kennel, commercial animal facilities, and animal "day care" regulations.

It shall be unlawful for any pet shop, rescue organization, animal foster care organization, commercial animal facility, groomer, breeder, kennel, stable or animal "day care" business to fail to:

(a) Maintain and retain records for a two-year period on all animals maintained in such facility. Such records shall show breed, color, markings, sex and age; date received and source, including name and address of owner or previous owner; date and disposition of animal, including name and address of new owner if applicable; disease prevention and/or treatment and by whom. Such records shall be made available to the Health Officer upon request for inspection;

(b) Provide cages and pens constructed of nontoxic, easily cleanable, water-impervious materials if used for confining animals and shall keep such cages and pens clean and sanitary at all times;

(c) Provide adequate space and ventilation to prevent overcrowding, odors, and minimize contagion;

(d) Provide general environmental conditions including endoparasite and ectoparasite control, clean wholesome food and water, weather protection and clean and sanitary facilities so as to enhance the health and well-being of such animals.

(e) Maintain a building temperature at a comfortable level. Maintain adequate ventilation by means of windows, doors, vents and fans.

(f) Provide each animal with sufficient space to stand up, lie down and turn around in a natural position without touching the sides or top of the enclosure. If additional space is not provided, either indoor or outdoor, then this enclosure must provide an adequate exercise area.

(g) All enclosures shall be kept clean and dry.

(h) Provide food which is free from contamination, and of sufficient quantity and nutritive value to meet the normal daily requirements for the condition and size of the animal.

(i) Provide all animals with fresh water available at all times, except as part of a veterinary treatment regimen.

(j) Provide veterinary care to maintain good health and general welfare.

(k) Maintain the premises of such business, and any domestic animal structures on such premises, in a clean and sanitary condition in compliance with the health standards set forth in this chapter.

(l) Comply with all provisions of the Unified Zoning Code.

Any individual who fails to comply with the requirements of this section shall be deemed guilty of a misdemeanor. "

SECTION 28. Section 6.04.177 of the Code of the City of Wichita is created to read as follows:

"**Pigeons--Conditions for keeping--Letting loose in city.** Every person who owns, controls, keeps, maintains or harbors any pigeons in the city

shall at all times keep them confined in proper cages or pens; provided, however, that what are generally known as seamless banded pigeons, being pigeons banded by a recognized association of pigeon fanciers, may be released in compliance with this section. This section shall not apply to common carriers of interstate commerce who have received shipments of such seamless banded pigeons in releasing such pigeons within the corporate limits of the city for the purpose of starting such pigeons in a pigeon race. Any person owning or keeping any seamless banded pigeons such as flying tipplers, tumblers, homing pigeons or rollers may release such pigeons for exercise or performance, upon the condition that the owner or person who has possession of such pigeons shall not permit them to alight upon the buildings or property of others."

SECTION 29. Section 6.04.190 of the Code of the City of Wichita is hereby amended to read as follows:

"~~**Section 6.04.190**~~ **Violation--Penalty.** (a) Except as otherwise provided for by the Code, ~~A~~ a person violating any provision of this chapter is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars or by imprisonment of not more than one year, or both such fine and imprisonment, provided the minimum fine for the following enumerated sections of this chapter shall be assessed as follows:

Section	**Violation**	**Fine**
6.04.040(a)(1)	Violation of Leash Law. 1st offense within a 12-month period	$50.00
6.04.040(a)(2)	2nd offense within a 12-month period	$100.00

6.04.040(a)(3)	3 or more offenses within a 12-month period	$200.00/ court appearance
6.04.040(b)	Failure to microchip after 1st appearance	$50.00/court impound
6.04.040(b)(1)	Sterilization Violations after 1st impound	$100.00/(must show proof of sterilization, or court appearance)
~~6.04.040(b)(3)~~	~~Fail to maintain breeders license after 1st impound~~	~~$50.00/(must show proof of breeder's license, or court appearance)~~
6.04.040(c)	Fail to show proof of sterilization after 2nd impound)	$150.00/court appearance
6.04.060	Dog Bite Violations.	
6.04.060(a)(1)	1st offense within a 12-month period	$150.00/court appearance
6.04.060(a)(2)	2nd offense within a 12-month period	$250.00/court appearance
6.04.060(a)(3)	3 or more offenses within a 12-month period	$500.00/court appearance
6.04.080	Failure to confine rabies suspect animal	$250.00/court appearance
6.04.110	Failure to obtain a license to keep a dog	$50.00

6.04.140	No identification tags	$35.00
6.04.155	No required breeding license	Mandatory Court appearance and:
6.04.155(a)(1)	1st offense	$100.00
6.04.155(a)(2)	2nd offense	$250.00

(b) Each day that any violation of this chapter occurs shall constitute a separate offense and shall be punishable under this chapter as a separate violation.

(c) In addition to the penalties enumerated in subsections (a) and (b) of this section, the judge of the Municipal Court may, upon a person's third conviction of Section 6.04.040 (a), 6.04.040(a)(1), and 6.04.040(a)(2), involving the same animal within any twelve-month period, order such person's license to keep said animal revoked.

(d) Any person who continues to own or harbor an animal after the license for said animal has been revoked is guilty of a misdemeanor."

SECTION 30. Section 6.04.210 of the Code of the City of Wichita is hereby amended to read as follows:

"~~Section 6.04.210~~ Appeal from Health Officer Rulings.

Unless otherwise specified, ~~A~~any person dissatisfied with any order or determination of the Health Officer made under his or her authority pursuant to this chapter may appeal such order or determination to the City Council. An appeal shall be a de novo quasi-judicial proceeding from which further appeal may be taken to the district court. An appeal must be filed with the City Clerk no more than ten business days from the date of the written order appealed from.

The City Council will hear the appeal no later than thirty days from the filing of such appeal."

SECTION 31. Section 6.04.215 of the Code of the City of Wichita is created to read as follows:

"**Dogs prohibited in parks; exceptions.** Except as otherwise allowed for by this title, it is unlawful for any person to allow or permit any dog to run at large in any park or to permit any dog, with or without a leash, except for service dogs or dogs used by public law enforcement agencies and under the control of a law enforcement officer, to enter any public beach, wading area, pond, fountain, stream or designated children's play area. The Director of Parks and Recreation and the Director of Environmental Services may ban dogs or other animals, or a specific dog or other animal from areas of any park where he or she determines the same to be a nuisance."

SECTION 32. Section 6.04.218 of the Code of the City of Wichita is created to read as follows:

"**Designation of Dog Parks, Off-leash Areas; Rules and Regulations; Penalties for Offenses.** (a) Dogs may be allowed to run at large only in dog parks and off-leash areas as designated by the Wichita City Council. The designation of such parks and off-leash areas shall be made at the recommendation of the Director of Park and Recreation and the Director of Environmental Services.

(b) It shall be unlawful for any dog owner to violate any of the following regulations regarding the use of any City designated dog park or off-leash area in a park owned by the City of Wichita:

1. All dogs that enter the park must be over five months of age, not in heat, and have a valid license and current rabies vaccination with an accompanying tag. The tag must be securely affixed to the dog's collar at all times.

2. All dogs must be leashed when entering or leaving the park's fenced enclosures and owners must retain possession of the leash at all times when within the parks fenced enclosure.

3. Owners must be at least 14 years of age and remain within the park's fenced enclosure and in control of all dogs under their care at all times when within the park. Owners are limited to 3 dogs per visit.

4. Owners shall immediately pick up their dogs' excrement and deposit it in the designated receptacle.

5. Aggressive, vicious or contagious dogs are prohibited from use of the park.

6. Owners shall immediately close and secure the gate upon entering or exiting the confines of the park's fenced enclosure.

7. Entrance within the park in violation of its posted hours or when closed is prohibited.

8. No animals, other than dogs, may be brought into the dog parks.

9. Dogs must never be left unattended. The dog owner must be in reasonable control of his or her dog(s) at all times and keep a leash available at all times.

10. Dogs may not be brought into the park if they are sick or unhealthy, have a history of aggressiveness, or have been adjudicated a dangerous dog.

11. No food or treats for human or animal consumption, rawhide chews, alcoholic beverages, glass containers, bicycles, skateboards, motorbikes, scooters, or roller blades will be allowed in the dog park area. Littering is prohibited. Smoking is prohibited inside the park and within ten feet of the park's parameter.

12. Dog owners must immediately fill any holes their dogs dig.

13. Professional dog trainers and behaviorists are not permitted to use the park to conduct their business.

14. All owners must have in his or her possession a baggy or some other form of equipment to clean up after his or her dog(s). All waste must be placed in a bag and placed in a waste receptacle provided at the park.

15. No large dogs (over 25 pounds) will be allowed in the small-dog areas of the dog park. Such areas will be clearly marked.

16. No small dogs (under 25 pounds) will be allowed in the large dog areas of the dog parks. Such areas will be clearly marked.

17. All dog bites must be reported to Animal Services. If a bite occurs, the dog's owner must exchange his or her name and phone number with the victim of the bite.

17. The City of Wichita, the Director of Parks and Recreation, and the Director of Environmental Services reserve the right to close a dog park for maintenance and repair, public safety reasons or for special events.

(c) It is unlawful for any person to:

1. Enter or remain in a dog park at such time as such park is closed to the public as set out herein or at such time as provided for under the rules and regulations adopted by the Director of Environmental Services and Director of Parks and Recreation.

2. Fail to immediately leash and restrain a dog in the dog park when advised to do so by the Health Officer or the Director of Parks and Recreation or his or her designee.

3. Fail to immediately leave the dog park when ordered to do so by a law enforcement officer, Health Officer or the Director of Parks and Recreation or his or her designee.

(d) 1. Owners assume all risks, loss or injury for themselves or their dog(s) associated with or resulting from the use of the park.

2. Owners making use of the dog park shall be responsible for injuries caused by their dogs to other persons and dogs. Persons

responsible for any injuries or property damage shall hold the City of Wichita harmless for any such damage.

(e) Enforcement of the above rules and regulations is under the immediate supervision of the Director of Environmental Services and the Director of Parks and Recreation. Violators of dog park rules and regulations may be subject to one or more of the following:

1. Removal from the park;

2. Suspension of park privileges;

3. Issuance of a Uniform Criminal Complaint or Notice to Appear.

(f) If an owner or individual is found guilty of violating the rules and regulations of a city-owned dog park of any other provisions of this section, such owner or individual shall be guilty of a misdemeanor.

(g) The Director of Parks and Recreation and the Director of Environmental Services shall promulgate additional regulations as are necessary to address health and safety concerns related to the operation of such parks. A copy of such regulations shall be available for inspection at Animal Services and the Office of the Director of Parks and Recreation during regular office hours.

SECTION 33. The originals of Sections 6.04.010, 6.04.020, 6.04.035, 6.04.036, 6.04.040, 6.04.045, 6.04.046, 6.04.048, 6.04.055, 6.04.060, 6.04.110, 6.04.120, 6.04.130, 6.04.140, 6.04.155, 6.04.156, 6.04.170. 6.04.190, 6.04.210, and chapters 6.12 and 6.16 of the Code of the City of Wichita, Kansas are hereby repealed.

SECTION 34. This ordinance shall be included in the Code of the City of Wichita, Kansas, upon its passage and publication once in the official city paper, and shall become effective on July 1, 2009.

PASSED by the governing body of the City of Wichita, Kansas, this _____, 2009.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

ENVIRONMENTAL SERVICES

Executive Summary of 2009 Ordinance Proposal
March 5, 2009

Amendments consolidate three existing animal code provisions, Chapter 6.12 (animal maintenance) and Chapter. 6.16 (Cats) into one code, Chapter 6.04. Proposed effective date for ordinance is July 1, 2009, so that all impacted stakeholders have time to be educated on amendments and to update licensing and vaccination forms.

1. New pit bull ownership restrictions

a. Requires all adult pit bulls to be micro chipped within 6 months of ordinance adoption.
b. Requires mandatory surgical sterilization of all adult pit bulls within 6 months of ordinance, unless the owner obtains a dog breeder's license.
c. Makes it unlawful for anyone to own more than two adult pit bulls.
   - Exempts those owners with valid animal maintenance permits for more than two pit bulls at the time of adopted ordinance (for the life of those animals only)
d. Provides right to appeal determination that any dog is a pit bull and allows vets to certify that the dog is not a pit bull.
e. Exempts pit bull dogs being kept temporarily in city for legitimate dog shows and service dogs.
f. Breeder's license will allow no more than two unaltered adult pit bulls. Breeder's license cannot be issued for residential premises.

Reason for amendments: 25%-30% of all dog activities are associated with pit bulls.

2. Amendments to allow flexibility with rabies vaccination schedule

a. Requires dogs, cats, and ferrets to be vaccinated for rabies by a licensed DVM at least every three years with a vaccine listed in the National Association of State and Public Health Veterinarians Compendium for Rabies Control.
b. Requires annual certification and tags by a vet, that each dog has been properly vaccinated for rabies for licensing.
c. Provides exemption for three year rabies vaccination requirements if a vet certifies it would be injurious to the animal due to its health or age.
d. Continues annual dog licensing.

Reason for amendments: Concerns expressed by veterinarians and animal owners regarding necessity of annual vaccinations and health concerns caused by frequency of vaccinations.

3. New animal nuisance provisions

a. Provides for health officer and other law enforcement officers authority to issue notices to appear for nuisance animals.
b. Deals with repeated cat/dog defecation issues, animals getting into trash, noisy animals, damage of property, dog barking, etc.

Reason for amendments: Addresses neighborhood complaints that are frequently made to Environmental Services.

4. Commercial Animal Establishments

a. Revisions add grooming shop, auction, riding school, stable, guard dog service, dog trainer or other businesses which keep or maintain animals in stock for retail or wholesale trade or sale.
b. Requires proper compliance with Unified Zoning Code.

Reason for amendments: Addresses health and sanitation issues which are inherent with these types of establishments.

5. Comprehensive changes to Animal Maintenance Permit system and increased fees

a. Revises requirements for AMP application and for maintenance of domestic animals.
b. Revises ownership requirements for livestock including mandatory acreage requirements.
c. Clarifies maximum number of animals allowed.
    1. Sets maximum number without AMP at:
        - No livestock without AMP
        - 2 dogs
        - 2 cats
        - 2 rabbits
        - 3 fowl or pigeons
        - No more than 3 “kinds” of animals without AMP
    2. Establishes maximum number of animals allowed with an AMP at:
        - 4 dogs
        - 4 cats
        - 12 fowl (25 pigeons)
        - 1 per acre livestock – cow, horse, goat, sheep, ratite (emu) - NEW
        - 1 neutered Vietnamese pot bellied pig
        - 12 rabbits
        - 25 fur-bearing animals such as chinchillas, mink, etc. (for fur harvest)
d. Revises fee schedule for AMPs
    - Dogs & cats: from $20 to $25
    - Livestock: from $20 or $50 to $100

e. Establishes system for revocation of and appeal of the revocation/denial of AMPs.
f. Establishes a system for requesting an animal variance and revocation and appeal of revocation/denial of such variance by Director of Environmental Services.

Reason for amendments: Clarifies code requirements for animal ownership. Establishes a set process and standards for the issuance, revocation and denial of such permits.

6. Changes to Breeder's License requirements including alignment with Unified Zoning Code

a. 'Dog Breeder' means a person who raises or produces dogs or puppies for sale or profit.

- It is presumed that a person who advertises the sale of dogs or puppies or a person who owns two or more unaltered female dogs is a dog breeder. Such term includes persons who are licensed by the State of Kansas as an Animal Dealer, Retailer Breeder, Animal Breeder, Hobby Breeder or Hobby Kennel. Such term shall include a person who owns one or more unaltered pit bulls.

b. Must issue breeders licenses in accordance with Unified Zoning Code. Breeders not allowed in residential areas.

Reason for amendments: Provides clarity of breeder license requirements and mechanism for enforcement of current breeding licensing rules. Amendment is necessary to comply with current Unified Zoning Code provisions.

7. New regulations for dog parks

a. Establishes designation of off-leash areas of dog parks by directors of ES and Parks Dept.
b. Establishes rules and regulations for off-leash dog parks.

Reason for amendments: Two new dog parks are to be established in Wichita. Rules are necessary for liability and use purposes.

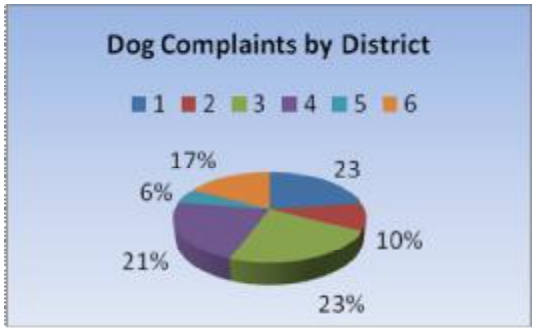
DEPARTMENT OF
ENVIRONMENTAL SERVICES

Animal Services: 2008 Annual Dog Statistics Report

Dog Control Statistics 2008														
All Dogs	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	2007
Dog complaints	960	829	1028	888	893	934	966	928	880	923	832	732	10,793	N/A
Dogs impounded	448	454	557	591	542	626	557	471	479	521	373	407	6,026	6,338
Dogs euthanized	283	277	332	347	299	351	285	288	297	278	182	188	3,407	4,098
Percent dogs redeemed	14%	17%	20%	24%	30%	25%	15%	12%	14%	26%	30%	26%	25%	23%
Dogs running at large	357	367	477	390	340	412	448	391	380	425	306	324	4,617	4,191
Dog attacks* investigated	17	12	5	20	20	37	6	23	54	27	17	14	252	*
Dog bites* investigated	26	38	31	45	66	58	48	43	42	29	24	31	481	470
Dogs deemed dangerous**	8	5	2	18	10	3	2	2	10	9	3	3	75	198
Pit Bulls	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	2007
Pit bull complaints	224	168	223	216	201	248	233	217	206	221	194	172	2,523	N/A
Pit bulls impounded	107	107	140	144	165	147	219	134	119	126	73	94	1,575	1,793
Pit bulls euthanized	103	94	121	124	126	108	178	96	91	91	51	72	1,255	1,559
Percent Pit bulls redeemed	2%	9%	4%	12%	20%	24%	14%	24%	22%	17%	27%	16%	16%	13%
Pit bulls running at large	85	81	126	110	136	119	175	119	88	94	67	79	1,279	1,477
Pit bull attacks* investigated	10	5	3	9	9	22	1	16	24	9	5	5	118	*
Pit bull bites* investigated	7	11	5	16	21	16	16	10	9	8	6	3	128	131
Pit bulls deemed dangerous**	5	5	0	5	6	1	1	2	4	9	0	3	41	59

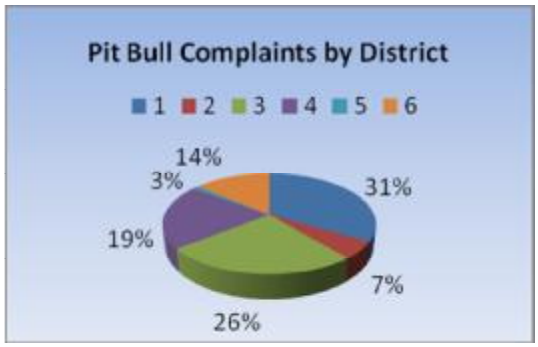
*Prior to 2008, "attacks" and "bites" were not tracked as separate measures. 2006 and 2007 totals include attacks and bites combined.
**Prior to 2008, "dogs (and pit bulls) deemed dangerous" indicates the number of dogs that were signed over to animal services for biting. All of these dogs were not necessarily "dangerous dogs".

Complaints involving dogs by Council District 2008



Animal Services responded to 10,793 dog complaints. Percentages of dog complaints by Council District in 2008 were:

- District 1 23%
- District 2 10%
- District 3 23%
- District 4 21%
- District 5 06%
- District 6 17%



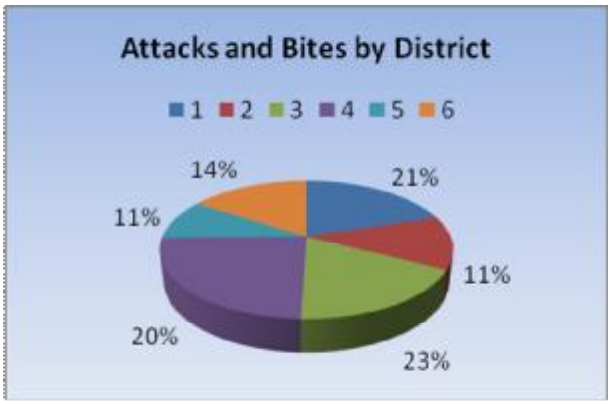
Year to date, Animal Services has responded to 2,523 complaints involving pit bulls. 23% of all dog complaints involved one or more pit bulls. Percentages of pit bull complaints by Council District in 2008 were:

- District 1 31%
- District 2 7%
- District 3 26%
- District 4 19%
- District 5 3%
- District 6 14%

DEPARTMENT OF
ENVIRONMENTAL SERVICES

Attacks and bites by Council District 2008 Totals

Dog Attack & Bite Report 2008 Year End Totals							
Attack & Bite Statistics for All Dogs							
	District 1	District 2	District 3	District 4	District 5	District 6	Total All Districts
Dog complaints investigated	2,465	1,116	2,489	2,268	666	1,789	10,793
Dog attacks investigated	44	19	81	50	17	41	**252**
Dog bites investigated	113	58	89	99	60	62	**481**
Dogs deemed dangerous	14	9	27	8	9	8	**75**
Attack & Bite Statistics for Pit Bulls							
Pit bull complaints investigated	793	163	663	472	68	364	**2,523**
Pit bull attacks investigated	28	6	39	24	6	15	**118**
Pit Bull bites investigated	40	9	23	31	12	13	**128**
Pit bulls deemed dangerous	9	5	14	3	6	4	**41**



Animal Services investigated 733 dog attack and bite reports in 2008. Seventy-five dogs were deemed dangerous in 2008.

- 34% of dog attacks and bites involved pit bull dogs.
- 55% of the dogs deemed dangerous were pit bulls.
- 27% of the dog bites were caused by pit bull dogs.

Animal Services Annual Trends: 2008 compared to 2007

- Dogs impounded in 2008 decreased by 5% (6,026 vs. 6,338).
- Pit bulls impounded in 2008 decreased by 12% (1,575 vs. 1,793).
- Dogs euthanized in 2008 decreased by 17% (3,407 vs. 4,098).
- Pit bulls euthanized in 2008 decreased by 19% (1,255 vs. 1,559).
- Dogs found running loose in 2008 increased by 9 % (4,617 vs. 4,191).
- Pit bull dogs found running loose in 2008 decreased by 13% (1,279 vs. 1,477)
- Dog bites investigated in 2008 increased by 2% (481 vs. 470).
- Pit bull bites decreased in 2008 by 2% (128 vs. 131) .

Wichita Police Department Report 2008

WPD Dog Encounters 2004-2008					
	2004 Actual	2005 Actual	2006 Actual	2007 Actual	2008 Actual
Total animal shooting incidents	46	48	30	55	43
Number of dogs encountered	50	40	23	53	22
Number of pit bull dogs encountered	33	32	17	46	21
Number of dogs killed	22	21	11	23	13
Number of dogs injured	10	11	4	14	7
Number of incidences in Patrol North	21	20	11	25	13
Number of incidences in Patrol East	9	11	5	9	10
Number of incidences in Patrol West	8	14	8	11	15
Number of incidences in Patrol South	8	3	6	10	6

WPD Annual Trends

In 2008 there were 22 police encounters with dogs, 21 (95%) of which were pit bulls.

For 2007 officers were dispatched to 24 calls involving vicious dogs or dog bite reports that resulted in the officer discharging a weapon. Pit bulls or Pit bull mixes made up 87% of the dogs encountered by the officers.

For 2006 officers responded to 13 vicious dog complaints that resulted in the officer discharging a weapon. Of the 23 different dogs encountered, 17 were identified as pit bull or pit bull mix breed. 74% of all dogs encountered in 2006 were identified as pit bull or pit bull mix breed.

Summary of pit bulls encountered by Wichita PD 2004 through YTD:

The percentage of aggressive dogs encountered by WPD that was pit bulls has increased four consecutive years (from 66% in 2004 to 95% in 2008).

- In 2004 66% of all dogs encountered by PD were pit bull dogs.
- In 2005 80% of all dogs encountered by PD were pit bull dogs.
- In 2006 74% of all dogs encountered by PD were pit bull dogs.
- In 2007 87% of all dogs encountered by PD were pit bull dogs.
- In 2008 95% of all dogs encountered by PD were pit bull dogs.

ENVIRONMENTAL SERVICES **INTEROFFICE MEMORANDUM**

TO: Mayor and City Council

FROM: D. Kay Johnson, Director Environmental Services

COPIES: Scott Moore, Interim City Manager
Karen Sublette, City Clerk

SUBJECT: Proposed Revisions to Chapter 6.04 Animal Control and Protection

DATE: January 22, 2009

The Environmental Services Department (ES) has been preparing revisions to the City's Animal Code Chapters 6.04 Animal Control and Protection for some time. Council last approved revisions to the ordinances in December 2007. The ordinances were revised to increase community safety and pet owner responsibility. Wichita has been experiencing a growing number of unwanted dogs, dog bites, dogs running at large (RAL), and increasing pit bull issues including severe attacks on children and adults. After adopting the revisions, the Council directed ES to track dog and pit bull statistics for 2008 and to provide these results in a workshop format. As requested, the Animal Statistical Report for 2008 is attached and the Council Workshop is scheduled for January 27, 2009 to review and provide further recommendations.

During 2008, additional issues were raised by the Council members and the community including:

- Complaints regarding the City's annual rabies vaccination requirement with requests to revise the ordinance to allow multi-year vaccinations;
- Complaints regarding animal nuisance situations including those identified during the public portion of a 2008 City Council meeting;
- Animal maintenance complaints including keeping horses and other livestock animals in the city; and
- Complaints about conditions at pet grooming facilities (pet groomers are unregulated).

Additionally, the Law Department has further reviewed the 2007 revised ordinances and recommends code modifications to improve clarity and enforcement. ES and Legal staff also recommend combining all of the city's domestic animal codes into a single chapter (6.04) to ease code administration. Currently, codes for keeping animals including animal maintenance permits are in Chapter 6.12 Keeping of Animals, and codes for regulating the control of cats are in Chapter 6.16 Cats.

Staff will seek guidance during the workshop regarding some of the recommended ordinance changes. Other recommendations will be provided in draft form for Council and District Advisory Board members to review and consider. Stakeholder meetings will also be held for discussion and the documents will be posted on the City's website to obtain public comments prior to presenting a revised ordinance recommendation for Council's final consideration and vote.

The following information provides a brief summary of information and current efforts to develop 2009 revisions to animal ordinances:

- ES has taken 2008 statistics into consideration for added recommendations on the control and management of pit bulls. While the number of total dog related issues somewhat decreased in 2008, pit bull dogs continue to occupy twenty-five to thirty percent of Animal Service's time and resources aimed at controlling dogs in Wichita. No other dog type consumes such efforts and resources. The Wichita Police Department also encounters pit bull dogs in a disproportionate manner as 95% of all dogs WPD encountered in 2008 were pit bull dogs.

- To date, staff has gathered valuable input regarding rabies vaccination schedules. This summer, ES convened an ad-hoc committee that consisted of area veterinarians, local public health officials, and other experts in animal control and care. ES also partnered with Wichita State University's psychology department to conduct an electronically administered survey to gather additional information from as many local practicing veterinarians as possible. The survey was developed to address concerns of some veterinarians serving on the ad-hoc committee. Stakeholder comments have also been taken into consideration for developing a revision to the city's required rabies vaccination schedule. Survey results have been informally transmitted to ES. A WSU doctoral student is currently finalizing a formal report on the survey results that will be made public upon completion and receipt.

- Citizen complaints and other input have triggered recommending additional codes for dealing with animal nuisances and changes to animal maintenance requirements, including horses.

Reviews by the Law Department and ES enforcement experience in 2008 have been taken into consideration for recommending modification and addition to a number of animal ordinances. ES staff and the Law Department are currently working on a draft ordinance and are nearing completion.

Council will also be briefed on two additional issues which will require action in the near future, a new ordinance for dog parks and an operating agreement with the Kansas Humane Society (KHS). ES will also provide a short overview of a new pet animal adoption program called "New Beginnings" (partnering with the Wichita Fire Department and Kansas Humane Society) and will update the Council on the construction and planned openings of the new Wichita Animal Shelter and KHS Shelter, both being built at the Murfin Animal Care Campus.

Attachment:

1. ES Animal Services 2008 Annual Dog Statistics Report
2. Wichita Pit Bull Dogs in 2008

Wichita Pit Bull Dogs in 2008

- 55% of all dogs deemed dangerous were pit bulls (41 pit bull dogs deemed dangerous).
- 34% of attacks and bites involved pit bull dogs (246 pit bull attacks / bites).
- 28% of dogs found running at large were pit bulls (1,279 pit bulls found running loose).
- 25% of dogs impounded were pit bulls dogs (1,575 pit bulls impounded).
- 37% of all dogs euthanized were pit bull dogs (1,255 pit bulls euthanized).
- 23% of dog complaints involved pit bull dogs (2,523 complaints involved pit bull dogs).
- Only 16% per cent pit bull dogs redeemed (252 pit bulls redeemed).

WPD Dog Encounters 2004-2008					
	2004 Actual	2005 Actual	2006 Actual	2007 Actual	2008 Actual
Total animal shooting incidents	46	48	30	55	43
Number of dogs encountered	50	40	23	53	22
Number of pit bull dogs encountered	33	32	17	46	21

In 2008 there were 22 police encounters with dogs, 21 (95%) of which were pit bulls.

Pit bulls Dogs Encountered by WPD 2004 - 2008:

The percentage of aggressive dogs encountered by WPD that were pit bull dogs has increased four consecutive years (from 66% in 2004 to 95% in 2008).

- In 2004 66% of all dogs encountered by PD were pit bull dogs.
- In 2005 80% of all dogs encountered by PD were pit bull dogs.
- In 2006 74% of all dogs encountered by PD were pit bull dogs.
- In 2007 87% of all dogs encountered by PD were pit bull dogs.
- In 2008 95% of all dogs encountered by PD were pit bull dogs.

Agenda No. IV-1.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council

SUBJECT: CUP2008-52– DP-18 Amendment #3 to allow a night club/drinking establishment on property zoned LC Limited Commercial; generally located North of 21st Street North and east of Somerset Avenue (1580 West 21st Street North). (District VI)

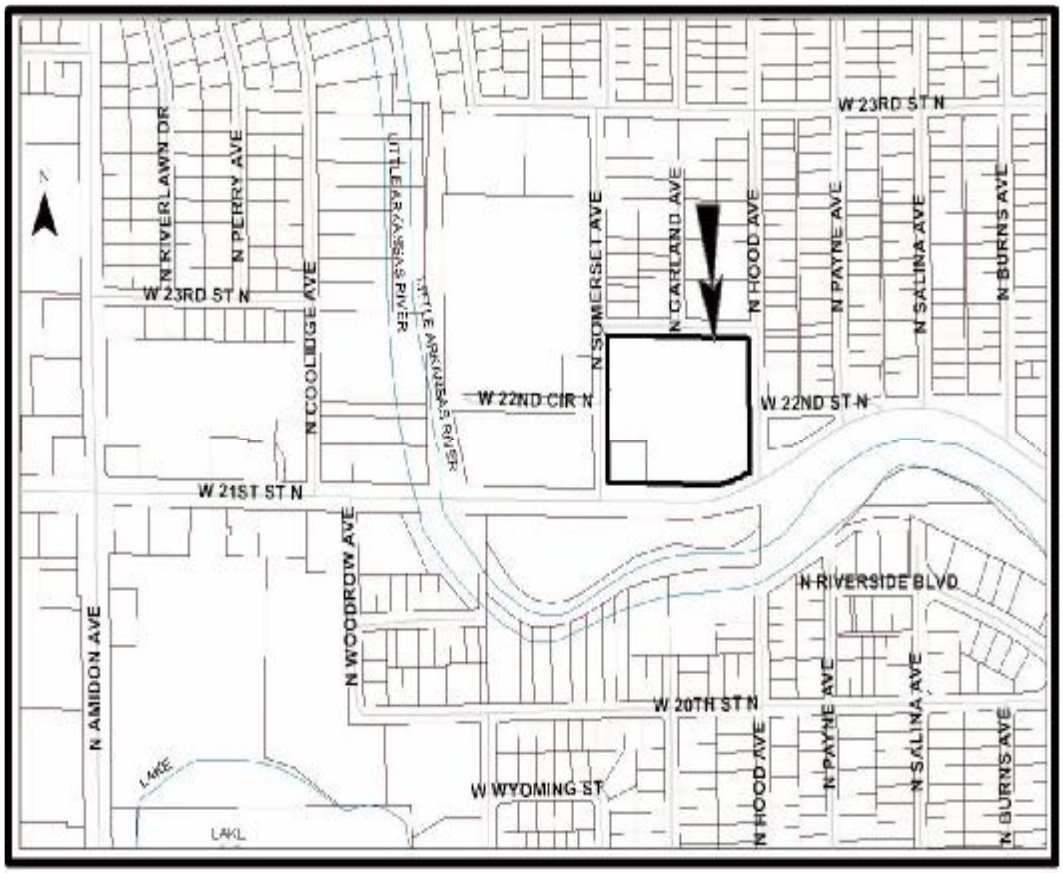
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve, subject to staff recommendations (8-1).

MAPD Staff Recommendations: Approve, subject to conditions.

DAB Recommendations: Approve, subject to staff recommendations (10-0).



BACKGROUND: The applicant seeks a CUP amendment to allow a drinking establishment and nightclub within an existing restaurant located at 1580 West 21st Street North. The applicant wishes to use 5,000 square feet of the existing restaurant as a nightclub and private rental facility, this space is limited by fire code to a 300 person occupancy. The 5,000 square feet of designated nightclub space is located within a larger 10,600 square foot building. DP-18 does not list nightclubs or drinking establishments as permitted uses for this site. Also, the site is located within 200 feet of a church and multi-family residential zoning; these factors require the applicant to request a CUP amendment for a drinking establishment and nightclub.

If this request is approved, the current limitation on the amount of alcohol that can be sold on this site by virtue of the current Drinking Establishment–Restaurant (DE-R) license would be removed. The DE-R license requires that 50% of gross revenue be from food sales. Without the DE-R license restriction, there are no restrictions on the volume of alcohol that could be sold. Establishments that sell alcohol and provide entertainment/dancing can be good neighbors to other businesses, but they can also become nuisances that generate excessive noise and nuisance activity.

A "nightclub in the city" is defined by the *Unified Zoning Code* as an establishment that provides entertainment, which may include the provision of dancing by employees or patrons, and where alcoholic beverages are offered to the public or its members, and which may or may not serve food. "Nightclub in the city" is a use permitted by right in the LC Limited Commercial ("LC") zoning district except when it is located within 200 feet of a church or place of worship, public park, school or residential zoning district. A Conditional Use (or an amendment to a Community Unit Plan) is required if a nightclub is located within 200 feet of the aforementioned uses or zoning districts.

The existing business is within a shopping center outbuilding, located on the west side of the property, northeast of the Somerset Avenue and 21st Street intersection. The site is within Parcel 1 of the River Bend Shopping Center Community Unit Plan (CUP), DP-18. The applicant's property is zoned LC, subject to the conditions contained in DP-18, including the development standards for Parcel 1. Uses permitted in Parcel 1 are restricted to: Shopping center, department store, restaurant, offices and other similar uses permitted in LC zoning. Existing businesses located in the CUP include a gas station/tire store, a bus station, a retail strip center, a bingo hall and a vacant restaurant.

North and east of this property is SF-5 Single-family Residential ("SF-5") and LC zoning with single family residences to the north and east, and commercial uses to the east. South of the site, on the south side of 21st Street, is GO General Office ("GO") zoning and a medical office building. West of the site is B Multi-family Residential ("B") and GO zoning with a church and an apartment complex.

A previous night club within this same shopping center generated law enforcement problems several years ago. In 2004, a different applicant requested an amendment to this same CUP for a drinking establishment and nightclub, that request was denied and generated significant neighborhood opposition. It would be important to note that the previous nightclub and the previously denied application were on the east side of the shopping center, with the club and parking approximately 100 feet from single-family residences. This current request is at a different location within the center; the building is over 280 feet from single-family residences to the north, and over 475 feet from residences to the east, with a commercial strip center building between this site and all single-family residences. The proposed nightclub building is over 350 feet from the nearest apartment building, and over 200 feet from the church building to the west. However, the application area parking is within 200 feet of the apartment and church properties to the west.

Analysis: DAB VI heard this request on January 5, 2009. One person spoke against the request and several people spoke in support of the request at the DAB hearing. DAB VI approved the request subject to staff recommendations by a vote of 10-0. The MAPC heard this request on January 8, 2009. At the MAPC hearing, the manager of the adjacent apartment complex west of the site spoke against the request, one residential neighbor spoke in support of the request and one business neighbor asked questions and expressed concerns.

The action of the MAPC was to approve the request subject to the following staff recommended conditions:

1. DP-18 Parcel 1 item I. shall be amended to add Amendment #3: "One drinking establishment/nightclub shall be permitted at 1570 W. 21st Street North. The drinking establishment/nightclub shall be attached to a restaurant and under the same ownership as the restaurant. The nightclub shall not exceed 5,000 square feet in size, shall not exceed a 300-person occupancy, and shall conform to an approved site plan."

2. The applicant shall submit a site plan, to be approved by Planning Staff, which demonstrates a designated nightclub parking area of 150 spaces which shall not be permitted within 160 feet of the east property line. The nightclub shall be responsible to enforce the designated parking area, and shall conform to all other codes and regulations.

3. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

The applicant submitted letters of support, along with the application, from neighborhood and business associations, and the church west of the site. The adjacent apartment complex management submitted a letter of opposition to the request from the same church, and from several individual members of a neighborhood association which had submitted a letter of support. 23 properties filed protests against this request, for a total of 63% of the protest area. Because the protest area is greater than 20%, the governing body requires a ¾ supermajority to override the protests.

City Council heard this request on February 10, 2009; the Council deferred the case to the March 10, 2009 hearing. A neighborhood meeting is scheduled for March 3, 2009, a follow-up memorandum from that meeting is included.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality and Affordable Living.

