REVISIONS
ADDITION OF ITEM XI-1.
ITEMS XII-15, 16, & 17 PULLED

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. July 21, 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 July 14, 2009

AWARDS AND PROCLAMATIONS

-- Proclamation

Adult Learner Celebration Week

-- Awards

Citizen Bravery Award, Odies Horner, Delorean King and Josh Kennedy

-- Service Awards

Don R. Marling
Randall S. Wittsell
Joseph F. Couey

-- Certificate of Appreciation

All America City Sponsors and Partners

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. Dennis Scoffham **(To speak under Unfinished Business)**

COUNCIL BUSINESS

II. UNFINISHED COUNCIL BUSINESS

1. Repair or Removal of Dangerous Structures - 2001 East 21st Street North. (District I)
(Deferred July 14, 2009)

RECOMMENDED ACTION: Take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: 1)the structure is kept secure; 2)the premise is routinely mowed and kept clean and free of debris; and 3)the service station premise is secured in manner to deter unauthorized access onto the gas station premise.

2. Vietnamese/American Memorial. (District VI)
(Deferred June 9, 2009)

RECOMMENDED ACTION: Approve the memorial donation as it was presented on April 15, 2009 to the Design Council. Private funds are being raised to fulfill their commitment to partner with the Park Board to complete this project. Additionally, it is recommended that the compromise elements listed above the approved and that the resolution be adopted.

III. NEW COUNCIL BUSINESS

1. Request for Letter of Intent for Industrial Revenue Bonds, LDF Properties, LLC. (District II)

RECOMMENDED ACTION: Close the public hearing and approve a one-year Letter of Intent to issue Industrial Revenue Bonds to LDF Companies, LLC in an amount not-to-exceed $10,000,000, subject to the standard Letter of Intent conditions; approve a 100% tax abatement on bond-financed existing real property for an five-year period and a 100% tax abatement on the new construction for a period of five years plus an additional five years pending City Council review and approval.

2. Amendment to Charter Ordinance 202 Section 8(c); Amendment to Section 1.04.070; and Creating Section 1.04.075 of the Code of the City of Wichita setting forth costs in the Municipal Court.

   RECOMMENDED ACTION: Place the Ordinances on first reading.

3. East Bank River Corridor Improvements, north of Douglas. (District VI)

   RECOMMENDED ACTION: Approve the design concept, approve the supplemental agreement and authorize the necessary signatures.

4. Intrust Bank Arena Wayfinding Signs. (Districts I, IV, and VI)

   RECOMMENDED ACTION: Approve the wayfinding project design.

5. I-235 By-Pass and 13th Street Floodway Crossings. (Districts V and VI)

   RECOMMENDED ACTION: Approve the design project, approve the agreement, adopt the resolution and authorize the signing of state/federal agreements as required.

6. Wichita Employees' Retirement and Police and Fire Retirement Systems, Actuarial Valuation Reports, January 1,2008 - December 31, 2008.

   RECOMMENDED ACTION: Receive and file the Actuarial Reports and approve the 2010 employer contribution rates.

(10:30 a.m. or soon thereafter)

7. General Obligation Bond and Note Sale.

   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. 2010 Annual Operating Budget and 2009 Budget Revisions.

   RECOMMENDED ACTION: Set the public hearing on the proposed 2010 Budget (including the Tax Increment Financing Districts and the Self-Supporting Municipal Improvement District downtown) and the revised 2009 Budget for August 11, 2009; authorize publication of the formal public hearing notice, including technical adjustments as listed; approve first reading of the general budget, TIF district, and SSMID ordinances; and set a maximum amount of taxes levied ($101,298,570) based on an anticipated mill levy of 32,056 mills (no change from the current mill levy) and an estimated assessed valuation of $3,160 billion.

9. Authorization to submit a Letter of Inquiry grant funding request to the Wichita Community Foundation. (District III)

   RECOMMENDED ACTION: Authorize submission of a Letter of Inquiry to the Wichita Community Foundation requesting a community venture grant in the amount of $29,000 to hire a consultant to develop a conceptual design and programmatic plan for a possible future Southeast Wichita Community Resource Center.

10. Water Supply Surcharge of $2/month/meter-Ordinance.

    RECOMMENDED ACTION: Declare a public emergency exists requiring final adoption and passage on the day of introduction July 21, 2009, to a monthly $2/meter water supply surcharge (3.20/meter for outside City accounts) and authorize the necessary signatures.

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 nightclub 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) Adopt the findings of the MAPC and approve the CUP Amendment subject to staff recommended conditions plus the additional conditions agreed to by the applicant as outlined in the memorandum of March 4, 2009 (requires a ¾ supermajority vote by the governing body to override the valid protest) OR 3) 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 (ITEMS 1 THROUGH 5)

1. *ZON2009-00018 – City zone change from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") and MF-18 Multi-family Residential with a PO Protective Overlay; generally located south of 53rd Street North, west of Meridian Avenue. (District VI)

   RECOMMENDED ACTION: 1) Adopt the findings of the MAPC, approve the zone change subject to platting within one year and the provisions of Protective Overlay #234, and withhold publication of ordinance until the plat has been recorded; OR 2) Return the application to the MAPC for reconsideration.
   (An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

2. *CUP2009-00013 & ZON2009-00019 – City zone change from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") and amendment to DP-11 to add three lots to the CUP Community Unit Plan and rezone the lots to GO General Office; generally located north of Central Avenue, east of Socora (854 North Socora). (District V)

   RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and approve the community unit plan amendment and the zone change to GO General Office ("GO") and place the ordinance on first reading; withhold publication of the ordinance until instructed by planning staff, following the recording of the required vacation; OR 2) Return the application to the MAPC for reconsideration.
   (An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

3. *SUB 2008-51 -- Plat of Fontana 4th Addition located north of 29th Street North and on the east side of 119th Street West. (District V)

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

4. *VAC2009-00018 - Request to vacate platted utility-drainage easements; generally located midway between 127th Street and 143rd Street East and north of Pawnee Avenue. (District II)

   RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

5. *VAC2009-00019 - Request to vacate a platted easement; generally located east of Tyler Road and north of Central Avenue. (District V)

   RECOMMENDED ACTION: Approve the Vacation Order 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.

VI. NON-CONSENT HOUSING AGENDA

None

VII. CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

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

VIII. NON-CONSENT AIRPORT AGENDA

None

IX. CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

1. Consideration of direction to staff regarding development of possible amendments to Charter Ordinance No. 197.
   (Requested by Vice-Mayor Skelton)

2. Plumbing Board Appointments.
   (Deferred July 14, 2009)

   RECOMMENDED ACTION: Approve the appointments.

3. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUGH 24)

1. Report of Board of Bids and Contracts dated July 20, 2009.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

New	2009	(Consumption off Premises)
Mandeep Sira	RnM Corporation dba Flying Eagle	3405 South West Street

Renewal	2009	(Consumption off Premises)
Jeff Parker	Kwik Shop 714	4811 South Seneca
Jeff Parker	Kwik Shop 716	2424 West 37th Street North
Jeff Parker	Kwik Shop 722	3959 South Hydraulic
Jeff Parker	Kwik Shop 727	7107 West 37th Street North
Jeff Parker	Kwik Shop 731	710 West 29th Street North
Jeff Parker	Kwik Shop 748	2809 East Douglas
Jeff Parker	Kwik Shop 772	2750 South Oliver
Loan H. Le	KC Gas and Groceries #1	1102 West Maple

Renewal	2009	(Consumption on Premises)
Hanh Bui	Saigon Restaurant*	1103 North Broadway
Mark T Ryan	Ryan Boys Inc.dba Two Brothers BBQ*	300 South Greenwich Road
Gerardo Guzman	La Posada Mexican Restaurant*	552 South Oliver
Angela L. Ray	El Matador Lounge**	2033 South Broadway

** Tavern (less than 50% of gross revenues from sale of food.
* General/Restaurant 50% or more gross revenue from sale of food.

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

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

   RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:
   a. Baehr Street Improvement, between Central and Newell. (District VI)

   RECOMMENDED ACTION: Approve petitions and adopt resolutions.

5. Statement of Costs:
   a. Statements of Costs. (See Attached)

   RECOMMENDED ACTION: Approve and file.

6. Consideration of Street Closures/Uses.
   a. Fred Douglas Lodge #99 BBQ Cook-off. (District I)

   RECOMMENDED ACTION: Approve street closure.

7. Agreements/Contracts:
   a. Supplemental Agreement No. 2-Merrick & Company Digital Elevation Using LiDAR Technology.
   b. Right-of-Way Agreement, Cain's Coffee Company. (District I)
   c. Northfork Calfskin Creek Flood Hazard Assessment. (Districts IV and V)

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

8. Design Services Agreements:
   a. Design Services for Waterline along 135th Street West, to 21st to 29th-Supplemental. (District V)
   b. Design Services for Meridian from 47th to 31st Street South-Supplemental. (District IV)

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

9. Change Orders:
   a. 37th Street North Improvement, between Maize and Tyler. (District V)
   b. Douglas Street Drainage Outfall Phase 2. (Districts I and IV)
   c. Washington at Waterman Intersection Improvement. (District IV)
   d. Central Corridor Railroad Improvement. (District VI)

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

10. Minutes of Advisory Boards/Commissions:

    Arts Council, June 11, 2009
    Wichita Board of Appeals of Plumbers and Gas Fitters, June 3, 2009
    District VI Advisory Board, June 1, 2009
    District VI Advisory Board, June 17, 2009

    RECOMMENDED ACTION: Receive and file.

11. Report on Claims for June 2009.

Name of Claimant	Amount
AT&T	$1,487.67
Betty Bartholomew	$105.00
Floyd Bess	$760.00
Melissa Hill	$94.33
Kansas Gas Service	$972.46**
Kansas Gas Service	$1,260.89**
Kansas Gas Service	$1,410.43**
Melvin Romme	$765.38
Octavio Rolfe	$149.95

*City Manager Approval
**Settled for lesser amount than claimed

RECOMMENDED ACTION: Receive and file.

12. Intelligent Transportation Systems-Traffic Signal Controllers.

RECOMMENDED ACTION: Approve the purchase of traffic signal controllers from Gades Sales Company in the amount of $771,600.

13. HOME Program CHDO Funding; Wichita Indochinese Center. (District I)

RECOMMENDED ACTION: Approve the funding allocations and the funding agreements, and authorize the necessary signatures.

14. False Alarm Reduction Contract Amendment.

RECOMMENDED ACTION: Approve the contract amendment between the City of Wichita and AOT Public Safety Corporation.

15. Acquisition by Eminent Domain of a portion of 3432 and 3426 West 8th Street and 804 North Custer for the 9th Street Drainage Outfall Project. (District VI)

(PULLED PER PROPERTY MANAGEMENT)

16. Acquisition by Eminent Domain of a portion of Vacant Land in the 15000 Block Moscelyn for the Goddard School 2nd Addition Sanitary Sewer Project, East of 167th Street and North of West Kellogg. (District V)

(PULLED PER PROPERTY MANAGEMENT)

17. Acquisition by Eminent Domain of Easements for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (District III)

(PULLED PER PROPERTY MANAGEMENT)

18. Homelessness Prevention and Rapid Re-Housing Program Data Collection and Evaluation Contract.

RECOMMENDED ACTION: Approve a sole source contract with the United Way of the Plains (UWP), to administer the data collection and evaluation component of the Homelessness Prevention and Rapid Re-Housing Program (HPRP).

19. HOMEownership 80 Program; Maximum Purchase Price. (Districts I, III, IV, V, and VI)

RECOMMENDED ACTION: Approve the increase in the maximum price for homes purchased through the HOMEownership 80 Program, to an amount not to exceed $95,550.

20. HOME Program; Housing Development Loan Program Funding. (District VI)

RECOMMENDED ACTION: Approve the recommended funding allocations and the funding agreement, and authorize the necessary signatures.

21. HOME Funding Allocations and CHDO Housing Development Funding Agreements. (Districts I, III, IV, V, and VI)

RECOMMENDED ACTION: Approve HOME funding allocations and the agreements for Mennonite Housing Rehabilitation Services (MHRS), Community Housing Services (CHS), Power CDC, and the new funding agreement for the Boarded-up House Program, and authorize the necessary signatures.

22. Watershed Assessment Restoration and Protection Strategy (WRAPS) Contract.

RECOMMENDED ACTION: Approve the contract with Geotechnical Services, Inc and authorize the necessary signatures.

23. Authorization to Request Joinder in Exemption Application -- Envision: Project 2301 South Water.

RECOMMENDED ACTION: Authorize the preparation and mailing of a motion or letter seeking joinder in the pending Court of Tax Appeals matter.

24. Second Reading Ordinances: (First Read 7/14/2009)
    a. Second Reading Ordinances. (See Attached)

    RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Workshop to follow

Agenda Item No. II-1.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Repair or Removal of Dangerous Structures - 2001 East 21st Street North (District I)

INITIATED BY: Office of Central Inspection

AGENDA: Unfinished Business

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

Background: On December 2, 2008, the City Council conducted its initial public hearing to consider condemnation of the dangerous building on property at 2001 E. 21st St. North (the gasoline service station). The property was represented by Mr. Joseph Weber, attorney for Ciena Capital. Mr. Weber stated his client was attempting to obtain title to the property in order to sell it and/or to have the underground gasoline storage tanks and vacant service station buildings removed. Mr. Weber said his client was pursuing mortgage foreclosure, and had obtained bid estimates to remove the buildings and underground gasoline storage tanks. Mr. Weber requested a sixty to ninety day extension to finalize foreclosure and/or possible sale of the property. The City Council deferred action for ninety days.

At the March 3, 2009 Council meeting, the property was represented by Mr. Weber. Mr. Weber reported that Ciena Capital was still pursuing foreclosure, but had not yet taken title to the property. Mr. Weber informed the Council that Ciena Capital had obtained a Phase I environmental study of the site, and was working with an interested buyer of the property. Per Mr. Weber, Ciena Capital had agreed to keep the property clean and mowed, and to keep the building secure. As of March 3, 2009, the property was mowed, clean and secure. Per Mr. Weber's request, Council passed a motion to defer action for an additional sixty days.

On May 5, 2009, Mr. Weber appeared before City Council, representing Ciena Capital. As of May 5, 2009, Ciena Capital had not yet obtained title to the property, and was waiting to see if they could sell the property before finalizing foreclosure action. Mr. Weber reported there was still an interested buyer, although the potential buyer had encountered significant neighborhood opposition to its redevelopment plan for the site. Mr. Weber reported that KDHE has been actively monitoring the area around this site, and that at least one (1) KDHE official had indicated to him that the potential for significant ground contamination at this site was minimal. Mr. Weber reported he was trying to obtain additional information from KDHE to help alleviate fears of potential buyers about ground contamination at the site. Mr. Weber requested that the City Council defer action for at least another sixty days. After significant discussion among the Council and staff, Director of Law, Gary Rebenstorf, suggested that Council allow staff thirty days to contact KDHE, review property status and meet with Mr. Weber so staff could provide a more detailed report and recommendation. Council Member Williams moved to defer this case for thirty days to allow staff to further review this case and to meet with Mr. Weber. Council Member Williams asked to be involved in the staff meeting/s with Mr. Weber and/or KDHE. The motion carried.