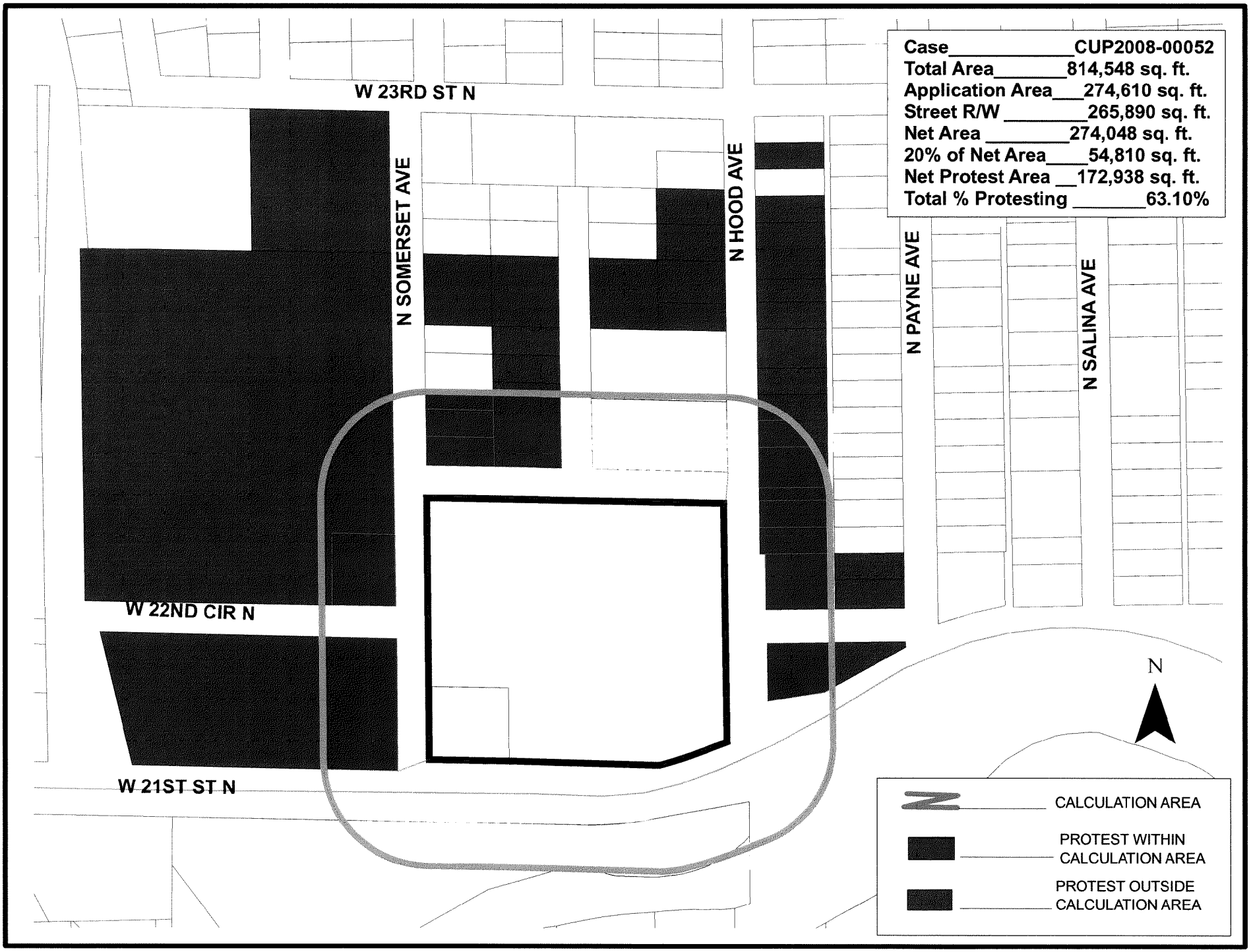
Legal Considerations: No ordinance is required.

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the community unit plan amendment subject to the recommended conditions (requires a ¾ supermajority vote by the governing body to override the valid protest); or

2. Return the application to the MAPC for reconsideration (requires a simple majority).

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)


Case CUP2008-00052
Total Area 814,548 sq. ft.
Application Area 274,610 sq. ft.
Street R/W 265,890 sq. ft.
Net Area 274,048 sq. ft.
20% of Net Area 54,810 sq. ft.
Net Protest Area 172,938 sq. ft.
Total % Protesting 63.10%
W 23RD ST N
N SOMERSET AVE
N HOOD AVE
N PAYNE AVE
N SALINA AVE
W 22ND CIR N
W 21ST ST N
N
CALCULATION AREA
PROTEST WITHIN CALCULATION AREA
PROTEST OUTSIDE CALCULATION AREA

1-8-2009 MAPC HAND OUT ITEM # 5

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: MAPC Members

FROM: Terri Dozal, Neighborhood Assistant, District 6

SUBJECT: **CUP2008-00052 1570 W 21ST ST N** DP-18 Amendment #3 to allow a night club/drinking establishment on property zoned LC Limited Commercial generally located north of 21st Street North and East of Somerset Avenue.

DATE: January 7, 2009

On Monday, January 5, 2009 the District 6 Advisory Board (DAB) considered a DP-18 Amendment #3 to allow a night club/drinking establishment on property zoned LC Limited Commercial generally located north of 21st Street North and East of Somerset Avenue. The members were provided the MAPD staff report for review prior to the meeting. *Jess McNeely*, Planner presented the case background and reviewed the staff recommendation with members and the public.

The Board asked the following questions/comments:

- What is the correct address of the location?
- Was a notification sign posted as I don't see one.
- What about the parking for the supermarket, where is it to be?
- How do you intend to isolate the parking?
- Will this CUP request stay with the property?
- This is not in compliance with the *Comphrensive Plan* as the distance requirements are not met.
- What are the owner's plans for security and training them?
- Will this club be connected to the restaurant and will it be non-smoking?
- I suggest you cut the parking along Somerset.
- Very impressed the owner has worked with the neighborhoods for their support

One member of the public spoke in opposition of the request.

Seven public members spoke in favor of the request stating:

- Support for small businesses.
- Family/community oriented business.
- Will coordinate safety efforts with police.
- The owner already has a flourishing business for the past 10 years.
- The business brings Hispanic pride to the community.

****Action:** The DAB VI members made a motion to recommend to City Council Approval (**10-0**) of the request based on staff recommendations.

Please review this information when **CUP2008-00052(DP-18)** is considered.

mtd

EXCERPT OF JANUARY 8, 2009 MAPC HEARING

Case No.: CUP2008-52 – Nuot Nguyen and Ly Ngoc Thi (owner); Mario Quiroz (applicant); Baughman Company P.A., c/o Russ Ewy (agent) Request DP-18 Amendment #3 to allow a night club/drinking establishment on property zoned LC Limited Commercial.

Lot 1, W. F. Farha 3rd Addition, Wichita, Sedgwick County, Kansas, generally located north of 21st Street North and east of Somerset Avenue.

BACKGROUND: The applicant seeks a CUP amendment to allow a drinking establishment and nightclub within an existing restaurant located at 1580 west 21st Street North. The applicant wishes to use 5,000 square feet of the existing restaurant as a nightclub and private rental facility, this space is limited by fire code to a 300 person occupancy. The 5,000 square feet of designated nightclub space is located within a larger 10,600 square foot building. DP-18 does not list nightclubs or drinking establishments as permitted uses for this site. Also, the site is located within 200 feet of a church and multi-family residential zoning; these factors require the applicant to request a CUP amendment for a drinking establishment and nightclub.

If this request is approved, the current limitation on the amount of alcohol that can be sold on this site by virtue of the current Drinking Establishment–Restaurant (DE-R) license would be removed. The DE-R license requires that 50% of gross revenue be from food sales. Without the DE-R license restriction, there are no restrictions on the volume of alcohol that could be sold. Establishments that sell alcohol and provide entertainment/dancing can be good neighbors to other businesses, but they can also become nuisances that generate excessive noise and nuisance activity.

A "nightclub in the city" is defined by the *Unified Zoning Code* as an establishment that provides entertainment, which may include the provision of dancing by employees or patrons, and where alcoholic beverages are offered to the public or its members, and which may or may not serve food. "Nightclub in the city" is a use permitted by right in the LC Limited Commercial ("LC") zoning district except when it is located within 200 feet of a church or place of worship, public park, school or residential zoning district. A Conditional Use (or an amendment to a Community Unit Plan) is required if a nightclub is located within 200 feet of the aforementioned uses or zoning districts.

The existing business is within a shopping center outbuilding, located on the west side of the property, northeast of the Somerset Avenue and 21st Street intersection. The site is within Parcel 1 of the River Bend Shopping Center Community Unit Plan (CUP), DP-18. The applicant's property is zoned LC, subject to the conditions contained in DP-18, including the development standards for Parcel 1. Uses permitted in Parcel 1 are restricted to: shopping center, department store, restaurant, offices and other similar uses permitted in LC zoning. Existing businesses located in the CUP include a gas station/tire store, a bus station, a retail strip center, a bingo hall and a vacant restaurant.

North and east of this property is SF-5 Single-family Residential ("SF-5") and LC zoning with single family residences to the north and east, and commercial uses to the east. South of the site, on the south side of 21st Street, is GO General Office ("GO") zoning and a medical office building. West of the site is B Multi-family Residential ("B") and GO zoning with a church and an apartment complex.

A previous night club within this same shopping center generated law enforcement problems several years ago. In 2004, a different applicant requested an amendment to this same CUP for a drinking establishment and nightclub, that request was denied and generated significant neighborhood opposition. It would be important to note that the previous nightclub and the previously denied application were on

the east side of the shopping center, with the club and parking approximately 100 feet from single-family residences. This current request is at a different location within the center; the building is over 280 feet from single-family residences to the north, and over 475 feet from residences to the east, with a commercial strip center building between this site and all single-family residences. The proposed nightclub building is over 350 feet from the nearest apartment building, and over 200 feet from the church building to the west. However, the application area parking is within 200 feet of the apartment and church properties to the west.

CASE HISTORY: The W.F. Farha 3rd Addition was approved in 1966. DP-18 was approved in 1984. Currently 1530 west 21st Street has "drinking establishment-restaurant" (DE-R) license.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Residential
SOUTH:	GO	Medical office
EAST:	SF-5, LC	Residential, office and retail
WEST:	SF-5, GO, B	Church and multi-family residential

PUBLIC SERVICES: At this location 21st Street North is a four-lane arterial with a central turn lane. This section of 21st carries 17,316 average daily trips. All municipal services are available.

CONFORMANCE TO PLANS/POLICIES: The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan designates this site as appropriate for local commercial uses, defined as commercial uses that do not have a significant regional market draw. The site is within the adopted *21st Street North Corridor Redevelopment Plan*. The *21st Street North Corridor Redevelopment Plan* designates this shopping center as a "Commercial Mixed" area, which would encourage retail, office and restaurant uses mixed with medium density residential. The Comprehensive Plan has an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments (p. 12, Land Use-Residential Objective II. B). Strategy II.B3 states that there is a need to evaluate the effectiveness of regulations aimed at reducing or preventing the detrimental impacts of land uses that produce excessive odors, noise or safety hazards upon residential areas.

RECOMMENDATION: Night clubs within this shopping center had negative impacts on the surrounding neighborhood in the past. This application is within a building further removed from single-family neighborhoods, and within a limited amount of space. Appropriate conditions limiting the size of the establishment and tying it to a restaurant will keep the proposed nightclub at a neighborhood scale, and mitigate any potential negative effects on the residential neighborhood. This application has generated only one phone call in opposition, possibly demonstrating neighborhood acceptance of this proposal. Likewise, several business and neighborhood group's submitted letters of support for this application, see attached. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. DP-18 Parcel 1 item I. shall be amended to add Amendment #3: "One drinking establishment/nightclub shall be permitted at 1530 W. 21st Street North. The drinking establishment/nightclub shall be attached to a restaurant and under the same ownership as the restaurant. The nightclub shall not exceed 5,000 square feet in size, shall not exceed a 300-person occupancy, and shall conform to an approved site plan."

2. The applicant shall submit a site plan, to be approved by Planning Staff, which demonstrates a designated nightclub parking area of 150 spaces which shall not be permitted within 160 feet of the east property line. The nightclub shall be responsible to enforce the designated parking area, and shall conform to all other codes and regulations.

3. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: North and east of this property is SF-5 and LC zoning with single family residences to the north and east, and commercial uses to the east. South of the site, on the south side of 21st Street, is GO zoning and a medical office building. West of the site is B and GO zoning with a church and an apartment complex. If the request is limited to the proposed conditions, a neighborhood scale nightclub buffered from single-family residences could be compatible with the surrounding neighborhood.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC subject to the development standards contained in DP-18. Uses permitted on the site are: shopping center, department store, restaurant, offices and other similar uses permitted in LC zoning. The site could continue to be used under the current zoning and CUP restrictions.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Currently the sale of alcoholic beverages is limited by its DE-R status; approval of this request would remove this limitation. The requested CUP amendment would generate traffic at later hours than the current restaurant use.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *2030 Wichita Functional Land Use Guide* of the Comprehensive Plan designates this site as appropriate for local commercial uses, defined as commercial uses that do not have a significant regional market draw. The site is within the adopted *21st Street North Corridor Redevelopment Plan*. The *21st Street North Corridor Redevelopment Plan* designates this shopping center as a "Commercial Mixed" area, which would encourage retail, office and restaurant uses mixed with medium density residential. The Comprehensive Plan has an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments (p. 12, Land Use-Residential Objective II. B). Strategy II.B3 states that there is a need to evaluate the effectiveness of regulations aimed at reducing or preventing the detrimental impacts of land uses that produce excessive odors, noise or safety hazards upon residential areas.

5. Impact of the proposed development on community facilities: The proposed CUP amendment could result in an increased demand for police services. The proposed CUP amendment could also result in increased traffic demand at later hours.

JESS MCNEELY, Planning Staff presented the Staff Report. He reported that DAB VI recommended unanimous approval of the application; however, one neighbor spoke against the request. He added that the owners of the apartment complex were also against the request, but several neighborhood associations and businesses were in favor of the request. He reminded the Commission that any CUP amendment runs with the land.

MILLER STEVENS asked about the church to the west and if it was within 200 feet of the site.

MCNEELY commented that the church is zoned General Office because of an application for a day-care center approved several years ago and clarified that it is within 200 feet of the CUP.

RUSS EWY, BAUGHMAN COMPANY, AGENT FOR THE APPLICANT said the applicant was also present to answer any questions. He referred the Commission to the agenda, which included a letter of support from the Church. He commented that he would wait for rebuttal to address any concerns. He also mentioned that this application received unanimous support from DAB VI. He added that there were a number of fundamental differences between this application and the application that was denied in 2004 including scale of use, as well as being tied into another business use. He mentioned issues touched upon at the DAB meeting including the new proposed code changes concerning regulating and enforcement at night clubs. He said his client has a working relationship with the Wichita Police Department (WPD) and that the beat officer actually spoke on behalf of the applicant at the DAB meeting. He mentioned security both inside and outside the nightclub and how the new regulations were a very structured system, with greater penalties that they will go a long way to teaching club owners how to manage property and preserve neighborhood peace.

MILLER STEVENS commented that the ordinance **EWY** referred to has not been passed so the applicant would not fall under the provisions of that ordinance.

EWY said that was correct.

BRANDY ALCORN, REPRESENTING PACIFIC PROPERTIES said they have a multi-family housing property directly across the street from this location consisting of 230 multi-family units, in addition to 293 units at Twin Lakes Apartments located less than one mile from this location. She referred Commission members to several pictures she took earlier today of the wall behind the shopping center where the club is being proposed, which was covered with graffiti. She commented that it was obvious from the pictures that the area has never been taken care of by the property owner. She said the pictures just demonstrate some of the challenges they already face in the neighborhood with graffiti. She mentioned one of the letters of support that said they were comfortable that the applicant would be able to provide security to control 300 people and mentioned that there was not enough control with the other nightclub that had been located there. She said they are very concerned about keeping a nice neighborhood for their residents. She said unfortunately, they did not find out about the application until yesterday. She said they will be submitting a petition within 14 days with numerous names who want to be involved in not letting this happen. She concluded by mentioning that the church, named Breakthrough Ministries, was geared towards drug and alcohol rehabilitation and she wondered about a bar being located across the street. She also mentioned that there was a bus station located in the same building as the proposed nightclub and that was also a concern.

DELORA DONAVON, 559 FARRELL DRIVE, PRESIDENT, NORTH RIVERSIDE NEIGHBORHOOD ASSOCIATION said they have been having dialogue with the applicant for several months concerning the proposal. She said this has been discussed at neighborhood and DAB meetings, which are open for everyone to go to. She said from her standpoint and her discussions with the applicant, she would like to see this higher class club opened in the neighborhood rather than to wait for the next person to open a "hip hop" joint. She commented that there was graffiti in Minisa Park, along the bike path and other areas and she doesn't think graffiti has anything to do with the applicant's proposal for a nightclub.

HANK BLASE, 2302 NORTH HOOD said he has an office across the street to the East of the application area. He said at the DAB meeting there was concern that the sign required to be placed at the proposed location was initially placed but then removed from the site and never replaced and that the sign had not been up for the required period of time. He said the sign was never replaced so there has been a lack of information going to the neighborhood for people who are concerned and want to come forward and express their opinion. He said the regulation about nightclubs that was mentioned is a proposed

regulation that has not gone into effect yet, and therefore, has no control over anything. He referred to the comments from the North Riverside Association representative and said it was interesting to note the comments of the President of the North Riverside Association in 2004, Rosalee Bradley, which specifically referred to overconsumption of alcohol and consumption of alcohol outside the building at the Latino Boom. He said she also mentioned excessive loud noise, trash in the neighborhood, and damage to cars and properties as patrons from the club cut through the neighborhood. He commented that zoning changes go with the property and not with the client, and once the zone change is granted; there is nothing anyone can do to prevent this from becoming another Latino Boom.

He mentioned the letters attached to the Staff Report commenting on what a good operator the applicant is. He asked what happens when this owner leaves and a hip hop joint comes in. He said there is no control and that there should be some. He commented that 2004 statistics provided by the WPD showed that there were 54 WPD reports in an 18-month period at the location. He said the past four years have been a period of peace and tranquility in the neighborhood. He said his point is that the recommendation for approval of this application has been based on this applicant, not the property or the impact it will have on the neighborhood for all time. He said no one has found that this will improve the neighborhood. He said the Commission has the ability to make the recommendation that the applicable laws be changed to allow amendments to CUP's to authorize uses based on the conduct and character of the applicant rather than just the property site. He said that way, a new operator and their track record would come under scrutiny. He said the Commission could at least impose a condition on the application and approval of the amendment that will revoke the amendment in case that say "*X number of WPD reports occur in Y amount of time.*" He asked for something that will retain some kind of control over what happens as a result of the operation. He concluded by saying that dance clubs and night clubs are not allowed within 200 feet of residential areas for a good reason; to protect the neighborhoods. He asked the Commission to protect and strengthen the neighborhood.

RUSS EWY, BAUGHMAN COMPANY said property owners within a 500-foot radius of the property were notified of the proposal and added that over 90 property owners were sent notices so he does not believe that inadequate notices were given on the project. He also stated that he thought it was unfair to tie graffiti in the neighborhood to a particular land use. He added that the implication of increased gang activity and vandalism is also a little unfair. He said Planning Staff did see the sign posted at the location. Referring to the past comments of the former North Riverside Association President and how they reflect on the current application, he said it shows how people can be objective and can change their mind. He said the proposed land use under the umbrella of zoning is harmonious with surrounding land and will be a good asset to the neighborhood in general. He concluded by mentioning the support of the WPD and stated that **MR. QUIROZ** was present to answer any questions on how he has integrated his club plan with the WPD.

MITCHELL asked if the restaurant at the location serves liquor today.

EWY said yes.

HILLMAN asked if it were possible to tie a conditional use to the conduct and character of the operator; the number of WPD reports of problems in the area; or some other tie that might go with the operator, so if a sale were to take place or something change, the approval process would automatically be negated.

JOE ALLEN LANG, CITY LAW DEPARTMENT commented that the application is being presented as a CUP amendment rather than a conditional use permit. He said with a conditional use permit the time could be limited, or it could be reviewed upon certain events; however, that is not normally done with a CUP or other zoning, which is based on land use. He said he thought something could be crafted that would require review; but he believes that needs to be done in the context of a conditional use application.

HILLMAN asked if that could be done at this meeting or if the Commission needed to move to defer the item, have it reconstructed as a conditional use request and brought back to the MAPC.

DIRECTOR SCHLEGEL said if the Commission wanted to attach that type of condition to an approval of the site, deferral would be needed to give staff time to work with the applicant to come up with some type of standard. He said he doesn't know what the standard might be, but staff would need time to talk to the applicant and his agent.

HILLMAN asked if the applicant would be interested in this alternative and if he would be willing to work with staff to make this happen.

EWY said the applicant has demonstrated his willingness to work with the City and that he would let him address that question. He said with most Conditional uses if any of the terms are found to be in violation, the conditional use is revoked. He said he does not know if a CUP has that same language. He said the question is what would that actually look like and how would those terms be defined. He asked how you draw a fair line with that type of enforcement. He said the proposed code amendments which are currently being written by WPD do spell out penalties. He said he could ask his applicant to take a two-week deferral.

MARIO QUIROZ, 1530 WEST 21ST STREET NORTH said he is trying to run a clean and good place in the area. He said there is graffiti in all the neighborhood area and that big businesses are moving out. He said he has decided to stay and rebuild his neighborhood. He said they opened last April with a cabaret license so they can have different shows and performances for the entire community. He said his restaurant has received recognition (3 out of 4 stars) from the Wichita Eagle. He said he has been in the restaurant business the last eight years and has also been be involved with the community. He said he is trying to work with the community and the neighborhood to try to establish a good way of living. He said he doesn't want to make a bar with a bad reputation. He said this is a new era and a new segment and he wants to bring a different atmosphere to his neighborhood and that all he is asking is a chance to have a decent place. He said he has been working with WPD to establish a "best practices" establishment. He concluded by saying that he has the support of the WPD, the surrounding neighborhood associations and the church and that he has done his homework and talked to people and opened doors in support of his project. He added that he has been learning a lot. He offered to answer any questions.

TAPE 1, SIDE 2

HILLMAN asked if he was the sole owner of the facility.

QUIROZ said he and a partner have a corporation and that they also own LeMesa Mexican Restaurant.

HILLMAN asked if he would be willing to work with staff and reform the request into a conditional use and re-apply.

EWY said they wouldn't go so far as to say that. He said that could take up to three more months and creates a whole other class of problems from a zoning procedure standpoint. He said he believes they can get where they need to be through the CUP amendment.

> **MOTION:** To approve subject to staff recommendation.
>
> **ANDERSON** moved, **MITCHELL** seconded the motion, and it carried (8-1).
> **FOSTER** - No.

MITCHELL said he would like to make a statement on how the proposed changes in zoning and CUP's are being handled. He said he was at the DAB meeting Monday night and pleasantly surprised to hear most of the testimony in favor of the applicant. He said the DAB members voted unanimously to approve, which is very unusual. He said he doesn't want to see zoning cases decided on a popularity contest and that is exactly what went on that night. He said although the outcome was good, that is not the way zoning cases ought to be considered or voted on. He said he would not support any move to make zoning cases specific to the applicant.

MCKAY asked if the applicant would fall under the new ordinance. He asked if the ordinance would be retroactive, or would the applicant be grandfathered in.

LANG said he didn't know the specific answer to that question and said he believes that issue will be addressed when the applicant's license comes up for renewal.

SCOTT KNEBEL, Planning Staff said he has been working with WPD on the licensing ordinance. He said as the ordinance is proposed today, people would be subject to the new requirements when they come in to renew their license.

Butler
Community College
Pure Learning Power

September 16, 2008

To Whom It May Concern:

We, Butler Community College HALO (Hispanic American Leadership Organization) are writing this letter in support of Mr. Mario Quiroz and his establishment of Fridas Mexican Grill. HALO was established by Butler students for the purpose of improving the community and strengthening student leadership skills. HALO consists of energetic and ambitious Butler students who recognize, develop, and test leadership skills both on campus and in the community. The goals of HALO include: strengthening Latino students, recognition on and off campus, provide and develop leadership and professional opportunities, foster an understanding and appreciation for Latino customs and traditions and form a united fellowship for addressing issues and concerns affecting the Hispanic community.

Our organization strives for success and would not be capable of achieving the goals we have achieved without the support of Butler, the Latino community, and local Latino business owners, such as Mr. Quiroz. Mr. Quiroz, has been a leader in the Latino community, supporting not only our organization but other Latino organizations as well. Mr. Quiroz has repeatedly supported us by allowing us to use his facilities in order to host events. Considering that one of our goals is to create recognition on and off campus of Latino students and to foster an understanding and appreciation for Latino customs and traditions, we greatly appreciate being able to host events in the heart of the Latino community and being able to introduce our customs and traditions to our non-Latino peers.

Mr. Quiroz and his business are a great asset to the Wichita community. Thank you for your time and consideration. If you have any further questions or comments please feel free to contact me at cbravo@butlercc.edu or (316) 304-9236.

Sincerely,

Clever Bravo
President
Butler HALO

Ministerio Rompimiento (Templo De Poder Sinai)

To Whom It May Concern:

With this letter I would like to grant my ongoing support to Mr. Mario Quiroz and his restaurant Frida's. Mr. Quiroz has demonstrated to be a respectable member of society, who continually supports the Hispanic community by offering his establishment for church and school activities. His success in business has helped in the growth of other Hispanic businesses in our community.

In addition, the restaurants vibrant colors, Mexican artifacts and, most importantly, the artwork of the famous painter Frida contribute to the enrichment of our Hispanic culture. Also, the décor portrays the importance of our culture and traditions, which is especially important to our youth in today's society.

Mr. Quiroz has set a good example in our community, and I believe this is very important in our growing community. Therefore, I once again offer my support to his restaurant Frida's.

Pastor Juan Larin

(316) 880-2059

21st St. Business Association

P.O. Box 47,052 Wichita, KS 67201

Representing "EL CORAZON" of the Business Community of North Central Wichita, Kansas

Sept. 18, 2008

HELLO FRIENDS OF THE COMMUNITY:

We are writing this letter in support of a fellow business association member, Mr. Mario Quiroz, owner of Frida's Mexican Grill, located at 1580 W. 21st St. N., Wichita, KS 67203. Mario exhibits the professional business ethics and vision that we share in our business community. **We find his business concepts and vision to be a refreshing encouragement, for our future "NOMAR INTERNATIONAL MARKET" district area.** "Frida's" is a more than just another restaurant/cantina, because it is themed around the arts. The restaurant was named after Frida Kahalo, a very famous artist from Mexico, known for her very avante-guarde impressionistic paintings. Frida was married to Diego Rivera, a famous muralist, who was highly sought after by American industrialists and Public Works Departments. Copies of this couple's famous artistry can be found at the restaurant.

Mr. Quiroz has amazingly been able to bring in a variety of interesting musicians, ranging from jazz, and saxaphonists, to the traditional mariachi and cowboy (ranchero) groups! This range of artistry adds to the diversity, and upscale appeal that the "NOMAR" business district leaders wish to achieve.

We appreciate the cooperative and friendly attitude demonstrated by Mr. Quiroz, and heartily extend a big "Welcome/ Bienvenidos" to Mr. Quiroz, and best wishes for his continued success in this important business endeavor.

Sincerely,

Sharon Stauth

Sharon Stauth, Secretary - 21st St. Business Association, & Public Accountant

OFFICERS OF 21ST ST. BUSINESS ASSOCIATION

President: Ron Cruz
Cell # 316-204-0445

Secretary: Ken Thomas
Treasurer: Sharon Stauth

Vice-Presidents:
East Side: Bob Alford
Central: Dick Glenn
West Side: Jim Basham

NORTH RIVERSIDE NEIGHBORHOOD ASSOCIATION

(boundaries include Little and Big Arkansas River
13th St. north to 21st St.)

September 26, 2008

To whom it May Concern:

It was my pleasure to meet with Mr. Mario Quiroz, owner of Frida's Mexican Grill, located at 1580 W. 21st St N., Wichita, KS. He shared his dream of operating an up-scale club at this location where people could meet to enjoy good music in a safe environment, visit with friends and perhaps dance a little. His targets audience will be college age people and others who are interested in improving the image of the Hispanic population here in Wichita. Mr. Quiroz had gone to the expense of installing audio/visual equipment that can be used for business presentations, closed circuit TV games, and etc. He assures us that he has adequate security to control a crowd of 300, which is the capacity of his building.

The North Riverside Neighborhood Association Board met to discuss Mr. Quiroz's project and after careful consideration, we wish to add our support to him for opening and operating a club on 21st St.. We are also in support of his being awarded a dancing permit so he can operate his business in accordance with the city ordinances.

Sincerely,

D. Donovan President
Claire Wittenberg Treas.
Sharon Powell Quincy

ASOCIACIÓN DE VECINOS
EL PUEBLO
NEIGHBORHOOD ASSOCIATION
2105 N. BROADWAY, WICHITA, KS 67214

Phone: 316-267-6359
Fax: 316-267-6354
Email: guero7@cox.net

September 25, 2008

We are writing this letter in support of Mr. Mario Quiroz, owner of Frida's Mexican Grill, located at 1580 W. 21st St. N., Wichita, KS 67203. We appreciate the cooperation and friendliness of this business to the El Pueblo Neighborhood Association and community. "Frida's" has opened their doors to various community organizations, and has allowed us to hold meetings there, free of charge and interference.

The esthetics of the restaurant, in its humble beginnings, are that of appreciation and education of the cultural arts. The restaurant was named after Frida Kahlo, a very famous artist from Mexico, wife of Diego Rivera, a muralist. The restaurant walls are hung with some copies of their works. Mr. Quiroz also has brought in a variety of musicians, such as saxophonists, which adds to the diversity and appeal of our community.

The back part of the building has a large space available for social events and other activities which is widely accepted in our predominantly Hispanic and Catholic community. We know that Mr. Quiroz runs a clean business, provides for tight security, and demonstrates a sensitivity to community needs.

We appreciate the fact that Mr. Quiroz has attended our community meetings and has made himself available and accountable to our large neighborhood of residents and other business, along the west 21st St. N. corridor.

El Pueblo Neighborhood Association is in favor of Frida's Mexican Grill in getting a conditional use to the community unity plan and extends a big welcome to Mr. Quiroz with best wishes for success in his business.

Thank you for your time and attention.

Sincerely,
Alejandro Calderon

Alejandro Calderon, President
(316) 640-5387—Cell
guero7@cox.net

Neighborhood diversity is power / La diversidad en el vecindario es poder

WEIGAND-OMEGA MANAGEMENT, INC.

February 4, 2009

Re: DP18 Amendment #3, CUP2008-52

Dear Mayor Brewer and Council Members,

I am the District Manager for Twin Rivers Apartments located at 2305 North Somerset in Wichita. We have become concerned about the current attempt to gain authority to operate a drinking establishment/nightclub in the shopping center located across the street from out apartments. Our concern about the nightclub stems from concern about our residents' safety and quiet enjoyment of their living quarters, as well as, the potential diminution in value of our property.

I just received notice of the MAPC meeting from our corporate office on the day before it was to occur. I also understand the sign required to be posted for 13 days prior to the hearing was only placed, if at all, for a very short period of time. As a result, I was not prepared to fully expound on the reasons why our ownership is opposed to the operation of a nightclub so close to our 230 unit multi-family housing property. Additionally, the allotted time of 5 minutes to address the MAPC is not enough to meaningfully communicate all of our concerns. I did produce pictures of extreme amounts of graffiti located on the wall behind the building that has applied for this amendment. This was discounted because "graffiti is a problem everywhere". I disagree with that because the graffiti was taken from the property of the same owner who is asking to be allowed to operate a nightclub/drinking establishment when clearly the owners cannot properly maintain their property as it is.

In reviewing the information in the staff report on this application and in hearing the statements of the applicant at the MAPC hearing, I began to question why a minister of the church that had an alcohol rehabilitation program across the street from the proposed nightclub location would be in favor of the application. Since his phone number was listed at the bottom of his letter of recommendation, I called him. To my surprise, he told me that he was totally against drinking and the establishment of new nightclubs, and that he did not know that his letter would be used to promote a nightclub. I also learned that he is not currently a Pastor of the church that is across the street from the proposed nightclub. He prepared and signed a letter clarifying his position in opposition any business involved in selling alcohol or operating nightclubs, a copy of which is enclosed.

In reviewing the Minutes of the MAPC meeting, it is reported that one member asked a question about the proximity of the Church to the proposed nightclub location and was advised that it was within 200 feet of the CUP. This question was immediately followed by the agent for the applicant who stated that the MAPC agenda "included a letter of support from the Church." Later, the applicant stated "that he has the support of the WPD, the surrounding neighborhood

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Associations and the church. After talking with the WPD North station I was told that their department would not take a public stance on this and that there must have been a misunderstanding.

I then contacted the minister of Breakthrough Ministries (the next door), Rev. Henry Foster, who told me that he opposed the operation of a nightclub across the street from his church and alcohol rehabilitation program. He then signed a formal protest petition stating his opposition to the proposed change in the CUP. He has also assured me that he will make every effort to appear at the City Council meeting on February 10th, 2009 and can clarify that his church never gave their support and that statements to that effect were indeed false.

Also attached to the Staff Report submitted to the MAPC were several letters from neighborhood associations, one of which was the North Riverside Neighborhood Association. We also have an apartment complex near Twin Lakes in North Riverside, and I know the North Riverside association had been vocal in their opposition to a nightclub at the River Bend Shopping Center four years ago. Our Twin Lakes Manager called the Vice President of the association to inquire about their support for the nightclub. He said he had no knowledge of the letter, and certainly is opposed to the new nightclub application. I attended the next meeting of the North Riverside Neighborhood Association held on January 19, 2009, and discussed with them this application. Two of the three persons who signed the letter were at this meeting and one of them said that they had discussed the application at their November, 2008, meeting when Mario Quiroz was present and no one opposed it at that time, so they approved the letter. I should point out that there was no notice of the fact that this nightclub application was going to be discussed at that meeting so interested parties could attend and speak about it. I should further point out that the letter signed by this association was dated September 26, 2008, within the same two week time period of all the dated letters included in the Staff Report. The letter also does not state that the entire association met to discuss the nightclub, only the association Board, of which the Vice President, who had no knowledge of such a meeting, is a member. At the January 19th meeting, I gave any interested person the opportunity to sign a statement indicating their opposition to a nightclub being allowed at the River Bend Shopping Center, and four association members signed such a statement which is also enclosed.

In checking with the Kansas Secretary of State's office, it has been determined that none of the three neighborhood associations signing letters that were attached to the Staff Report were authorized to do business in the State of Kansas at the time each letter was signed and when the letters were presented to the MAPC. The El Pueblo Neighborhood Association's charter was forfeited on September 15, 2008; the 21st Street Business Association's charter was forfeited on July 15, 2008; and the North Riverside Neighborhood Association's charter was forfeited on September 15, 2002.

It appears that the only justification for the support of a nightclub application at this time as opposed to the similar application four years ago is the location of the proposed nightclub within the shopping center. The previous plan called for the nightclub location to be on the east side of the center closer to single family homes, whereas the current plan calls for the nightclub to be on the west side of the center closer to the church and our 230 apartment units. The parking for the current club is at the street across from the church and our apartments, as well as, encompassing the majority of the remaining shopping center parking at the core of the center. The result is that the problems that were identified during the hearings on the application four years ago will now be moved to the other side of the center if this application is approved. The problems are inherent with nightclubs and will not go away. Our concern is not so much what goes on inside the nightclub, but what goes on outside the nightclub. Many of the patrons leaving the club at late hours will be driving the streets through the neighborhood, some in an inebriated condition, some feeling the need to immediately empty their bladder, and, unfortunately, some who will carry their disagreement with another patron into the neighborhood often resulting in fights, gunshots, and sometimes even death. These are some of the reasons nightclubs are not allowed within 200 feet of residential neighborhoods and churches.

There has been no showing in this application of how our neighborhood will be protected from the detrimental effects that will be brought into it by the approval of a nightclub in the River Bend Shopping Center. Nothing has changed in that regard from the application of four years ago. In fact, this application actually makes the situation worse. The application four years ago was for the operation of a nightclub **two** Saturday nights a month. According to City figures, 18.19% of the neighbors within 200 feet of the application area protested the change. I understand the former application immediately followed about seven years of having a nightclub operating without legal authority at the shopping center, and so the detrimental effects of its operation were fresh in the minds of the neighbors and the City.

This current application requests the operation of a nightclub **every** night of the month, and has been protested by 63.10% of the neighbors within 200 feet of the application area (the only reason this is not a higher percentage is that one of the large parcels is owned by the same owner as that of the applicant). The current proposed use is much more intense than four years ago, and has almost three and a half times more neighbors protesting than four years ago. I submit to you that the reason for such an increase in neighborhood protests is a result of the neighborhood having experienced the calm and quiet of living without the detrimental effects of the nightclub for the last four years, and they do not want to see that changed now.

The current Staff Report stated that "this application has generated only one phone call in opposition, possibly demonstrating neighborhood acceptance of this proposal." I did not see any mention in the notice of this application sent to area residents that their opposition should be voiced in the form of a phone call to the planning department. I submit that to indicate that the lack of phone calls in opposition to this application is a misrepresentation to the MAPC of the true

status of the mood of the neighborhood. I also submit to you that the notice that was sent to area residents and land owners was only written in the English language which from my understanding excluded many of them from fully understanding the information that was being disseminated. That is unfair to in an area where many of the residents have limited English proficiency.

In conclusion, it is our opinion that there has been false information distributed to the District Advisory Board and the MAPC in regard to this application that resulted in an incomplete hearing and quite possibly influenced their decision to support the amendment to the River Bend Shopping Center CUP. Additionally, due to the lack of signage indicating zoning matter was being considered at the shopping center, and the English only notice to the neighborhood, it is our opinion that many residents did not get the opportunity to appear and personally relate to these bodies their true feelings about this proposed change, thus preventing these bodies from having complete hearings. We are asking that you deny the request for a CUP amendment to allow a nightclub/drinking establishment at 1580 W. 21st Street based on the basis of the overwhelming number of protests in the area, the misrepresented information, and the failure to post the proper signage for the required amount of time. At the very least if you will not deny this request please hold a public hearing on this application and allow the neighbors to appear before you and tell you of their personal experiences with nightclubs at the shopping center. I understand and appreciate that the council is very busy taking care of our great city and that in the overall picture this is a small issue, however, to those who live in this area the decision you all make concerning this request will have long term effects on their quality of life, their children's quality of life, and all of our property values. Only after hearing their testimonies of the turmoil that this location with the same owner has caused in the past will you truly get a feel for the will of the neighbors and the impact such a nightclub will have on their lives and families.

Thank you for your consideration of these matters.

Regards,

Brandy L. Alcorn

Brandy L. Alcorn, ARM
District Residential Manager,
Weigand-Omega Management Inc.
316-263-2215

January 20, 2009

To Whom it May Concern;

As a Christian Community, we are not in favor of business that involved alcohol as night clubs. Our message to the people is to stop practicing that life style. As a religious community we do not suppost that kind of business. We do suppost hispanic business that are aloud by the city such like Clothing Stores, Restaurants or any other business that there is no alcohol involved

Sorry for any misunderstanding but we do not support any negative life style.

Sincerly,
Pastor Juan Farin

God Bless You

01/19/09

To Whom It May Concern:

It has been brought to my attention as a member of the North Riverside Neighborhood Association that there was a letter recently written endorsement given to the City of Wichita Metropolitan Planning commission by our President and two other members concerning their feelings about Mr. Mario Quiroz and the proposed amendment that would allow for a nightclub/drinking establishment at 1570 W. 21st street north, with a capacity of 300 people. By signing this protest letter I am stating that I am part of the North Riverside Neighborhood Association and that I do not agreed to the proposed amendment and protest having a nightclub/drinking establishment at 1570 W. 21st Street north. This is not an appropriate location for a nightclub/drinking establishment and regardless of anyone's personal feelings about Mr. Quiroz should not be allowed in and would be detrimental to this residential neighborhood.

Name	Address	Phone
Melinda Bradburn	1840 N Payne Ave	316-941-9370
Daniel Bonson	1848 N Payne Ave	316-941-9370
Barbara H Tabata	1754 N Payne Ave	260 6596
Rosanne Carter	1822 N Porter Ave	351-7326

2 FEB 2009

TO THE CITY COUNCIL OF WICHITA

Dear Council Members:

Less than one year ago I moved to 2302 N. Hood which is directly across the street from Frida's. This organization now plans to open a nightclub. This will definitely add noise and congestion to my neighborhood and possibly create an atmosphere for crime.

Since they need approval to change the zoning, please consider the following:

1. Weren't there good reasons for restricted zoning in this neighborhood?
2. What do you envision when you think of a nightclub? Would you want to live next to one?
3. After speaking with former residents of this area, I learned that legal or illegal clubs operated in this shopping center several years ago. During that time there was constant noise, public urinations and gunshots.

Please do not lift the restriction!

Sincerely,

PAGE CONNER
2302 N. Hood
Wichita, Ks 67204

LAW OFFICES OF BLASE & BLASE

Attorneys at Law
2302 North Hood
Wichita, Kansas 67204
Tel: (316) 993-7733

HENRY H. BLASE

ALBERT H. BLASE (1907 - 1988)
ROBERT E. BLASE (1909 - 1988)

February 4, 2009

Mayor Brewer and City Council Members
City of Wichita
455 North Main, 1st Floor
Wichita, KS 67202

Re: CUP2008-52
DP18 Amendment #3

Dear Mayor Brewer and Council Members Fearey,
Gray, Longwell, Schlapp, Skelton, and Williams,

I spoke at the MAPC hearing in opposition to the above referenced CUP amendment. Being mindful of the policy considerations contained in City Council Policy #9, I will limit my comments to new evidence and arguments about the completeness of the prior hearings.

In terms of new evidence, the reason for these comments not being made at the MAPC hearing is the requirement that all comments from interested parties not the applicant be limited to five minutes. With the magnitude of the implications from allowing a nightclub in the River Bend Shopping Center CUP area, it was impossible to convey all information within the five minute time frame.

The first new evidence to the Council is the information that was left out of the Minutes of the MAPC meeting whereat I quoted the comments of Rosalee Bradley, former President of the North Riverside Neighborhood Association, contained in the Minutes of the MAPC meeting hearing the prior nightclub amendment on October 7, 2004. Just before I said, "over consumption of alcohol and consumption of alcohol outside the building . . .", which are reported in the current Minutes, I said, quoting Rosalee Bradley, "my neighborhood has a long history of dealing with fights, gun fights, with people getting killed, disorderly conduct, over consumption . . ." Why would reference to the most egregious conduct be left out of the current Minutes?

At the October 7, 2004, hearing, Gerardo Valenciana played a video he shot from the porch of his house at 2320 North Hood that depicted people urinating in the street and other disorderly conduct as well as the sounds of gunshots. That activity terminated after the illegal nightclub previously operating at the shopping center was shut down over four years ago. The neighborhood does not want it to start up again. Since that video tape is retained in the "permanent record" of the MAPC hearing on the former amendment application, I request that you ask to see it and get a first hand look at what the neighborhood had to suffer when a nightclub operated at the shopping center.

When Emma Jaso re-roofed her house two years ago, she reported to me, the roofers found bullet fragments on her roof that is adjacent to the parking lot to the north of the shopping center. She said that when the nightclub was operating, she could not let small children out of her house in the summertime to play in the yard because of the nightclub activity in the neighborhood. Mrs. Jaso could not attend the DAB meeting since she does not drive at night. Consequently, she calling the planning department to voice her opposition to the nightclub. She told me the from the comments of the planner she spoke with, she understood there would be no use of her going to the MAPC meeting since this application was sure to be approved, and she did not go. She gladly signed a protest petition, and if public comment is allowed at your council meeting, she will definitely appear and impart to you the insight she has gained by living through the prior nightclub experience.

Also in the Minutes of the MAPC hearing on January 22, 2009, it is stated that Jess McNeely reported that at the DAB VI meeting that considered this amendment application, "one neighbor spoke against the request." Jess McNeely was at that DAB meeting. He must have mis-remembered the events of that meeting. I was at that meeting also, and I spoke against the request as did Page Conner, a resident living closest to the proposed nightclub on Hood Street. It is interesting to note also that Terri Dozal, Neighborhood Assistant, District 6, who wrote an Interoffice Memorandum to the MAPC Members, also mis-remembered the speakers at that meeting. She reported that "one member of the public spoke in opposition to the request" without quoting any of the negative points made by the speakers. She then reported that "seven public members spoke in favor of the request" and then listed 5 positive points they made, none of which offered to ameliorate the deleterious effects a nightclub will have on the neighborhood. The memorandum is further misleading by failing to state that two of the "public members" were the agent of the proposed nightclub operator and the proposed nightclub operator. The correct tally of the speakers is that two people who live and work inside the 200 feet protest area spoke against the application, four people who live outside the neighborhood, one of whom lives in Topeka, spoke in favor, and two interested parties, one of whom was paid to speak, spoke in favor of their own application.

The end result of the DAB meeting was that the members were influenced by the alleged support for the application by the Church across the street and the letters from the neighborhood associations. In fact, the Church across the street never ever gave any kind of approval to the application and has signed a protest petition. The letter attempted to be passed off as coming from the Church was signed by a Pastor in another Church who did not know that his letter was being used to promote a nightclub. He has since written a letter stating that he is staunchly opposed to alcohol and nightclubs in any location.

The background information contained in the Staff Report for this application is further misleading in that it states that "in 2004, a different applicant requested an amendment to this same CUP for a drinking establishment and nightclub. . ." It also lists Mario Quiroz as the current applicant. Section V-E.2 and Section V-E.13 each state that the applicant for a CUP and a CUP amendment must be the property owner. Mario Quiroz does not own the subject property. The owner of the property, the applicant, is the same owner who submitted the application in 2004. This is the same owner that allowed an illegal nightclub to operate on his premises for seven years until neighborhood opposition and City action forced it to stop over four years ago. This is the same owner who disrespects the neighborhood by allowing graffiti to adorn the walls of the concrete

block screening wall along almost the entire north property line along 22nd Street between Hood and Somerset. This is the same owner who continues to disrespect the neighborhood by ignoring the requirements of the CUP that state that the length of the property boundary of the parking lot on Hood and Garland Streets be fenced with at least a three foot high fence.

This is the same owner who has apparently subdivided space within the shopping center without the requisite City permits for such reconstruction, as Central Inspection was unable to show me any upon my recent request and appeared to be unaware of the reconstructed space. One of the new spaces now has a lighted sign announcing it as an "Activities Center" in which activities are conducted which appear to be very similar in nature to those suggested to be conducted in the proposed nightclub space. Quite often these activities fill the available parking spaces that the application for the nightclub asserts are allocated to nightclub parking. Where will the Activities Center parking go if the nightclub is approved? Out onto Hood Street or even into the unfenced overflow parking area north of 22nd Street. The City does not appear to have a plan for parking for the Activities Center that allocates a fixed number of parking spaces for the Activities Center use.

Further mis-information conveyed to the DAB and MAPC came from the proposed operator of the proposed nightclub, Mario Quiroz. He stated to the DAB that he had talked to the neighbors. He told the MAPC that "he had the support of the WPD, the surrounding neighborhood associations and the church, and that he has done his homework and talked to people and opened doors in support of his project." First, I am not aware that the WPD would ever be authorized to support any nightclub project, or any other private project for that matter. They may work with an operator to try to improve a bad situation, but I would not go so far as to say they support the project. The fact is, he did not have the support of the Church under any stretch of one's imagination. The neighborhood associations who signed letters apparently did so without advertising any meeting for the purpose of discussing the nightclub and soliciting comments and opinions of actual neighbors. In fact, the person who signed the 21st Street Business Association letter is also the Resident Agent of the El Pueblo Neighborhood Association who also submitted a letter. I have spoken to about twenty residents of the single family houses in the 2300 block of North Hood, and none of them were contacted by Mario Quiroz to inquire as to their views of a nightclub re-opening at the shopping center. Most of them were not even aware that a nightclub was again proposed.

The findings upon which the recommendation in favor of the current application is based are essentially the same as the findings upon which the recommendation opposing the application of four years ago was based. The only real substantive difference is the affirmative statement contained in Finding No. 1, <u>The Zoning, uses and character of the neighborhood</u>, which states:

> "If the request is limited to the proposed conditions, a neighborhood scale nightclub buffered from single-family residences could be compatible with the surrounding neighborhood."

Yet this current finding fails to address the compatibility of a nightclub with the adjacent Church that operates an alcohol rehabilitation program less than 75 feet from the proposed nightclub's parking. And, what happens if the nightclub is not compatible with the surrounding neighborhood?

The following language found in Finding No. 2, <u>The suitability of the subject property for the uses</u>

to which it has been restricted, of the former recommendation was omitted from the current one:

> "Approval of this request would introduce a more intense use that is not appropriate given the application areas proximity to residences (less than 100 feet) and a church (approximately 300 feet), and the parking for the proposed use (adjacent to single-family homes)."

The more intense proposed use in the current application is still not appropriate given its proximity to the Church (less than 100 feet), multi-family living units (less than 100 feet), and single-family homes (less than 275 feet).

In Finding No. 3, Extent to which removal of the restrictions will detrimentally affect nearby property, the language, ". . .which could lead to a loss of enjoyment and value by surrounding properties" was replaced with "[t]he requested CUP amendment would generate traffic at later hours than the current restaurant use." Both of these statements are true, and there was no objective reason to omit the language from the former finding.

Finding No. 4, Relative gain to the public health, safety and welfare as compared to the loss of value or the hardship proposed upon the applicant, contained in the Minutes of the hearing of October 7, 2004, was completly omitted from the current findings. That omitted finding stated,

> "Denial would presumable (sic) cause the applicant an economic loss while continuing some level of protection for the nearby residences and businesses."

There has been no reason stated, nor was there any discussion at the MAPC hearing, concerning the reason for the omission of this finding. It is this level of protection for the nearby residences and businesses that the restriction concerning location of a nightclub within 200 feet of the same was intended to provide. How can a decision now be made to withdraw that protection without some consideration of the effect that withdrawal will have on the people it was intended to protect?

While the Staff Report paid lip service to Objective II.B of the Comprehensive Plan in Finding No. 5, Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies, the strategy that states, "there is a need to evaluate the effectiveness of regulations aimed at reducing or preventing the detrimental impacts of land uses that produce excessive odors, noise or safety hazards upon residential areas" was totally ignored. The portion of that strategy of concern to the neighborhood is the noise and safety hazards a nightclub will create. History has shown that nightclubs create those kinds of problems. Information available at the hearing on the former application, in the Public Services section of the Staff Report, showed a total of 54 police calls to respond to incidents occurring at the shopping center in an 18 month period during which a nightclub operated there. Information about recent police reports at the shopping center was conspicuously missing from the same section of the current Staff Report. Why? I submit that such information would have shown a drastic reduction in police activity at the center since the nightclub operation was closed down. It is precisely that relative peace and tranquility that the neighborhood desires to retain, and the MAPC apparently failed to consider.

In regard to arguments about the completeness of the prior hearings, I would re-assert the points

previously made about mis-information that was disseminated to the DAB and MAPC. In addition, the notification process was flawed. Written notices were sent to area residents written in English. However, many area residents are Hispanic and are not bilingual. The sign that is required to be posted on the subject property for 13 days prior to the MAPC hearing was not posted for the required amount of time. The fact that the sign had been missing was brought to the attention of the agent for the proposed nightclub operator at the DAB meeting, and yet the sign was not replaced prior to the MAPC hearing three days later.

One other glaring defect in the completeness of the hearing is the calculation of area of the proposed amendment. The application for amendment calls for an amendment to DP-18, the River Bend Shopping Center Amended Community Unit Plan. DP-18 consists of four identified parcels. The area calculated for the amendment only includes Parcel 1, Parcel 2 and Parcel 3. Parcel 4, consisting of 67,450 square feet, is left out of the calculation. Consequently, that area surrounding Parcel 4 appears to be left out of the notice area. Also, Parcel 4 is not included in the application area and, therefore, is included in the net area to determine the percentage of protest. The result is a lower percentage protest than actually exists. While these erroneous figures do show that 63.10% of property owners within the 200 feet protested, correct figures would place that percentage at over 88% of property owners within 200 feet, and would include Mrs. Jaso whose property is adjacent to Parcel 4.

At the MAPC hearing on January 22, 2009, Commissioner M.S. Mitchell made the statement that "he doesn't want to see zoning cases decided on a popularity contest and that is exactly what went on [at the DAB meeting]." Yet, by the same token, that same popularity contest standard appears to be exactly why the MAPC voted in favor of this application. All of the letters of support for the application specifically refer to Mario Quiroz and his operation of a restaurant, not a nightclub. In fact, if Mario Quiroz has any experience whatsoever operating a nightclub, that information was never conveyed at the DAB meeting or the MAPC hearing. Nor was he ever asked about his nightclub operation experience. I would suspect that he does not have such experience. Yet the only speaker at the MAPC hearing in favor of the application outside of the proposed operator of the nightclub and his agent, was the President of North Riverside Neighborhood Association, who had also signed one of the letters, and she who stated, ". . . she would like to see this higher class club opened in the neighborhood rather than to wait for the next person to open a 'hip hop' joint." What she evidently fails to understand is that if this application is approved, there is no possible way to stop that "hip hop joint" from operating at the shopping center. Her support of this application, and I suspect the similar support of the other associations, stems from the type of operation Mario Quiroz envisions and has articulated for his nightclub, not the reversion to type of operation that manifested itself in the operation of nightclubs at the shopping center in the past. Yet, there is no condition contained in the recommended approval that would insure that the nightclub operated in this CUP, if approved, be that "high class club".

The limitation imposed in the recommended approval is that the nightclub be attached to and under the same ownership as a restaurant. Such limitation does nothing to insure the character of the nightclub. All that restriction means is that the nightclub is required to maintain separate books from the food sales. That way the food sales, while perhaps only amounting to 10% of the aggregate sales made in the building, would still account for over 50% of the "restaurant" sales so it will still fit within the definition of a "restaurant." The tie to a restaurant does not insure that the

neighborhood will be free from the detrimental effects that a nightclub historically causes.

So, too, the size limitation does not protect and preserve the neighborhood. All it takes is one person to fire a gun to present a safety issue. I have picked up bullet casings from the parking lot at my building across the street from the former nightclub. I do not want to experience that again for myself of the tenants in the office building. One tenant is a former Sheriff's Deputy who is now a real estate agent who told me he did not feel safe conducting business at night when the nightclub was operating. News reports from five years ago state that 10 people cornered 3 police officers outside the former nightclub resulting a crowd of 150 people, many of whom were throwing bottles. Two police officers were hospitalized. How does limiting the number of people in the nightclub to 300 protect the neighborhood?

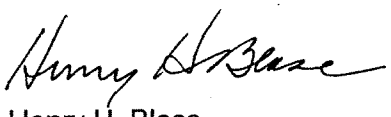
One of the requirements placed on the nightclub in the recommended conditions is that it "shall be responsible to enforce the designated parking area, and shall conform to all other codes and regulations." What happens if it does not do so? What provision is there to rescind the approval for a nightclub in this CUP if the conditions imposed are not followed? Why not impose additional condition(s) that insure the peace and tranquility of the neighborhood? The Wichita-Sedgwick County Uniform Zoning Code at Section V-E.7 and V-E.13 allow the governing body to approve an application with conditions or modifications. If this Council is considering approval of this application, why not impose conditions on the operation of the nightclub, that are applicable regardless of who is actually operating the nightclub, which conditions allow the CUP amendment to be rescinded if the nightclub does not meet the standard. Such conditions would be designed to reduce or prevent the detrimental impacts of a nightclub use that produces excessive noise or safety concerns. There is nothing in the Uniform Zoning Code that would prohibit the imposition of such conditions.

The passage of time has only shown how the neighborhood can improve without a nightclub. It has not shown how the neighborhood has changed to now be suited for a nightclub. A close review of the facts clearly shows that the location of a nightclub anywhere within in the River Bend Shopping Center CUP will be detrimental to the residential and business neighborhood the zoning restrictions were enacted to protect. Zoning runs with the land, not the owner or operator. Please make a decision now to deny this application and protect the character of the neighborhood for the foreseeable future, and not one that will come back to haunt us through untenable living conditions that will result in the deterioration of our neighborhood.

Thank you for your careful attention to this important issue that affects so many people.

Sincerely,

LAW OFFICES OF BLASE & BLASE



Henry H. Blase

HHB/bb

cc: John Schlegel, Director of Planning

CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

March 4, 2009

MEMORANDUM FOR: City Council

FROM: Jess McNeely, MAPD Staff

RE: **CUP2008-52** - DP-18 Amendment #3 to allow a night club on property zoned LC Limited Commercial, generally located north of 21st Street North and east of Somerset Avenue.

On March 3, 2009 at 6:30 pm, MAPD staff, Councilmember Sharon Fearey, and Wichita Police Department staff held a neighborhood public meeting regarding this request. City staff, with the applicant's concurrence, recommended the following revised conditions to the CUP Amendment request:

Italicized conditions are added since the WCC hearing on February 10, 2009; also, references to a "drinking establishment" land-use have been removed.

1. DP-18 Parcel 1 item I. shall be amended to add Amendment #3: "One nightclub shall be permitted at 1570 W. 21st Street North. The nightclub shall be attached to a restaurant and under the same ownership as the restaurant. The nightclub shall not exceed 5,000 square feet in size, shall not exceed a 300-person occupancy, and shall conform to an approved site plan."

2. The applicant shall submit a site plan, to be approved by Planning Staff, which demonstrates a designated nightclub parking area of 150 spaces which shall not be permitted within 160 feet of the east property line. The nightclub shall be responsible to enforce the designated parking area.

3. The restaurant and nightclub shall be restricted to a Drinking Establishment – Restaurant (DER) liquor license, consistent with the Zoning Code definition of a "restaurant".

4. *The applicant, or nightclub operator, shall maintain in full force and effect all licenses or permits that are required by any governmental agency for the operation of a nightclub.*

5. *City Staff shall provide City Council with a review report of DP-18 Amendment #3 within six months of approval by the City Council. The report shall address conformance to the DP-18 Amendment #3 conditions and any licensing and/or other law enforcement issues that have occurred in that six-month period. The City Council may request further staff reports on DP-18 Amendment #3 conformance with City codes and conditions.*

6. *If the Zoning Administrator finds that there is a violation of any of the conditions of the DP-18 Amendment #3, the Zoning Administrator, may, with the concurrence of the Planning Director, declare the DP-18 Amendment #3 null and void.*

7. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

Under the current CUP restrictions, the applicant has a DER and cabaret license, which allows for a restaurant that also sells alcohol, and live entertainment. With the above proposed conditions, permitting the CUP Amendment for a nightclub would then allow the applicant to obtain a dance hall license, which would be the only change to the current establishment. City Staff feels that the proposed conditions, along with licensing ordinances, would keep the proposed nightclub at a neighborhood scale, would mitigate negative effects on the surrounding neighborhood, would have adequate additional review, and would have a revocation clause if the site failed to comply with the Amendment Conditions.

The neighborhood meeting had a sign-in attendance of 35 people representing 28 addresses (see the attached sign-in roster). The majority of the public attending the meeting were vocally opposed to the requested CUP Amendment, citing concerns such as graffiti, trash, poor maintenance of the CUP grounds, a lack of parking on the site due to other nighttime businesses, concerns that designated parking areas would not be enforced; concerns that condition violations or complaints would not result in timely Police or OCI enforcement actions, intoxicated drivers, noise, firearm violations, violence in general, and illegal activity in general.

Please review this information when **CUP2008-52** (DP-18 Amendment #3 to allow a night club on property zoned LC Limited Commercial) is considered.

NAME	Address	Phone
James + Alice Petersen	2438 Somerset	838-7398
Keith Juanita Benjamin Buchanan	2408 Somerset	838-1262
Pat Jessica Brent + Kile grandchildren		
PASTOR Henry Foster	1620 W. 21st	651-0711
Rosanne Carter	1822 N Porter	351-7326
Delora Donovan	1559 Ferrell Dr	262-0596
Melinda Baldwin	1848 N Payne Ave	941-9370
Debi Hutcheson	1632 W 22nd St, Wichita KS 67204	200-0412
Marlena Powell	2011 Porter Wichita	838-4732
Jason Baldwin	1915 Porter Wichita	
Barbara Sawhill	2011 Porter #36 Wichita, Ks	312-0040
Amelia Ornelas	2359 Garland Wichita	838-1337
Kelley Contreras	2345 Garland Wichita	838-3959
Rudy Villegas	2358 Somerset Wichita	838-7665
Addi C Diaz	2425 N. Garland Wichita	806-1637
Delores Ladysh	2545 N Coolidge Wichita, Ks	832-9796
Veronica Valenciana	2615 N. Coolidge Wichita KS 67204	831-9039
HANK BLASE	2302 N. Hood Wichita, KS 67204	993-7733
Brandy Alcorn	2303 N. Somerset Wichita, 67204	239-6640
JAMES GARCÍA	EL PUEBLO N. ASSOC.	990-6521
Betty & Delbert McNew	2333 Garland Wichita 67204	832-9155
Danielle Thon	505 N. Tyler Road Wichita 67212	320-232-8176
Leon Salazar	2358 Garland Wichita KS 67204	838-8241
Michael Horsley	1614 W. 22nd #204 67203	727-4321
MIKE GLEAVE	2615 S. Topeka #204 67216	299-9457
Crystal Rucker	2615 S Topeka #204 67216	993-5572

Ronald + Valerie Nelson 1632 W 27th St 290-1579

Theodore L. Browning 832-0666
2365 Somerset
Apt 104

Lisa Landri 2531 N. Garland 838-7462

Ruth Ann Immermeyer 2537 N. Garland 838-8717

Agenda Item No. V-1.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: SUB 2008-96 -- Plat of Regency Lakes Commercial 3rd Addition located on the northwest corner of 21st Street North and Greenwich Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (10-0)

Background: This site, consisting of seven lots on 11.3 acres, is a replat of a portion of the Regency Lakes Commercial 2nd Addition. This site is also contained within Parcels 1-7 of the Regency Lakes Commercial Community Unit Plan (CUP 2003-49/DP-234). A Notice of Community Unit Plan (CUP) identifying the approved CUP and its special conditions for development on this property has been submitted.

Analysis: Water and sewer services are available to serve the site. Since this is a replat of a previous addition, a Restrictive Covenant has been submitted that will continue the sharing in the ownership and maintenance responsibilities of the previously platted reserves by this addition. A Declaration of Cross-lot Access and Easement has been submitted. Since this site is located within the noise impact area of McConnell Air Force Base, a Restrictive Covenant and Avigational Easement have been submitted.

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

Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Notice of Community Unit Plan, Restrictive Covenants, Declaration of Cross-lot Access and Easement and Avigational Easement will be recorded with the Register of Deeds.

Recommendations/Actions: Approve the documents and plat and authorize the necessary signatures.

NOTICE OF COMMUNITY UNIT PLAN

Regency Lakes Commercial Community Unit Plan (DP-234)

THIS NOTICE made this 5th day of January, 2009, by Regency Land Company, L.L.C., Kanza Bank and RBH Hotel Wichita, L.L.C., hereinafter called "Declarant".

WITNESSETH

WHEREAS, declarant is the owner of the following described property;

Lots 1 thru 7, Block 1, and Reserves "A" & "B", Regency Lakes Commercial 3rd Addition to Wichita, Sedgwick County, Kansas, and

WHEREAS, declarant is desirous to file notice that a Community Unit Plan approved by the Wichita City Council is on file with the Metropolitan Area Planning Department, located on the 10th Floor, City Hall, Wichita, Kansas, (316) 268-4421.

NOW, THEREFORE, the declarant wants to make notice that the approved Regency Lakes Commercial Community Unit Plan (DP-234) has placed restrictions on the use and requirements on the development of the above described real property. The Community Unit Plan shall be binding on the Owners, their heirs, successors, or assigns, and is a document running with the land and is binding on all successors in title to Lots 1 thru 7, Block 1, and Reserve "A" &"B", Regency Lakes Commercial 3rd, an Addition to Wichita, Sedgwick County, Kansas.

EXECUTED the day and year first written above.

REGENCY LAND COMPANY, L.L.C.
By: LAHAM DEVELOPMENT COMPANY, L.L.C.,
ITS MANAGER

By:_____
George E. Laham II, Manager

2008-96

PEC Project No. 36-08639-3432

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid George E. Laham II, Manager of Laham Development Company, L.L.C., Manager of Regency Land Company, L.L.C., to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 5th day of January, 2009.

CATHY ERICKSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 9-22-12

Notary Public

My Appointment Expires 9-22-12

KANZA BANK

By: _____
John E. Boyer, IV, CEO/Chairman

STATE OF KANSAS)
) SS
KINGMAN COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid John E. Boyer, IV, CEO/Chairman of Kanza Bank, to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 15th day of Jan, 2009.

Notary Public

My Appointment Expires 12-2-11

CARIE DAWN YOUNGERS
Notary Public - State of Kansas
My Appt. Expires 12-2-11

PEC Project No. 36-08639-3432

RBH HOTEL WICHITA, L.L.C.

By: _____

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid William J Hamrick of RBH Hotel Wichita, L.L.C., to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 20th day of Jan., 2009.

_____
Notary Public

My Appointment Expires _____

MICHAEL R. KEYSER
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 10-15-12

PEC Project No. 36-08639-3432

RESTRICTIVE COVENANT

This covenant, executed this 5th day of January, 2009.

WITNESSETH: That,

WHEREAS, the undersigned is in the process of platting certain real property to be known as Regency Lakes Commercial 3rd, an Addition to Wichita, Sedgwick County, Kansas; and

WHEREAS, as a part of the platting process certain requirements have been made by the Wichita-Sedgwick County Metropolitan Area Planning Commission regarding the establishment of an owners' association, providing for the ownership and maintenance of the reserves being platted, the maintenance of the "Parking Strips" located along 21st Street North and Greenwich Road, and the requirements for the private drives located in Reserves "A" & "B".

NOW, THEREFORE, the undersigned does hereby subject Regency Lakes Commercial 3rd, an Addition to Wichita, Sedgwick County, Kansas, to the following covenants and restrictions:

1. At such time as the said property shall become developed by erection of improvements thereon, the undersigned agrees to cause an association to be formed to provide for the care, maintenance, and upkeep of the reserves, common areas, parking strips, private drives and drainage improvements.

2. The reserves located in said addition will be conveyed to the association at such time as the project is sold to or occupied by owners or tenants other than the undersigned.

3. Until said reserves are so conveyed, the ownership and maintenance of the reserves, together with the maintenance of the parking strips, shall be by the undersigned.

4. The reserves located in said addition will become part of a master owners association developed for Regency Lakes Shopping Center, Wichita, Sedgwick County, Kansas.

5. In the event that the undersigned or the association, its successors or assigns, shall fail at any time to maintain within the reserves or common areas or fail in any manner to fulfill their obligations relating to the reserves or common areas, the City of Wichita may serve a written Notice of Delinquency upon the undersigned or the association setting forth the manner in which the undersigned or the association has failed to fulfill its obligations. Such Notice shall

Sub 2008-96

include a statement describing the obligation that has not been fulfilled and shall grant twenty (20) days within which the undersigned or the association may fulfill the obligations. If said obligation is not fulfilled within the time specified, the City of Wichita, in order to preserve the taxable value of the properties within the Addition and to prevent the reserves or common areas from becoming a nuisance, may enter upon said reserves or common areas and perform the obligations listed in the Notice of Delinquency. All costs incurred by the City of Wichita in carrying out the obligations of the undersigned may be assessed against the reserves in the same manner as provided by law for such assessments and said assessments may be established as liens upon said reserves. Should the undersigned or the association, its successors or assigns, upon receipt of said Notice of Delinquency believe that the obligations described in said Notice are not proper for any reason, may within the twenty-day period to be provided in said notice, apply for a hearing before the City Council to appeal said assessments and any further proceedings under said Notice shall be suspended pending the outcome of any proceedings with respect to such appeal.

6. This covenant is binding on the owners, its successors and assigns and is a covenant running with the land and is binding on all successors in title to the above-described property.

7. The covenants, conditions, restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent to the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

8. The private drive located in Reserves "A" & "B" shall be a 20-foot wide hard paved surface with no parking and include a turnaround or extension to another access point.

EXECUTED the day and year first above written.

REGENCY LAND COMPANY, L.L.C.
By: LAHAM DEVELOPMENT COMPANY, L.L.C.,
ITS MANAGER

By:_____
George E. Laham II, Manager

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid George E. Laham II, Manager of Laham Development Company, L.L.C., Manager of Regency Land Company, L.L.C., to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 5th day of January, 2009.

CATHY ERICKSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 9-22-12

Notary Public

My Appointment Expires 9-22-12

PEC Project No. 36-08639-3432

KANZA BANK

By: _____
John E. Boyer, IV, CEO/Chairman

STATE OF KANSAS)
) SS
KINGMAN COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid John E. Boyer, IV, CEO/Chairman of Kanza Bank, to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 15th day of Jan, 2009.

_____
Notary Public

My Appointment Expires 12-2-11

My Appt. Expires 12-2-11

RBH HOTEL WICHITA, L.L.C.

By: _____

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid William J Hamrick of RBH Hotel Wichita, L.L.C., to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 20th day of Jan., 2009.

_____
Notary Public

My Appointment Expires _____

MICHAEL R. KEYSER
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 10-15-12

PEC Project No. 36-08639-3432

DECLARATION OF CROSS LOT ACCESS AND EASEMENT

This Declaration is made as of this 5th day of January, 2009, by the undersigned.

A. The undersigned is/are the owner(s) of Regency Lakes Commercial 3rd Addition to Wichita, Sedgwick County, Kansas.

B. The undersigned desires to provide for cross lot access and easements for pedestrian and vehicular traffic over and across said Lots.

Lots 1 thru 7, Block 1, Regency Lakes Commercial 3rd Addition

NOW, THEREFORE, the undersigned hereby declares, establishes and grants to and for the benefit of each of their respective lots, for the convenience of the owners and employees, customers, and invitees of the owners thereof, mutual non-exclusive easements and rights-of-way for the purpose of ingress and egress of vehicular and pedestrian traffic along and across those portions of the respective Lots to be established as driveways and sidewalks from time to time. Said easements are for the purpose of providing ingress and egress between and for the benefit of each of the Lots, the owners thereof, their employees, customers and invitees. There shall be erected no fence or other barrier which would prevent or obstruct the passage of such vehicular and pedestrian traffic between said Lots; provided, however, that this Declaration shall not be construed to create any rights in the general public nor as a dedication to public use of any portion of said Lots. The easements herein granted are superior and paramount to the rights of the owner of the servient estates so created and shall be deemed covenants that run with the land and shall inure to the benefit of and be bin ding upon the owners of said Lots, their successors and assigns.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

REGENCY LAND COMPANY, L.L.C.
By: LAHAM DEVELOPMENT COMPANY, L.L.C.,
ITS MANAGER

By:_____
George E. Laham II, Manager

Sub 2008-96

PEC Project No. 36-08639-3432

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid George E. Laham II, Manager of Laham Development Company, L.L.C., Manager of Regency Land Company, L.L.C., to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 5th day of January, 2009.

Notary Public

CATHY ERICKSON
NOTARY PUBLIC
STATE OF KANSAS

My Appointment Expires 9-22-12 9-22-12

KANZA BANK

By: _____
John E. Boyer, IV, CEO/Chairman

STATE OF KANSAS)
) SS
KINGMAN COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid John E. Bloyer, IV, CEO/Chairman of Kanza Bank, to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 15th day of Jan, 2009.

Notary Public

My Appointment Expires 12-2-11

CARIE DAVIN YOUNGER
Notary Public - State of Kansas
My Appt. Expires 12-2-11

RBH HOTEL WICHITA, L.L.C.

By: _____

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid William J Hamrick of RBH Hotel Wichita, L.L.C., to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 20th day of Jan., 2009.

_____
Notary Public

My Appointment Expires _____

MICHAEL R. KEYSER
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 10-15-02

AVIGATIONAL EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That for a good and valuable consideration, the receipt of which is hereby acknowledged, that Regency Land Company, L.L.C., Kanza Bank and RBH Hotel Wichita, L.L.C., do hereby grant a permanent Avigational Easement to the public authority authorized by law to own and operate public-owned airports in Sedgwick County, Kansas, for the use of "Navigable Airspace" as defined by the Federal Aviation Act of 1958, over all of the following described real estate, to-wit:

Lots 1 thru 7, Block 1, and Reserves "A" & "B", Regency Lakes Commercial 3rd Addition to Wichita, Sedgwick County, Kansas, and

By virtue of this easement, the grantor, for and on behalf of himself and all successors in interest to any and all of the real property above described, waives as to the public authority only any and all claims for damage of any kind whatsoever incurred as a result of aircraft using the "Navigable Airspace" granted herein. This easement does not grant or convey any surface use rights, nor is it to be construed to grant any right to private persons or corporations.

"Navigable Airspace" means air space above the minimum altitudes of flight prescribed by regulations issued under the Federal Aviation Act of 1958, Section 101 (24) 49 U.S. Code 1301, and shall include air space needed to insure safety in takeoff and landing of aircraft.

To have and to hold said easement forever.

IN WITNESS WHEREOF: The grantors have signed these presents this 5th day of January, 2009.

Feb 2008-96

PEC Project No. 36-08639-3432

EXECUTED the day and year first above written.

REGENCY LAND COMPANY, L.L.C.
By: LAHAM DEVELOPMENT COMPANY, L.L.C.,
ITS MANAGER

By:_____
George E. Laham II, Manager

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid George E. Laham II, Manager of Laham Development Company, L.L.C., Manager of Regency Land Company, L.L.C., to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 5th day of January, 2009.

CATHY ERICKSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 9-22-12

_____
Notary Public

My Appointment Expires 9-22-12

KANZA BANK

By:_____
John E. Boyer, IV, CEO/Chairman

STATE OF KANSAS)
) SS
KINGMAN COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid John E. Boyer, IV, CEO/Chairman of Kanza Bank, to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 15th day of Jan., 2009.

_____
Notary Public

My Appointment Expires 12-2-11

CARIE DAWN YOUNGERS
Notary Public - State of Kansas
My Appt. Expires 12-2-11

PEC Project No. 36-08639-3432

RBH HOTEL WICHITA, L.L.C.

By:_____

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid William J Hamrick of RBH Hotel Wichita, L.L.C., to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 20th day of Jan., 2009.

_____
Notary Public

My Appointment Expires _____

MICHAEL R. KEYSER
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 10-15-12

PEC Project No. 36-08639-3432

RESTRICTIVE COVENANT

This covenant, executed this 5th day of January, 2009.

WITNESSETH: That,

WHEREAS, the undersigned is in the process of platting certain real property to be known as Regency Lakes Commercial 3rd, an Addition to Wichita, Sedgwick County, Kansas; and

WHEREAS, Grantors are the owners of Lots 1 thru 7, Block 1, and Reserve "A" & "B", Regency Lakes Commercial 3rd Addition to Wichita, Sedgwick County, Kansas, which property is located near McConnell Air Force Base and is accordingly subject to considerable noise from the operation of aircraft, and is exposed at times to aircraft noise which may infringe upon a resident's enjoyment of property and may, depending upon the degree of acoustical treatment of the dwelling, affect his health and/or well being, and

WHEREAS, the City of Wichita in connection with approval of the plat of said addition considers it to be in the public interest to require any buildings constructed on said addition to be designed and constructed giving proper considerate to noise pollution in the area;

NOW, THEREFORE, the undersigned does hereby subject Regency Lakes Commercial 3rd, an Addition to Wichita, Sedgwick County, Kansas, to the following covenants and restrictions:

1. Any building constructed on the premises shall be so designed and constructed as to minimize noise pollution in any such structure, giving due consideration to the use for which such structure is designed and built. This covenant is for the benefit of said property and shall run with the land and shall inure to the benefit of and pass with said property and shall apply to and bind the successors in interest and any owner thereof.

2. This covenant is binding on the owners, its successors and assigns and is a covenant running with the land and is binding on all successors in title to the above-described property.

3. The covenants, conditions, restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent to the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas. Sub 2008-96

PEC Project No. 36-08639-3432

EXECUTED the day and year first above written.

REGENCY LAND COMPANY, L.L.C.
By: LAHAM DEVELOPMENT COMPANY, L.L.C.,
ITS MANAGER

By:_____
George E. Laham II, Manager

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid George E. Laham II, Manager of Laham Development Company, L.L.C., Manager of Regency Land Company, L.L.C., to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 5th day of January, 2009.

CATHY ERICKSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 9-22-12

_____
Notary Public

My Appointment Expires 9-22-12

KANZA BANK

By:_____
John E. Boyer, IV, CEO/Chairman

STATE OF KANSAS)
) SS
KINGMAN COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid John E. Boyer, IV, CEO/Chairman of Kanza Bank, to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 15th day of Jan, 2009.

_____
Notary Public

My Appointment Expires 12.2.11

CARIE DAWN [illegible]
Notary Public - State of [illegible]
My Appt. Expires 12.2.11

PEC Project No. 36-08639-3432

RBH HOTEL WICHITA, L.L.C.

By: _____

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid William J. Hamrick of RBH Hotel Wichita, L.L.C., to me personally known to be the same person(s) who executed the foregoing instrument of writing and said person(s) duly acknowledged the execution thereof.

Dated this 20th day of Jan., 2009.

_____
Notary Public

My Appointment Expires _____

MICHAEL R. KEYSER
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 10-15-12

City of Wichita
City Council Meeting
March 10, 2009

TO: Wichita Housing Authority Board Members

SUBJECT: Administrative Plan Revisions – Section 8 Housing Choice Voucher Program

INITIATED BY: Housing and Community Services Department

AGENDA: Housing Authority - Consent

Recommendation: Review and approve the Administrative Plan revisions for the Section 8 Housing Choice Voucher Program.

Background: The Wichita Housing Authority Board must approve revisions to the Administrative Plan for the Section 8 Housing Choice Voucher Program before changes can be implemented. The Administrative Plan was last revised on September 16, 2008.

Analysis: The Section 8 Housing Choice Voucher Program Administrative Plan has been revised to include the 2009 Utility Allowance Schedule and 2009 Payment Standards that were adopted by the Wichita Housing Authority Board on February 10, 2009 and November 18, 2008, respectively. Other revisions include a an update to the acceptable primary heating source for dwellings, revised family obligations to the program, and a policy update which states that the informal hearing process is the final step in appeal process.