On May 18, 2009, Council Member Williams, City Manager Layton and staff from the Law Department, Office of Central Inspection and Environmental Services Department met with Mr. Weber, attorney for Ciena Capital. The current status of the Ciena Capital foreclosure case, the Phase I environmental report, KDHE monitoring reports for the site, potential site tank removal/sealing programs/options, Ciena Capital's bid estimates for removal of the service station and underground tanks, marketing and sale of the property, and other related issues were discussed. Mr. Weber indicated that Ciena Capital would be finalizing a contract with a commercial property realtor sometime in June. Mr. Weber agreed to inform his client of the need to perform more frequent mowing and premise cleanup of the property, and of the

need to secure the site in order to prevent unauthorized access (for illegal dumping, vehicle abandonment, etc.). City Manager Layton informed Mr. Weber that it would be critical for the commercial realtor hired by Ciena Capital to attend the June 9, 2009 Council review hearing.

On June 9, 2009, Mr. Weber appeared before City Council, representing Ciena Capital. Mr. Weber stated that Mr. Brad Tiedemann, a commercial broker with Weigand Real Estate, had looked at the property and thought he could market it, although Weigand was looking for some protection from liability due to the results of the Phase I environmental study. In addition to regular marketing of the property, Mr. Tiedemann indicated that a property auction could be a possibility. Council Member Williams made a motion to defer action for another 30 days, which passed unanimously.

Analysis: Staff inspected the property on June 30, 2009; no repairs had been made, but the property was secure. The grass on the vacant lots behind the grocery store building just east of the service station (part of the Ciena Capital property interest) was tall, but not over a foot in height. Ciena Capital was planning to mow the property again shortly after July 1st. Debris and bulky waste that had been dumped on the gas station property had been removed by the Ciena Capital contractor.

The 2006, 2007 and 2008 taxes are delinquent in the amount of $47,311.18, including specials and interest. There is a 2008 special assessment for weed mowing in the amount of $1,144.75, including interest, and a 2009 special assessment for lot cleanup in the amount of $2,064.61, including interest.

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

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

Legal Considerations: The owner and owner's representative have been informed of the date and time of the review hearing.

Recommendations/Actions: It is recommended that the City Council take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) the structure is kept secure; (2) the premise is routinely mowed and kept clean and free of debris; and (3) the service station premise is secured in manner to deter unauthorized access onto the gas station premise.

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

Attachments: None

Agenda Item No. ________

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Vietnamese/American Memorial. (District VI)

INITIATED BY: Department of Park and Recreation

AGENDA: Unfinished Business

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Recommendation: Staff recommends that the memorial donation be approved by the City Council as it was presented on April 15, 2009 to the Design Council *and the resolution be adopted*. Private funds are being raised to fulfill their commitment to partner with the Park Board to complete this project. The placement of the memorial will not be in John Steven's Veterans' Memorial Park, but on city property on the riverbank.

Background: On August 14, 2006, members of the Wichita Vietnamese/American Community presented a concept plan to the Park Board to create a memorial. The motion passed 7-0 *to recommend approval of the memorial*. Though the memorial was approved, another meeting on September 11, 2006 was held to receive additional feedback and information from the citizens concerned about the memorial. Additional comments from the public were made the following day during the public agenda session for a City Council meeting on September 12, 2006.

On January 16, 2008 the concept plan was presented to the Design Council for initial feedback. At that time, the Design Council made the motion that the design be approved with the exception that the donor hires professional design assistance for refinement. Subsequently, the plan was taken back to the Design Council for final review and was approved on April 15, 2009.

Analysis: The proposed memorial has been reviewed and approved by the Park Board and Design Council. The schedule for actual development is not yet known, pending fundraising for the memorial. However, the donor has provided due diligence with city staff and others for approval. Staff recommends that the memorial donation be approved as it was presented on April 15, 2009 to the Design Council.

On June 9, 2009, the City Council deferred action on the location of the memorial, requesting that the City Manager meet with representatives of the Wichita Veterans and Vietnamese communities. The City Manager held three meetings; one on June 25, 2009, the second on July 7, 2009, and the third on July 15, 2009.

In addition to meeting with the concerned groups, the City Manager commissioned research to be done determining if any governing body, City Council or Board of Park Commissioners, specifically stated that only U.S. Military personnel could be recognized within Veterans' Park. No conclusive documentation was found specifically stating that only U.S. Military personnel would be recognized or honored within Veterans' Park.

The outcome from these meeting discussions resulted in the following compromise:

1. A memorial to the United States, South Vietnam and allied soldiers that fought in the Vietnam War and to the United States citizens that have supported the South Vietnamese community would be constructed ~~in a City park~~ *on city property*, located north and west of the existing Veterans' Park. The memorial would be *visually* buffered from the Veterans' Park by a berm, *minimum of six (6) feet tall,* and landscaping. Access for the ~~park~~ *memorial* would be provided from the riverfront trail. The suggested location and buffering are depicted in the attached drawings. Signage directing visitors to Veterans' Park will be installed *at the upper walkway at the south end of the proposed berm at the pedestrian traffic way pointing east* to clearly define John Steven's Veterans' Park from other city properties.

2. ~~Additional park ground would be dedicated to the Veterans' Park for Future memorials.~~ *All land currently owned by the City of Wichita which is contiguous with Veterans' Park to the Arkansas River, as well as the remainder of land acquired from Westar north of Veterans' Park, will be utilized in conjunction with Veterans' Park.*

3. Any land acquired by the City from Westar Energy in the future ~~would be added to~~ *will be utilized in conjunction with* the Veterans' Park, if it is adjacent to the park.

4. The City and Veterans' Memorial Park of Wichita, Inc. would develop a master plan for the future development of the park. *All memorial requests will be reviewed by a joint committee of city officials and members of the Veterans community. The City's Park and Recreation Director will serve as the designated contact person for assisting Veterans groups with long range planning and the addition of Veterans Memorials.*

5. The City Council ~~would be asked to~~ *will* designate the *current* Veterans' Park, *and lands identified in item two (2) above,* as a memorial park dedicated to *memorialize* the service of *the* United States Military.

6. *The City will adopt a resolution that provides no future alterations or changes will be made to this plan; to in effect make the proposed South Vietnamese Memorial appear to be a part of Veterans Memorial Park.*

Financial Considerations: None. Development for this project will be provided with private funding. Staff recommends that a maintenance agreement for the memorial be provided by the Wichita Vietnamese Community.

Goal Impact: The memorial will provide citizens a memorial to honor and recognize both American and South Vietnamese soldiers who worked together during the Vietnam War.

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

Recommendations/Actions: Staff recommends that the memorial donation be approved by the City Council as it was presented on April 15, 2009 to the Design Council. Private funds are being raised to fulfill their commitment to partner with the Park Board to complete this project. Additionally, it is recommended that the compromise elements listed above be approved *and that the resolution be adopted.*

Attachment: Site plan and details for the Memorial

RESOLUTION NO. 09-247

A RESOLUTION AUTHORIZING A VIETNAMESE AMERICAN COMMUNITY MEMORIAL.

WHEREAS, the City Council has designated John Steven's Veterans' Memorial Park as a memorial park dedicated to men and women who have served in the United States Military.

WHEREAS, additional City land which is contiguous to the John Steven's Veterans' Memorial Park will be utilized in conjunction with the John Steven's Veterans' Memorial Park for future memorials.

WHEREAS, the City has approved a site on the Arkansas Riverbank for the placement of the Vietnamese American Community Memorial.

WHEREAS, the Vietnamese American Community Memorial will be screened as its own memorial site, separate from John Steven's Veterans' Memorial Park through the use of landscaping, berms, and proper signage.

WHEREAS, the City will not change any of the land forms that would make it appear in the future that the Vietnamese American Community Memorial is, or appears to be, a part of the John Steven's Veterans' Memorial Park.