Financial Considerations: None

Legal Considerations: None

Goal Impact: Promote Economic Vitality and Affordable Living

Recommendations/Actions: It is recommended that the Wichita Housing Authority Board review and approve the Administrative Plan revisions for the Section 8 Housing Choice Voucher Program.

Attachment: Summary of proposed changes to the Administrative Plan for the Section 8 Housing Choice Voucher Program.

SUMMARY OF PROPOSED CHANGES TO THE ADMINISTRATIVE PLAN FOR THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM
March 10, 2009

SECTION OF PLAN	REASON FOR CHANGE
5.0 Selecting Families From The Waiting List	Add new preference to the waiting list for working families and those unable to work because of age and disabilities.
11.5 Assistance and Rent Formula	Add statement that the Wichita Housing Authority will pay $40 to a landlord should we fail to pay the housing assistance payment timely during the first two calendar months of the HAP contract term.
12.3.D. Housing Quality Standard (HQS) Inspection – Thermal Environment	Remove statement that electric heaters are acceptable. Electric wall and baseboard heating systems are not acceptable as a primary heating source. Primary heating source for a dwelling should be in safe and good working condition, capable of maintaining a 70 degree Fahrenheit temperature three feet from the floor in all habitable rooms.
12.4 HQS Acceptability Criteria	Correct statement that adequate heat is considered to be 70 degrees Fahrenheit in all habitable rooms.
13.1 Participant Responsibilities	Add statement that the family's primary mailing address must be the dwelling for which the Housing Authority is providing rental subsidy. Mail from the Housing Authority will be sent to family at subsidized unit, and it is the family's responsibility to ensure that mail is accepted at their subsidized residence. Families must comply with Section 8 Program Participant Responsibilities form that is signed at the time of initial leasing into the program and at each annual recertification.
16.3.5 Issuance of Informal Hearing Decision	Add statement that the Informal Hearing process relative to reinstatement of rental assistance is the final appeal process available through the Wichita Housing Authority.
Appendix 3	Replace 2006-08 Utility Allowance Schedule with adopted 2009 Utility Allowance Schedule
Appendix 4	Replace 2008 Payment Standards with adopted 2009 Payment Standards

CHANGE ORDER

OWNER
ARCHITECT
CONTRACTOR
FIELD
OTHER

AIA DOCUMENT G701

PROJECT:	Rehabilitation to Hangar 16	**CHANGE ORDER NUMBER:**	One
(name, address)	Wichita Mid-Continent Airport	**DATE:**	January 16, 2009
	2173 Air Cargo Road	**ARCHITECT'S PROJECT NO:**	
	Wichita, Kansas 67209		
TO CONTRACTOR:	Caro Construction Co., Inc.	**CONTRACT DATE:**	October 12, 2007
(name, address)	527 North Walnut Wichita, Kansas 67203	**CONTRACT FOR:**	General Construction

The Contract is changed as follows:

1. Change door insulation from 8" to 6" ..... $ 250.00
2. Add metal stud framing at North wall of South Hangar ..... $ 2,650.00
3. Add metal stud framing at South wall of North Hangar ..... $ 2,300.00
4. Leave restrooms unfinished ..... (-) $ 1,509.80

TOTAL AMOUNT OF CHANGE ORDER: $ 3,690.20

Not valid until signed by the Owner, Architect and Contractor.

The original **(Contract Sum)** ~~**(Guaranteed Maximum Price)**~~ was	$ 829,476.00
Net Change by previously authorized Change Orders	$ 0.00
The **(Contract Sum)** ~~**(Guaranteed Maximum Price)**~~ prior to this Change Order was	$ 829,476.00
The **(Contract Sum)** ~~**(Guaranteed Maximum Price)**~~ will be **(increased)** ~~**(decreased)**~~ ~~**(unchanged)**~~ by this Change Order in the amount of	$ 3,690.20
The new **(Contract Sum)** ~~**(Guaranteed Maximum Price)**~~ including this Change Order will be	$ 833,166.20

The Contract Time will be ~~**(increased)**~~ ~~**(decreased)**~~ **(unchanged)** by Zero (0) days.

The date of Substantial Completion as of the date of this Change Order therefore remains: (180) days from receipt of the Notice to Proceed letter.

NOTE: This summary does not affect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price authorized by Construction Change Directive.

Hanney & Associates Architects	Caro Construction Co., Inc.	Wichita Airport Authority
ARCHITECT *(Firm Name)*	CONTRACTOR *(Firm Name)*	OWNER *(Firm Name)*
1726 S. Hillside, Wichita, Ks	527 N. Walnut, Wichita, Ks	2173 Air Cargo Rd., Wichita, Ks
ADDRESS	ADDRESS	ADDRESS
BY *(Signature)*	BY *(Signature)*	BY *(Signature)*
Joe Perez	David Caro	
(Typed Name)	*(Typed Name)*	*(Typed Name)*
January 16, 2009	1/28/09	
DATE	DATE	DATE

Approved as to Form Gary E Rebenstorf

Mr. David Caro
Caro Construction
527 N. Walnut
Wichita, Kansas 67203

Re: Proposed Change Orders

21 March 08

David,

The Airport Authority has approved the proposed change order to change the door insulation in the hangar doors from 8" to 6" for $250. Please add this to your next application for payment.

If you have any questions, please let me know.

Sincerely,

Joe Perez
HANNEY & ASSOCIATES ARCHITECTS

HANNEY & ASSOCIATES ARCHITECTS
1726 S. HILLSIDE ▪ WICHITA, KANSAS 67211 ▪ (316) 683-8965 ▪ FAX (316) 684-1441▪ Email HArchitect @ AOL.com
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CITY OF
WICHITA

Wichita Airport Authority

March 10, 2008

Joe Perez
Hanney & Associates Architects
1726 S Hillside
Wichita, KS 67211

Re: Wichita Mid-Continent Airport
Hangar 16 Rehabilitation

Dear Mr. Perez:

After review of your letter dated 28 February 2008 of the proposed change order items on the referenced project, we concur with the change of the hangar door insulation from 8" to 6". The other proposed items will not be accepted.

Since there is no reference to a time extension with this work, we anticipate an increase of $250.00 to the project and no time adjustments.

Should you have any questions, please contact me.

WICHITA AIRPORT AUTHORITY

Don L. Dearmont

Don L. Dearmont, Construction Superintendent
Airport Engineering and Planning Division

DLD\lfb

cc: John M. Oswald, P.E., Airport Engineering and Planning Division Manager

2173 Air Cargo Road • P.O. Box 9130 • Wichita, Kansas 67277-0130

T 316.946.4700 **F** 316.946.4793

www.flywichita.org

CARO
Construction Co., Inc.

527 N. Walnut · Wichita, KS 67203 · (316) 267-7505 · Fax: 267-7508 · License 153

February 26, 2008

Joe Perez
Hanney & Associates
1726 S Hillside
Wichita, Ks 67211

RE: Wichita Airport Hanger 16

Change Order Request #4

1. Modify 8" insulation bats to fit into 6" girts on hangar doors to allow the doors pass without rubbing on the vinyl. $ 250.00

Total amount for change order request #4 $ 250.00

Total of extra days requested for Change Order #3 0 days

Thank you for your attention and consideration on this matter. Please advise of the status of this request at you earliest convenience.

Rob Gehrer
Project Manager

CITY OF
WICHITA

Wichita Airport Authority

May 20, 2008

Joe Perez
Hanney & Associates
1726 S. Hillside
Wichita, Kansas 67211

Re: Wichita Mid-Continent Airport
Hangar 16 Rehabilitation

Dear Mr. Perez:

We will accept the Contractor prices for the additional work to the north wall of the south hangar and the south wall of the north hangar as identified in your May 16, 2008 letter. It is our understanding there is no change in contract time.

Please incorporate this work into an upcoming change order.

Let me know if there are questions.

WICHITA AIRPORT AUTHORITY

John Oswald

John Oswald, P.E.
Airport Engineering and Planning Manager

Cc: Don Dearmont, Construction Superintendent

2173 Air Cargo Road • P.O. Box 9130 • Wichita, Kansas 67277-0130

T 316.946.4700 **F** 316.946.4793
521
www.flywichita.org

Mr. Don Dearmont
Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

Re: Proposed Change Orders

16 May 08

Don,

Per my letter of 12 March, Caro Construction had submitted two items for change order. Both of these items are for the addition of metal studs at the transition of the hangars and the middle (office roof). The addition was necessary because the horizontal girt was not exactly installed at the height shown on the hangar construction documents and the roofing membrane needed an attachment point where it turned up from the lower roof.

The cost were as follows:

North Wall of South Hangar	$ 2,300.00
South Wall of North Hangar	$ 2,650.00
Total	$ 4,950.00

It is my opinion that for the type of work involved and for the length of walls altered that this cost is fair and represents the best solution to the problem. It is my recommendation that the Airport Authority accept this proposed change order.

If you have any question, please let me know.

Sincerely,

Joe Perez
HANNEY & ASSOCIATES ARCHITECTS

cc: Mr. John Oswald- Wichita Airport Authority

HANNEY & ASSOCIATES ARCHITECTS
1726 S. HILLSIDE ▪ WICHITA, KANSAS 67211 ▪ (316) 683-8965 ▪ FAX (316) 684-1441▪ Email HArchitect @ AOL.com
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Mr. Don Dearmont
Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

Re: Proposed Change Orders

12 March 08

Don,

Caro Construction has submitted two items for change order review for the same condition but in different locations. The attached detail shows the transition from the epdm roof over the office area to the vertical wall of the respective hangars. The problem is that the steel girt appears to have been installed lower than the height indicated on the drawings. The roofing membrane does not have anything to attach to when it turns up at the required height (8" minimum). I am in the process of trying to verify the height of the girt with Caro because Mark, the superintendent, mentioned 12" of vertical rise. Although this may be the preferred distance from his roofer, it is not the requirement of the specified roofing system. Caro has already added metal stud framing to the north wall of the south hangar without approval of the cost. (This was done about 6-8 weeks ago). The proposed change order would also add metal stud framing to the south wall of the north hangar.

North Wall of South Hangar	$ 2,300.00
South Wall of North Hangar	$ 2,650.00

I am currently also trying to get a cost breakdown of the proposed change orders for our review. I will update you when I receive additional information but I wanted to bring it to your attention at this time.

If you have any question, please let me know.

Sincerely,

Joe Perez
HANNEY & ASSOCIATES Architects

HANNEY & ASSOCIATES ARCHITECTS
1726 S. HILLSIDE ▪ WICHITA, KANSAS 67211 ▪ (316) 683-8965 ▪ FAX (316) 684-1441▪ Email HArchitect @ AOL.com
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cc: Mr. John Oswald- Wichita Airport Authority

HANNEY & ASSOCIATES ARCHITECTS
1726 S. HILLSIDE ▪ WICHITA, KANSAS 67211 ▪ (316) 683-8965 ▪ FAX (316) 684-1441▪ Email HArchitect @ AOL.com
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527 N. Walnut · Wichita, KS 67203 · (316) 267-7605 · Fax: 267-7608 · License 158

May 20, 2008

Joe Perez
Hanney & Associates
1726 S. Hillside
Wichita, KS. 67211

Faxed

Re: Wichita Airport Hangar 16 Breakdown

Dear Joe;

Per your request for a cost breakdown regarding item #3 of change order request #3 for the rework of the wall framing to accommodate new roof between buildings, please find below the cost breakdown.

North Wall of South Hangar	
Remove wall panels 2men x 5hours x $38.00/hr=	$ 380.00
Build backing of stud framing 2men x 14hours x $38.00/hr=	$1,064.00
Replace wall panels 2men x 6hours x $38.00/hr=	$ 456.00
Clean-up 2men x 1hour x $38.00/hr=	$ 76.00
Metal Track 220 lf @ $565.00/mlf=	$ 124.00
Metal Studs 300 lf @ $575.00/mlf=	$ 173.00
Misc. Screws/caulking/flashing=	$ 112.00
Subtotal	$2,385.00
Caro Construction 10% OH&P	$ 239.00
Total	$2,624.00
Bond Fee	$ 26.00
Grand Total	$2,650.00

South Wall of North Hangar	
Build backing of stud framing 2men x 15hours x $38.00/hr=	$1,140.00
Replace wall panels 2men x 6hours x $38.00/hr=	$ 456.00
Clean-up 2men x 1hour x $38.00/hr=	$ 76.00
Metal Tack 230 lf @ %565.00/mlf=	$ 130.00
Metal Studs 320 lf @ $575.00/mlf=	$ 184.00

Cont. From Page One

Misc. Screws/caulking/flashing=	
Subtotal	$ 88.00
Caro Construction 10% OH&P	$2,070.00
Total	$ 207.00
Bond Fee	$2,277.00
Grand Total	$ 23.00
	$2,300.00

Please note that the prices have been corrected from February 25, 2008 letter where the prices were inadvertently reversed.

All prices are rounded to nearest dollar.

If you have any questions, please feel free to contact me.

Sincerely,
Caro Construction Co., Inc.

David Caro,
President

CARO
Construction Co., Inc.

527 N. Walnut · Wichita, KS 67203 · (316) 267-7505 · Fax: 267-7508 · License 153

FACSIMILE TRANSMITTAL

To: Hanney & Assoc.
Attn: Joe

Date: 4-21-08

Fax #: 684-1441

RE:

No. PAGES 2
(INCLUDING COVER)

From: Caro

CC:

NOTES:

CARO Construction Co., Inc.

527 N. Walnut • Wichita, KS 67203 • (316) 267-7505 • Fax: 267-7508 • License 153

April 21, 2008

Hanney & Associates
1726 S Hillside
Wichita, Ks 67211
Attention: Joe Perez

Change Order # 4

RE: Wichita Airport Hangar 16

Credit for leaving restrooms unfinished:

Resilient Floors (material and labor)	($376.00)
Interior Signage (material and labor)	($128.00)
Toilet Accessories (4 grab bars, 2 Paper towel dispensers, 2 Mirrors and labor	($441.00)
Paint	($184.80)
Plumbing	($380.00)
Total	(1,509.80)

Mr. David Caro
Caro Construction
527 N. Walnut
Wichita, Kansas 67203

Re: Hangar 16 Credit

17 April 08

David,

I have not received a proposed credit for leaving the restrooms unfinished. Can you please get that to me so that we can review it asap?

If you have any questions, please let me know.

Sincerely,

Joe Perez
HANNEY & ASSOCIATES ARCHITECTS

cc: Don Dearmont- Wichita Airport Authority

HANNEY & ASSOCIATES ARCHITECTS
1726 S. HILLSIDE ▪ WICHITA, KANSAS 67211 ▪ (316) 683-8965 ▪ FAX (316) 684-1441▪ Email HArchitect @ AOL.com
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Mr. David Caro
Caro Construction
527 N. Walnut
Wichita, Kansas 67203

Re: Hangar 16 Rest Rooms

11 March 08

David,

The Airport Authority would like to delete the remainder of the work to be done in the office restrooms. The work will be done at a later time as part of a separate project. The toilet fixtures should not be installed and all finishes should be deleted. Central Inspection has waived the requirements for operating restroom for this project. Please prepare a deduct cost for review.

If you have any questions, please let me know.

Sincerely,

Joe Perez
HANNEY & ASSOCIATES ARCHITECTS

cc: Don Dearmont- Wichita Airport Authority
Melanie Dickey- Professional Engineering Consultants

HANNEY & ASSOCIATES ARCHITECTS
1726 S. HILLSIDE ▪ WICHITA, KANSAS 67211 ▪ (316) 683-8965 ▪ FAX (316) 684-1441▪ Email HArchitect @ AOL.com
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REVISED 3-09-2009

Agenda Item No. VIII-1.

City of Wichita
City Council Meeting
March 10, 2009

TO: Wichita Airport Authority

SUBJECT: Hangar 16 Rehabilitation
Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority ***(NON-CONSENT)***

Recommendation: Approve Change Order No. 1 and budget adjustment.

Background: On February 7, 2007 the Wichita Airport Authority approved the capital project with a budget of $940,000.00. On October 12, 2007 Caro Construction Company, Inc. was awarded the contract to rehabilitate Hangar 16 in the amount of $829,476.00. ***A breakdown of the expenses is as follows:***

Design and bid fees:	***$ 46,743.00***
Construction-related engineering services, etc.	***$ 43,593.00***
Project Inspection and administration	***$ 12,194.73***
Misc. (gas line relocation, asbestos abatement)	***$ 7,627.00***
Caro Construction Contract	***$829,476.00***
Caro Change Order #1	***$ 3,690.20***
Total needed:	***$943,323.93***
Budget:	***$940,000.00***
Budget increase requested	***$ 4,000.00***

Analysis: The construction work is now complete and a change order has been prepared to adjust the final quantities.

Financial Considerations: The cost of the change order is $3,690.20 and represents less than 1% difference. In order to process this change order a budget increase is requested in the amount of $4,000.00 bringing the total budget to $944,000.00. The project will be funded with General Obligation bonds paid for with airport revenue and reimbursements from Koch Industries.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through maintaining hangars that serve the aviation community.

Legal Considerations: The change order has been approved by the Law Department as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the change order and the budget adjustment and authorize necessary signatures.

Attachments: Change Order No. 1.

Agenda Item No. X-1.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Appointment of Municipal Court Judge

INITIATED BY: City Council

AGENDA: Council Agenda

Recommendation: Declare a Vacancy and Appoint a Municipal Court Judge

Background: A vacancy will occur because of the recent announcement of current Municipal Court Judge Richard Shull that he will retire at the end of his term of office. The vacancy will be effective April 21, 2009. Charter Ordinance No. 186 provides a procedure for consideration of individuals for appointment to the office of Municipal Court Judge.

Analysis: Concluding on January 13, 2009 with the appointment of a judge, the selection procedure was recently used to fill another vacancy occurring for a Municipal Court Judge position. The Municipal Court Judge Nominating Commission had recommended three highly qualified candidates for appointment to that position and the City Council made the appointment from among the three candidates. Since the previous selection process was so recent in time and the other candidates recommended by the Nominating Commission are highly qualified, the City Council will waive the selection procedure and proceed to make an appointment for the current vacancy from among the candidates previously recommended by the Municipal Court Judge Nominating Commission.

Legal Considerations: The City Council has the authority to appoint a person to serve as Municipal Court Judge.

Recommendations/Actions: Declare a vacancy in a Municipal Court Judge position, waive the selection procedure, and proceed to appoint a Municipal Court Judge from among the candidates recently recommended by the Municipal Court Judge Nominating Commission and appoint _____to a full four year term as Municipal Court Judge, commencing on April 21, 2009 and expiring on the third Tuesday of April, 2013.

Bids were opened March 6, 2009, pursuant to advertisements published on:

PUBLIC WORKS DEPARTMENT/ENGINEERING DIVISION: Sewers, Paving and Water Mains as per specifications (Exhibit Attached).

Southeast 48 Inch Water Main, Phase 2a Lewis & Ida to Lewis & Green; Lewis Street Sanitary Sewer Adjustment/Relocation of Sanitary Sewer No. 23 Interceptor along I-135 from English to Pawnee Phase 1, English & I-135 Interceptor along I-135 from English to Pawnee Phase 1, English & I-135 (448-90310/468-84375/633796/624087/757002/ 655534) Traffic to be maintained using flagpersons and barricades. (District I,III)

BRB Contractors	-	$6,589,941.20

16 Inch Water Main Extension at Ridge Road and K-42 for Mid Continent Water Reclamation Facility to serve Mid Continent 6th Addition (north of MacArthur, east of Ridge) (448-90370/635694/769742) Traffic to be maintained using flagpersons and barricades. (District IV)

McCullough Excavation	-	$ 132,950.00

On motion the Board recommended that the contracts be awarded as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

PUBLIC WORKS DEPARTMENT/STORMWATER DIVISION: Drainageway Mowing

Commercial Lawn Management, LLC*	-	$ 48,455.78

*Estimate – Contract approved on unit cost basis; refer to attachments.

PARK & RECREATION DEPARTMENT/RECREATION DIVISION: Chapin Park Improvements

Cornejo & Sons, Inc.	-	$ 634,813.09	Base Bid
		$ 111,083.00	Add Alternate 1
		$ 71,149.00	Add Alternate 2
		$ 33,408.92	Add Alternate 3
		$ 107,425.00	Add Alternate 5
		$ 27,955.00	Add Alternate 7
		$ 33,740.00	Add Alternate 8
		$ 22,000.00	Add Alternate 9

POLICE DEPARTMENT/TRAINING DIVISION AND
WICHITA AIRPORT/PUBLIC SAFETY DIVISION: Police and Airport Uniforms

Baysinger Police Supply*	-	$ 80,846.25	Group 1
		$ 14,421.60	Group 2
		$ 187.58	Group 3
		$ 6,520.00	Group 4
		$ 972.00	Group 5

	$ 162.40	Group 6
	$ 8,251.75	Group 7

*Estimate – Contract approved on unit cost basis; refer to attachments.

PUBLIC WORKS DEPARTMENT/PRODUCTION & PUMPING DIVISION:
Drilling Replacement Wells

Clarke Well & Equipment Inc.*	-	$ 767,155.00	Base Bid
		$ 91.00	Option 1 (per linear foot)
		$ 357.00	Option 2 (per linear foot)
		$ 760.00	Option 3 (per linear foot)
		$ 128.00	Option 4 (per linear foot)
		$ 23.75	Option 5 (per linear foot)

* Revised Award

On motion the Board recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

On motion the Board of Bids adjourned.

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL MARCH 10, 2009

a. 2009 Contract Maintenance Mill & Overlay Phase 3 (north of 63rd Street South, east of 135th Street West) (472-84791/132722/620535/133116/N/A) Traffic shall be maintained using flagpersons and barricades. (District IV,V,VI) - $1,070,000.00

b. Water Distribution System to serve Via Christi West Campus Addition (east of 151st Street West, north of 21st Street North) (448-90404/735430/470103) Does not affect existing traffic. (District V) - $291,000.00

Agenda Item No. XII-4a.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: City/County/State Agreement: 63rd St. South Improvement, between Hydraulic and Broadway. (District III)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The Kansas Department of Transportation (KDOT) has allocated funding to Sedgwick County to improve 63rd St. South between Hydraulic and Broadway. A portion of the improvement is adjacent to Wichita's City limits. KDOT has prepared a City/County/State agreement that provides for the administration and funding of the project.

Analysis: Wichita is a part of the agreement solely because it adjoins a portion of the improvement area.

Financial Consideration: There is no cost to the City of Wichita.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through a major traffic corridor.

Legal Consideration: The Law Department has approved the Agreement as to legal form.

Recommendation/Actions: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachment: Agreement.

PROJECT NO. 87 C-4179-01
STP-C417(901)
GRADING & SURFACING
SEDGWICK COUNTY, KANSAS
CITY OF HAYSVILLE, KANSAS
CITY OF WICHITA, KANSAS

AGREEMENT

PARTIES: Debra L. Miller, Secretary of Transportation, Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary,"

Sedgwick County, Kansas, hereinafter referred to as the "County,"

The City of Haysville, Kansas, hereinafter referred to as the "Haysville,"

The City of Wichita, Kansas, hereinafter referred to as the "Wichita,"

The City of Haysville, Kansas and The City of Wichita, Kansas, shall be jointly referred to as the "Cities,"

Collectively referred to as the "Parties."

PURPOSE: The Secretary has authorized a Non-National Highway System county road/city street project, hereinafter referred to as the "Project." The County has requested the Project. The Secretary, the County, and the Cities are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of county roads and city streets utilizing federal funds. The County agrees to sponsor the Project, and the Cities agrees to the portion of the Project being constructed in the Cities. The County and the Cities desire to construct the Project on 63rd Street (south) from Hydraulic to Broadway in the County and Cities.

PROJECT: The Secretary, the County and the Cities desire to enter into this Agreement for the construction of the Project, which is described as follow:

Grading and surfacing on 63rd Street (south) from Hydraulic to Broadway in the County and the Cities.

EFFECTIVE DATE: The Parties in consideration of the premises and to secure the approval and construction of the Project shall mutually agree to perform in accordance with this Agreement as of the date signed by the Secretary or designee.

ARTICLE I

THE SECRETARY AGREES:

1. To provide technical information upon request to help the County to acquire right of ways in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Council of the Kansas Department of Transportation and as required by Federal Highway Administration directives such the County may obtain participation of federal funds in the cost of the Project.

2. To let the contract for the Project and shall award the contract to the lowest responsible bidder upon concurrence in the award by the County. The Secretary further agrees, as agent for the County and City, to administer the construction of the Project in accordance with the final design plans, as required by the Federal Highway Administration, to negotiate with and report to the Federal Highway Administration and administer the payments due the contractor, including the portion of the cost borne by the County.

3. The contractor shall be required to indemnify and save the Secretary and the County and Cities harmless from personal injury and property damage claims arising out of the act or omission of the contractor, the contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary, the County, and the Cities defend a third party's claim, the contractor shall indemnify the Secretary, the County, and the Cities for damages paid to the third party and all related expenses the Secretary, the County, and the Cities incur in defending the claim.

4. To be responsible for eighty percent (80%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering for the Project. The Secretary shall not be responsible for the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project.

5. After receipt of the Federal Highway Administration acknowledgement of final voucher claim, the Secretary's Chief of Fiscal Services will in a timely manner, prepare a complete and final billing of all Project costs for which the County is responsible and shall then transmit the complete and final billing to the County.

ARTICLE II

THE COUNTY AND THE CITIES AGREE:

1. The Project shall be undertaken, prosecuted and completed for and on behalf of the County and Cities by the Secretary acting in all thins as their agent, and the County and Cities hereby constitutes and appoints the Secretary as their agent, and all things hereinafter done by the Secretary in connection therewith are hereby by the County and Cities authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the County and Cities acting in their own individual corporate capacity instead of by their agent.

2. A portion of the Project shall be constructed in the Cities.

3. All rights of way provided for the Project shall be used solely for public road purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the rights of way limits except as provided by state and federal laws.

4. Any right of way required for the Project within the limits of the Cities shall be acquired by the County.

5. To adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.

6. To allow the contractor to work anytime during a twenty-four (24) hour period. The Cities and/or County agree to grant all permits and licenses necessary to allow sound levels in excess of those set forth in local ordinances and/or to waive any and all local ordinances or restrictions on the contractor's working hours.

ARTICLE III

THE COUNTY AGREES:

1. The Secretary is authorized by the County to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

2. To design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Project Development Manual for Non-National Highway System Local government Road and Street Projects, Volume I, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the current version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), Bureau of Traffic Engineering's TE Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions with the rules and regulations of Federal Highway Administration pertaining thereto.

3. To make or contact to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including but not limited to, environmental, hydraulic, and geological investigations or studies for such projects. Upon completion thereof, such design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to the Secretary by a licensed professional engineer attesting to the conformity of the design plans with the items in paragraph 2 above. Contracts between the County and any consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement shall contain language requiring conformity with paragraph 2 above.

4. The County and any consultant retained by the County shall have the sole responsibility for the adequacy and accuracy of design plans, specifications, estimates, and necessary surveys, investigations and studies including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. The Secretary or his or her representatives' review of these items is not intended to and shall not be construed to be an undertaking of the County's and its consultant's duty to provide adequate and accurate design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Such reviews are not done for the benefit of the consultant, the constructions contractor, the County, or other political subdivision, nor the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations and studies, including but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or County.

5. A duly appointed representative of the County is authorized to sign for the County any or all routine reports as may be required or requested by the Secretary in the completion of any project undertaken under this Agreement. The design plans must be signed and sealed by the licensed professional engineer responsible for preparation of the design plans. Geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies. Rights of way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the rights of way descriptions.

6. It will, in its own name, as required by law, acquire by purchase, dedication or condemnation all the rights of way, easements and access rights shown on the final design plans in accordance with the schedule established by the Kansas Department of Transportation. The County agrees the necessary rights of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The County shall certify to the Secretary, on forms provided by the Bureau of Local Projects, such rights of way, easements and access rights have been acquired. The County further agrees it will have recorded in the Office of the Register of Deeds all rights of way, deeds, dedications, permanent easements and temporary easements.

7. To contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. pt.24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive and Kansas Administrative Regulations 36-16-1 et seq.

8. To provide all legal descriptions required for rights of way acquisition work. The County further agrees to acquire rights of way, easements, and access rights in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of the Kansas Department of Transportation and as required by Federal Highway Administration Directives to insure participation of federal funds in the cost of the Project. The County agrees copies of all documents including recommendations and coordination for appeals, bill, contracts, journal entries, case files or documentation requested by the Office of Chief Counsel will be sent to the Office of Chief Counsel within the time limits set by the Secretary.

9. It will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing fixtures, pole lines, pipe lines, meters, manholes, and other utilities, publicly or privately owned, which may be necessary to construction of the Project in accordance with the final design plans. New or existing utilities to be installed, moved or adjusted will be located or relocated in accordance with the current version of the Kansas Department of Transportation Utility Accommodation Policy (UAP) as amended or supplemented.

Except as provided by state and federal laws, the expense of the removal or adjustment of the utilities located on public right of way shall be borne by the o. The expense of the removal or adjustment of privately owned utilities located on private rights of way or easements shall be borne by the County except as provided by state law.

10. It will expeditiously take such steps as are necessary to facilitate the early adjustment of utilities, will initiate the removal or adjustment of the utilities, and will proceed with reasonable diligence to prosecute this work to completion. The County further agrees to move or adjust or cause to be moved or adjusted all necessary utilities sixty (60) days prior to the scheduled construction letting except those necessary to be adjusted during construction and those which would disturb the existing street surface. The County further agrees to certify to the Secretary on forms supplied by the Secretary all utilities required to be moved prior to construction have either been moved or a date provided by the County as to when, prior to constructions, they will be moved. The County will initiate and proceed to complete adjusting the remaining utilities not required to be moved during construction in order that the contractor shall not be delayed in construction of the Project. To the extent provided by law, the County will indemnify, hold harmless, and save the Secretary and construction contractor for damages incurred by the Secretary and construction contractor because the utilities have not been moved or adjusted timely or accurately.

11. To furnish the Secretary a list of existing and know utilities affected, together with locations and proposed adjustments of the same and designate and individual to be responsible for coordinating the necessary removal or adjustment of utilities.

12. To certify to the Secretary all privately owned utilities occupying public right of way require for the construction of the Project are permitted thereon by franchise, ordinance, agreement permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

13. To provide the construction inspection in accordance with the rules and guideline developed for the KDOT construction engineering program and in accordance with the current edition of the Standard Specification for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the County or a consultant retained by the County. The Secretary does not undertake for the benefit of the County, the contractor, the consultant, or any third party, duty to perform the day-to-day detailed inspection of the Project, or to catch the contractor's errors, omissions, or deviations from the final design plans and specifications. The County will require at a minimum all personnel, whether County or consultant to comply with the high visibility apparel requirements of the KDOT Safety Manual. Chapter 4, Section 8 Fluorescent Vests. If the County executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The County may set additional clothing requirements for adequate visibility of personnel.

14. To be responsible for twenty (20%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering for the Project. The County agrees to be responsible for one hundred percent (100%) of the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project.

15. It will deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The County will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of County Funds received by the County from the Secretary. The date indicated for the County to deposit its estimated share of the total Project expenses is fifty (50) days after the letting date.

16. If any payment is due to the Secretary, such payment be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

17. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the right of way shown on the final design plans for this Project and it will initiate and proceed with diligence to remove or require the removal of the encroachments. It is further agreed all encroachment be removed before the Project is advertised for letting (provided, however, if the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the County and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The County further agrees it will not in the future permit the erection of gas and fuel dispensing pumps upon the right of way of the Project and it will require any gas and fuel dispensing pumps upon the right of way of the Project and it will require any gas and fuel dispensing pumps erected, moved or installed along the Project be placed no less than twelve (12) feet back of the right of way line. All right of way provided for the Project shall be used solely for public street purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the right of way limits except as provided by state and federal laws.

18. The Secretary has no responsibility to locate any and all hazardous waste sites within the Project's rights of way, easements, and access rights acquired by the County. Further, the County agrees the Secretary shall not be responsible for any costs necessary to remedy or clean up any and all hazardous waste sites, including, but not limited to, leaking underground storage tanks discovered on rights of way, easements and access rights acquired by the County. The County shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims and costs incurred by the Secretary from any hazardous waste site discovered on rights of way, easements and access rights acquired by the County prior to commencement of construction of the Project. The County shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. The County will investigate any and all hazardous waste sites discovered during construction of the Project on County and City land within the Project boundary and shall take appropriate action to contain or remediate such hazardous waste sites.

To the extent provided by law, for any and all hazardous waste site, including but not limited to, leaking underground storage tanks, the County shall hold harmless, defend and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss f natural resources.

Any provision of this hazardous waste clause is not intended to make the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party of this Agreement to maintain a suit for personal injuries, property damages, or hazardous waste claims. The duties, obligations and responsibilities of the Parties on this Agreement with respect to third parties shall remain as imposed by law.

The County by signing this Agreement with the Secretary has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any hazardous waste on any rights of way, easements, and access right acquired by the County. The County reserves the right to bring any action against any third party for any hazardous waste site on any rights of way, easements, and access rights acquired by the County.

The term hazardous waste includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, are incorporated by reference and include but not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule: (2) 40 C.F.R. § *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 1990 Supp. 65-3431 *et seq.*, Hazardous waste.

The standards to establish cleanup of a hazardous waste site include, but is not limited to, federal programs administered by E.P.A., State of Kansas environmental laws and regulations, and city and county standards where hazardous waste site is located.

19. Upon request by the Secretary, to provide the Secretary an accounting all of actual non-participating costs which are paid directly by the County to any party outside of the KDOT and all costs incurred by the County not to be reimbursed by the KDOT for preliminary engineering, rights of way, utility adjustments, construction, and construction engineering work phases, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

20. If they cancel the Project, they will reimburse the Secretary any costs incurred by the Secretary prior to the cancellation of the Project. The County agrees to reimburse the Secretary within thirty (30) days after receipt by the County of the Secretary's statement of the cost that were incurred by the Secretary prior to cancellation of the Project.

21. When the Project is completed and final acceptance is issued by the engineer the County will, at its own costs and expense, maintain the Project. Upon notification by the State Transportation Engineer of any unsatisfactory maintenance condition, the County, together with the Secretary's representative, will investigate the reported condition and agree upon the type and extent of any necessary repairs. If the County and the Secretary's representative cannot agree upon the type and extent of the necessary repairs, the Secretary shall make the final determination. The County will begin work on such repairs within thirty (30) days and prosecute the work continuously until it is satisfactorily completed.

ARTICLE IV

THE PARTIES MUTUALLY AGREE:

1. Plans for handling traffic during construction must be included in the plans provided by the County and must be in conformity with the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be noted on the design plans. The Secretary or his or her authorized representative may act as the County's and City's agents will full authority to determine the dates when any road closings shall commence and terminate. The Secretary or his or her authorized representative shall notify the County and Cities of the determinations made pursuant to this section.

2. The final design plans for the Project are by reference made a part of this Agreement.

3. If any items are found to be non-participating by the Secretary, acting in his or her own behalf and on the behalf of the Federal Highway Administration, the total cost of these items will be paid for by the County.

4. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public

authority, or other agency as authorized by K.S.A. 8-2005, shall conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to the approval of the Federal Highway Administration.

5. The Special Attachment No. 1 attached hereto, pertaining to the implementation of the Civil Rights Act of 1964, is hereby made a part of this Agreement.

6. 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.

7. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the County, the Cities, and their successors in office.

8. No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first written above.

ATTEST:

_____
COUNTY CLERK
(SEAL)

BOARD OF COUNTY COMMISSIONERS

_____
CHAIRMAN

ATTEST:

_____
CITY CLERK (Date)
(SEAL)

THE CITY OF HAYSVILLE, KANSAS

_____
MAYOR

ATTEST:

_____
CITY CLERK (Date)

THE CITY OF WICHITA, KANSAS

_____
MAYOR

Debra L. Miller
Secretary of Transportation

By:_____
Jerome T. Younder, P.E. (Date)
Deputy Secretary for Engineering and
State Transportation Engineer

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such ACT, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties, that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age disability, national origin, or minority populations and low income populations as more specifically set out in the following “Nondiscrimination Clauses”.

CLARIFICATION

When the term “consultant” appears in the following “Nondiscrimination Clauses”, the term “consultant” is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant’s assignees and successors in interest (hereinafter referred to as the “Consultant), agrees as follows:

1) Compliance with Regulations: The Consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23, and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made part of this contract.

2) Nondiscrimination: The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

4) Information and Reports: The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.

5) Employment: The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or natural origin.

6) Sanctions for Noncompliance: In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including but not limited to,

   (a) withholding of payments to the consultant under the contract until the contractor complies, and/or

   (b) cancellation, termination or suspension of the contract, in whole or in part.

7) Disadvantaged Business Obligation

(a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract

(b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.

(c) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

8) Executive Order 12898

(a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with this Order.

9) Incorporation of Provisions: The consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

State of Kansas
Department of Administration
DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.

2. **Agreement With Kansas Law**: All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

   Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

Agenda Item No. XII-5a.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Supplemental Design Agreement for a Bike Path along I-135 to K-96 (McAdams Park to Grove Park) (District I/VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement.

Background: On October 28, 2008, the City entered into an Agreement with Ruggles & Bohm, P.A. for designing a bike path along the I-135 Freeway to K-96 Highway (McAdams Park to Grove Park). The fee was $95,000.

Analysis: The Kansas Department of Transportation has advised that the project may be eligible for economic stimulus funding. A supplemental agreement with Ruggles & Bohm has been prepared to expedite the plans and make them federally compliant.

Financial Considerations: Payment to Ruggles & Bohm will be on a lump sum basis of $9,500 and will be paid by General Obligations Bonds.

Goal Impact: This project addresses the Efficient Infrastructure and Quality of Life goals by constructing bike paths.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Supplemental Agreement and authorize the necessary signatures.

Attachments: Supplemental Agreement.

SUPPLEMENTAL AGREEMENT

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED OCTOBER 28, 2008

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

RUGGLES & BOHM, P.A.

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated October 28, 2008) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements for a **BIKE PATH ALONG I-135 TO K-96** (Project No. 472 84740, OCA No. 706982).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

Additional Design Services (federal funding):

- Federal Compliance
- Expedite plans (see Attachment “A”)
- Meeting with KDOT

B. PAYMENT PROVISIONS

The lump sum fee and the accumulated partial payment limits in Section IV. A. shall be amended as follows:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the lump sum fee specified below:

706982 **$9,500.00**

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2009.

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

RUGGLES & BOHM, P.A.

_____
(Name & Title)

ATTEST:

_____

Attachment "A"

BIKE PATH ALONG I-135 TO K-96

Revised schedule is as follows:

- DAB 6 – complete
- Design Council – Presented in January but the Council did not have a quorum. A motion to approve will be made at the next meeting without re-presentation.
- Dab 1 – Scheduled for March 2nd.
- Topographic Survey Complete
- Preliminary plans delivered to City Staff on April 15th, 2009.
- One-month review by your staff with review plans returned to RB by May 15th, 2009.
- Final plans July 1, 2009.