NOW, THEREFORE, BE IT RESOLVED that the City has defined a site for the veterans of the United States military and their memorials and a separate site for the Vietnamese American Community Memorial.

ADOPTED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

CITY OF WICHITA, KANSAS

By_____
Carl Brewer, Mayor

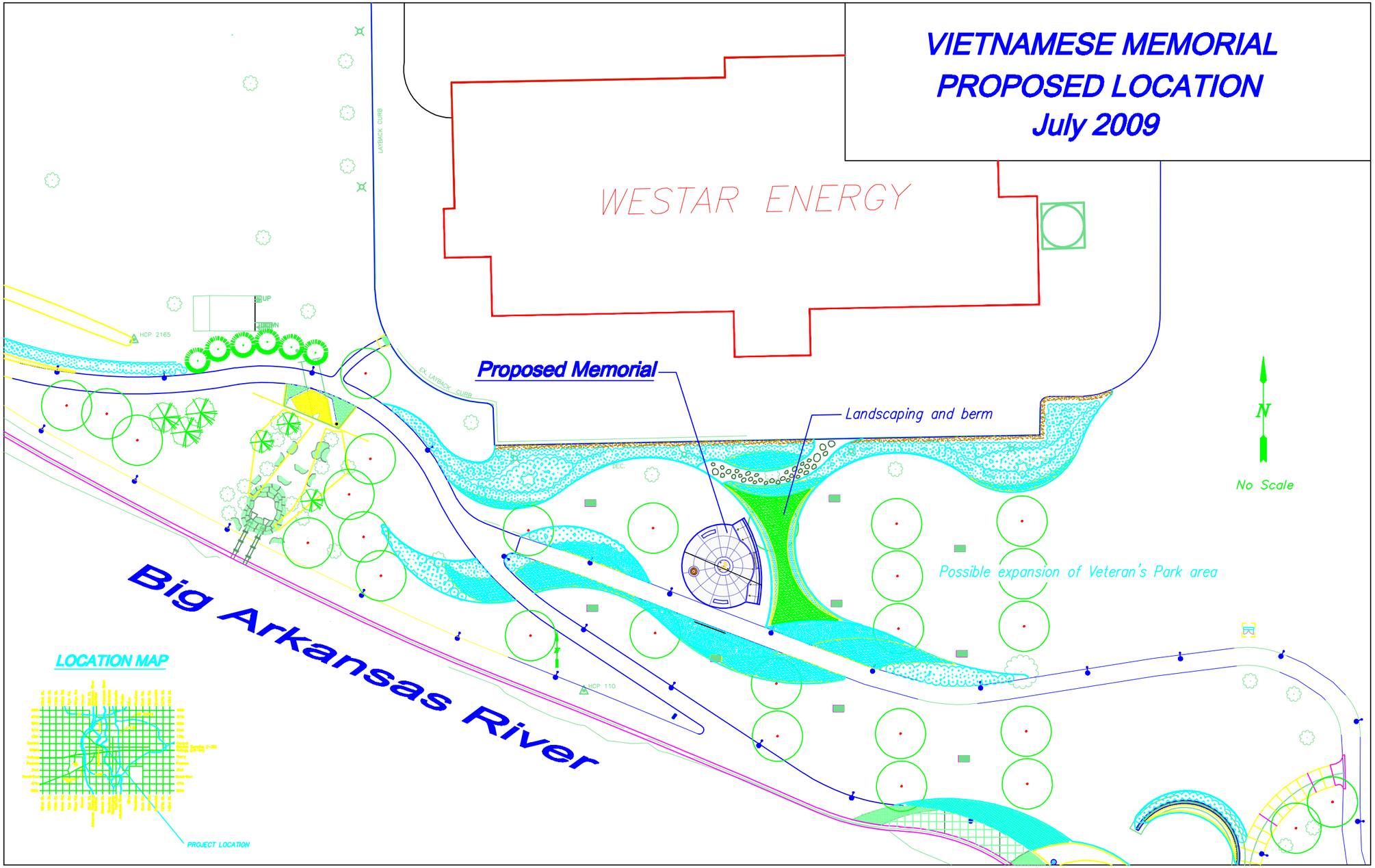
ATTEST:

_____
Karen Sublett
City Clerk

(SEAL)

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law


VIETNAMESE MEMORIAL
PROPOSED LOCATION
July 2009
WESTAR ENERGY
Proposed Memorial
Landscaping and berm
Possible expansion of Veteran's Park area
Big Arkansas River
N
No Scale
LOCATION MAP
PROJECT LOCATION
LATBACK CURB
EX. LATBACK CURB
HCP 2165
HCP 110

W CENTRAL AVE
N NIMS AVE
N GREENWAY BLVD
N RIVERVIEW ST
W 2ND
KIOWA ST
N MCLEAN BLVD
551
550
538
431
432
345
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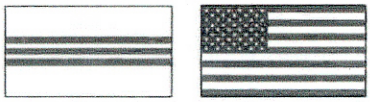
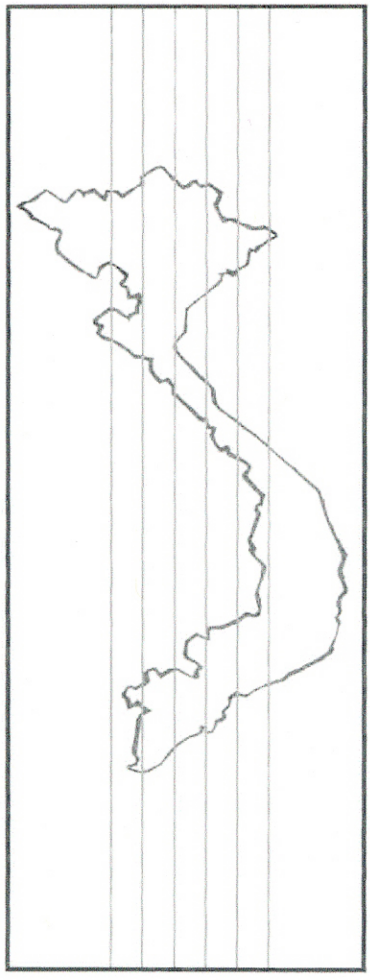


VIỆT NAM CỘNG HOÀ

Chúng tôi, Cộng đồng người Mỹ gốc Việt tại Wichita, Kansas, cống hiến Đài Tưởng Niệm này để tưởng nhớ và vinh danh những người Mỹ, Việt Nam và các nước đồng minh đã chiến đấu để giúp Việt Nam Cộng Hòa chống lại cuộc xâm lăng của cộng sản Bắc Việt. Đặc biệt là 58,000 chiến binh Hoa Kỳ đã hy sinh vì lý tưởng tự do trên quê hương chúng tôi. Những người nam và nữ ấy đã dũng cảm làm nhiệm vụ của những người lính và đã đổ máu cho một chính nghĩa cao quý để người dân miền Nam Việt Nam được sống nhiều năm trong tự do.

Sau khi cộng sản đánh chiếm miền Nam Việt Nam năm 1975, vì không chấp nhận sống dưới chế độ độc tài, hàng triệu người đã vượt thoát khỏi Việt Nam bằng thuyền, đường bộ... Trên đường đi tìm tự do, hàng trăm ngàn người đã phải hy sinh mạng sống trong rừng sâu, trên biển cả, hoặc bỏ mình trong các trại tỵ nạn, cuối cùng đã đến đất nước bao dung này.

Là những nhân chứng lịch sử cho tội ác của cộng sản, chúng tôi thấu hiểu giá trị của tự do bằng kinh nghiệm bản thân. Xin tri ân sâu xa sự hy sinh của những người đã chiến đấu bên cạnh chúng tôi, cũng như nhân dân Hoa Kỳ đã rộng mở vòng tay nhân ái, cưu mang chúng tôi và cho chúng tôi cơ hội tái lập lại đời sống trên mảnh đất được mệnh danh là "quê hương Tự Do của nhân loại".

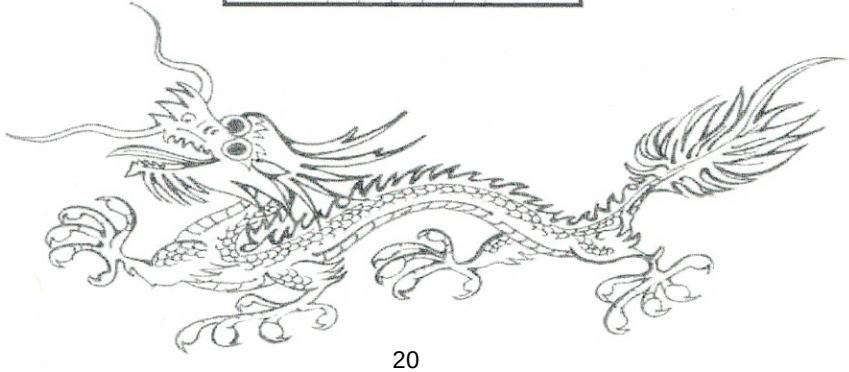


REPUBLIC OF VIETNAM

We, the Vietnamese American Community of Wichita, Kansas, dedicate this plaque in the memory and honor of American, Vietnamese and Allied soldiers who fought to resist the North Vietnamese aggression against the Republic of Viet Nam. We honor in particular the more than 58,000 American soldiers who sacrificed their own lives for the cause of freedom in our land. These men and women valiantly discharged their duties and shed their blood on our soil for a noble cause that the South Vietnamese may live in freedom for many years.

After the Communists conquered the South in 1975, millions of South Vietnamese rejected the prospect of living under an authoritarian regime and fled their homeland – by land and sea-to search for freedom. Along their arduous journeys, hundreds of thousands perished in the jungles, on the oceans and in refugee camps. We were among those who survived and arrived ay this land of the free.

Having faced the crimes against humanity committed by the Communists, we fully appreciate the value of freedom and democracy. Therefore, we would like to express our profound gratitude for those who fought along our side, and to the American people who have embraced us with wide open arms and provided us with new opportunities. We have begun anew in this "Land of Liberty".



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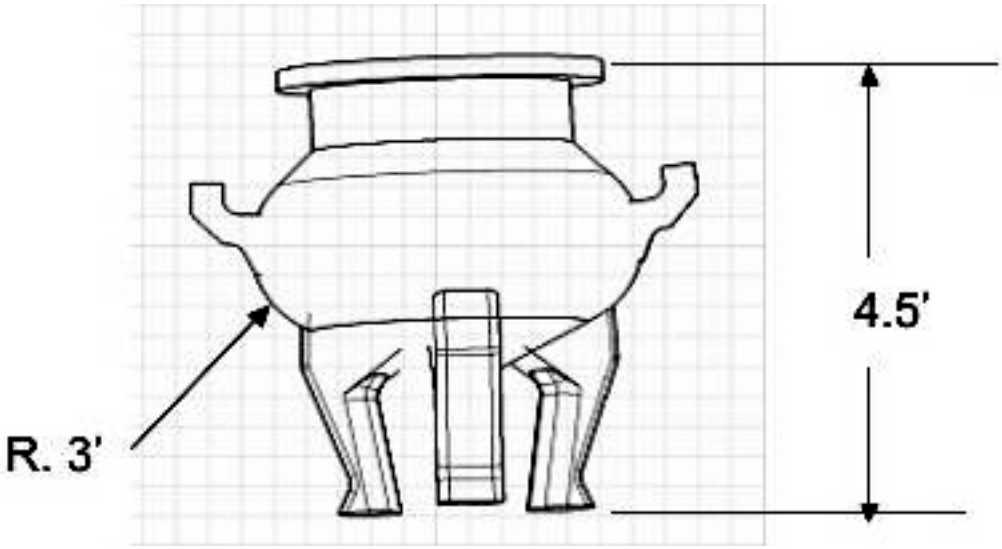

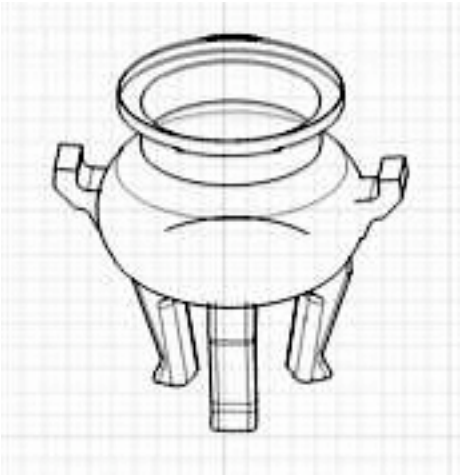

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Request for Letter of Intent for Industrial Revenue Bonds (LDF Properties, LLC) (District II)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close public hearing and approve Letter of Intent to issue Industrial Revenue Bonds.

Background: The City has received application for a Letter of Intent to issue Industrial Revenue Bonds ("IRBs") for LDF Properties, LLC ("LDF"). The proceeds of the bonds will be used to finance the acquisition and expansion of a consolidated distribution center, warehouse facility and corporate headquarters.

LDF is requesting the issuance of a one-year letter of intent for IRBs in an amount not to exceed $10,000,000. LDF is also requesting a 100% five-year tax exemption on the IRB-financed existing real property and a 100% five-year tax exemption on the IRB-financed new real property plus a second five years subject to City Council approval.

Analysis: LDF is a real estate holding company which is owned by Larry D. Fleming consists of LDF Sales & Distributing and LDF Food Group. LDF Sales & Distributing, established in 1983, markets, sells and distributes MillerCoors, Boulevard and dozens of other beverage brands in Kansas and Oklahoma. Almost three-quarters of their total sales are shipped outside the Wichita Metropolitan Statistical Area. LDF Food Group is a restaurant franchise operation that was founded in 1975. LDF Food Group currently owns 42 Wendy's restaurants in Kansas, Oklahoma and Texas.

The proposed project will consist of relocation of the existing LDF Companies corporate headquarters at 2959 North Rock Road in the Terra Cotta Building and the LDF Sales & Distribution warehouse at 8225 Irving in southwest Wichita. Both of these operations will be consolidated in the former BeautyFirst building located at 10610 East 26th Circle North, near K-96 and Greenwich Road. LDF plans to acquire the existing building and the 5 acre vacant parcel directly east of the building. The existing building will be expanded to more than double its existing size to accommodate additional warehouse and office space and additional site improvements will be made to service the building and expansion. The proceeds of the bonds will be used as outlined below:

Uses of Funds	
Acquisition of Existing Facility	$ 2,565,000
Acquisition of Adjacent Land	$ 560,000
Furniture, Fixtures and Equipment	$ 803,000
Expansion & Improvements of Existing Facility	$ 6,072,000
Total	$10,000,000

LDF has considered both Wichita and Tulsa for this consolidation. By providing the 100% tax abatement on the project, LDF will be able to complete the expansion here and retain the 126 employees currently employed by LDF in Wichita. LDF's current average wages are $51,475. They plan to add 3 new employees in the Wichita area as a result of the consolidation. They also plan to relocate 17 individuals

from the Parsons, Kansas distribution facility; however these individuals will continue to reside throughout southeast Kansas and commute regularly to the Wichita location.

In analyzing the City's incentive offer to the company, the previous abatement on the existing building was taken into consideration. The building was exempt from 2004 through 2009 for BeautyFirst; when they moved out of Wichita, the building was placed back on the tax roll. Staff recommends a five-year only exemption on the existing property for LDF in order to stay consistent with the current total abatement term standard of ten years.