Agenda Item No. XII-6a.

CITY OF WICHITA
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land at 4258 South Meridian for the Meridian; 47th Street – 31st Street Road Improvement Project (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On July 1, 2008, the City Council approved the Meridian Street between 47th St. South and 31st St. South project. Meridian will be widened from two-lanes to five-lanes. The center lane will be a two-way turn lane. Drainage ditches will be eliminated and traffic signals will be upgraded. In addition, new traffic signals will be installed at the I-235 access ramps. The property at 4258 South Meridian is improved with a residential home. The southern 19 acres is vacant land in agricultural production.

Analysis: The proposed acquisition consisting of 13,466 square feet is a 20-foot wide strip of land and is parallel to the east right-of-way line of Meridian. The owner rejected the appraised value of $6,582, or $0.50 per square foot and has agreed to accept $15,000, or $0.75 per square foot for the land and $4,900 as damages to the mature trees at 4258 South Meridian. This amount is amicable when considering the cost of eminent domain.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $18,000 is requested. This includes $15,000 for acquisition and $3,000 for closing costs and title insurance.

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

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 Real Estate Purchase Contract and 3) Authorize the necessary signatures.

Attachments: Tract map, aerial and real estate purchase agreement.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, Made and entered into this ___ day of _____, 2009 by and between Bradford L. and Lisa J. Reinert, husband and wife, hereinafter referred to as "Seller," whether one or more, and City of Wichita, Kansas, a Municipal Corporation, 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 warranty deed for the construction and maintenance of road right-of-way and other infrastructure improvements within, upon and under the following described tract, to wit:

A proposed 20.00 feet Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas, described as follows:

The East 20.00 feet of the West 50.00 feet of the following described tract of land:

The South 20 Acres of the SW Quarter of the NW Quarter of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas

2. The Buyer hereby agrees to purchase and pay to the Seller as consideration for the conveyance to Buyer, the above described tract and damages including but not limited to fencing and landscaping, the sum of Fifteen Thousand Dollars and no/100 ($15,000.00) in the manner following, to-wit: cash at closing.

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 January 30, 2009.

6. The Seller further agrees to convey the above described easement with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.

7. Possession to be given to Buyer on or before closing date.

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 . Site Assessment

A. At any time prior to the 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. 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 testing of the Property, at the buyer's sole expense.

B. Provided, however, buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. The buyer shall, if buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Bradford L. Reinert

Lisa J. Reinert

BUYER:
By Direction of the City Council

ATTEST:

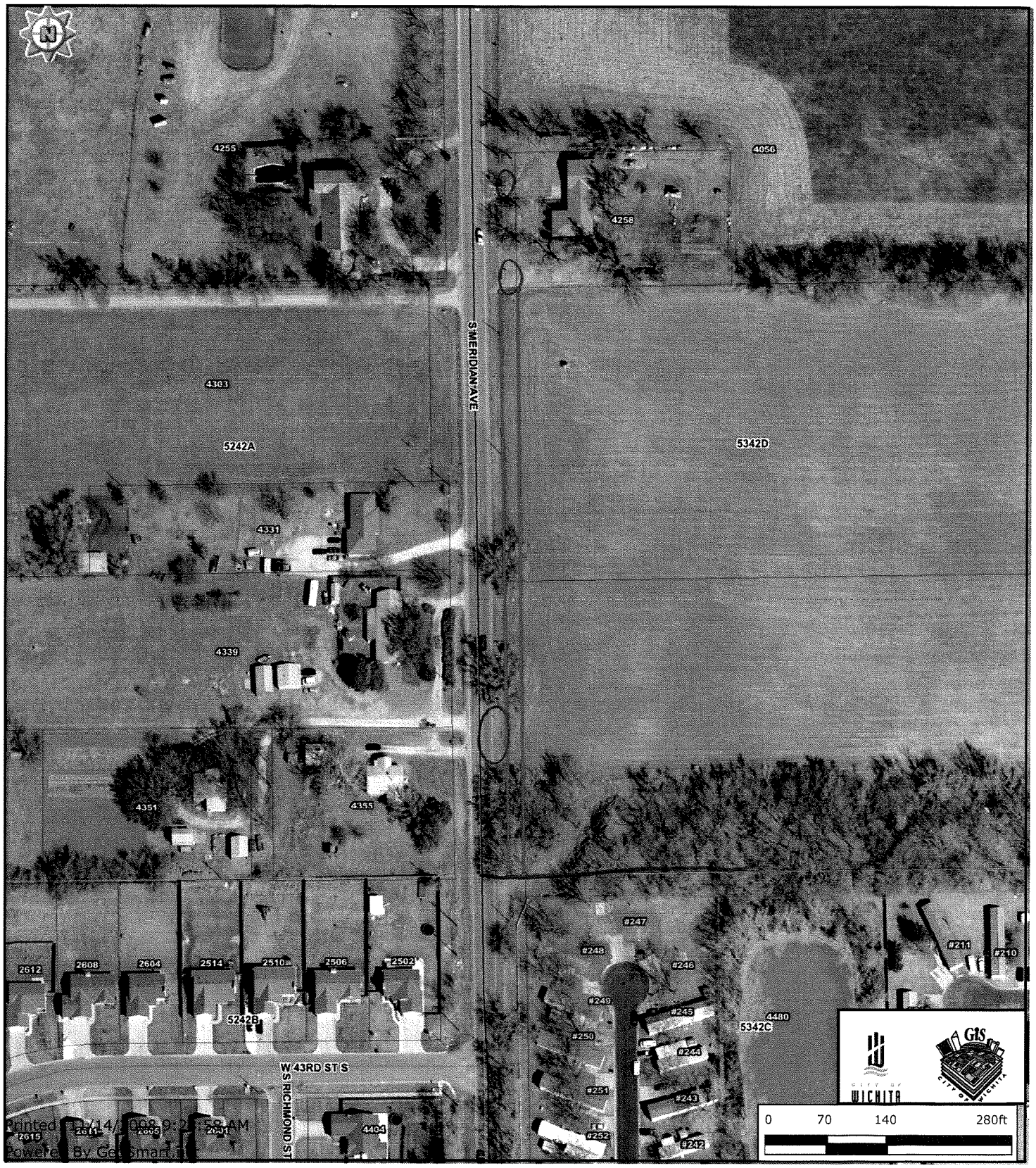
Carl Brewer, Mayor

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

reinert ag land



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.

EXHIBIT

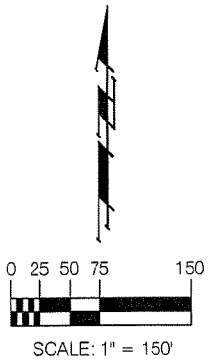
LEGAL DESCRIPTION:

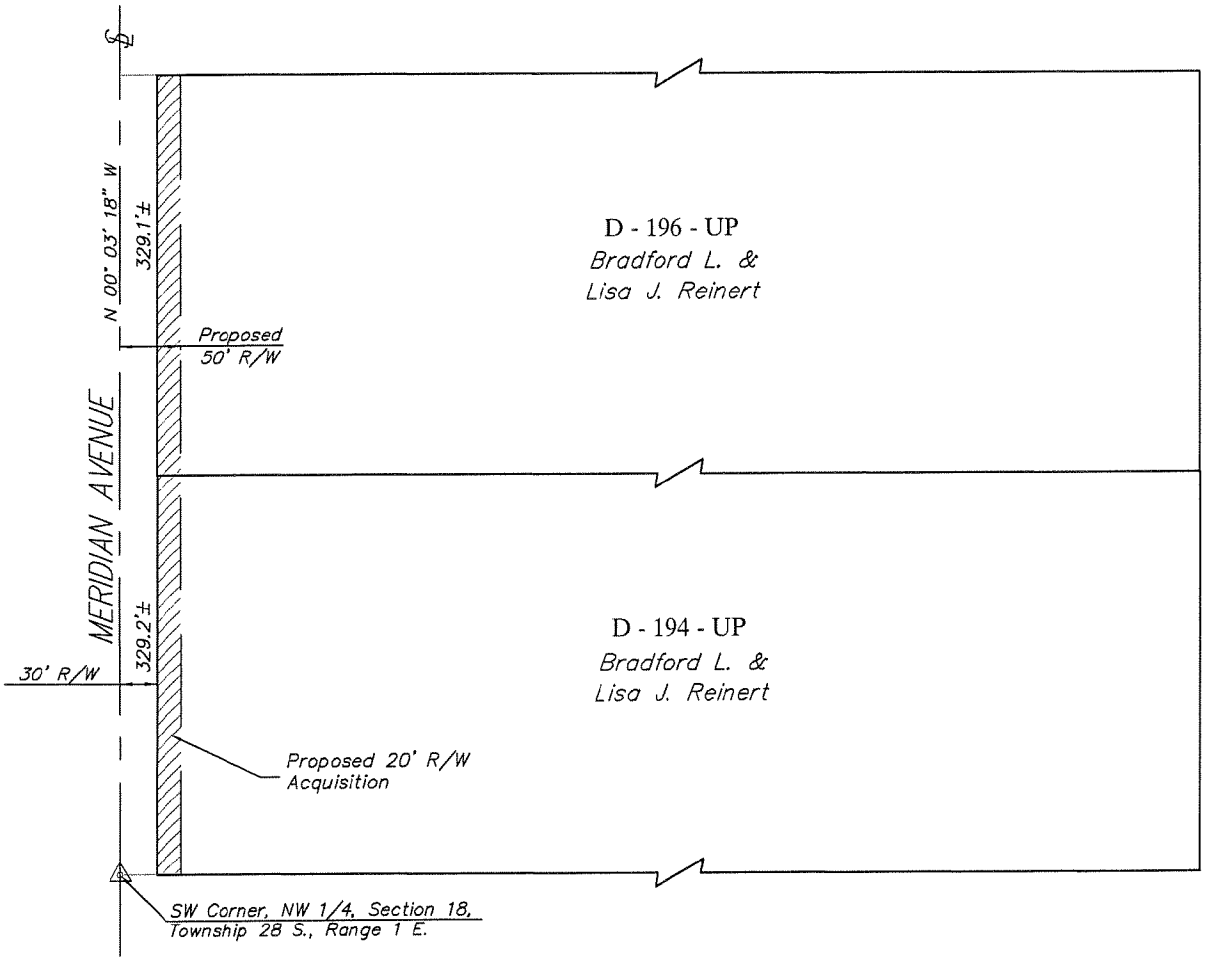
A Proposed 20.00 feet Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas, Described as Follows:

The East 20.00 feet of the West 50.00 feet of the following described tract of land:

The South 20 Acres of the SW quarter of the NW quarter of Section 18, Township 28 S, Range 1 E of the 6th P.M., Sedgwick County, Kansas.

Containing 13,166 Sq. Ft., more or less.





DATE: 5/22/08

Project Number 05-10-E397

F:eng/47th St South/Exhibits/Reinert 1.dwg

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Agenda Item No. XII-6b.

CITY OF WICHITA
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land at 4756 South Meridian for the Meridian; 47th Street – 31st Street Road Improvement Project (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On July 1, 2008, the City Council approved the improvement of Meridian Street between 47th St. South and 31st St. South. Meridian will be widened from two-lanes to five-lanes with a center two-way turn lane. Curb to gutter will be constructed. Traffic signals will be upgraded throughout and new traffic signals will be installed at the I-235 access ramps. The property at 4756 South Meridian consists of a 16.5-acre farmstead. The southwest portion of the property has 7 acres, unplatted and is zoned Limited Commercial. The remainder of the site is vacant, unplatted and is zoned residential.

Analysis: This particular acquisition is irregular in shape and consists of a total of 30,096 square feet. The land required as right-of-way varies. The take is generally a 20-foot wide strip of land along Meridian. In the southern 300-feet, it widens to as much as 30-feet. Along 47th Street South, from Meridian, the acquisition area is 20-feet wide and tappers down to 10-feet. All of the improvements that make up the farmstead are at the southwestern portion of the property, nearest the intersection of 47th and Meridian. Trees, an unoccupied residential structure, a one-car garage, a cattle coral and a cattle feeding pen will be cleared from the proposed right-of-way. During construction, it will be necessary to detour the storm water runoff from Meridian easterly towards the 47th Street South drainage structure. This is handled by creating a 40-foot wide drainage easement, consisting of 31,400 square feet, around the north side of the farmstead. To facilitate the construction of the drainage easement, it is necessary to acquire a 30-foot wide temporary construction easement. The owner has agreed to convey the necessary right-of-way, improvements within the proposed right-of-way and easements for the appraised value of $63,175.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $100,000 is requested. This includes $63,175 for the acquisition and $36,825 for demolition, closing costs and title insurance.

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

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 Real Estate Purchase Contract and 3) Authorize the necessary signatures.

Attachments: **A**erial map and real estate purchase agreement.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, Made and entered into this 22nd day of February, 2009 by and between Lena P. Peebler Revocable Trust dated September 22, 1998, hereinafter referred to as "Seller," whether one or more, and City of Wichita, Kansas, a Municipal Corporation, 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 warranty deed for the construction and maintenance of road right-of-way and other infrastructure improvements within, upon and under the following described tract, to wit:

Attached as Exhibit "A"

2. The Seller does hereby agree to sell and convey to the Buyer by a temporary drainage easement within, upon and under the following described tract, to wit:

Attached as Exhibit "B"

3. The Seller does hereby agree to sell and convey to the Buyer by a temporary construction easement for the construction and maintenance of drainage easement, road right-of-way, and other infrastructure improvements within, upon, and under the following described tract, to wit:

Attached as Exhibit "C"

4. The Buyer hereby agrees to purchase and pay to the Seller as consideration for the conveyance to the Buyer the above described tract and any damages including but not limited to fencing and landscaping, the sum of Sixty-Three Thousand One Hundred Seventy-Five Dollars and No/100 ($63,175.00) in the manner following, to-wit: cash at closing.

5. A complete abstract of title certified to date, or a title insurance company's commitment to insure 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. Buyer hereby agrees to obtain said title information at its expense.

6. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

7. 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 March 29, 2009.

8. The Seller further agrees to convey the above described easement with all the improvements located thereon except for personal property and deliver possession of the same in

RJB
CMB

the same condition as they now are, reasonable wear and tear excepted. Personal property shall be removed within thirty (30) days after closing.

9. Buyer and Seller hereby agree that the Buyer will demolish and remove the residential structure, the southern garage and associated covered pit, former wood cattle corral and a portion of the former feeding pen from the premises located thereon SW Quarter, SW Quarter except the W 263.6 feet of the South Half of the North Half and except for the East Half and except that part dedicated for Street Right-of-Way in Section 18, Township 28 South, Range 1 East. Said improvements are to be razed as a portion thereof is located within the proposed right-of-way.

10. Seller agrees to provide the Buyer with access by granting a temporary construction easement for a term not to exceed sixty (60) days post closing to raze the improvements located within Exhibit "A" and noted in Paragraph 9.

Buyer hereby agrees to raze said improvement per State and Local conditions and specifications. The site will be restored to match the nearby existing area.

11. Possession to be given to Buyer at closing.

12. 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.

13. Site Assessment

A. At any time prior to the 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. 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 testing of the Property, at the buyer's sole expense.

B. Provided, however, buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. The buyer shall, if buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

14. Paragraph 9 and 10 shall survive the closing.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Colleen M. Basil
COLLEEN M. BASIL
CO-TRUSTEE
Feb 22, 2009

Robert J. Basil
ROBERT J. BASIL
CO-TRUSTEE
Feb 22, 2009

LJM
CMB

BUYER:
By Direction of the City Council

Carl Brewer, Mayor

ATTEST:

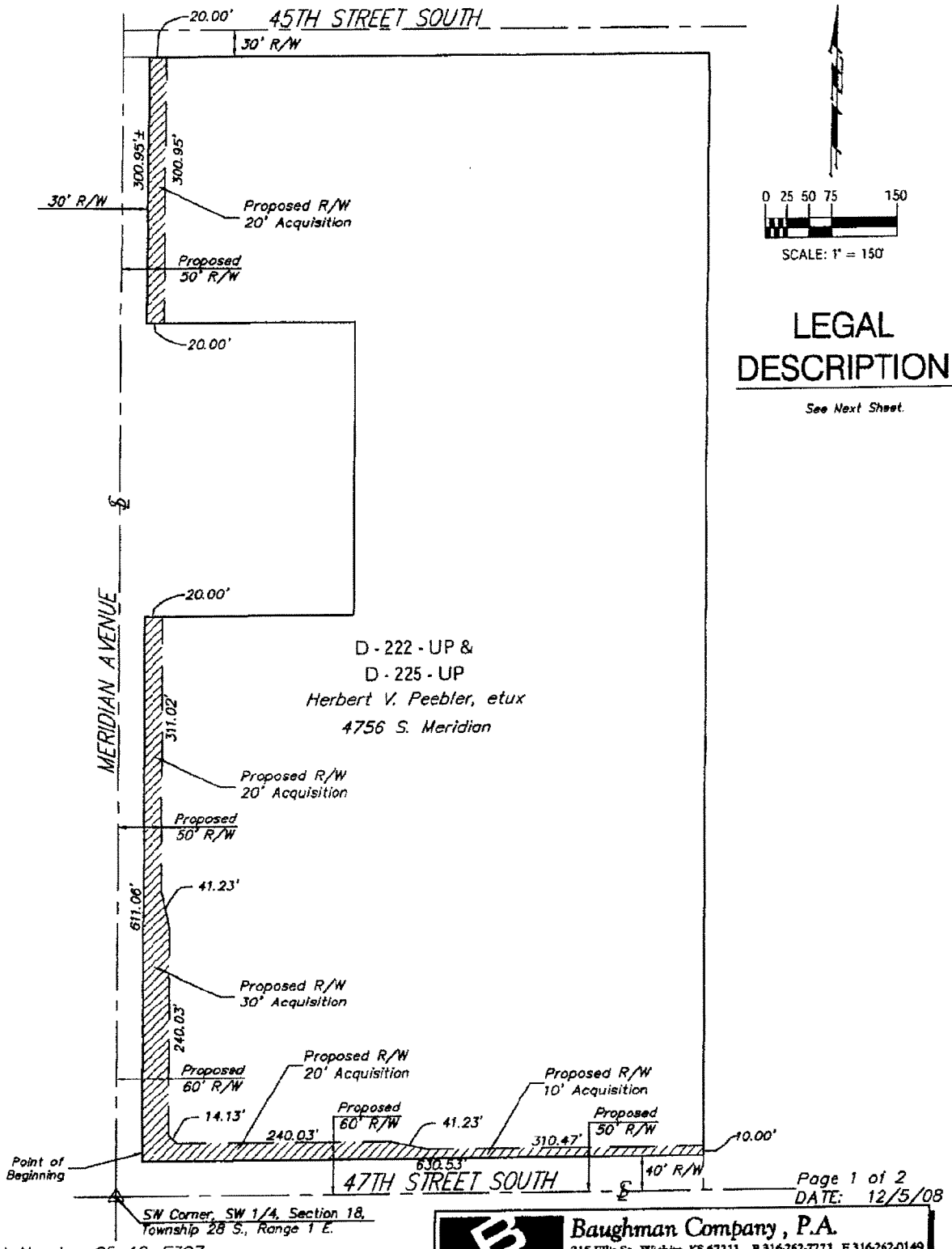
Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

RJB
CMB

EXHIBIT "A"



LEGAL DESCRIPTION:

See Next Sheet.

Page 1 of 2
DATE: 12/5/08

Project Number 05-10-E397

F:eng/47th St South/Exhibits/Peebler.dwg

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

RJS
CMB

EXHIBIT 'A'

LEGAL DESCRIPTION:

A Proposed Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas, Described as Follows:

Commencing at the SW Corner of the SW ¼ of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence North along the West Line of said SW ¼ a distance of 40.00 feet; thence East parallel to the South Line of said SW ¼ a distance of 30.00 feet to the Point of Beginning; thence continuing East parallel with the South Line of said SW ¼ a distance of 630.53 feet to a point on the East Line of the West Half of the SW ¼ of said SW ¼; thence North along the East Line of the West Half of the SW ¼ of said SW ¼ a distance of 10.00 feet; thence West parallel with the South Line of said SW ¼ a distance of 310.47 feet; thence Northwesterly a distance of 41.23 feet to a point 60.00 feet normally distant North of the South Line of said SW ¼ and 310.03 feet normally distant West of the East Line of said SW ¼; thence West parallel to said South Line a distance of 240.03 feet to a point 70.00 feet normally distant East of the West Line of said SW ¼; thence Northwesterly a distance of 14.13 feet to a point 70.00 feet normally distant North of the South Line of said SW ¼ and 60.00 feet normally distant East of the West Line of said SW ¼; thence North parallel to the West Line of said SW ¼ a distance of 240.03 feet; thence Northwesterly a distance of 41.23 feet to a point 50.00 feet normally distant East of the West Line of said SW ¼ and 310.03 feet normally distant North of the South Line of said SW ¼; thence North parallel to the West Line of said SW ¼ a distance of 311.02 feet to a point on the South Line of the N ½ of the SW ¼ of the SW ¼; thence West along the South Line of the N ½ of the SW ¼ of the SW ¼ a distance of 20.00 feet; thence South parallel to the West Line of said SW ¼ a distance of 611.06 feet to the Point of Beginning.

AND

The East 20.00 feet of the West 50.00 feet of the North ½ of the North ½ of the SW ¼ of the SW ¼ of Section 18, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas.

Containing 30,096.8 Sq. Ft., more or less.

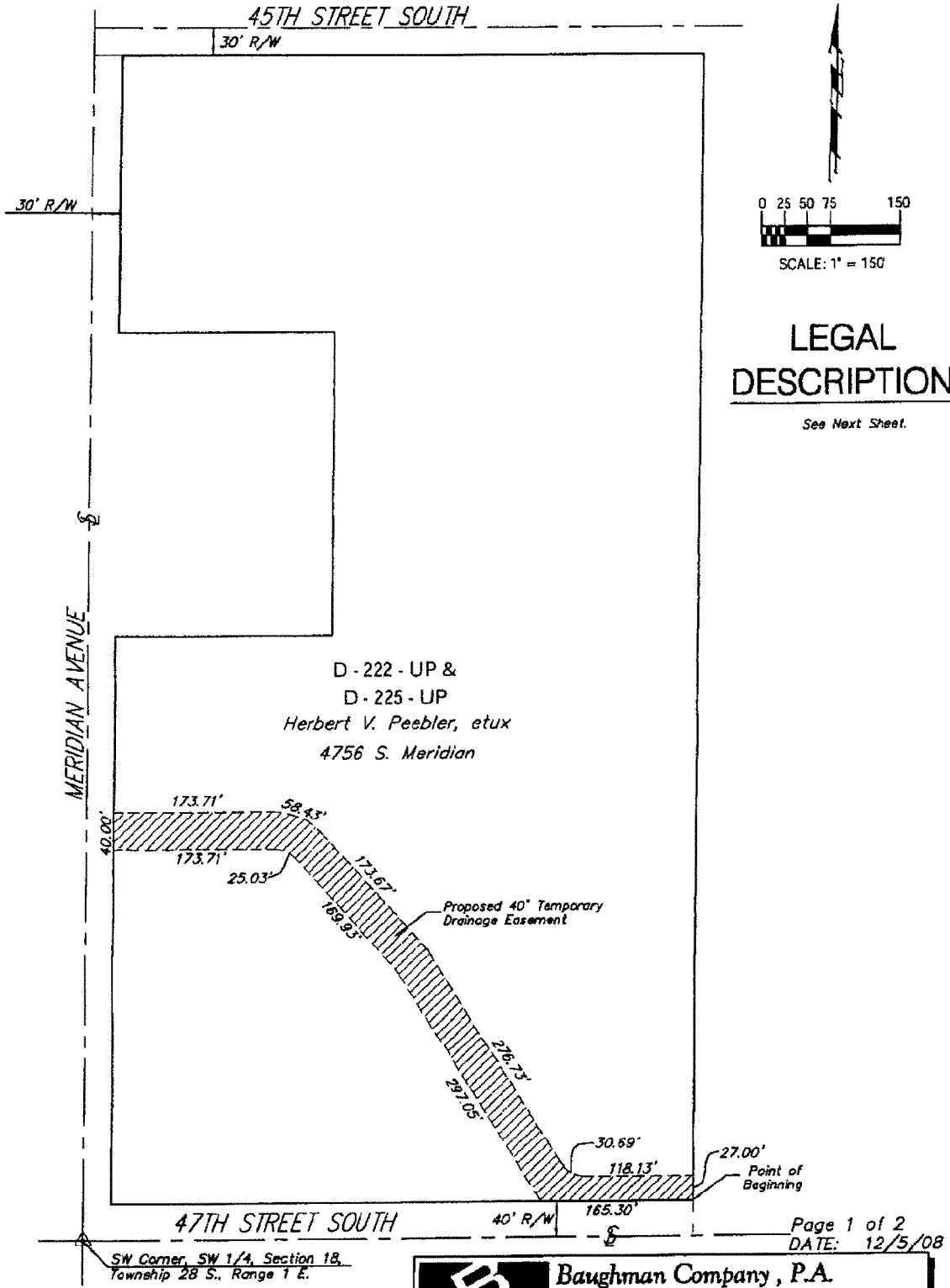
DATE: 12/5/08

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Project Number 05-10-E397
F:eng/47th St South/Exhibits/Peebler.dwg

RJG
CMB

EXHIBIT "B"



0 25 50 75 150

SCALE: 1" = 150'

LEGAL DESCRIPTION:

See Next Sheet.

Page 1 of 2
DATE: 12/5/08

Project Number 05-10-E397

F:eng/47th St South/Exhibits/Peebler Ditch.dwg

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

RJB
CMB

EXHIBIT "B"

LEGAL DESCRIPTION:

A Proposed Temporary Drainage Easement in Wichita, Sedgwick County, Kansas, Described as Follows:

That part of the W ½ of the SW ¼ of the SW ¼ of Sec. 18, Twp. 28–S, R–1–E of the 6th P.M., Sedgwick County, Kansas described as follows: Commencing at the SE corner of the W ½ of the SW ¼ of said SW ¼; thence N00°00'37"E along the east line of the W ½ of the SW ¼ of said SW ¼, 40.00 feet for a point of beginning; thence N89°53'38"W parallel with the south line of said SW ¼, 165.30 feet; thence N31°29'33"W, 297.05 feet; thence N42°10'41"W, 169.93 feet to the P.C. of a curve to the left; thence northwesterly and westerly along said curve, having a central angle of 47°49'19" and a radius of 30.00 feet, an arc distance of 25.04 feet, (having a chord length of 24.32 feet bearing N66°05'21"W), to the P.T. of said curve; thence N90°00'00"W, 173.71 feet to a point 30.00 feet normally distant east of the west line of said SW ¼; thence N00°00'00"E parallel with the west line of said SW ¼, 40.00 feet; thence N90°00'00"E, 173.71 feet to the P.C. of a curve to the right; thence easterly and southeasterly along said curve, having a central angle of 47°49'19" and a radius of 70.00 feet, an arc distance of 58.43 feet, (having a chord length of 56.74 feet bearing S66°05'21"E), to the P.T. of said curve; thence S42°10'41"E, 173.67 feet; thence S31°29'33"E, 276.73 feet to the P.C. of a curve to the left; thence southeasterly and easterly along said curve, having a central angel of 58°36'49" and a radius of 30.00 feet, an arc distance of 30.69 feet, (having a chord length of 29.37 feet bearing S60°47'58"E), to the P.T. of said curve; thence N89°53'38"E parallel with the south line of said SW ¼, 118.13 feet to a point on the east line of the W ½ of the SW ¼ of said SW ¼; thence S00°00'37"W along the east line of the W ½ of the SW ¼ of said SW ¼, 27.00 feet to the point of beginning.

Containing 31,400.4 Sq. Ft., more or less.

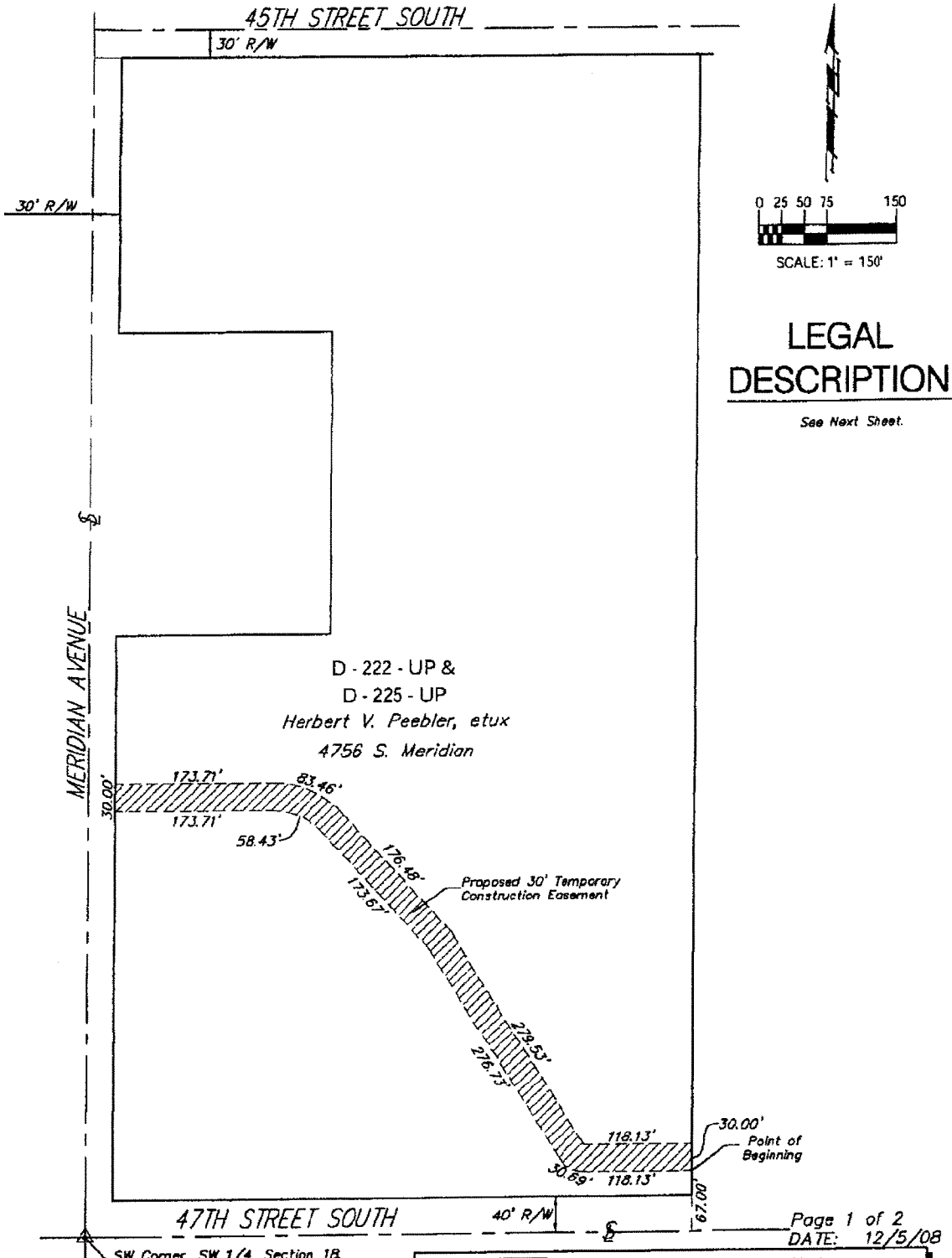
DATE: 12/5/08

Project Number 05–10–E397
F:eng/47th St South/Exhibits/Peebler.dwg

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

RJH
CMB

EXHIBIT "C"



LEGAL DESCRIPTION:

See Next Sheet.

Page 1 of 2
DATE: 12/5/08

Project Number 05-10-E397

F:eng/47th St South/Exhibits/Peebler Ditch Temp.dwg

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

RJB
CMB

EXHIBIT "C"

LEGAL DESCRIPTION:

A Proposed Temporary Construction Easement in Wichita, Sedgwick County, Kansas, Described as Follows:

That part of the W ½ of the SW ¼ of the SW ¼ of Sec. 18, Twp. 28–S, R–1–E of the 6th P.M., Sedgwick County, Kansas described as follows: Commencing at the SE corner of the W ½ of the SW ¼ of said SW ¼; thence N00°00'37"E along the east line of the W ½ of the SW ¼ of said SW ¼, 67.00 feet for a point of beginning; thence S89°53'38"W parallel with the south line of said SW ¼, 118.13 feet to the P.C. of a curve to the right; thence westerly and northwesterly along said curve, having a central angle of 58°36'49" and a radius of 30.00 feet, an arc distance of 30.69 feet, (having a chord length of 29.37 feet bearing N60°47'58"W), to the P.T. of said curve; thence N31°29'33"W, 276.73 feet; thence N42°10'41"W, 173.67 feet to the P.C. of a curve to the left; thence northwesterly and westerly along said curve, having a central angle of 47°49'19" and a radius of 70.00 feet, an arc distance of 58.43 feet, (having a chord length of 56.74 feet bearing N66°05'21"W), to the P.T. of said curve; thence N90°00'00"W, 173.71 feet to a point 30.00 feet normally distant east of the west line of said SW ¼; thence N00°00'00"E parallel with the west line of said SW ¼, 30.00 feet; thence N90°00'00"E, 173.71 feet to the P.C. of a curve to the right; thence easterly and southeasterly along said curve, having a central angle of 47°49'19" and a radius of 100.00 feet, an arc distance of 83.46 feet (having a chord length of 81.06 feet bearing S66°05'21"E), to the P.T. of said curve; thence S42°10'41"E, 176.48 feet; thence S31°29'33"E, 279.53 feet; thence N89°53'38"E parallel with the south line of said SW ¼, 118.19 feet to a point on the east line of the W ½ of the SW ¼ of said SW ¼; thence S00°00'37"W along the east line of the W ½ of the SW ¼ of said SW ¼, 30.00 feet to the point of beginning.

Containing 24,940.8 Sq. Ft., more or less.

Page 2 of 2
DATE: 12/5/08

Project Number 05–10–E397
F:eng/47th St South/Exhibits/Peebler.dwg

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

AJM
CMB

EXHIBIT

0 25 50 75 150

SCALE: 1" = 150'

DATE: 12/3/08

Project Number 05-10-E397

F:eng/47th St South/Exhibits/Peebler-Ditch.dwg

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

Agenda Item No. XII-6c.

CITY OF WICHITA
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land at 4255 South Meridian for the Meridian; 47th Street – 31st Street Road Improvement Project (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On July 1, 2008, the City Council approved the Meridian Street between 47th St. South and 31st St. South project. Meridian will be widened from two-lanes to five-lanes. The center lane will be a two-way turn lane. Drainage ditches will be eliminated and traffic signals will be upgraded. In addition, new traffic signals will be installed at the I-235 access ramps. The property at 4255 South Meridian is zoned SF-20 and is improved with outbuildings and a horse stabling business.

Analysis: The proposed acquisition consisting of 10,042 square feet is a 20-foot wide strip of land parallel to the west right-of-way line of Meridian. Within the proposed right-of-way is a portion of the facility's most southern horse pen, the property boundary fence, a business advertising sign and several large mature trees. The owner rejected the appraised value of $6,721, or $5,021 for the land and $1,700 as compensation for the damages to the trees. However, the owner agreed to accept $5,021 for the land, or $0.50 per square foot, $2,800 as damages to the mature tree row, $200 to reset the business advertising sign and $7,235 to reset the horse coral in addition to the perimeter fencing for a total of $15,256. This amount is reasonable for the cost-to-cure items were not included in the appraisal and said amounts are based on actual estimates.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $18,256 is requested. This includes $15,256 for acquisition and $3,000 for closing costs and title insurance.

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

`

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 Real Estate Purchase Contract and 3) Authorize the necessary signatures.

Attachments: Tract map, aerial and real estate purchase agreement.

#5

EXHIBIT

LEGAL DESCRIPTION:

A Proposed 20.00 feet Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas, Described as Follows:

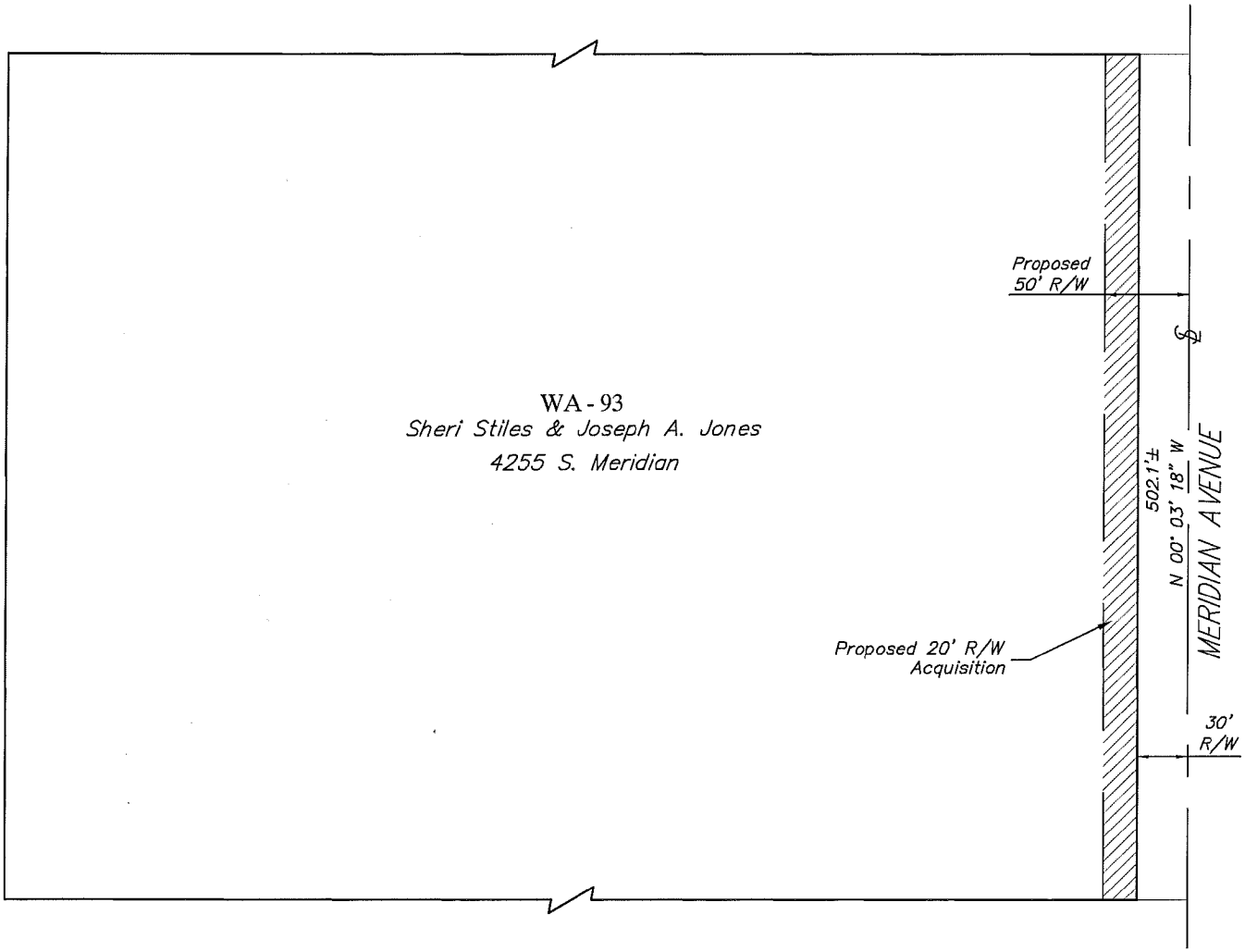
The West 20.00 feet of the following described tract of land:

The North half of the SE quarter of the NE quarter of Section 13, Township 28 S, Range 1 W of the 6th P.M., Sedgwick County, Kansas, except the North 5 Acres thereof and except for the Road Right of Way of Record.