The City's contract bond counsel firm, Kutak Rock LLP, will serve as bond counsel in the transaction. LDF agrees to comply with the City's Standard Letter of Intent Conditions.

Financial Considerations: LDF agrees to pay all costs of the City relative to the issuance of the bonds. The company also agrees to pay the City's $2,500 annual IRB administrative fee for the term of the bonds. The bonds will be privately placed with Larry Fleming, owner of LDF.

Based on the current property tax abatement matrix, the Company qualifies for a 100% five-plus-five-year tax exemption on real property constructed with bond proceeds.

% Eligible	Condition	Commitment
123.4%	Job Creation/Retention	139 FTE; avg. wage - $51,745/yr.
110%	Capital Investment	$10,000,000
233.4%	Total Business Incentive Eligibility (Maximum allowed is 100%)	

Based on the 2008 mill levy, the estimated property tax value of the exempt property for the first year is approximately $254,571. The value of a 100% real property tax exemption as applicable to taxing jurisdictions is:

City	$ 69,217	State	$ 3,239
County	$ 65,592	USD 259	$ 116,254

Approval of the second five-year abatement period for the building expansion only will be subject to compliance with job creation and average wage commitment, capital investment commitment and a requirement that at least 51% of exports are stored/shipped to end-users outside the Wichita MSA as required by the current incentive policy.

The project will qualify for a sales tax exemption on bond-financed purchases. The estimated amount of exempted sales tax is $68,750 of state sales tax and $364,375 of county sales tax; total value of the sales tax exemption is $433,135.

The cost/benefit analysis report conducted using the fiscal and economic impact model of Wichita State University's Center for Economic Development and Business Research reflects cost/benefit ratios as follows:

City of Wichita	1.83 to one
City of Wichita – General Fund	1.67 to one
City of Wichita – Debt Service	2.06 to one
Sedgwick County	1.51 to one
USD 259	1.17 to one
State of Kansas	18.87 to one

Goal Impact: Economic Vitality and Affordable Living. Providing low-cost financing and granting an ad valorem property tax exemption will allow for capital investment and the retention and creation of job opportunities in the City of Wichita and Sedgwick County.

Legal Considerations: Bond documents required for the issuance of the bonds will be prepared by bond counsel. The City Attorney's Office will review and approve bond documents as to form prior to the issuance of bonds.

Recommendations/Actions: It is recommended that City Council close the public hearing and approve a one-year Letter of Intent to issue Industrial Revenue Bonds to LDF Companies, LLC in an amount not-to-exceed $10,000,000, subject to the standard Letter of Intent conditions; approve a 100% tax abatement on bond-financed existing real property for an five-year period and a 100% tax abatement on the new construction for a period of five years plus an additional five years pending City Council review and approval.

Attachments: Letter of Intent Application

July 1, 2009

CITY OF WICHITA, KANSAS
Attn: Mayor and Members of the City Council
455 N. Main – City Hall
Wichita, Kansas 67202

Re: Not to Exceed $10,000,000 City of Wichita, Kansas Taxable Industrial Revenue Bonds (The LDF Companies)

Dear Mayor Brewer and Council Members:

This letter is to respectfully request approval by the governing body of the City of Wichita, Kansas of a Letter of Intent to issue its Industrial Revenue Bonds in one or more series in an amount not to exceed $10,000,000. The proceeds of the proposed Bonds will be used to finance the acquisition, construction, furnishing and equipping of a consolidated distribution center and warehouse facility for LDF Sales & Distributing, Inc., as well as corporate and operational offices for LDF Sales & Distributing, Inc., LDF Support Group, Inc., LDF Food Group, Inc., and LDF Properties, LLC (collectively, "The LDF Companies") to be located in the 10000 block of E. 26th Circle N., just north of Kansas Highway 96 and west of Greenwich Rd., in the City of Wichita, Kansas.

1. Name and Mailing Address of Applicant, Principal Owner, Contact Person and Telephone Number.

   LDF Properties, L.L.C. (the "Applicant")
   c/o LDF Support Group, Inc.
   Attn: Dennis L. Kirkhart
   2959 N. Rock Road, Suite 5100
   Wichita, Kansas 67226
   Telephone: (316) 636-5575, Ext. 2005

   Principal Owner:

   The LDF Companies are owned by Larry D. Fleming, Chairman and Chief Executive Officer, who founded the LDF Food Group, Inc. in 1975 and LDF Sales & Distributing, Inc. in 1983.

2. A General Description of the Nature of the Business, Business History and Experience; a List of Principal Competition; a Description of the Philosophy of the Business and a Detailed Estimate of the Extent to Which the Business' Products and/or Services are Exported Outside of Kansas.

General Description of the Nature of the Business:

The LDF Companies consist of four distinct Kansas entities consisting of LDF Sales & Distributing, Inc., LDF Food Group, Inc., LDF Support Group, Inc, and LDF Properties, LLC. The LDF Companies have significant operations in three states, with 52% of The LDF Companies' combined net sales in Oklahoma, 43% in Kansas, and 5% in Texas, with combined employment of approximately 1,700, and combined payrolls in excess of $28,750,000.

LDF Sales and Distributing, Inc.

LDF Sales & Distributing, Inc. is a wholesale beverage distributor founded in 1983.

An aggressive, high performance and fast growing company, LDF Sales & Distributing, Inc. markets, sells and distributes MillerCoors, Boulevard, Red Bull and dozens of other brands of beverages in Kansas and Oklahoma. Approximately 60% of this Company's product is distributed in Oklahoma, with the remaining 40% being distributed in Kansas. Approximately 77% of distribution is beyond Sedgwick County, and 72% of distribution is beyond the Wichita MSA.

The company has maintained a steady growth pattern since inception and now has over 300 employees. The philosophy of LDF Sales & Distributing, inc. is to achieve excellence in our relations with our employees, customers, consumers, communities, distributors, related companies, vendors, suppliers, competitors and lenders.

The company is significantly involved in the communities where it does business and has been recognized by receiving many community, state and industry awards. In addition, LDF Sales & Distributing, Inc. participates in a number of responsible drinking programs.

LDF Sales and Distributing, Inc. competes with franchise distributors of other beverage brands marketed throughout Kansas and Oklahoma.

LDF Food Group, Inc.

LDF Food Group Inc. is a restaurant franchise operation founded in 1975.

LDF Food Group, Inc.'s first Wendy's restaurant was opened in Wichita and was the 200th Wendy's to open in the nation. Today there are over 6600 Wendy's worldwide and the LDF Food Group, Inc. has grown to include 42 Wendy's restaurants in Kansas, Oklahoma and Texas.

The company has received every major award given by Wendy's International, including two Marketer of the Year Awards as well as the Founders Award, which is given to only the most outstanding franchisees. Mr. Fleming was also inducted into the Wendy's Hall of Fame in 1998.

The company has maintained a steady growth pattern since inception and now has over 1350 employees and maintains the practice of promotion from within whenever possible. Strict adherence to all of the Wendy's International training and operational programs has resulted in the company being ranked in the top 5% of all franchisees in numbers of restaurants certified by the franchisor.

The company is significantly involved in the communities where its restaurants are located and has been recognized by receiving many community, state and industry awards. The company also founded "The Wendy's Wonderful Kids" program which is now a national adoption program for Wendy's International.

LDF Food Group, Inc. competes with local, regional and national franchises operating restaurants throughout its existing service area.

LDF Support Group, Inc.

LDF Support Group Inc. is an administrative and operational support group founded in 1986 to serve and support the management, administrative and operational needs of The LDF Companies. Committed to the success of the mission and philosophy of LDF Sales & Distributing, Inc. and LDF Food Group, Inc., LDF Support Group, Inc. employs approximately 30 employees. Like all of The LDF Companies, LDF Support Group, Inc. is committed to success and long-term profitability by assisting The LDF Companies in consistently exceeding customer expectations in being the employer of choice of exceptional employees, providing a professional and safe working environment and maintaining controlled growth and profitable operations.

LDF Properties, LLC

LDF Properties, LLC is a single member Kansas limited liability company formed in 2008 and operating as a real estate holding company to facilitate real estate acquisition and development for the benefit of The LDF Companies.

More information regarding The LDF Companies' corporate culture and opportunities is available in the sample *LDF2DAY* newsletter, Career Opportunities pamphlet and other information included as **Exhibit "A."**

3. Name and Address of the Owner of the Land and Building Occupied or to be Occupied by the Business and the Nature of the Lease Arrangement.

The Applicant proposes that the Project will be leased by the City to LDF Properties, LLC. LDF Properties, LLC would be the principal obligor on the Bonds with LDF Properties, LLC subleasing the Project in allocable proportions to The LDF Companies, all of which are owned and controlled by Larry D. Fleming.

4. A General Description of the Proposed Building Project, including Estimated Capital Costs, a Project Site Plan, plus the Amount or Percentage of Tax Exemption being Requested.

The proposed Project will consist of a complete relocation and expansion of The LDF Companies, including relocation of the existing Wichita, Kansas Corporate Headquarters offices at 2959 N. Rock Road and relocation of distribution center facilities located at 8225 Irving St., with a planned relocation and consolidation of The LDF Companies' Parsons, Kansas distribution facility to follow. The LDF Companies are currently considering Park City, Kansas (where The LDF Companies owns a 23.5 acre parcel of land at 45th Street North and I-135), and Wichita, Kansas as alternative sites for the proposed entire relocation and expansion Project, and Tulsa, Oklahoma (the original home town of Larry Fleming, and the location of The LDF Companies' 105,000 square foot combined Oklahoma Operations facility), as an alternative site for the relocation of The LDF Companies' Corporate Headquarters, with a new combined Kansas Operations facility to be constructed on a portion of the land in Park City.

The Wichita option consists of acquiring the approximately 5 acre lot containing the current Beauty First Building, a 51,133 sq. ft. facility, and an adjoining parcel of real property containing approximately 5.13 acres. The building would be expanded to more than double the existing size, to accommodate additional warehouse and office space, and additional drives, paved loading areas and parking lots would be constructed. The site would then function as a warehouse and distribution center to support LDF Sales & Distributing, Inc., and as the Corporate Headquarters building for all of The LDF Companies. A preliminary Site Plan for the proposed Project is attached as **Exhibit "B"**.

It is currently estimated that the proceeds from the sale of the proposed Bonds, together with other monies to be provided by the Company, will be applied substantially as follows:

Acquisition of Existing Facility	$ 2,565,000
Acquisition of Adjacent Land	$ 560,000
Expansion & Improvements of Existing Facility	$ 6,072,000
Furniture, Fixtures and Equipment	$ 803,000
TOTAL	$10,000,000

The Applicant respectfully requests that the property (acquired, constructed and installed with the proceeds of the Bonds) be 100% exempted from Kansas ad valorem property

taxes for the ten (10) year period permitted by Kansas law. The tax abatement will permit the Applicant to proceed with the anticipated Project, allow for its anticipated growth and result in the public benefits otherwise outlined herein.

5. Average Total Monthly Employment Figures for the Past 12 Months; Number of New Jobs to be Created by Type or Position; and Statement Describing the Type of New Jobs and an Estimate on Wages/Earnings of These Jobs.

The LDF Companies currently employ a combined 126 employees at its current Wichita, Kansas locations, which are proposed to be consolidated at the Project. This consolidation and expansion Project will also provide for the consolidation of an additional 20 employees in connection with the relocation and closing of The LDF Companies' current Parsons, Kansas distribution facility, for a total of 146 full time equivalent employees at the Project. It is estimated that 17 of the consolidated employee base will continue to live in Southeast Kansas, but travel regularly to the new Project. Constructing and operating the Project in Wichita will ensure that the current Wichita employees are retained in the City of Wichita and that several jobs will be created in Wichita.

The Applicant estimates the relocation, addition and retainage of jobs to be in the following categories:

Description	Number of Employees	Average Hourly Wage
Warehousing/Distribution	22	$13.50
Drivers/Delivery Personnel	25	$16.45
Sales Personnel	34	$20.30
Management/Administrative	37	$45.30
Clerical/Support Personnel	28	$19.05
TOTAL	146 *	

* 126 of the anticipated jobs currently exist at the Wichita, Kansas facilities.

6. The Dollar Amount of the Bonds Requested.

The total principal amount of the Bonds requested is not to exceed $10,000,000.

7. Name and Address of Proposed Counsel to be Utilized In Connection with the Issuance of the Bonds.

Applicant's counsel for all elements relating to issuance of the Bonds will be:

Tenant's Counsel
Triplett, Woolf & Garretson, LLC
2959 North Rock Road, Suite 300
Wichita, Kansas 67226
Telephone: (316) 630-8100
Attention: J.T. Klaus

8. Brief Statement Regarding the City's Costs Relative to the Issuance of the Bonds.

The LDF Companies agree to pay the following: (1) fees and expenses for the services of bond counsel to be selected by the City, (2) $2,500 per year, in arrears, for the life of the bond issue, and (3) all City costs relative to the issuance of the bonds, regardless of whether or not the bonds are actually approved and/or issued.

9. Brief Statement Relative to the Effects of the Proposed Expansion on the Ambient Air Quality of the City of Wichita and Sedgwick County.

The proposed expansion will have no effect on the ambient air quality of the City of Wichita or Sedgwick County, nor are there any other anticipated adverse environmental effects. The Applicant will agree to comply with the City's policies and requirements relating to environmental matters.

10. Arrangements for Sale of the Bonds.

It is anticipated that the Bonds will be sold through private placement with the Owner of The LDF Companies.

11. Financial Information.

The Applicant is a real estate holding company with no historical financial statements or applicable history of operations. A complete summary of The LDF Companies' financial statements, together with debt service projections on the Bonds for the first five (5) fiscal years of operations, can be provided upon request, subject to the request that such information remain confidential, as such information is proprietary to The LDF Companies and would be sought by its competitors.

12. A Statement Explaining Why the Requested Tax Exemption is a Critical Factor in Determining Whether the Proposed Project is to be Completed.

The exemption being sought is critical to the relocation and consolidation but, particularly important, to the decision to design and build a Project which will provide for the planned expansion and the additional employees. The Applicant's acquisition of the land is conditioned upon the exemption.

In the absence of such incentive, any consolidation would necessarily be downsized in an effort to eliminate the losses sustained in connection with relocation, not to mention the risks associated with planned future growth.

13. Brief Statement with Respect to Benefits.

It is anticipated that the proposed Project will cause the relocation, retainage and/or additional creation of a total of 146 full time jobs within the City limits of the City of Wichita, Kansas. While relocated or new employees may not necessarily take up

residence in the City of Wichita initially, the proximity of the employment base will ultimately provide significant additional residential base to the community of Wichita, not to mention the commercial value of the Project when it is ultimately placed on the tax rolls. In addition, locating the Project in the City of Wichita will prevent Wichita's loss of 146 full time jobs with a payroll of over $7,450,000 which would occur if the Project were undertaken in Park City, Kansas, or the State of Kansas' loss of 35 full time jobs with a payroll of over $2,775,000 which would occur if The LDF Companies' Corporate Headquarters were relocated to Tulsa, Oklahoma and the Kansas Operations facility was moved to Park City (which would have the overall impact to the City of Wichita as stated at the beginning of this sentence).