Containing 10,042.0 Sq. Ft., more or less.

0 25 50 100

SCALE: 1" = 100'



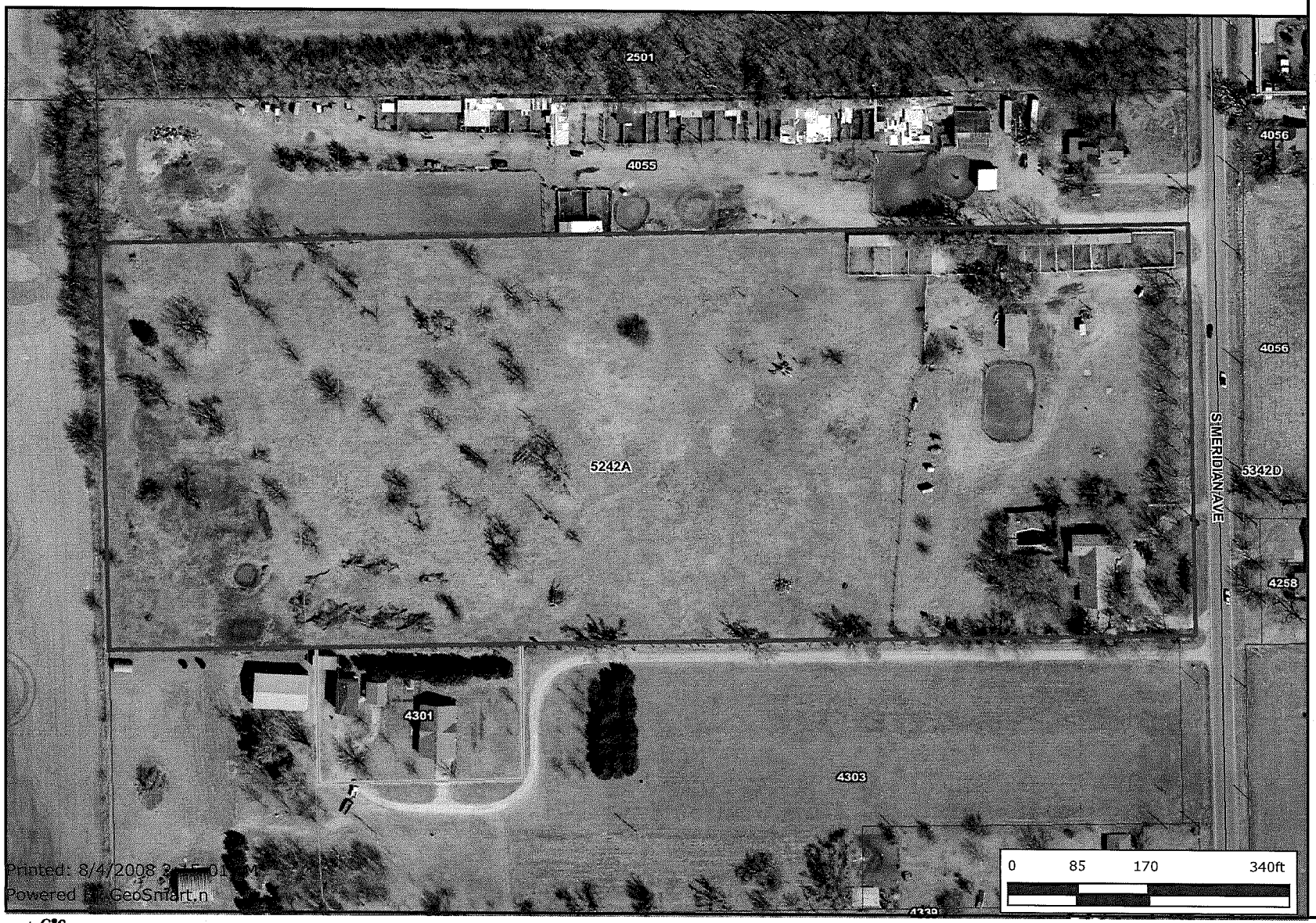
DATE: 7/23/08

Project Number 05-10-E397

F:eng/47th St South/Exhibits/Jones.dwg

Baughman Company, P.A.
315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
Baughman ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

4255 S. Meridian



- Identified Features
- Selected Features
- Historic Districts
- Old Town
- Delano Overlay District
- NO
- YES
- Property Parcels
- Subdivisions
- Roads
- State Highway
- US Federal Highway
- Interstate
- KTA
- Arterial
- Collector
- Minor
- Ramp
- Railroads
- Quarter Section
- Waterways
- Streams
- Historic Sites
- REGIONAL
- STATE/NATIONAL
- STATE
- Historic Environs
- Parks
- Airports
- SDERASTER.S-DEDATA.ORTH-O
- City Limits

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.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, Made and entered into this 23 day of Feb, 2009, ~~2008~~ by and between Sheri Stiles Jones and Joseph A. Jones, husband and wife, hereinafter referred to as "Seller," whether one or more, and City of Wichita, Kansas, a Municipal Corporation, 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 warranty deed for the construction and maintenance of road right-of-way and other infrastructure improvements within, upon and under the following described tract, to wit:

A proposed 20.00 feet Right-of-Way Acquisition in Wichita, Sedgwick County, Kansas, described as follows:

The West 20.00 feet of the following described tract of land:

The North Half of the SE Quarter of the NE Quarter of Section 13, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, except the North 5 Acres thereof and except for the road right-of-way of record.

2. The Buyer hereby agrees to purchase and pay to the Seller as consideration for the conveyance to Buyer, the above described tract and damages including but not limited to fencing and landscaping, the sum of Fifteen Thousand Two Hundred Fifty-Six and no/100 ($15,256.00) in the manner following, to-wit: cash at closing.

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. Buyer hereby agrees to order said 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 March 13, 2009.

6. The Seller further agrees to convey the above-described property in the same condition as it is now. Reasonable wear and tear excepted. All of the personal property improvements to be relocated shall be relocated by the Seller ~~within 30-days post closing~~. on or before May 31, 2009

7. Possession to be given to Buyer at 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. Site Assessment

A. At any time prior to the 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. 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 testing of the Property, at the buyer's sole expense.

B. Provided, however, buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. The buyer shall, if buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

10. Buyer and Seller hereby acknowledge the presence of a water well outside of the proposed acquisition area and immediately south of driveway at Station 138+18.36; and a septic system in and around Station 134+00.00, exact location of subsurface lines not known.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Joseph A. Jones

Sheri Stiles Jones

BUYER:
By Direction of the City Council

ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

State of Kansas
Department of Health & Environment
Office of Local & Rural Health
Curtis State Office Building, Suite 340
Topeka, KS 66612-1365
(785) 296-0425

Form #1

To be completed by State Office
Date Received:

Grant Period: July 1, 2009 - June 30, 2010

APPLICATION FOR GRANT

City of Wichita - Environmental Services
Applicant (Name of Agency)

1900 E 9th
Street Address/Courthouse

Wichita 67214
City Zip Code

D. Kay Johnson
Name of Director

316-268-8351
Telephone: Area Code-Number

Lisa Hilyard
Fiscal Officer
316-268-8351
Telephone: if different from Applicant Agency

City
Type of Organization - (County, City-County, Voluntary, Multi-County, Non-Profit)

_48-6000653_____
FEIN #

Sedgwick County Kansas
Where will program be conducted?

Comments:

Application Checklist:

__ 2009 Health Department approved budget

_X_ 2009 Local Tax Revenue Amt: $___ 4,177,033

__ SFY 2010 Program Objectives

__ SFY 2010 Detailed Budget(s)

__ SFY 2010 Personnel Allocation by Program

GRANT FUNDS REQUESTED

State Formula (#1)	$_____
Chronic Disease Risk Re. (#2)	$_____
Family Planning (#5)	$_____
SN-PHN Collaborative Practice (#9)	$_____
AIDS HERR (#13)	$_____
AIDS Counseling & Testing (#14)	$_____
AIDS/STD Dis Int/Prev Serv (#15)	$_____
STD Dis Int / Prev (#16)	$_____
Maternal & Child Health (#17)	$_____
Child Care Licensing & Reg (#18)	$_325,124___
Comm Based Primary Care (#27)	$_____
Prescription assistance to clinics (#27)	$_____
Teen Pregnancy Case Mangt (#32)	$_____
Ryan White (#33)	$_____
Immunization Action Plan (#34)	$_____
WIC / IAP Collaborative (#35)	$_____
HIV/AIDS - HE/RR Collaborative (#36)	$_____
Other (Specify)	
_____	$_____
_____	$_____
TOTAL FUNDS REQUESTED	$_325,124___

_____
President/Chairman Local Board of Health or
Board of Directors

Date _____

_____
Administrator/Director

Date _____

APPLICATION FOR GRANT INSTRUCTI

One completed form is required as the cover sheet for each Local Age

GENERAL INFORMATION: Enter the name of your agency (coun other local agency), address, telephone number(s), Federal Employee I (FEIN) and the names of your agency=s director/health officer and fisc spaces. In addition, indicate whether your agency is a county health de health department, not-for-profit agency and the area (e.g. name of cou your program will be conducted in the appropriate spaces.

APPLICATION CHECKLIST: Indicate here those items that are inc Indicate the amount of Local Tax Revenue, in the appropriate space, if General Health Formula funds (health departments only).

GRANT FUNDS REQUESTED: Enter here the amount of GRANT from KDHE, on the appropriate line(s). Please do NOT include match

SIGNATURES: The Application must be signed by both the Presiden Health Board (for County Health Departments) **AND** the Administrat agency.

COMMENTS: This section should be used to explain or clarify your increase in Family Planning is requested due to 25% increase in caselo and Child Health is requested to offset the decrease in tax revenue fro economy, etc.)

PROGRAM REQUEST FORMS and **DETAILED BUDGET FOR** according to Grant Application Guidelines and included with this cove

TIONS

gency application.

unty health department or
e Identification Number
scal officer in the appropriate
department, city-county
ounty or counties) where

included in your packet.
if your agency is eligible for

T funds being requested
ching or other local funds.

ent/Chairman of the Local
ator/Director of the local

ur funding requests, (e.g. an
eload; an increase in Maternal
om depressed agriculture

RMS should be completed
ver sheet.

Form #2

PROGRAM REQUEST FORM

APPLICANT AGENCY:
PROGRAM TITLE:

Instructions: Use this form for each program your agency is applying for. Refer to Section 3 (Specific Program Information) for each type of categorical fund. Copy and use multiple pages if needed, and attach additional information as requested. Note (CDRR/Enhancement applications use Form #7)

TERM: July 1, 2009 through June 30, 2010

Program objectives to be met:

1. Reduce health and safety risks to all children in out-of-home care.
2. Increase public awareness in regards to the need for quality child care.
3. Improve timeliness with the contract.
4. Collaborate with other local agencies and organizations to coordinate childcare services.
5. Work with KDHE to develop and implement regulations, policies, and procedures.

Request for Funds: $_325,124_____

Comments:

SFY 2010 PERSONNEL ALLOCATION BY PROGRAM

Form #14

LOCAL AGENCY NAME: City of Wichita - Environmental Services DATE: 2/23/2009 PAGE ____ OF _____

EMPLOYEE NAME	POSITION TITLE	SALARY *	STATE FORM #01	CDRR #02	FAM-PLAN #05	SN-PHN Collab Prac #09	AIDS HERR #13	AIDS CO/TEST #14	AIDS INTER & PREV #15	STD INTER #16	MCH #17	CHILD CARE LIC #18	PRIMARY CARE #27	PRESCRIPTION Asst to Clinics #27	TEEN PREG-CASE MGT #32	Ryan White #33	IAP #34	WIC / IAP #35	HIV/AIDS - HE/RR Collaborative #36	OTHER	OTHER	TOTAL % **
Vacant- Full time	CHN II - RN	$47,421										X										100%
Vacant- Part time	CHN I - RN	$21,506										X										100%
Carbajal, Carmen	CHN I - RN	$61,614										X										100%
Smith, Dianna	CHN I - RN	$44,087										X										100%
Jensen, Nancy	CHN III - RN	$61,266										X										100%
Turner, Deana	Counselor I - BS Ed	$44,087										X										100%
Ladd, Adrienne	Counselor I - BS Gen	$43,012										X										100%

* Annual salary or hourly rate x no. of hours to worked during year

**Total must not exceed 100%

COMPLETION INSTRUCTIONS FOR SFY 2010 PERSONNEL ALLOCATION BY PROGRAM

Instructions to complete the SFY 2010 Personnel Allocation By Program form are as follows. This information must be in agreement with the detailed budget(s) filed with individual Program Attachment(s). We request your Agency to complete and return this form with your SFY 2008 Grant Application (3 copies total). We encourage you to retain a copy for your reference.

Local Agency Name - **Print or type the name of the organization making the application or receiving an award.**

Employee Name - **Identify the employee in the position**. You can abbreviate with last name, initials, position number, etc. If the position is vacant or a new position, indicate such by "Vacant", "New", "to be hired", etc., in this column.

Position Title - Identify the position title as PHN 1, PHN 2, Clerk, HSHV, etc. You can abbreviate any title as need be.

Salary - The annual salary is the total salary that the agency pays each employee. It should match the salary that is used on the budget.

Program Titles - List the specific % time worked under the appropriate program title(s).

Other - Identify what Program(s) the employee is reported working on, if the program is not one previously reflected.

Total - Total must not exceed 100% for any employee.

Use additional pages as necessary.

Salaries and percent of time worked should be rounded to the nearest whole figure.

Footnote any discrepancies or clarify what is being reflected.

All budgets submitted must be in agreement. The administrating county for multi-county programs are responsible for obtaining correct and up-to-date information on salaries and percent of time worked on other grants for each subgrantee(s). Any discrepancies will delay state review and approval. It is encouraged to reflect the county the employee is employed by for comparison purposes.
If you have questions while completing this form, please contact Kevin Shaughnessy (785) 296-1507, Division of Management and Budget.

An electronic copy of this form is available at "www.kdheks.gov/doc_lib/index.html" Form # 3

Detailed Budget for Grant Funds
SFY 2010 July 1, 2009 - June 30, 2010

1. LOCAL AGENCY:
2. PROGRAM:

Formulas are set to round numbers to the nearest dollar.		Annual Salary for Grant Period	% of Time Worked	Local Applicant's Share	Requested from Grant	TOTAL	
3. Personnel							
(Name and Position of employee)							
Carbajal, Carmen	CHN I Surveyor - RN Dipl	61,614	100%	61,614		61,614	
Smith, Dianna J	CHN I Surveyor - RN BSN	44,087	100%		44,087	44,087	
Vacant- full time	CHN II Surveyor - RN BSN	47,421	100%		47,421	47,421	
Jensen, Nancy	CHN III Supervisor RN BSN	61,266	100%	61,266		61,266	
Vacant- part time	CHN I Surveyor	21,506	100%		21,506	21,506	
Turner, Deana	Counselor I- BS Ed	44,087	100%		44,087	44,087	
Ladd, Adrienne	Counselor I- BS Gen Studies	43,012	100%		43,012	43,012	
FICA (7.65%)				9,290	15,309	24,599	
Retirement & Benefits( )				27,100	62,854	89,954	
Category Total				159,270	278,274	437,544	
4. Travel							
	Meals and lodging				500	500	
	Registration fees				500	500	
	Transportation				1,000	1,000	
Category Total					2,000	2,000	
5. Supplies							
	Office/Photo supplies				1,500	1,500	
	Other non-cap equipment				1,500	1,500	
	Other commodities				1,000	1,000	
	Training Equipment				350	350	
Category Total					4,350	4,350	
6. Capital Equipment (ITEMIZE)							
Category Total							
7. Other (ITEMIZE)							
	Vehicle motorpool			25,680		25,680	
	Vehicle liability			2,390		2,390	
	Data Center				14,976	14,976	
	Phones, lines, voice mail				3,180	3,180	
	Long distance				100	100	
	Printing/photocopy				2,500	2,500	
	Postage				1,000	1,000	
	City Administrative Charge				17,744	17,744	6.3763% of salary
	Certification fees				1,000	1,000	
	Membership fees						
Category Total				28,070	40,500	68,570	
GRAND TOTAL				187,340	325,124	512,464	

KDHE USE ONLY: _____
AUDITED BY: _____

COMPLETION INSTRUCTIONS FOR DETAILED BUDGET FOR GRANT FUNDS

The budget is the plan for necessary financing to achieve the process and outcome objectives. The plan for financing should receive serious consideration so that few changes will occur to budget line items during the administration of the grant. If for some reason, during the grant award period a variance of more than 10% to a line item should occur, an amended budget should be filed with the Division of Management and Budget, Attn.: Kevin Shaughnessy, 1000 SW Jackson Ave, Suite 570. Topeka, KS 66612-1368. If you have questions, please contact Kevin Shaughnessy at (785) 296-1507.

1. Print or type the name of the organization receiving the grant award.

2. Print or type the title of the grant award exactly as it appears on the Contract/Attachment.

3. Each employee position should be listed separately with the **position title and name of the employee** (or "VACANT" if not currently filled). The annual salary together with the percentage of time worked should be shown in the appropriate columns.

- **Annual Salary for Grant Period is the total salary that the Local Agency pays each employee.** If an hourly rate is paid, then show the hourly rate multiplied by the number of hours.

- % of Time Worked should be the percentage of time that position spends on the program.

- Use the following formulas:

  - "**Annual Salary for Grant Period" X "% of Time Worked" = Total**
  - "**Local Applicant's Share" + "Requested from Grant" = Total**

- Retirement and F.I.C.A. should be shown as separate items and are based on the total salary(ies) for the program. Please indicate the percentage rate used for retirement, insurance, etc., as each Local Agency differs in these areas. Please identify the salaries used in calculating retirement, insurance, etc.

4. Include only meals, lodging, transportation and other miscellaneous expenses. Do not include salary of employee during travel.

5. Expendable supplies include all types of supplies. Do not include capital items.

6. Capital Equipment is defined as items costing $500 or more with a useful life greater than one year**. <u>If possible, either avoid budgeting for capital equipment or show it financed in the Local Applicant's share column.</u>** Capital Equipment purchased with State or Federal funds (except State Formula funds or other special grant funds) must be carried on the equipment inventory of KDHE, and KDHE and the individual local health agencies must annually account for the equipment. Each capital item should be **<u>listed separately</u>.**

7. Expenditure items in the "Other" category would include contractual services such as consultants, rental of equipment, etc. Each projected expenditure item in the "Other" category should be **<u>listed separately</u>**.

INDIRECT COST AND CONTRIBUTIONS ARE ACCEPTABLE AS PART OF THE **<u>LOCAL MATCH ONLY</u>,** AFTER THE AGENCY HAS SUBMITTED AN ANNUAL INDIRECT COST PROPOSAL WHICH MEETS KDHE REQUIREMENTS. Items included in the indirect cost computation cannot be included as direct cost items.

ATTACH ADDITIONAL SHEET(S) AS NECESSARY.

KANSAS

DEPARTMENT OF HEALTH
AND ENVIRONMENT
Division of Health

Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

www.kdheks.gov

Form #15

CHILD CARE FACILITY SURVEYOR QUALIFICATIONS
EDUCATION AND EXPERIENCE

If you have new surveyor or assistant surveyor staff since the submission of the previous year=s grant, complete one form for each **new** surveyor or assistant surveyor employed to do inspections for child care licensing and registration and return with the KDHE Grant Application.

PLEASE PRINT AND COMPLETE ALL INFORMATION.

Please check one:
Surveyor ____X__(Temporary)_____ Assistant Surveyor _____

For the following County (ies): ____Sedgwick_____

Name: _____Couey_____Tina_____M___
Last First M.I.

EDUCATION:

Highest Degree Achieved: ___Associate of Science___ Specify Field:_____Nursing_____

Number of Credit Hours in Early Childhood or Child Development courses: ____6_____

Number of Credit Hours in Health related courses: _____72_____

Name and location of Accredited College or University: _Butler County Community College_____

List all current Professional Certificates or Licenses held:___Kansas Registered Nurse License_____

EXPERIENCE:

In years, how long have you worked in child care licensing and registration?___6 months _____ Year(s)

Job Title__Community Health Nurse I, Child Care Licensing Program_____

PROFESSIONAL ACTIVITIES/MEMBERSHIPS:_SANE/SART Sexual Abuse Nurse_____

KANSAS

DEPARTMENT OF HEALTH
AND ENVIRONMENT
Division of Health

Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

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Form #15

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PLEASE PRINT AND COMPLETE ALL INFORMATION.

Please check one:

Surveyor ___X_____ Assistant Surveyor _____

For the following County (ies):_____Sedgwick_____

Name:_____Ladd_____Adrienne_____L_____
Last First M.I.

EDUCATION:

Highest Degree Achieved:__Bachelor_____ Specify Field:___General Studies_____

Number of Credit Hours in Early Childhood or Child Development courses:_____18_____

Number of Credit Hours in Health related courses:_____0_____

Name and location of Accredited College or University:__Emporia State University_____

List all current Professional Certificates or Licenses held: Program Director Approval over 100 I /T /PS /SA__

EXPERIENCE:

In years, how long have you worked in child care licensing and registration?_____6.5 months_____ Year(s)

Job Title___Child Care Licensing Surveyor – Counselor A_____

PROFESSIONAL ACTIVITIES/MEMBERSHIPS:___NAEYC_____

KANSAS

DEPARTMENT OF HEALTH
AND ENVIRONMENT
Division of Health

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Form #15

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EDUCATION AND EXPERIENCE

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PLEASE PRINT AND COMPLETE ALL INFORMATION.

Please check one:
Surveyor ____X_____ Assistant Surveyor _____

For the following County(ies):_____Sedwick_____

Name:_____Carbajal_____Carmen_____A_____
Last First M.I.

EDUCATION:

Highest Degree Achieved:___Diploma-College_____ Specify Field:___Nursing_____

Number of Credit Hours in Early Childhood or Child Development courses:__Pediatric Nursing_____

Number of Credit Hours in Health related courses:___15 hours Nursing CEU annually_____

Name and location of Accredited College or University: Marymount College , Salina, courses at Ks Newman College_

List all current Professional Certificates or Licenses held:__Licensed Registered Nurse in Kansas and Texas_____

EXPERIENCE:

In years, how long have you worked in child care licensing and registration?___12 1/2_____ Year(s)

Job Title__Community Health Nurse I- Child Care Surveyor_____

PROFESSIONAL ACTIVITIES/MEMBERSHIPS:__NARA_____

KANSAS

DEPARTMENT OF HEALTH
AND ENVIRONMENT
Division of Health

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Form #15

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EDUCATION AND EXPERIENCE

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PLEASE PRINT AND COMPLETE ALL INFORMATION.

Please check one:
Surveyor ____X_____ Assistant Surveyor _____

For the following County(ies):____Sedgwick_____

Name:_____Turner_____Deana_____L_____
Last First M.I.

EDUCATION:

Highest Degree Achieved:___Bachelors_____ Specify Field:____Elementary Ed_____

Number of Credit Hours in Early Childhood or Child Development courses:_____25 _____

Number of Credit Hours in Health related courses:_____3_____

Name and location of Accredited College or University: Washburn University, Topeka_____

List all current Professional Certificates or Licenses held: Substitute Teaching Certificate PreK-12, Certified Parent Educator-PAT, Certified Healthy Families, Licensed Foster Parent_____

EXPERIENCE:

In years, how long have you worked in child care licensing and registration?_____6 months_____ Year(s)

Job Title__ Child Care Surveyor_____

PROFESSIONAL ACTIVITIES/MEMBERSHIPS:_____

KANSAS

DEPARTMENT OF HEALTH
AND ENVIRONMENT
Division of Health

Kathleen Sebelius, Governor
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Form #15

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EDUCATION AND EXPERIENCE

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PLEASE PRINT AND COMPLETE ALL INFORMATION.

Please check one:
Surveyor ____X_____ Assistant Surveyor _____

For the following County (ies): ____Sedgwick_____

Name: _____Jensen, _____ _____Nancy_____
Last First M.I.

EDUCATION:

Highest Degree Achieved: ___BSN_____ Specify Field:_____Nursing_____

Number of Credit Hours in Early Childhood or Child Development courses:____30_____

Number of Credit Hours in Health related courses:_____60_____

Name and location of Accredited College or University:___Southwestern College, Winfield Ks. _____

List all current Professional Certificates or Licenses held:___Kansas Registered Nurse License, National Program for Playground Safety Certification__

EXPERIENCE:

In years, how long have you worked in child care licensing and registration?___19 y 8 mo_____ Year(s)

Job Title__Supervisor City of Wichita-Environmental Services, Child Care Licensing Program_____

PROFESSIONAL ACTIVITIES/MEMBERSHIPS:_NARA, KPHA, ANA, Health Advisory Board Member Head start/Early Head start, Kansas SIDS Network community-at-large Board member_____

KANSAS

DEPARTMENT OF HEALTH
AND ENVIRONMENT
Division of Health

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EDUCATION AND EXPERIENCE

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PLEASE PRINT AND COMPLETE ALL INFORMATION.

Please check one:
Surveyor ___X_____ Assistant Surveyor _____

For the following County(ies):____Sedgwick _____

Name:_____Smith_____Dianna_____J_____
Last First M.I.

EDUCATION:

Highest Degree Achieved:___BSN_____ Specify Field:____Nursing_____

Number of Credit Hours in Early Childhood or Child Development courses:____6_____

Number of Credit Hours in Health related courses:____60_____

Name and location of Accredited College or University:__WSU, Wichita, Ks. _____

List all current Professional Certificates or Licenses held: Kansas Registered Nurse License_____

EXPERIENCE:

In years, how long have you worked in child care licensing and registration?_____6 m onths_____ Year(s)

Job Title____Community Health Nurse I- Child Care Surveyor_____

PROFESSIONAL ACTIVITIES/MEMBERSHIPS:_____

Agenda Item No. XII-8.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council

SUBJECT: Childcare Licensing Grant Application

INITIATED BY: Department of Environmental Services

AGENDA: Consent

- -

Recommendation: Approve the grant application and award, if received.

Background: The Environmental Services Department conducts inspections of childcare facilities and provides education for childcare providers within Sedgwick County on behalf of the Kansas Department of Health and Environment. KDHE provides an annual grant to fund these activities, and has solicited Environmental Services application for state fiscal year 2010 (July 1, 2009 through June 30, 2010.)

Analysis: The City has conducted childcare licensing and education services for in excess of thirty years, providing a local point of contact for citizens and providers. Local operation of the program also enhances coordination with other agencies involved, such as the Fire Department and Office of Central Inspection. Environmental Services staff members enforce state regulations and utilize state enforcement mechanisms, as appropriate.

Financial Considerations: The grant request for state fiscal year 2010 totals $325,124. The program is also supported by the City's General fund in the amount of $187,340; the local contribution is partially offset by inspection fees, which are estimated at $145,000 for state fiscal year 2010. State funding and locally generated fees are projected to offset 92% of the total program cost of $512,464.

Goal Impact: This action furthers the Council's "Provide a Safe and Secure Community" goal via inspections and regulation of childcare facilities.

Legal Considerations: The grant agreement will be reviewed by the Department of Law upon receipt, for approval as to form, and submitted to the Council for acceptance.

Recommendations/Actions: It is recommended the City Council approve the grant application, the grant award and authorize the necessary signatures.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council

SUBJECT: HOME Program Funding Allocations (All Districts)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve the amendment to the funding agreement, the additional funding allocation for HOME Program administration, and authorize the necessary signatures.

Background: During the 2007-2008 Consolidated Plan Annual Plan funding process, a total of $225,000 in HOME funding was allocated for the Housing Development Loan Program (HDLP). The HDLP is designed to provide subsidies for infill housing projects, to support the development of real estate that is idle or underutilized, and to provide needed housing for underserved populations. Funding may be provided to non-profit or for-profit organizations. The loan structure is dependent upon the type of project to be financed. The program funding may be utilized within the boundaries of the City's Redevelopment Incentives Area (RIA), as well as Local Investment Areas (LIAs). Requests for funding under the program are received on an open application basis.

Analysis: On February 12, 2008, the City Council approved a total of $200,000 in funding from the 2007-2008 HDLP for Mennonite Housing Rehabilitation Services, Inc. (MHRS), in order to develop single-family housing in a newly platted subdivision located near 29th and Woodland. MHRS has requested additional funding in the amount of $41,288, in order to complete construction of two additional homes in the subdivision. As required under the HDLP, completed homes will be sold to income-eligible owner-occupant homebuyers receiving down payment and closing cost assistance through the City's HOMEownership 80 Program. The additional funding will be sufficient to allow MHRS to complete the project, which will offer a total of nine single-family homes.

The homes to be completed will require HOME program subsidy. HOME funds are usually provided through the HDLP as development subsidy in order to offset acquisition, construction and site improvement expenses, as well as selling expenses and developer fees. The total of these costs cannot be entirely recovered from sale proceeds due to market constraints and the need to keep the homes affordable for low-income families. Typically, the development subsidy for homes constructed with HOME program funding is between $25,000 and $40,000, depending on acquisition costs, engineering costs, and the cost of building materials and construction. Currently, the maximum selling price for a home constructed with HOME Program funding is $85,700.

Housing and Community Services has determined that the additional funding request meets the criteria of the HDLP, and will assist the City in achieving its neighborhood revitalization and consolidated plan goals, through the development of new single-family housing in a LIA. Therefore, staff recommends the additional funding, as requested, and proposes to provide it under an amendment to the MHRS 2007-2008 HDLP funding agreement.

As part of this action, Housing and Community Services is also requesting an additional allocation of $12,247.95 for HOME Program Administration. HOME regulations permit the retention of 10% of program income receipts for HOME administration expenses. The additional funding allocation is needed to ensure proper staff administration of the HOME program.

The additional funding for the HDLP project and for HOME Program Administration is available due to the receipt of loan repayments previously allocated for eligible HOME projects.

Financial Considerations: HOME funding for the proposed housing construction project will be provided in the form of zero-interest, MHRS obtains construction loans from local banks in an amount equivalent to 75% of the appraised value of a home to be constructed under the HDLP. The additional funding for the proposed allocation is available due to the receipt of loan repayments previously allocated for eligible HOME projects.

Goal Impact: Projects to be funded under the subject HOME funding agreement will contribute to the goal of Economic Vitality and Affordable Living.

Legal Considerations: Funding provided under the Housing Development Loan Program must be approved by the City Council. The funding agreement amendment has been drafted by Housing and Community Services staff and approved as to form by the City Law Department. Assistance loans provided to homebuyers for the purchase of homes constructed under the HDLP are secured with a mortgage on the property. This mortgage serves as the long-term deed restriction required under the HOME regulation to preserve affordability.

Recommendations/Actions: It is recommended that the City Council approve the amendment to the funding agreement, the additional allocation for HOME Program administration, and authorize the necessary signatures.

Attachments: Funding agreement amendment.

AMENDMENT TO GRANT AGREEMENT
Between

THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT

A
PARTICIPATING JURISDICTION
And
Mennonite Housing Rehabilitation Services, Inc.
(MHRS)

HOUSING DEVELOPMENT LOAN PROGRAM

HOME Investment Partnerships Program

2007-2008 Program Year

City of Wichita
Housing and Community Services Department
332 N. Riverview
Wichita, KS 67203
Phone (316) 462-3700
Fax (316) 462-3719

This contract amendment is entered into March 10, 2009 and dated to be effective March 10, 2009, between the City of Wichita (hereinafter referred to as the CITY) and Mennonite Housing Rehabilitation Services, Inc. (MENNONITE HOUSING, a Community Housing Development Organization/Non-profit Developer hereinafter referred to individually as the Developer).

WITNESSETH THAT:

WHEREAS, the above named entities were parties to a Grant Agreement dated to be effective February 12, 2008, and executed February 12, 2008, in the amount of $200,000, in which the Developer agreed to undertake an affordable housing program concentrated in the City's Northeast Local Investment Area, as described in the City of Wichita's Consolidated Plan.

NOW, THEREFORE, the above named parties, in order to fulfill the original intent of the grant agreement dated to begin February 12, 2008, and executed February 12, 2008, and the intent of this amendment, entered into March 10, 2009, and dated to be effective March 10, 2009, hereby agree, covenant, and contract with each other that, effective March 10, 2009, the terms of the amended agreement are hereby reaffirmed and re-executed for and on behalf of these parties except for the following amendments, modifications, and changes indicated below:

WHEREAS, the City is entitled to receive a HOME Investment Partnerships Program Grant (hereinafter referred to as HOME), from the U.S. Department of Housing and Urban Development (hereinafter referred to as the "Department").

WHEREAS, the Developer is desirous of participating in activities eligible under HOME, and further agrees that the beneficiaries of its activities under the program and this agreement are, or will be, individuals or families who meet the income eligibility guidelines of Title 24 CFR Part 92.216/217 as applicable; and

WHEREAS, the purpose of the assistance to be provided under this agreement is specifically authorized by Title 24 CFR Section 92.300; and

WHEREAS, the City deems the activities to be provided by the Developer as consistent with, and supportive of the HOME Investment Partnership Program, and that the Developer requires the financial assistance of the City to initiate its activities; and

WHEREAS, the cooperation of the City and the Developer is essential for the successful implementation of an Affordable Housing Program;

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

SECTION 12. PAYMENTS.

A. Compensation and Method of Payment. Compensation and method of payment to the Developer, relative to conducting the operations of the project activities and services as herein described, will be carried out as specified in Exhibit B attached hereto, and will be administered under the established accounting and fiscal policies of the City of Wichita.

B. Total Payments. Total Payment to the Developer will not exceed $241,288 as referenced in Exhibit B and Exhibit C. Contract payments above $241,288 are contingent upon the sale of completed projects and extended grant authority as a result of program income generated by the project.

C. Restriction on Disbursements. No Entitlement Funds shall be disbursed to the Developer or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this contract.

D. Unearned Payments. Under this contract unearned payments may be suspended or terminated if the entitlement funds to the City of Wichita under the HOME Investment Partnerships Program (24 CFR Part 92) are suspended or terminated.

Mennonite Housing Rehabilitation Services, Inc.

_____
Signature

_____
Title of Officer Date

CITY OF WICHITA

By_____
Carl Brewer, Mayor Date

ATTEST:

_____
Karen Sublett, City Clerk

_____
Date

Approved as to Form:

_____ _____
Gary E. Rebenstorf, City Attorney Date
and Director of Law of the
City of Wichita

Exhibit B

PERFORMANCE CRITERIA
AND
CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and Mennonite Housing Rehabilitation Services, Inc., hereinafter referred to as the "City" and "Developer" (or MHRS) respectively, that execution of this contract obligates the Developer to the following performance requirements.

In return for the $241,288 remuneration stated herein, the Developer agrees to undertake an affordable housing program, which will result in the construction of 9 single-family homes on vacant lots located in a new subdivision located between Woodland Avenue and Mascot Drive, south of 29th Street North, as approved by the City. To be eligible for this program properties acquired under this agreement must be vacant residential lots or sites, or residential lots with vacant, blighted residential structures that must be demolished.

Housing constructed under this agreement must be re-sold to HOME-compliant owner-occupant buyers, with down payment and closing costs assistance provided through the City's HOMEownership 80 program. The City will hold the deed restrictions for this HOME assistance. (24 CFR 92.254, Qualification as Affordable Housing, Homeownership.) The Developer represents and agrees that its purchase of the properties and its other undertakings pursuant to this Agreement are, and will be, for the purpose of redevelopment of such property and not for speculation.

The Developer represents and agrees that it will remain the owner of the properties until it reaches agreement with a prospective buyer(s) of the properties and, by mutual agreement, the Developer will transfer title to the prospective buyer. All HOME assistance will be repaid to the City; except in cases where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of assistance. Net proceeds will be considered funds available following adjustment for approved additional costs incurred by the Developer to prepare the property for ownership that were not collectable through sale of property. Funds that are not recoverable will be considered a development grant subsidy to the Developer.

III. Administration

The MHRS Executive Director will supervise operations and administration on a day-to-day basis. The MHRS Board of Directors is ultimately responsible for program administration.

A. Funding: It is mutually agreed by and between the City and the Developer that the total HOME funds available to MHRS for this project will be $241,288, in the form of a forgivable development subsidy loan, to be used as set forth in the sections entitled Budget and Method of Payment.

A. Budget: The City shall pay the Developer as hereinafter set out; the maximum of $241,288 for the program described in this contract. A developer fee in the amount of 10% of the total development cost will be paid to the Developer in connection with each completed project. The developer fee will be pre-determined at the onset of the construction of each home, and will be paid upon the closing of the sale of each individual home. Proceeds from the sale of homes, less the aforementioned developer fee, and applicable costs will be returned to the City, in the form of a payoff of development subsidy loans provided under this agreement. Contract payments over and above the original budgeted amount are contingent upon the sale of completed projects and extended grant authority as a result of repayments generated by the project. Extended grant authority may be utilized to develop additional housing units under the terms of this agreement. Funding under this agreement shall be originally budgeted as follows:

Contractual Expenses: (Acquisition Expenses, Construction Expenses, Developer Fees, other HOME-eligible project soft costs)	$241,288
TOTAL	$241,288

Exhibit C

BUDGET

Contractual Expenses: (Acquisition, Construction Expenses, Developer Fees, other HOME-eligible project soft costs)	$241,288
TOTAL	$241,288

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council

SUBJECT: Grant Application for Kansas Emergency Shelter Grant Funds (All Districts)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve the application for Kansas Emergency Shelter Grant funds, and authorize necessary signatures for the application and subsequent grant award.

Background: The State of Kansas receives Emergency Shelter Grant (ESG) funds under the McKinney-Vento Homeless Assistance Act. These funds are awarded to local government agencies throughout the state on behalf of homeless service providers. Awards are based on statewide competition. In the past, the City of Wichita has applied for and received emergency shelter grants from the Kansas state program on behalf of local providers, in addition to the City's ESG direct allocation from the U.S. Department of Housing and Urban Development (HUD).

The Kansas Housing Resources Corporation (KHRC) has issued a statewide "Application for a 2009 Kansas Emergency Shelter Grant (KESGP)". Seven homeless service providers in Wichita have submitted requests to the City for the 2009 KESGP application, as detailed below. These projects will be evaluated by the KHRC for funding awards, against projects submitted by other local government agencies in the state.

Analysis: The City of Wichita grant application includes funds for the following agencies and activities:

1. Catholic Charities Anthony Family Shelter - $22,000 is requested for shelter operations and case management services.
2. Center of Hope - $9,000 is requested for homeless prevention (assistance with rent).
3. Inter-Faith Inn - $32,670 is requested for shelter operations and case management services.
4. Salvation Army Emergency Lodge - $25,000 is requested for shelter operations.
5. Ti'Wiconi Safe Haven - $15,895 is requested for shelter operations and case management services.
6. United Methodist Open Door Drop-In Center - $25,000 is requested for case management services, floor staff, shelter supplies, and shelter operations.
7. YWCA - $5,000 is requested for shelter operations.
8. City of Wichita - The City is allowed up to 2.5% for administration of the grant. The amount received for administration will be determined by the amount awarded to the City.

Goal Impact: Enhance the Quality of Life and Provide Economic Vitality and Affordable Living.

Financial Considerations: The total amount of the request is $134,565. Each of the requesting agencies has committed to providing the required matching funds and/or volunteer hours.

Legal Considerations: None. If the State approves all or parts of this application, individual contracts will be developed for the agencies based on the State's decision.

Recommendations/Actions: It is recommended that the City Council approve the application for Kansas Emergency Shelter Grant funds, and authorize necessary signatures for the application and subsequent grant award.

Attachments: Grant Application.

APPLICATION FOR
2009 KANSAS EMERGENCY SHELTER GRANT

Instructions: Please complete all eight sections of the Emergency Shelter Grant (ESG) application.
Note: For FY2009, ESG Entitlement cities funding will be limited to $25,000 maximum.

SECTION I: APPLICANT INFORMATION (*Local Units of Government Only)*

A. Applicant Information

Local Government: City of Wichita, Kansas

Authorized Representative: Tiffanie Johnson Title: Management Analyst

Address: 332 N. Riverview City: Wichita

State: KS Zip: 67203 Federal I.D. Number: 46-6000653

Contact to whom questions about this application should be directed: Tiffanie Johnson

Telephone: (316) 462-3722 Fax: (316) 462-3719

E-mail Address: tjohnson@wichita.gov

B. Purpose of Request (Check all that apply.)

- ☐ Bring building up to health and safety codes.
- ☐ Make or improve facility accessibility.
- ☐ Increase beds for homeless people by _____ (number).
- ☒ Expand or maintain the number of homeless individuals or families served.
- ☒ Increase or maintain essential services.
- ☒ Provide homeless prevention services.
- ☐ Other (Specify):

Certification: To the best of my knowledge and belief, the data in this application are true and correct. This document has been duly authorized by the governing body of the applicant. The applicant will comply with federal and state regulations if assistance is approved.

_____ _____
Signature Date

_____
Title (Chief Elected Official)

SECTION II: PROVIDER INFORMATION

Section II asks for information on each of the homeless service providers. Section II needs to be completed on each sub-grantee in order to receive funding. If more space is needed, please make copies of page 2 and 3 and attach them to the completed application.

A. Provider Information

Emergency Shelter or Service Provider _____ Contact Person _____

Address _____ Telephone ( ) _____

City _____ State _____ Zip _____

Federal I.D. Number _____ Fax ( ) _____

E-mail Address _____

Counties served by this grant _____

State Senate Districts of *all* counties served _____

State House Districts of *all* counties served _____

*Please see Appendix 1 for individual agency applications and complete descriptions of the activities that will be undertaken.

SECTION III: Matching Funds

*Note: Matching funds must be provided **after** the date of the grant award to the grantee. Funds used to match a previous ESG grant may not be used to match a subsequent grant award.*

Please describe in detail matching funds to be used for this grant.

A. **Cash Funds**

Describe the source of the cash funds.

Anthony Family Shelter: Undesignated Cash Donations
Center of Hope: Private Donor Contributions
Inter-Faith Inn: Grants and Private Donor Contributions
Salvation Army- Emergency Lodge: United Way of the Plains and Private Donations
Ti'Wiconi Safe Haven: Grants and Private Donor Contributions

B. **Non-Cash Resources**

Describe the source and value of any non-cash resources, including materials, salaries paid by local agency, volunteer labor ($5.00 per hour allowed; Volunteer providing professional services, such as medical or legal services are valued at the reasonable and customary rate in the community), the appraised value of any donated building, or other match.

Inter-Faith Inn: 20,000 volunteer hours = $100,000; $50,000 food donations; $25,000 blankets and clothing; $5,000 cleaning supplies; $5,000 hygiene products.
Ti'Wiconi Safe Haven: 20,000 volunteer hours = $100,000; $50,000 food donations; $25,000 blankets and clothing; $5,000 cleaning supplies; $5,000 hygiene products.
United Methodist Open Door: 5,000 volunteer hours = $25,000
YWCA Women's Crisis Center: 1,000 volunteer hours = $5,000

C. **Other State/Federal Agency Grant Funds**

Describe the source of the funds and precisely how the funds are to be used. A letter of commitment from the relevant state/federal agency must be attached to the application if other state/federal funds are to be used to meet matching fund requirements.

D. **Waiver**

Section 832 of the Cranston-Gonzalez National Affordable Housing Act makes substantial changes to the ESG regulations. One change is the elimination of the first $100,000 of the Kansas ESG match requirements. Kansas Housing Resources Corporation intends to pass this benefit to units of local government in behalf of the emergency shelter/service providers who demonstrate inability or hardship in meeting the match requirement. *Applicants wishing to be considered for a waiver of the match requirement must furnish an explanation of need. Indicate the amount of the match requested to be waived and the reason why a waiver is needed (attach waiver request to the back of this application).*

SECTION IV: ACTIVITY DESCRIPTION

A. **Activities**

1. Briefly describe the purpose and capacity of the agency providing services to the homeless.

   ***Please see Appendix 1 for the individual agency applications and complete descriptions of the activities that will be undertaken.**

2. Describe how ESG funds for each category requested in this application will be used, (be specific, add more pages if needed):

   Rehabilitation: Amount Requested: $0

   Operations: Amount Requested: $62,880

   On behalf of seven agencies who annually serve a combined average of 2,196 people for residential services and 5,310 for non-residential services.
   The requested Operations figure is being requested to address the need to provide; utility costs for a new shelter facility that will accommodate shelter for 18 more individuals in comparison to 2008; client transportation service to appointments such as employment, medical, and housing, that influence self-sufficiency; supplies for daily living needs such as toiletries and paper goods; cleaning supplies to maintain shelter facilities.
   Anthony Family Shelter - $10,000
   Inter-Faith Inn - $15,290
   Ti'Wiconi Safe Haven - $7,590
   Salvation Army - $25,000
   YWCA Women's Crisis Center - $5,000

   Essential Services: Amount Requested: $62,685

   On behalf of seven agencies who annually serve a combined average of 2,196 people for residential services and 5,310 for non-residential services.
   The requested Essential services figure is being requested to address the need to provide; case management services including client intake and assessment to implement a self-sufficiency plan; follow-up services with clients used as a proactive tool; staff to assist clients with referrals and assistance to obtain permanent housing; cleaning supplies and office supplies.
   Anthony Family Shelter - $12,000
   Inter-Faith Inn - $17,380
   Ti'Wiconi Safe Haven - $8,305
   United Methodist Open Door - $25,000

   Homeless Prevention: Amount Requested: $9,000

   On behalf of the agency who annually serves an average of 5,219 individuals with non-residential services. The requested Homeless Prevention figure is being requested to address the need to provide rent assistance to 25 families who are homeless or in danger of becoming homeless. The requested amount will also provide assistance to homeless families with a documented source of income, transitioning them from emergency shelter to permanent housing.
   Center of Hope - $9,000

3. Kansas Housing Resources Corporation is permitted to use five percent of the state's 2009 ESG award for administrative purposes. The state subgrants two-and-a-half percent of the award to local governments who receive ESG grants for costs associated with accounting for the use of grant funds, preparing program-related reports, obtaining program audits, and similar costs related to administering the grant **after** the award. Provide a description of the expected use for this request, (*to be completed by local unit of government).*

As a direct result of increased need throughout the community, in addition to reduced funding, the City of Wichita is opting to forego the administrative portion of the award.

B. **Assistance**

Specifically describe how the following assistance, if applicable, will be provided to persons served by your agency:

1. Permanent Housing Referral Services
   Please see Appendix 1 for individual agency applications and complete descriptions of the assistance that will be provided.

2. Overnight Shelter
   Please see Appendix 1 for individual agency applications and complete descriptions of the assistance that will be provided.

3. Medical Services
   Please see Appendix 1 for individual agency applications and complete descriptions of the assistance that will be provided.

4. Children's Services
   Please see Appendix 1 for individual agency applications and complete descriptions of the assistance that will be provided.

5. Mental Health and/or Drug Abuse and/or Counseling Services
   Please see Appendix 1 for individual agency applications and complete descriptions of the assistance that will be provided.

6. Employment Services
   Please see Appendix 1 for individual agency applications and complete descriptions of the assistance that will be provided.

7. Transportation
   Please see Appendix 1 for individual agency applications and complete descriptions of the assistance that will be provided.

8. Other Available Federal, State, and Private Assistance

Please see Appendix 1 for individual agency applications and complete descriptions of the assistance that will be provided.

9. Other

Please see Appendix 1 for individual agency applications and complete descriptions of the assistance that will be provided.

C. **Confidentiality**

Section 832 of the Cranston-Gonzalez National Affordable Housing Act changes to the ESG Program require grantees to develop procedures to ensure confidentiality of victims of family violence. *Indicate how this requirement will be met to protect victims of family violence in your Shelter or service provider organization.* ***Note: If this application includes funding to a domestic violence shelter, the shelter must provide their confidentiality policy in order to be considered for funding.***

Notwithstanding the preceding confidentiality requirements, recipients of ESG funds will be required to account for use of all ESG monies to KHRC, as well as make all facilities and records available to KHRC upon request. KHRC will ensure the confidentiality of these records.

SECTION V: HOMELESS DEFINITION AND COMMUNITY RESOURCES

Homeless means as the term is defined in 42 U.S.C. 11302. "(a) IN GENERAL.-For purposes of this Act, the term "homeless" or "homeless individual or homeless person" includes—(1) an individual who lacks a fixed, regular, and adequate nighttime residence; and (2) an individual who has a primary nighttime residence that is: A) supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); B) a institution that provides a temporary residence for individuals intended to be institutionalized; or C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodations for human beings. EXCLUSION - For purposes of this Act, the term "homeless" or "homeless individuals" does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law." (42 U.S.C. 11302) There is a statutory requirement that ESG funds must benefit either homeless persons, or persons at imminent risk of becoming homeless in the case of homeless prevention activities.

A. Estimate an unduplicated count of homeless persons in your city/county, including the homeless population who do not access services. Explain how you estimated the homeless population. Has your community implemented, or is planning on implementing, an HMIS (Homeless Management Information System)? If so, what software is your community utilizing? *Note: As explained in further detail in Section VII, with some exceptions, recipients of ESG funds are expected to implement and use the HMIS system. Technical assistance is available from KHRC for implementation.*

The Wichita/Sedgwick County Continuum of Care (CoC) Committee meets monthly and organizes the year-round process of data collection; analysis of services currently provided and identifies gaps in existing services needing to be addressed. The CoC committee documents changes to the existing continuum of care to identify programs entering and exiting the community. The CoC conducted an annual point in time homeless survey on January 30, 2008. In addition, the CoC examined other census data along with the surveys to determine reporting accuracy and gaps analysis. The process of data collection consisted of surveys that were delivered to emergency shelter, transitional and permanent housing and permanent supportive housing service providers via fax, email or hand delivery. All were asked to report their current bed inventory and those under development in 2008.

The following chart depicts the homeless populations in the Wichita/Sedgwick County area. This information excerpted from Exhibit 1 was submitted with the Wichita/Sedgwick County HUD 2008 Continuum of Care funding application.

Homeless Population	Households with	Dependent Children		
	Sheltered		Unsheltered	Total
	Emergency	Transitional		
Number of Households	22	23	1	46
Number of Persons (adults and children)	61	67	3	131

	Households without	Dependent Children		
	Sheltered		Unsheltered	Total
	Emergency	Transitional		
Number of Households	262	47	23	332
Number of Persons (adults and unaccompanied youth)	270	47	25	342

	All Households/	All Persons		
	Sheltered		Unsheltered	Total
	Emergency	Transitional		
Total Households	284	70	24	378
Total Persons	331	114	28	473

Homeless Subpopulations	Sheltered	Unsheltered		Total
*Chronically Homeless (Federal definition)	85	8		93
*Severely Mentally Ill	112	4		116
*Chronic Substance Abuse	97	10		107
*Veterans	46	7		53
*Persons with HIV/AIDS	4	Not Reported		4
*Victims of Domestic Violence	58	Not Reported		58
*Unaccompanied Youth (under 18)	2	Not Reported		2

B. List all existing emergency shelter(s), domestic violence shelter(s), transitional housing, and social services that assist the homeless in your city/county area. If the agency listed below provides shelter include capacity and characteristics of the population served; if the agency provides only services provide characteristics of population served. (If the agency listed below only serves a sub population of the homeless, i.e. mentally ill, veteran, victims of domestic abuse please note this in population served).

Shelter	Capacity	Population Served
1. Anthony Family Shelter	50 Beds	Homeless Families
2. Inter-Faith Inn	50 Beds	Men, Women & Children
3. Inter-Faith Ti'Wiconi Safe Haven	20 Beds	Mentally Ill
4. Salvation Army – Emergency Lodge	18 Beds	Families and Single Women
5. United Methodist Open Door	56 Total Capacity	Men & Women
6. YWCA Women's Crisis Center	27 Beds	DV Women & Children
7. Harbor House	50 Beds	DV Women & Children
8. Union Rescue Mission	174 Beds	Single Men
9. Wichita Children's Home	50 Beds	Youth
(Add pages, if necessary)		

SECTION VI: CONTINUUM OF CARE

The ESG program is designed as the first step in a continuum of assistance to prevent homelessness. Facilitating the homeless to move towards the maximum degree of self-sufficiency that is appropriate for that individual or family is the goal of ESG funded programs. The Continuum of Care (CoC) model is based on the concept that homelessness is not just a problem of lack of shelter; but often involves a complex variety of issues that need to be addressed if homelessness is going to be successfully diminished and prevented. The State is encouraging local governments to implement a Continuum of Care approach to homelessness. Please describe local plans to implement a Continuum of Care approach. If your community has a Continuum of Care document please include this with your application (do not attach the CoC to this application, simply include it when submitting your application).

***Please see Appendix 2, City of Wichita/Sedgwick County Continuum of Care Document.**

SECTION VII: PERFORMANCE MEASURES: Kansas Housing Resources Corporation Quarterly Reports (reports are available on KHRC website, www.kshousingcorp.org)

Four Reports*	Quarterly Reporting Period:	Due Date:
First Report	July 1, 2009 thru September 30th 2009	October 13, 2009
Second Report	October 1, 2009 thru December 31, 2009	January 12, 2010
Third Report	January 1, 2010 thru March 31, 2010	April 13, 2010
Fourth Report	April 1, 2010 thru June 30, 2010	July 13, 2010
Final Report**	July 1, 2010 thru final expenditure	

* Reports are due only while ESG funds are being expended; i.e. if all ESG funds are spent in the first two quarters then only two quarterly reports would be required.

** This report is only for those grantees that did not spend their funds during the contract period, and requested and received approval for an extension.

Homeless Management Information System (HMIS)

Participation in the use of an approved HMIS is mandatory for recipients of ESG funds**. Notice: The Violence against Women Act, 2005 Reauthorization exempts all Domestic Violence shelters from participating in HMIS.**
Non-participation in the use of an HMIS by eligible ESG recipients will result in the loss of ESG funding.
All funded agencies must submit HMIS **Service Summaries** and **User Reports** quarterly. These reports are due as follows:

First Quarter – July 1st thru September 30th, Report due October 13th.

Second Quarter – October 1st thru December 31st, Report due January 12th

Third Quarter – January 1st thru March 31st, Report due April 13th

Fourth Quarter – April 1st thru June 30th, Report due July 13th

SECTION VIII: STATEMENT OF ASSURANCES AND CERTIFICATIONS (Following pages)

KANSAS HOUSING
RESOURCES CORPORATION

CERTIFICATION OF LOCAL APPROVAL FOR NONPROFIT ORGANIZATIONS

I, Carl Brewer, Mayor (*name and title)*, duly authorized to act on behalf of the City of Wichita *(name of jurisdiction)*, hereby approve the following project(s) proposed by Catholic Charities, Center of Hope, Inter-Faith Ministries, Salvation Army, United Methodist Open Door, and YWCA Women's Crisis Center *[name(s) of jurisdiction(s)]*.

By: Carl Brewer
Name of Local Government Official

Signature

Date

Mayor
Title

KANSAS HOUSING RESOURCES CORPORATION

LOCAL UNIT OF GOVERNMENT
EMERGENCY SHELTER GRANT PROGRAM
FY2009 CERTIFICATIONS

I, Carl Brewer, Mayor (*name and title)*, authorized to act on behalf of City of Wichita *(local unit of government)*, certify that the local unit of government will ensure compliance by units of general local government and nonprofit organizations to which it distributes funds under the Emergency Shelter Grant Program with all of the rules and regulations of the ESG Program, including but not limited to the following:

(1) The requirements of 24 CFR 576.21(a)(4), which provide that the funding of homeless prevention activities for families that have received eviction notices or notices of termination of utility services meet the following standards: (A) that the inability of the family to make the required payments must be the result of a sudden reduction in income; (B) that the assistance must be necessary to avoid eviction of the family or termination of the services to the family; (C) that there must be a reasonable prospect that the family will be able to resume payments within a reasonable period of time; and (D) that the assistance must not supplant funding for pre-existing homeless prevention activities from any other source.

(2) The requirements of 24 CFR 576.25(b)(2) concerning the submission by nonprofit organizations applying for funding of a certification of approval of the proposed project(s) from the unit of local government in which the proposed project is located.

(3) The requirements of 24 CFR 576.53 concerning the continued use of buildings for which Emergency Shelter Grant funds are used for rehabilitation or conversion of buildings for use as emergency shelters for the homeless; or when funds are used solely for operating costs or essential services, concerning the population to be served.

(4) The building standards requirement of 24 CFR 576.55.

(5) The requirements of 24 CFR 576.56, concerning assistance to the homeless.

(6) The requirements of 24 CFR 576.57, other appropriate provisions of 24 CFR Part 576, and other applicable Federal law concerning nondiscrimination and equal opportunity.

(7) The requirements of 24 CFR 576.59(b) concerning the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(8) The requirements of 24 CFR 576.59 concerning minimizing the displacement of persons as a result of a project assisted with these funds.

(9) The requirements of 24 CFR 576.65(a) and 576.65(b) that grantees develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the Emergency Shelter Grant Program and that the address or location of any family violence

shelter project assisted with ESG funds will not be made public, except with written authorization of the person or persons responsible for the operation of the shelter.

(10) The requirement that recipients involve, to the maximum extent practicable, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities as provided by 24 CFR 576.56(b)(2).

(11) The new requirement of the McKinney Act (42 USC 11362) to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons. I further understand that State and local governments are primarily responsible for the care of these individuals, and that ESG funds are not to be used to assist such persons in place of State and local resources.

I certify that the local unit of government will comply with the requirements of 24 CFR Part 24 concerning the Drug-Free Workplace Act of 1988.

I certify that the local unit of government will comply with the provisions of, and regulations and procedures applicable under 24 CFR 576.57(e) with respect to the environmental review responsibilities under the National Environmental Policy Act of 1969 and related authorities as specified in 24 CFR Part 58 as applicable to activities of nonprofit organizations funded directly by the State. The local unit of government also agrees to assume the Department's responsibility and authority as set forth in 24 CFR 576.57(e) for acting on the environmental certifications and requests for the release of funds submitted to the State by local government recipients.

I certify that the local unit of government will ensure the provision of the matching funds required by 24 CFR 576.51 and 42 USC 11375, including a description of the sources and amounts of such supplemental funds, as provided by the State, units of general local government or nonprofit organizations.

Name and Title:

_____ _____

Signature (Chief Elected Official) Date

____Mayor, City of Wichita_____

Title

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council

SUBJECT: Swimming Pool Improvements (All Districts)

INITIATED BY: Department of Park and Recreation

AGENDA: Consent

Recommendation: Approve and amend the bonding resolution.

Background: The 2008 Swimming Pool Improvements/Renovation was approved by the City Council on November 4, 2008, funding the renovation or updates of several swimming pools. The planned improvements included Harvest, replace deck sections, bathhouse renovations, and plumbing improvements; Linwood, pool basin painting improvements; Edgemoor, filter and flow meter repair and replacement; Harvest, Orchard, McAdams, Boston, Linwood, Aley and Evergreen,valve system repair or replacements. These improvements protect the City's investment in these facilities and keep them functional and aesthetically attractive to citizen users.

Analysis: A new federal law, the Virginia Graeme Baker (VGB) Act, requires all public pools and spas to be equipped with certified drain covers in compliance with the new ASME/ANSI 2007 standard, as well as other safety measures to prevent entrapment and evisceration. Staff recommends reallocating $25,000 to cover the cost for the required drain cover replacement at all eleven pools. The funding will come from all the original funding that was allocated for the Linwood pool basin painting improvements and a portion of the original funding that was allocated for Harvest bathhouse renovations. This will help to improve pool safety and bring all pools in compliance of the VGB Act by opening day, May 29, 2009.

Financial Considerations: The 2008 Park CIP provides $100,000 for swimming pool refurbishments. The source of funding is General Obligation bonds.

Goal Impact: The Quality of Life Goal is impacted as Park and Recreation improvements will enhance the quality of recreation and leisure services and help to increase and sustain the vitality of the neighborhood along with community satisfaction.

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

Recommendations/Actions: It is recommended that the City Council 1) approve the substitution of projects, 2) approve and amend the bonding resolution, 3) authorize initiation of the project and 4) authorize all necessary signatures.

Attachments: Amended Bonding resolution.

397-235

First Published in the Wichita Eagle on March 13, 2009

RESOLUTION NO. 09-067

A RESOLUTION AMENDING RESOLUTION NO. 08-510, AND AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE FOR IMPROVEMENTS AND REFURBISHMENTS AT ALL MUNICIPAL SWIMMING POOLS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That the description of public improvements identified in Section 1 of Resolution No. 08-510, adopted November 4, 2008 is hereby amended to read as follows:

Labor, Material, and Equipment for improvements and refurbishments at the following municipal swimming pools: Harvest, replace deck sections, bathhouse renovations and plumbing improvements; Edgemoor, filter and flow meter repair and replacement; Harvest, Orchard, McAdams, Boston, Linwood, Aley and Evergreen, valve system repair or replacements; and, at all City pools, certified drain covers in compliance with the new ASME/ANSI 2007 standard, as well as other safety measures to prevent entrapment and evisceration.

SECTION 2: That the prior version of Section 1 of Resolution No. R-08-510 is hereby rescinded and replaced by the foregoing amended section.

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.

ADOPTED at Wichita, Kansas, this 10th day of March, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

AMENDMENT TO DECLARATION
OF OFFICIAL INTENT CERTIFICATE

Comes now Kelly Carpenter, Director of Finance for the City of Wichita, Kansas, and hereby amends a certain Declaration of Official Intent Certificate by substituting the maximum principal amount of debt the City expects to issue for reimbursement of expenditures made in connection with such capital improvement projects as detailed below.

Labor, Material, and Equipment for improvements and refurbishments at the following municipal swimming pools: Harvest, replace deck sections, bathhouse renovations, and plumbing improvements; Edgemoor, filter and flow meter repair and replacement; Harvest, Orchard, McAdams, Boston, Linwood, Aley and Evergreen, valve system repair or replacements; and, at all city pools, certified drain covers in compliance with the new ASME/ANSI 2007 standard, as well as other safety measures to prevent entrapment and evisceration.

OCA No.	TITLE	AMOUNT
Project# 397-235	2008 Swimming Pool Renovations	$100,000

785135	2008 Pool Imprv- Harvest Pool Renovation/Improvements
785136	2008 Pool Imprv-Orchard Pool Plumbing refurbishments
785137	2008 Pool Imprv-Edgemoor Pool Plumbing refurbishments
785138	2008 Pool Imprv-Evergreen Pool Plumbing refurbishments
785139	2008 Pool Imprv-McAdams Pool Plumbing refurbishments
785140	2008 Pool Imprv-Boston Pool Plumbing refurbishments
785141	2008 Pool Imprv- Linwood Pool Renovation/Improvements
785142	2008 Pool Imprv-Aley Pool Plumbing refurbishments
785157	2008 Pool Imprv- Certified Drain Covers Replacement

This Certificate being signed and executed under oath by the Finance Director of the City of Wichita on the

_____ day of _____.
(month, year)

CITY OF WICHITA, KANSAS

_____
Kelly Carpenter, Director of Finance

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

Sworn to and subscribed before me this _____ day of _____
(month, year)

_____
Notary Public

My appointment expires:

_____

Rev. 09/24/96

Agenda Report Item No. XII-12.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Nuisance Abatement Assessments (Districts I, II, III, IV and VI)

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendation: Approve the assessments.

Background: The Office of Central Inspection supports neighborhood maintenance and improvement through abatement of nuisances under Titles 7 and 8 of the City Code in 2007. State law and local ordinance allow the City to clean up private properties that are in violation of environmental standards after proper notification to the responsible party. A private contractor performs the work, and the Office of Central Inspection bills the cost to the property owner.

Analysis: State law and city ordinances allow placement of the lot cleanup and mowing costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the nuisance abatements in question, and the Office of Central Inspection is requesting permission for the Department of Finance to process the necessary special assessments.

Financial Considerations: Nuisance abatement contractors are paid through budgeted appropriations from the City's General Fund. Owners of abated property are billed for the contractual costs of the abatement, plus an additional 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. Nuisance abatements to be placed on special assessments are on the attached property list.

Goal Impact: This action supports the goal of Core Area and Vibrant Neighborhoods by continuing cleanup and abatement of properties that are detrimental to Wichita neighborhoods.

Legal Considerations: These assessments are in accordance with Chapters 7.40.050 and 7.40.060 of the City Code. This agenda report has been reviewed and approved by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the proposed assessments.

Attachments: Property List for Special Assessment

Weed Mowing	**Amount**	**District #**
1501 N Fountain	$ 120.24	1
1209 N Jackson	120.24	6
608 W Burton	120.24	4
318 S Zelta	120.24	2
310 S Zelta	120.24	2
1513 N Grove	120.24	1
1907 N Grove	120.24	1
1223 N Ohio	120.24	1
V/L N of 832 N Wabash	120.24	1
916 Harding	120.24	1
437 N 127th St E	129.19	2
3239 S All Hallows	120.24	4
1902 S Market St	120.24	3
903 W Maxwell Ave	120.24	4
1928 S Water St	120.24	3
5008 E Pawnee	120.24	3
V/L NW corner of 52nd & Arkansas	128.29	6
4016 S Roseberry	120.24	3
2311 N Estelle	120.24	1
1326 N Erie St	120.24	1
945 N Wabash	120.24	1
V/L SW corner of 10th & Ohio	120.24	1
1129 N Spruce	120.24	1
1148 N Poplar	120.24	1
1101 N New York	120.24	1
921 N Grove	120.24	1
2732 S Holyoke Ct	120.24	3
3151 S Yale St	120.24	3
3508 E Munger	120.24	3
3147 N Market St	120.24	6
556 N Spruce	120.24	1
2601 E Douglas	120.24	1
V/L S of 706 N Piatt	120.24	1
1202 N Minnesota	120.24	1
1217 N Hydraulic	120.24	1
1400 E 1st St N	120.24	1
V/L W of 12728 E Central	128.29	2
2720 E S Fork Ct	120.24	3
1730 S Justin Cir	120.24	2
143 S Gordon	120.24	4
V/L E of 234 S Kessler	120.24	4
2138 N Minnesota	169.43	1
1759 N Minnesota	120.24	1
705 N Grove	120.24	1
127 W Aley Way	120.24	6
1202 N Emporia	120.24	6
1405 S Laura 1	20.24	1
2608 E Stadium	120.24	1
2416 E Stadium	120.24	1
1852 S St. Francis	120.24	3
1923 S Greenwood	120.24	1
V/L E of 2200 S Rock Rd	423.43	2

Lot Clean Up	**Amount**	**District #**
1148 N Market	$ 501.70	6

418 N Hydraulic	416.00	1
2033 S Wichita	1,626.84	3
547 N Green	1,510.95	1
1612 N Kansas	526.00	1
1327 N Ohio	745.25	1
1741 N Chautauqua	818.05	1
1745 N Chautauqua	677.55	1
2737 N Chautauqua	605.65	1
1317 N Erie	1,083.40	1
1238 N Green	800.35	1
1701 N Lorraine	587.80	1
1557 N Oliver	1,055.20	1
2424 S Victoria	1,153.30	3
1216 N Dellrose	508.25	1
524 N Doris	745.75	4
402 N Spruce	596.00	1

_____ Published in The Wichita Eagle on **March 27, 2009**

ORDINANCE NO. _____.

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

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

SECTION 1. That the sums set opposite the following lots, tracts, pieces and parcels of land or ground, herein specified, be and the same are hereby levied to pay the cost of cutting weeds in the City of Wichita, Kansas in the year 2009:

LEGAL OF PARCEL IN BENEFIT DISTRICT	ASSESSMENT
PAGE 1	
LOTS 1110-1112 JACKSON ST. LEWELLEN'S 3RD. ADD.	120.24
LOTS 147-149 MARKET ST ENGLISH'S 7TH ADD	120.24
LOTS 17-19 WATER ST. ENGLISH'S 9TH ADD.	120.24
LOTS 155-156 27TH. ST. NORTH LAWN ADD.	120.24
LOTS 28-29-30-31 BLOCK 22 JONES PARK ADD.	120.24
LOTS 250-252 & S 1/2 LOT 254 EMPORIA AVE. FERRELLS 2ND. ADD.	120.24

LOT 1 CLEVELAND AVE. MATHEWSON'S 4TH. ADD.	120.24
LOTS 1-3 WABASH AVE. MOORE'S ADD.	120.24
LOTS 17-19 EXC N 10 FT LOT 19 WABASH ELLIOTT & HAMMOND'S ADD.	120.24

E1/2 LOTS 329-330 GRANVILLE PARK ADD.	120.24
LOTS 48-50-52-54 GETTO NOW NEW YORK AVE. GETTO'S ADD.	120.24
LOTS 65-67 OHIO AVE. BURLEIGH'S 3RD. ADD.	120.24
LOTS 41-43-45-47 WABASH ADD.	120.24
LOTS 42-44 BLOCK 8 ALLEN & SMITH'S ADD.	120.24
LOTS 5-7 LAURA AVE MC CORMICK'S ADD	120.24
LOTS 17-19-21-23 FANNIE AVE.	120.24

STRONG'S ADD.	
LOTS 30-32 SPRUCE ST. STITES BROS. 2ND. ADD.	120.24
LOTS 50-52 PIATT AVE. STITES BROS. 4TH. ADD.	120.24

PAGE 3

LOTS 65-67-69 STITES NOW GROVE ST. STITES BROS. 4TH. ADD.	120.24
LOTS 17-19 TENTH ST. ADD.	120.24
PORTION RESERVE I LY E OF MINNESOTA AVE SWAN'S ADD.	120.24
LOTS 129-131 TYLER NOW GROVE ST. LOGAN ADD.	120.24
LOTS 1-3-5-7 BLOCK 2 KANSAS ADD.	120.24
LOTS 38-40-42 GROVE ST. STOUT'S ADD.	120.24
EVEN LOTS 2 THRU 12 ON MINNESOTA AVE & ODD LOTS 1 THRU 23 ON PIATT AVE EXC N 10 FT FOR ST. PARKVIEW ADD.	169.43

LOTS 106-108 MONA NOW POPLAR ST. FAIRMOUNT PARK ADD.	120.24
LOTS 26-28 MT. VERNON NOW ERIE AVE. FAIRMOUNT PARK ADD.	120.24

PAGE 4

LOTS 1-3 DOUGLAS AVE. OLIVER'S SUB. OF RICHLAND ADD.	120.24
LOT 15 BLOCK 4 PARKMORE ADD.	120.24
W 10 FT LOT 24 ALL LOT 25 & E 11 FT LOT 26 BLOCK 4 SHADYBROOK ADD.	120.24
W 44 FT LOT 26 & E 32 FT LOT 27 BLOCK 4 SHADYBROOK ADD.	120.24
LOT 9 BLOCK 3 EAST HIGHLAND NORTH ADD.	120.24
LOT 6 BLOCK P UNIVERSITY PARK ADD.	120.24
LOT 18 BLOCK X AUDREY MATLOCK HEIGHTS 1ST. ADD.	120.24
LOT 14 2ND. REPLAT OF PT OF PAWNEE RANCH ADD.	120.24

LOT 6 & E 10 FT LOT 7 BLOCK F MC ADAM ACRES ADD.	120.24

PAGE 5

LOT 1 BLOCK D PLANEVIEW SUB. NO. 1	120.24
LOT 28 BLOCK G PLANEVIEW SUB. NO. 1	120.24
LOT 10 BLOCK J PLANEVIEW SUB. NO. 1	120.24
LOT 24 BLOCK J PLANEVIEW SUB. NO. 2	120.24
LOT 2 REYNOLD'S 2ND. ADD.	120.24
LOT 3 REYNOLD'S 2ND. ADD.	120.24
LOTS 2-4-6-8-10 BURTON ST MC KEE'S RESURVEY	120.24
LOTS 22-24-26 PALMERSTON NOW GORDON SMITHSON'S SUB.	120.24
LOT 5 BLOCK 6	120.24

LEONARD POWELL ADD.	

PAGE 6

LOT 12 BLOCK 16 4TH. ADD. TO SOUTHWEST VILLAGE	120.24
LOT 40 EAST URBANDALE ADD.	128.29
LOT 1 EXC BEG WLY MOST NW COR E 435.17 FT S 233.16 FT W 385.17 FT N 85.16 FT W 50 FT N 148 FT TO BEG BLOCK 1 PLAZA AT CHERRY CREEK HILLS	423.43
LOT 5 127TH RETAIL ADD.	129.19
LOT 1 BLOCK 1 MAPLE STREET MINI-MALL ADD.	120.24
LOT 2 BLOCK 1 SMITHMOOR 10TH ADD.	120.24
SE1/4 EXC N 1643FT & EXC W 1645 FT & EXC PT BEG 75 FT N & 75 FT W SE SE COR SE1/4 TH N 175 FT W 200 FT S 178.75 FT TH NELY 25.28 FT TH E 175 FT TO BEG & EXC E 50 FT & S 50 FT FOR RDS & EXC 4.67A FOR HWY COND CASE 88-C-4045 SEC 15-27-2E	128.29

SECTION 2. This ordinance shall take effect and be in force from and after its passage by the city council and publication once in the official City newspaper.

ADOPTED at Wichita, Kansas, this **24th** day of **March, 2009**.

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

(SEAL)

Approved as to form

_____

Gary E. Rebenstorf, Director of Law

Published in The Wichita Eagle on **March 27, 2009**

ORDINANCE NO. _____.

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

SECTION 1. That the sum set opposite each of the following lots, pieces and parcels of land or ground, herein specified, be and the same is hereby levied to pay the cost of abating certain public nuisances under the provision of Section 7.40.050 of the Code of the City of Wichita, Kansas, which public health nuisances are determined to have existed upon the following described property:

LEGAL OF PARCEL IN BENEFIT DISTRICT	ASSESSMENT
PAGE 1	
LOTS 246-248 EXC E 45 FT MARKET ST. HYDE & FERRELL'S ADD.	501.70
LOTS 70-72 WICHITA ST. ENGLISH'S 9TH. ADD.	1,626.84
LOTS 29-31 OHIO AVE. BURLEIGH'S 3RD. ADD.	745.25
LOT 8 BLOCK 2 ARCHIE ADAMS ADD.	1,153.30
LOTS 22-24-26-28 & N 20 FT LOT 30 HYDRAULIC AVE. MC CAMPBELL'S ADD.	416.00
LOTS 22-23 EXC PT TAKEN IN COND. CASE 95 C 1056 SMYTH'S SUB	596.00

LOTS 84-86 BLOCK 6 KANSAS ADD.	526.00
LOTS 25-27 ALICE NOW GREEN ST. MOSSMAN'S 2ND. ADD.	1,510.95
LOTS 66-68 GREEN ST. FAIRMOUNT PARK ADD.	800.35

PAGE 2

LOTS 33-35 ERIE AVE. FAIRMOUNT PARK ADD.	1,083.40
LOTS 79-81 CHAUTAUQUA AVE. WOODRIDGE PLACE ADD.	818.05
LOTS 83-85 CHAUTAUQUA AVE. WOODRIDGE PLACE ADD.	677.55
LOTS 49-51 LORRAINE AVE. WOODRIDGE PLACE ADD.	587.80
LOTS 31-32 BLOCK 8 COUNTRY CLUB HEIGHTS ADD.	508.25
LOT 2 BLOCK 8 KEN-MAR ADD.	1,055.20
LOT 2	605.65

BLOCK 3 BRUCE JONES ADD.	
LOT 6 BLOCK 5 KELL HAWKINS ADD.	745.75

SECTION 2. This ordinance shall take effect and be in force from and after its publication once in the official City paper.

ADOPTED, at Wichita, Kansas, this **24th day of March, 2009**.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council

SUBJECT: 2009 Enforcing Underage Drinking Laws (EUDL) Grant

INITIATED BY: Police Department

AGENDA: Consent

Recommendation: Approve the application.

Background: For the past five years, the Wichita Police Department has placed an emphasis on eliminating underage alcohol consumption in our community. In an effort to address this problem, the Wichita Police Department, in collaboration with community agencies and citizens, developed and implemented the JUDGE (Juvenile Underage Drinking Group Education/Enforcement) program. The goals of the JUDGE program are to educate the public on underage alcohol consumption issues and enhance proactive enforcement of laws applicable to underage alcohol consumption. In an effort to assist with this effort, the Police Department is applying for a grant funded by the Kansas Department of Transportation, Bureau of Traffic Safety. The Enforcing Underage Drinking Laws (EUDL) grant is being made available to communities to support their enforcement activities in the area of preventing underage alcohol consumption. The Wichita Police Department has received EUDL funding since 2004.

Analysis: The Kansas Department of Transportation is providing financial support in the form of a three-month mini-grant. Funds would be made available from March 1 through May 31, for overtime to support enforcement activities during Spring break, proms and graduations.

Financial Considerations: The Wichita Police Department's grant application requests funding for the JUDGE program in the amount of $27,219 for overtime to support enforcement activities. There is no local match.

Goal Impact: Provide a safe and secure community by placing an emphasis on eliminating underage alcohol consumption in our community.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the City Council approve the application and authorize the appropriate signatures.

Attachment No. 1
Please submit 1
Signed application

APPLICATION FOR HIGHWAY SAFETY PROJECT
"Enforcing Underage Drinking Laws (EUDL)" Mini Grant Program

(All rules and regulations apply in accordance with Section 163 of Public Law 83-564)
KANSAS DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING AND DEVELOPMENT
BUREAU OF TRANSPORTATION SAFETY AND TECHNOLOGY
700 SW HARRISON STREET
TOPEKA, KS 66603-3754

PROJECT TITLE: **J.U.D.G.E. – Wichita P.D.**

LOCATION: **Wichita Police Department**

TYPE OF APPLICATION (Check appropriate box)

DATE OF APPLICATION: **1-23-2009**

[X] **Initial** [ ] Revision [ ] Continuation

APPLICANT

NAME OF AGENCY:
Wichita Police Department

PROJECT DIRECTOR / TITLE:
Norman D. Williams / Chief

ADDRESS OF AGENCY: (Mailing, including zip code)
455 North Main, Wichita, KS 67202

PROJECT COORDINATOR:
Officer Michael Lloyd

TELEPHONE NUMBER: **(316) 688-9300**

FAX NUMBER: **(316) 858-7704**

GOVERNMENTAL UNIT: **City of Wichita, Kansas**

[ ] STATE [X] **CITY** [ ] COUNTY OTHER (Specify)_____

BUDGET (from enclosed Schedule B (s))	PROJECT PERIOD FY: 2009		
COST CATEGORY			
(A) Personal Services	$27,218.88		
(B) Commodities			
TOTAL ESTIMATED COSTS	$27,218.88		
GRAND TOTAL (All Years)	$27,218.88		

NAME AND ADDRESS OF AUTHORIZING GOVERNMENTAL UNIT

City of Wichita
Name

Address

Submitted by: I certify compliance with all criteria applicable for eligibility of the program and implementation in accordance with program requirements.

Please print name and sign under appropriate heading.

Project Director
Norman D. Williams, Chief of Police

Authorizing Governmental Official
Robert Layton, City Manager

KDOT Secretary

For KDOT Bureau of Traffic Safety Use Only

Project Number: SP 2202-09

Contract Starting Date: 3/01/2009

Contract Number: JJ 1142-09

Contact Termination Date: 5/31/2009

Amount of Contract: $26,405.88

Contractor FEIN: 48-6000653

Federal Funds Obligated: 100%

Federal Funding Source: Juvenile Justice (JJ)

SCHEDULE A
GENERAL INFORMATION AND NARRATIVE

Proposal should address education and/or enforcement of the traffic safety problem in your local area. Use an additional page if necessary.

1. Describe the Problem (The Problem Statement.)

There has been a proliferation of underage drinking and access to alcohol within the City of Wichita, as well as across the nation over the past ten years. During the year 2008, the Wichita Police Department averaged 518 underage alcohol related arrests. There were also 1635 DUI arrests in 2008 with 160 (10.3%) of them being offenders under the legal drinking age. Of these, there were no fatality accidents with a driver under the legal drinking age. During the course of the EUDL mini-grant in 2008, we were able to make approximately 173 arrests related to underage drinking and seized approximately 586 containers. We also had contact with 126 juveniles and 77 parents about the dangers and cost of underage drinking.

This is just the tip of the iceberg regarding the extent of the problem. As noted in an article in the American Medical Association, alcohol is the most frequently used drug by high school seniors, with the first time use between the ages of 11-13.

The City of Wichita and metro area have 21 high schools (16 in the corporate City limits) along with 3 colleges with on-site student housing. There are over 20,000 high school students within the City of Wichita metro area. Many of the students of Goddard, Valley Center, Andover and Maize live within the corporate City limits of Wichita.

2. Describe the project. (The Problem Solution)

Throughout 2008 the JUDGE coalition has continued to meet and work towards reducing the ways the juveniles can access or obtain alcohol. The coalition is still comprised of members of public schools, private schools, concerned parents and Law Enforcement. Members of the coalition have also been working with the Stand Together Coalition of Wichita. This is a joint effort to reach more members of the community and to educate as many people as possible.

The EUDL grant would allow us to expand our efforts in the JUDGE (Juvenile Underage Drinking Group Education/Enforcement) program combating underage drinking within the City of Wichita. The monies would be allocated to provide six, 6-hour special assignments for each of the four police patrol bureaus. Each assignment would be planned in conjunction with the following school events: Spring break, prom, and graduation.

The assignments will be multi-faceted, including aspects of compliance checks, third party sales interdiction, and party patrols.

3. Describe the outcome expected. (Quantifiable Performance Objectives)

Again this year we will be monitoring Juvenile contacts, underage drinking arrests, drug arrests, containers seized, as well as Juvenile party calls. We will be tracking compliance checks, third hand sales, and other community contacts.

By increasing enforcement measures, we hope to deter underage drinking as well as other associated illegal activity such as disturbance calls, vandalisms, and assaults. We will measure the success of the grant through statistical methods regarding enforcement and education.

Please submit budget information for each year applicable

Year: FFY 09

SCHEDULE B BUDGET INFORMATION		
For the contract period itemize the cost of each applicable category.	Cost	KDOT use only Federal Share
Personnel Services:		
Supervisor base pay $28.68 x 1.5 hourly rate $43.02 x 144 (no. of estimated hours dedicated) = $6,194.88 Total	$6,194.88	
Officer base pay $24.33 x 1.5 hourly rate $36.50 x 576 (no. of estimated hours dedicated) = $21,024.00 Total	$21,024.00	
Total Personnel Services:	$27,218.88	
Grand Total for Budget:	**$27,218.88**	

KDOT BTS Project No: **JJ 1142-09**

KANSAS DEPARTMENT OF TRANSPORTATION
HIGHWAY SAFETY PROJECT AGREEMENT

PARTIES:

Deb L. Miller, Secretary of Transportation
Department of Transportation for the State of Kansas
(Secretary)
Eisenhower State Office Building
700 SW Harrison Street
Topeka, KS 66603-3754

and:

Norman D. Williams, Chief of Police
Wichita Police Department
455 North Main
Wichita KS 67202

PURPOSE: To promote highway safety improvement. This highway safety improvement is identified by the Project No. above, in the city or county listed above. It will hereinafter be referred to as the Project, and further identified by the Application for Highway Safety Project Contract, Attachment No. 1, which is incorporated by reference and made a part of this Agreement.

EFFECTIVE DATE: The Parties shall be mutually obligated to perform in accordance with this Agreement as of:

March 1, 2009

TERMS OF THE AGREEMENT

Article I - THE SECRETARY AGREES:

1) To reimburse the project Applicant for the work completed and actual costs incurred for commodities in the performance of this Agreement in an amount not to exceed a total price of as provided in the Project Application Attachment 1, which is incorporated by reference and made a part of this Agreement.

2) To make payments to the Project Applicant at intervals of not less than one calendar month.

Article II - THE PROJECT APPLICANT AGREES:

1) To furnish the necessary personnel, facilities, and such other professional services as may be required to fulfill the work identified and described in the Project.

2) To begin the Project upon receipt of Secretary's written notice to proceed and shall execute this Project to completion on or before:

May 31, 2009

3) To prepare and deliver to the Secretary during and upon completion of the Project all reports as required.

4) To pay actual project costs prior to any reimbursement claim to the Secretary and submit, at a minimum, reimbursement invoices to the Secretary after costs have been incurred.

5) That funds provided under this Agreement shall not supplant any activity or expenditure provided for by Project Applicant's current budget.

6) To maintain accounting records, which shall be made available at all reasonable times during the agreement period and for three years from the date of the final payment.

7) That the services to be performed by the Project Applicant are personal and cannot be assigned, sublet, or transferred without consent of the Secretary.

8) That the Secretary shall at all reasonable times have access to the premises to review and inspect the work and related records. Arrangements for all reviews and inspections by the appropriate federal agency shall be made by the Secretary.

9) The Project Applicant, by acceptance of this Agreement, acknowledges that the final payment is subject to all single audits which cover the time period of the expenses being claimed for reimbursement as set forth in the Federal O.M.B. Circular A-133, Audits of State and Local Governments, attached hereto and made a part of this Agreement. The Secretary and the Project Applicant agree that as the Single Audit Report becomes available for the reimbursement period, that the Secretary will review it for items which are declared as not eligible for reimbursement. If such non-eligible-for-reimbursement items are subsequently found by audit, the Project Applicant will refund to the Secretary the total amount paid for same.

10) That the Project Applicant may be allowed one, 90-day extension upon showing good reason and submitting his request to the Secretary in writing 30 days prior to the completion date. This extension must have the concurrence of the appropriate federal agency.

11) Disputed matters arising under this Agreement that are not mutually resolved, shall be decided by the Secretary, whose decision shall be final and binding.

12) That this Agreement, for any reason, may be terminated upon thirty (30) days written notice by either party; Provided, however, the Project Applicant shall not be paid more than that which would be received under the terms of the Agreement for that portion of services rendered to the date of termination. The parties further agree that termination due to Project Applicant's default shall result in forfeiture of any retainage of compensation due the Project Applicant as of the day of termination.

13) The provisions found in the Contractual Provisions Attachment, Attachment No. 4 (form DA-146a) are incorporated into this Agreement and made a part hereof.

14) Attachment No. 3, pertaining to the implementation of the Civil Rights Act of 1964, is incorporated by reference and made a part hereof.

15) The Certification of the Project Applicant, Attachment No. 2, is incorporated by reference and made a part hereof.

16) This Agreement shall be binding upon the parties hereto and their successors and assigns.

17) It is expressly agreed that no third party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

LOCAL AUTHORIZING OFFICIALS

X

Norman D. Williams, Chief of Police
Wichita Police Department

X

Robert Layton, City Manager
City of Wichita

KANSAS DEPARTMENT OF TRANSPORTATION

Deb L. Miller
Secretary of Transportation for the State of Kansas

FORM APPROVED BY
LAU 1/8/09-2/8/09
Legal Dept.
KDOT

CONTRACTS & AGREEMENTS
BLANKET PURCHASE ORDERS RENEWAL OPTIONS
FEBRUARY 2009

COMMODITY TITLE	EXPIRATION DATE	VENDOR NAME	DEPARTMENT	ORIGINAL CONTRACT DATES	RENEWAL OPTIONS REMAINING
Airport Marketing & Image Campaign	2/28/2009	Armstrong/Shank	Airport	2/28/2006 - 2/28/2007	1 - 1 year option
Armored Car Services	2/28/2009	PSI Armored, a Garda Company	Finance	3/4/2008 - 2/28/2009	3 - 1 year options
Batteries, Automotive and Commercial	2/28/2009	Allied Battery Supply Company	Various	3/1/2007 - 2/29/2008	1 - 1 year option
Carpet, Installation & Repair	2/28/2010	Sherwin Williams Company	Housing & Community Services	3/3/2008 - 2/28/2009	1 - 1 year option
Fire Extinguisher Service	2/28/2010	Kansas Fire Equipment Co., Inc.	Various	3/1/2008 - 2/28/2009	1 - 1 year option
Janitorial Services Greenway/McLean, etc.	2/28/2010	E H Technical Solutions	Housing & Community Services	3/18/2008 - 2/28/2009	1 - 1 year option
Paint, Exterior & Interior	2/28/2010	PPG Architectural Finishes, Inc. dba Porter Paints	Public Works	3/3/2008 - 2/28/2009	1 - 1 year option
Runway Broom Parts	2/28/2010	MB Companies, Inc.	Airport	3/4/2008 - 2/28/2009	1 - 1 year option
Vehicle Washes (Brush and Brushless)	2/28/2009	Presto Convenience Stores, LLC	Various	1/1/2004 - 2/28/2005	Annual basis
Workers Compensation Injuries Treatment	2/28/2010	Via Christi Rehabilitation Center, Inc.	Finance	3/1/2006 - 2/28/2007	1 - 1 year option

PROFESSIONAL CONTRACTS UNDER $25,000
PURCHASE ORDERS FOR FEBRUARY 2009

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT
Advanced PT LLC	PO930124	Professional Medical Services	21,650.00
Professional Engineering	PO930179	Engineering Consulting	7,700.00
Burns & McDonnell	PO930181	Professional Design Services - Cowskin Creek Mitigation Site	21,500.00
Addison Deallie	PO930178	Consultant Services - Housing & Community Services	25,000.00

ANNUAL MAINTENANCE CONTRACTS OVER $25,000
DIRECT PURCHASE ORDERS FOR FEBRUARY 2009

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT
Oracle Corporation	DP930224	Software Maintenance/Support	$52,484.22
Infor Global Solutions Inc.	DP930266	Software Maintenance/Support	$73,048.29
Dataedge Solutions Corp.	DP930318	Software Maintenance/Support	$47,975.00
Infor Global Solutions Inc.	DP930284	Software Maintenance/Support	$73,048.29
Accela Inc.	DP930291	Software Maintenance/Support	$106,090.75

Agenda Item No. XII-15.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Resolution Ordering a Public Hearing: Wichita Street Improvement, between Murdock and 8th (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Adopt the Resolution.

Background: Wichita Street, between Murdock and 8th Street, is an unpaved road that drains poorly and is very difficult to maintain. The adjacent lots are primarily commercial buildings and a church. Attempts to obtain a valid paving Petition to improve the street to an urban standard have not been successful. A Resolution to order a public hearing on April 7, 2009, has been prepared and will provide an opportunity for the project to proceed.

Analysis: It is proposed that the paving be ordered in as a two-lane concrete roadway with some off street parking on the east side. A 10' wide concrete bike path has recently been completed on the west side of the unpaved road.

Financial Considerations: The estimated project cost is $175,000 with $130,000 assessed to the improvement district and $45,000 paid by the City. The proposed method of assessment is the square foot basis. The estimated rate of assessment to individual properties is $1.10 per square foot of ownership. The City share is for the additional width of the street and for the cost of off street parking on the east side of Wichita, north of Murdock. The funding source for the City share is General Obligation Bonds.

Goal Impact: The project addresses the Efficient Infrastructure goal by providing paved access in an existing commercial area.

Legal Considerations: State Statutes provides the authority for the City Council to order in paving projects. Adopting the Resolution does not obligate the Council to approve the project, only to hold a public hearing on April 7, 2009.

Recommendation/Action: It is recommended that the City Council adopt the Resolution and authorize the necessary signatures.

Attachments: Map, Spreadsheet, and Resolution.

132019

First Published in the Wichita Eagle on March 13 and March 20, 2009

RESOLUTION NO. 09-068

RESOLUTION DIRECTING AND ORDERING A PUBLIC HEARING ON THE ADVISABILITY OF AN IMPROVEMENT

A resolution directing and providing for a public hearing on the advisability of improvements consisting of paving WICHITA STREET FROM THE NORTH LINE OF MURDOCK TO THE SOUTH LINE OF 8TH STREET NORTH 472-84796 in the City of Wichita, Kansas, all as provided by K.S.A 12-6a04. Said hearing shall be held on April 7, 2009 in the City Council Chambers of City Hall at 9:00 a.m.

Be it further resolved: That the City Clerk of the City of Wichita, Kansas shall give notice of the aforesaid public hearing by publication in the official city newspaper in the manner provided by K.S.A 12-6a04 in the following form:

NOTICE OF HEARING

NOTICE OF HEARING ON IMPROVEMENTS CONSISTING OF PAVING WICHITA STREET FROM THE NORTH LINE OF MURDOCK TO THE SOUTH LINE OF 8TH STREET NORTH 472-84796, IN THE CITY OF WICHITA, KANSAS.

Notice is hereby given that the Governing Body of the City of Wichita, Kansas will hold a hearing as provided by K.S.A 12-6a04, at its regular meeting on April 7, 2009. Said meeting to be held in the City Council Chambers of the City Building, 455 North Main Street at 9:00 a.m. Said hearing to begin at 9:00 a.m., for the purpose of considering the advisability of the following improvements:

SECTION 1. That it is necessary and in the public interest to pave paving WICHITA STREET FROM THE NORTH LINE OF MURDOCK TO THE SOUTH LINE OF 8TH STREET NORTH 472-84796.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the estimated and probable cost of the foregoing improvement being One Hundred Seventy-Five Thousand Dollars ($175,000), exclusive of the cost of interest on borrowed money, with 73.02 percent payable by the improvement district and 26.98 percent payable by the City-at-large. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after March 1, 2009.

SECTION 3. That the cost of said improvement attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MUNGER'S ORIGINAL TOWN ADDITION
Lots 97 through 128 Inclusive, Wichita Street

SECTION 4. That the method of assessment of all costs for the improvements for which the improvement district shall be liable shall be on a square foot basis.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

The hearing may be adjourned from time to time until the Governing Body of the City of Wichita, Kansas shall have made findings by resolution as to the advisability of the improvements, the nature of the improvements, the estimated cost, the boundaries of the improvement district and the method of assessment, all as finally determined by the said Governing Body: Provided the area of the proposed improvement district to be assessed may be less than but shall not exceed the area proposed to be assessed as stated in this Notice of Hearing without giving notice and holding a new hearing on the improvements. All persons desiring to be heard with reference to the proposed improvements will be heard at this hearing.

That this resolution shall be published twice in the official City newspaper. The two publications shall be a week apart and at least three days shall elapse between the last publication and the hearing.

PASSED AND APPROVED by the governing body of the City of Wichita, Kansas, this 10th day of March, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

Wichita St, Murdock to 8th

Estimated assessments for paving Wichita Street from Murdock to 8th Street North.

Key No.	Property Owner	Property Address	Legal Description	Area (sq. ft.)	Estimated Assessment*	Driveway Assessment***	02/18/09 Annual Payment**	Resident Owners
MUNGER'S ORIGINAL TOWN ADD.								
A 00670	H O T PROPERTIES LLC 807 S XANTHUS PLACE TULSA OK 74104	300 W MURDOCK	LOTS 97-99-101-103-105-107-109-111 WICHITA ST.	27720	$30,468		$2,935	nr
A 00671	H O T PROPERTIES LLC 807 S XANTHUS PLACE TULSA OK 74104		LOT 113 WICHITA ST.	3465	$3,808		$367	repeat
A 00672	H O T PROPERTIES LLC 807 S XANTHUS PLACE TULSA OK 74104		LOT 115 WICHITA ST.	3465	$3,808		$367	repeat
A 00673	JECKL INVESTMENT CO LLC 812 N WACO WICHITA KS 67203		LOTS 117-119 WICHITA ST.	7049	$7,748		$746	1
A 00621	MT OLIVE CH OF GOD IN CHRIST 840 N WICHITA WICHITA KS 67203	840 N WICHITA	LOTS 124-126-128 WICHITA ST.	10428	$11,462	$2,100	$1,307	1
A 00674	PERRY TRUST AGREEMENT_THE ATTN: HAROLD PERRY 7930 E CAMELBACK #409, BLDG #25 SCOTTSDALE AZ 85251		ODD LOTS 121 TO 127 INC. WICHITA ST.	13846	$15,218		$1,466	nr
A 00616	TOTAL DESIGN LLC 807 S XANTHUS PLACE TULSA OK 74104	216 W MURDOCK	LOTS 98-100-102-104 EXC W 89 FT WICHITA ST.	4622	$5,080		$489	1
A 006170002	TOTAL DESIGN LLC 807 S XANTHUS PLACE TULSA OK 74104		E 43 FT LOTS 106-108-110-112 & S 4 FT E 43 FT LOT 114 WICHITA ST.	4687	$5,152		$496	repeat
A 006160001	WHETZEL_ALAN G & ROBERTA A LIV TR U/A PO BOX 824 WICHITA KS 67201	222 W MURDOCK	W 89 FT LOTS 98-100-102-104 WICHITA ST.	9345	$10,271		$990	1
A 00617	WHETZEL_ALAN G & ROBERTA A LIV TR U/A PO BOX 824 WICHITA KS 67201		LOT 114 EXC S 1 FT & EXC N 3 FT S 4FT E 43 FT & ALL LOTS 116-118-120- 122 WICHITA ST	16764	$18,426	$2,100	$1,977	repeat
A 006170001	WHETZEL_ALAN G & ROBERTA A LIV TR U/A PO BOX 824 WICHITA KS 67201		W 89 FT LOT 106 - LOT 108 EXC E 43 FT - ALL LOT 110 EXC E 43 FT & S 9.25 FT EXC E 43 FT LOT 112 WICHITA	7832	$8,608	$2,100	$1,032	repeat
A 00617002A	WHETZEL_ALAN G & ROBERTA A LIV TR U/A PO BOX 824 WICHITA KS 67201		The W 89.02 Ft N 17 FT LOT 112 & W 89.02 FT S 1 FT LOT 114 WICHITA ST.	1602.36	$1,761		$170	repeat
			Total:	110,825	$121,810	$6,300		4

Abbreviations:
etal. = and others
etux. = and wife
etvir. = and husband
nr = non resident

* Estimated assessment for street construction based on $1.10 per square foot excluding drive approach (if applicable), inflation, and/or temporary financing.

** Estimated Annual escrow payment based on 5% bond sale rate, and spread over 15 years

BREAKDOWN OF PROJECT COSTS

Amount assessed to the improvement district	$121,810
Add: City Share for Parking (26.98%)	$45,000
Add: Estimated driveway costs***	$8,190
Total Estimated project cost	$175,000

*** Driveway approach costs are assessed to individual properties based on the actual size of drive approach requested. Each property must have a driveway constructed with the project, unless it is a corner lot with access to another street. The approach must be at least 12' wide and will extend from the street to the property line. Total estimated cost for driveway construction is based on 20' average width, at a cost of $2,100 per driveway. The annual payment above includes the street construction and driveway cost for each lot.

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council

SUBJECT: Equus Beds Funding Memorandum of Understanding with Kansas Water Office

INITIATED BY: Water Utilities

AGENDA: Consent

Recommendation: Approve the Memorandum of Understanding with the Kansas Water Office to process state funding for the Equus Beds Aquifer Storage and Recovery Project.

Background: On October 3, 2000, the City Council authorized projects to begin the development of new water supplies for the City. These projects will develop water supplies to fulfill the City needs through the year 2050. On July 10, 2007, City Council approved and instructed Staff to proceed with the projects required for Phase II of the Equus Beds Aquifer Storage and Recovery (ASR) Project. Obtaining state funding for the ASR project was one of the legislative priorities established by City Council in 2008.

Analysis: During the 2008 legislative session, the Kansas State Legislature passed legislation to provide state funding for the City of Wichita's ASR project. The legislature approved $1,000,000 in 2008, with an expectation that future funding would be considered for the project at least during the span of Phase II of the project, perhaps for the next seven years. Administration of the funding will be done by the Kansas Water Office.

To facilitate receiving these funds for the construction costs of the ASR project, a Memorandum of Understanding (MOU) has been prepared between the City and the Kansas Water Office. The MOU describes the parts of the project that are eligible for funding and how the City is to proceed invoicing the Water Office. The MOU will remain in effect as long as state funding is available, including the funds currently allocated and any future allocations.

Financial Considerations: Funding for the project has been approved in CIP W-549, Water Supply Plan, which is dedicated to new water supply development. The cost for Phase II of the ASR project is estimated to exceed $200 million. The state has currently appropriated $1,000,000 towards the project. While not a large contribution, it represents state participation in this significant water resource development project.

Goal Impact: The project will ensure efficient infrastructure by assisting in the development of water supplies.

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

Recommendations/Actions: It is recommended that the City Council approve the Memorandum of Understanding and authorize the necessary signatures.

Attachments: Memorandum of Understanding with the Kansas Water Office

Grant Agreement
Kansas State Water Plan Funding of
Equus Beds Aquifer Storage and Recovery Project(s)
in the Lower Arkansas River Basin

This Memorandum of Agreement (hereinafter "Agreement") between the Kansas Water Office (hereinafter "KWO,") 901 South Kansas Avenue, Topeka, Kansas, 66612 and the City of Wichita,_____ Kansas,_____, Federal Employer Identification Number _____, memorializes the parties' agreement on the process of approving and funding projects, activities or purposes for the expenditure and / or use of monies provided by the State of Kansas, by and through the Kansas Water Office, for the Equus Beds Aquifer Storage and Recovery Project(s) in the Lower Arkansas River basin under the terms of this Agreement and any applicable legislation and statutes of the state of Kansas.

The parties agree that such grant monies provided under the terms of this Agreement shall be used exclusively for the purposes of paying all or a portion of the costs of aquifer storage and recovery projects, as further discussed within this Agreement and / or applicable legislation, in those areas of the state of Kansas lying in the Lower Arkansas River basin.

I. PROJECT TITLE

The project has been entitled *Equus Beds Aquifer Storage and Recovery Projects in the Lower Arkansas River Basin* All correspondence and official references to this Agreement shall include this title and the Kansas Water Office Contract Number 009-0111.

II. GRANT PROGRAM PROVISIONS

A. City of Wichita will:

1. Provide for and report, to the extent required by the KWO or as may be required in any authorizing legislation, all expenditures of such moneys as shall be approved by City of Wichita for projects under the auspices of this grant. The City will report all expenditures and the status of all projects receiving funds under the terms of this Agreement no less than every six (6) months to the director of the KWO at the address given in Paragraph VI, B, *infra*. The first such report shall be due to the KWO no later than July 1, 2009

2. Insure that all grant funds shall be used to pay for all or a portion of the costs of the actual costs of projects, without administration or overhead, within the Equus Beds Aquifer lying in or near the Lower Arkansas River Basin in Kansas. (*See also:* Paragraph II, C, *infra*.)

3. Be responsible for administering all funds provided under this grant, account for and report on activities undertaken using any funds provided as provided by this Agreement. The City of Wichita shall act in a fiduciary manner in all actions taken to administer these funds for the purposes of this Agreement.

4. Insure, prior to expending any funds provided under the terms of this Agreement, that each and every project, activity or purpose undertaken under the terms of this Agreement, has the appropriate and / or required local, state, and federal approval, permits, licenses, and / or meets any and all other filing or legal requirements as may be applicable to the project or any portion thereof..

5. In the event the City of Wichita shall issue payment, using funds provided under the terms of this Agreement, for a project, activity or purpose that is not approved by and through the terms of this Agreement City of Wichita shall be responsible for any and all payment of and for the project or purpose wholly from City of Wichita funding. Further, City of Wichita shall refund to the account containing the funds provided by this Agreement any such funds paid from grant funds provided under the terms of this Agreement for such projects or purposes that are outside the terms of this Agreement and provide sufficient notice and information to KWO to verify that such funds have been returned. In the event such project is later approved by the processes provided for under the terms of this Agreement, City of Wichita may pay for or reimburse itself from this fund.

B. The Kansas Water Office will:

1. Review and comment upon, as the KWO may deem appropriate, reports, invoices or requests for payments for applicable projects provided by City of Wichita pursuant to the terms of this Agreement.

2. KWO will review all projects only to the extent that KWO will insure that the project meets the basic project requirements of paragraph II, A, 2, *supra* and II, C, *infra*.

C. The parties mutually agree that no portion of the grant monies provided under the terms of this Agreement may be used by or provided to City of Wichita for grant administration purposes or activities, including but not limited to administrative activities such as: accounting, travel, reporting, audits, project administration, staff or consultant compensation and other related activities. Projects to be funded under the terms of this agreement should provide aquifer storage and recovery facilities, necessary building (s) and / or fixtures, technology or other "on the ground" needs to further the projects, activities or purposes contemplated by this Agreement and provides actual storage, recharge or recovery for the Equus Beds Aquifer.

III. PAYMENTS

A. Funding under this proposal for State of Kansas Fiscal Year 2009 is limited to a total not to exceed One Million dollars ($1,000,000.00) in United States currency, for implementing or furthering projects, activities or purposes for Equus Beds Aquifer Storage and Recovery in or near the lower Arkansas River Basin within the boundaries of the state of Kansas. All funding is subject to legislative and budgetary approval, review, restraint or appropriation.

B. The KWO shall transmit to City of Wichita all or a portion of the grant monies provided herein upon the receipt by KWO of an invoice from the City of Wichita detailing expenditures for aquifer storage and recovery projects or purposes that are installed or completed. Approval, as discussed in paragraphs II, B, *supra*, will be provided upon the receipt by the KWO of sufficient information upon which to judge that the projects, activities or purposes meet the requirements of this Agreement.

IV. EFFECTIVE DATES

This Agreement shall be effective for the period of January 1, 2009 until the grant funds provided under the terms of this Agreement have been exhausted or the parties may otherwise mutually agree to terminate this Agreement.

V. MODIFICATION AND EXTENSION/RENEWAL OF CONTRACT

This Agreement may be modified, extended or renewed by written Agreement of all parties to this Agreement. The parties mutually intend to provide any further Kansas Water Plan Fund monies or legislatively approved funding, as may be applicable to the Equus Beds Aquifer Storage and Recovery in or near the lower Arkansas River Basin within the boundaries of the state of Kansas, by and through the terms of this Agreement. All future funding is subject to any terms or conditions that may be imposed by the Kansas Water Authority, the Kansas Water Office, executive order or legislative enactments and intent, which will be provided in future amendments or modifications to this Agreement.

VI. CONTACT PERSONS

A. Each party has designated a contact person to facilitate communication between the parties for purposes of this Agreement. The designated contact person may be changed by either party at any time by sending notice of such change, via first class mail, to the appropriate party at the address first given above.

B. the KWO contact person for purposes of this Agreement will be:

Name:	Tracy Streeter
Address:	901 S. Kansas Avenue Topeka, KS 66612
Phone:	785-296-4094
E-mail:	tracy.streeter@kwo.ks.gov

C. the KWO contact person for purposes of Administration of this Agreement will be:

Name:	Kim Christiansen
Address:	901 S. Kansas Avenue Topeka, KS 66612
Phone:	785-296-3185
E-mail:	kim.christiansenr@kwo.ks.gov

D. The City of Wichita contact person for purposes of this Agreement will be:

Name:	Debra Ary
Address:	455 N. Main Street, 8th Floor Wichita, KS 67202-1601 Wichita, KS
Phone:	(316) 269-4764
E-mail:	Debra Ary (dary@wichita.gov)

VII. OWNERSHIP OF MATERIALS, DOCUMENTS, ETC.

A. All reports, information, data, photos, documents, procedures, descriptions and work flows accumulated, developed or acquired by City of Wichita from any project completed under the terms of this Agreement shall be owned by City of Wichita. The KWO shall be provided copies of all materials and may use, release or otherwise use any such materials without the written approval of the City of Wichita.

B. Any and all improvements to real property made under projects, activities or purposes competed under the terms of this Agreement shall become attached to, as a permanent fixture, the real property so improved or provided for under projects, activities or purposes competed under the terms of this Agreement. Such improvements or fixtures shall be deemed to run with the land or real property upon which such improvement or fixture shall lie.

VIII. ADDITIONAL PROVISIONS

A. KANSAS CONTRACT PROVISIONS ATTACHMENT. The provisions found in contractual provisions attachment (Form DA-146a - Attachment A), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

B. WAIVER: The wavier or temporary modification of any clause, requirement or term of this Agreement shall not be contemplated or construed as on-going, continued or permanent waiver of that clause, requirement or term or of any other term within the Agreement.

C. HEADINGS. Headings used in this Agreement are informational and not to be considered persuasive or determinative of any paragraph or matter in dispute.

IX. SIGNATURES

In Agreement to the terms of this Memorandum of Agreement, we set our hand the date we have executed this Agreement, under the authority and power granted to us by virtue of our position or office.

For the Kansas Water Office	**For the City of Wichita**
_____	_____
Tracy Streeter Director, Kansas Water Office	Carl Brewer, Mayor
Date_____	Date_____

Approved as to form_____
Gary E. Rebenstorf, Director of Law

Department of Administration
DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT A

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.

2. **Agreement With Kansas Law**: All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

   Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.1. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

City of Wichita
City Council Meeting
March 10, 2009

TO: Mayor and City Council Members

SUBJECT: Street Closure: Intersection of Mount Vernon and Broadway (District III)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the street closure.

Background: This project will install a 4'x6' box culvert for storm water, running from the Arkansas River to the east of Broadway Street. This culvert will provide drainage for Topeka, Broadway, Market, Main, Water, Wichita, Waco, Palisade, Gold, Exchange, and Silver Streets, as well as Gateway Boulevard. Cornejo & Sons, Inc., has contracted to install the storm water system, and the project was approved by the City Council on May 7, 2008. The street closure will begin March 20, 2009, and continue three days to March 22, 2009. If weather becomes a factor during this installation the contractor will use steel plates to get the intersection back open at the end of the three-day period.

Analysis: Cornejo & Sons, Inc., is responsible for the placement of the required detour and construction signs and barricades and the notification of area businesses and residents. During the street closure, Broadway traffic will be detoured as follows:

Southbound traffic on Broadway will be redirected west onto Harry Street across to McLean Boulevard, south to Pawnee Street, then east back to Broadway Street. Northbound traffic on Broadway will be redirected west onto Pawnee Street across to McLean Boulevard, north onto Harry Street, then east on Harry back onto Broadway.

Eastbound traffic on Mount Vernon Street will be redirected north at Water Street, north to Harry Street, east on Harry to Washington Street, the south on Harry back to Mount Vernon Street. Westbound traffic on Mount Vernon will be redirected north onto Washington to Harry Street, west on Harry to Water Street, then south back to Mount Vernon Street.

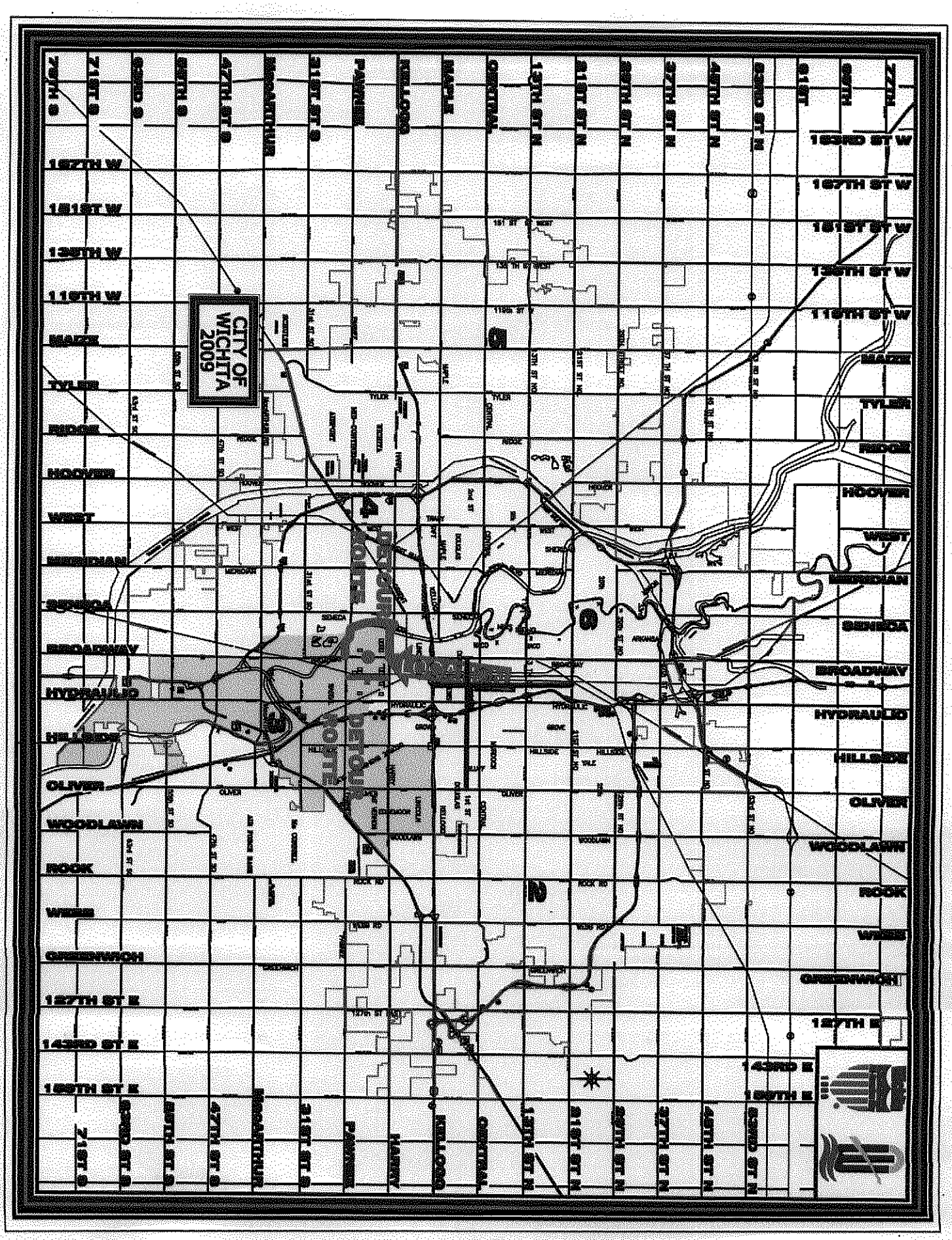
Financial Consideration: None.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving the storm water system for this area of Wichita.

Legal Consideration: None.

Recommendation/Actions: It is recommended that the City Council approve the street closure.

Attachments: Map


CITY OF WICHITA 2009
153RD ST W
167TH ST W
151ST ST W
138TH ST W
119TH ST W
MAZE
TYLER
RIDGE
HOOVER
WEST
MERIDIAN
SENECA
BROADWAY
HYDRAULIC
HILLSIDE
OLIVER
WOODLAWN
ROOK
WEBB
GREENWICH
127TH ST E
143RD ST E
159TH ST E
167TH W
151ST W
138TH W
119TH W
MAZE
TYLER
RIDGE
HOOVER
WEST
MERIDIAN
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ROOK
WEBB
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127TH E
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Agenda Item XII-18

City of Wichita
City Council Meeting
March 10, 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 temporary street closure.

Background: In accordance with the Community Events procedure Dan Closson, Wichita Regional Group of Horseless Carriage Club of America is coordinating with City of Wichita Staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

50th Anniversary Air Capital Tour, September 5, 2009 8:00 am – 2:00 pm

§ St. Francis Street, Douglas to Williams.

Client will arrange to remove blockades as necessary to allow tenants and 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.

Second Reading Ordinances for March 10, 2009 (first read on March 3, 2009)

Creation of New Chapter 5.36 of the Code of the City of Wichita, Kansas, pertaining to Gambling and Gambling-Related Crimes.

ORDINANCE NO. 48-198

An ordinance creating new Chapter 5.36 of the code of the city of Wichita, Kansas, pertaining to the crime of gambling and other gambling-related crimes and the penalties therefore, and repealing the original of said Chapter 5.36.

An Ordinance amending section 5.30.020 of the Code of the City of Wichita, Kansas, pertaining to Emergency Cases.

ORDINANCE NO. 48-199

An ordinance amending Section 5.30.020 of the code of the city of Wichita, Kansas, pertaining to report required; information to be shown and repealing the original of said section.

Repeal of Section 5.55.010 and Section 5.55.020 of the Code of the city of Wichita, Kansas, pertaining to Molotov Cocktails.

ORDINANCE NO. 48-200

An ordinance repealing Section 5.55.010 and 5.55.020 of the code of the city of Wichita, Kansas, pertaining to molotov cocktails.