In addition to jobs directly attributable to The LDF Companies, the Project will provide economic growth by supplying work to local construction companies, builders and subcontractors.

Further, The LDF Companies have grown from approximately 20 employees in 1975 to approximately 1,700 employees at the current time, with an overall payroll of more than $28,750,000, and continued growth of The LDF Companies is anticipated.

14. Cost/Benefit Analysis.

Applicant has submitted a Firm Data Sheet and a check for the appropriate fee to the Wichita State University Center for Economic Development and Business Research for preparation of a cost/benefit analysis of the Project.

To permit The LDF Companies and the Applicant to proceed with the expenditure of the substantial sums required to timely complete the due diligence related to the acquisition and expansion of the Project and the financing for the facility, it is requested at this time that the City Council authorize the Mayor to execute a Letter of Intent for and on behalf of the City whereby the City indicates its intent to issue approximately $10,000,000 of its Taxable Industrial Revenue Bonds for the purposes described herein.

Applicant is aware that such a Letter of Intent is only an indication of the intent of the City to issue the proposed Bonds to assist in financing the expansion and that such Letter of Intent is subject in all respects to the governing body's final approval of the terms and provisions of the Bond Ordinance, Lease Agreement, Guaranty Agreement and other related documents. However, upon issuance of such Letter of Intent, Applicant will proceed in reliance thereon. Should there be any further questions or information which the City may require in evaluating this application, we will be most happy to discuss such matters.

Respectfully submitted,

THE LDF COMPANIES

By Larry D. Fleming
Chairman and Chief Executive Officer

Agenda Item No. III-2.

City of Wichita
City Council Meeting
July 21, 2009

TO:	Mayor and City Council
SUBJECT:	Amendment to Charter Ordinance 202 Section 8 (c); Amendment to Section 1.04.070; and Creating Section 1.04.075 of the Code of the City of Wichita setting forth costs in the Municipal Court
INITIATED BY:	Municipal Court
AGENDA:	New Business

- -

Recommendation: Place the ordinances on first reading.

Background: Amendment to Charter Ordinance 202 Section 8 (c); amendment to Section 1.04.070 of the City Code; and creating Section 1.04.075 of the City Code to allow for increased court costs to partially offset the cost of Court operations. A review of court programs and associated costs was performed. Additionally a survey of surrounding courts was conducted. The courts surveyed were Sedgwick County District Court; Topeka; Overland Park; Oklahoma City; Tulsa; and Colorado Springs.

Analysis: The requested amendments permit the Court to increase court fees to partially offset the costs of court operations. The amendments to Section 1.04.070 are made in order for authorized changes to be made immediately effective upon publication. Charter Ordinance 210 is enacted to transfer fee determination from Charter Ordinance 202 to simple ordinance control. The creation of Ordinance Section 1.04.075 will serve as the enabling ordinance to impose and increase the post conviction remedy fee currently authorized by Charter Ordinance 202. Until that time, post conviction remedy fees will remain as authorized under Charter Ordinance 202. Following are proposed amendments to the City Code:

- Subsection 1.04.070 (a) to increase municipal court costs by three dollars. The total amount of court costs would be fifty-eight dollars ($58), inclusive of mandated costs imposed by the State of Kansas in the amount of nineteen dollars and fifty cents ($19.50), a four dollar city public defender fee ($4) and a three dollar ($3) domestic violence program fee. Court costs are assessed on criminal, environmental, and traffic cases. Costs are not assessed on parking violations that are paid without a court setting nor against those defendants acquitted of the violation charged. The last fee increase was in 2007.

- Subsection 1.04.070 (b) to increase municipal court technology fee by one dollar ($1). Since 2007, the Court has assessed a one-dollar technology ($1) fee. With an increase there would be a two dollar ($2) technology fee assessed in order to maintain and improve the public safety and court computer systems, as well as provide technological advances to improve court, public safety, and prosecution responses to criminal conduct.

- Subsection 1.04.070 (i) would increase the bench warrant and probation violation warrant fee, when such is issued for an alleged probation violation or for failing to appear before the Court. The last fee increase was in 2007. Although the costs to process a bench warrant/probation violation is forty-eight dollars ($48) plus copying costs, it is recommended to increase the fee from thirty-five dollars ($35) to fifty dollars ($50) similar to the average assessment of fifty-seven dollars ($57) per the survey conducted.

- Subsection 1.04.070 (j) would increase the fee from twenty dollars to fifty dollars on those cases where a warrant is issued for fail to comply with a citation. The last fee increase was in 2007. The cost to process a citation warrant is $49, and again the survey reflected an average fifty-seven dollar ($57) warrant fee assessed by other courts.

- Subsection 1.04.070 (m) would increase the probation fee from an annual fifty dollars assessment to one hundred fifty dollars ($150). The last fee increase was in 2007, but an evaluation of the processes to provide the services necessary by Probation reflected a cost of $156. The surveys conducted reflect an average three hundred fifty dollars assessed against probationers. However, for indigent defendants, this fee may be reduced or waived.

- An amendment to Subsection 1.04.070 (n) would increase the fingerprint fee from fifteen dollars ($15) to twenty dollars ($20) for those misdemeanor offenses as set out in K.S.A. 21-2501 that require an individual be fingerprinted before final disposition of the case. The last fee increase was in 2007. The cost to perform the fingerprint function is twenty-one dollars ($21) and the average fee assessed by peer cities is twenty-two dollars ($22).

- An amendment to 1.04.070(o) would increase the court ordered urinalysis (UA) testing from fifteen dollars ($15) to twenty dollars ($20). An increase in the UA testing fee would help offset the cost of commodities and staffing costs as well as the same fee structure as our contracted vendor. The last fee increase was in 2004.

- Subsection 1.04.075 is created to serve as an enabling ordinance, which will be effective after the amendment of Charter Ordinance 202 to increase the costs of post conviction motions to seventy-five dollar ($75). The last amendment to Charter Ordinance 202 was in 2000. Staff costs to process post conviction remedies are seventy dollars ($70) plus storage costs. The average fee assessed by other courts is $100.

Financial Consideration: The Court cost increase of one dollar will partially fund maintenance and upgrades to technology necessary to most efficiently address the daily operation needs of this Court. Being the largest municipal court in the State of Kansas, with one of the largest case filings, technological maintenance and advancements are necessary to keep the Court running effectively and efficiently. The increase to the probation fee will partially offset the rising expenses associated with operations of the Municipal Court Probation Office. The remaining fees are assessed against individuals who have failed to comply with court orders or who have failed to appear; and for fingerprinting functions required by state statute.

Goal Impact: Municipal Court helps achieve a Safe and Secure community by ensuring that all parties in the criminal justice system have access to an independent judiciary, and as such, judicially imposed orders are enforced.

Attachments: Ordinances

Legal Consideration: The ordinances have been approved as to form by the Law Department.

Recommended Action: Place the ordinances on first reading.

Attachment:

- Ordinance 1.04.070
- Delineated Copy Ordinance 1.04.070
- Charter Ordinance 202
- Delineated Copy Charter Ordinance 202
- Ordinance 1.04.075

(First Published in the Wichita Eagle on _____)

(Second Publication in the Wichita Eagle on _____)

Charter Ordinance No. 210

A CHARTER ORDINANCE AMENDING SECTION 9 OF CHARTER ORDINANCE NO. 202 OF THE CODE OF THE CITY OF WICHITA, KANSAS RELATING TO COSTS AND WITNESS FEES IN CASES BEFORE THE MUNICIPAL COURT AND THE CODE OF PROCEDURE; AND REPEALING THE ORIGINAL OF SAID SECTION.

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

SECTION 1. The original of Section 9 of Charter Ordinance No. 202 amending Section 10 of Charter Ordinance No. 168 amending Charter Ordinance No. 122, Section 8 of the Code of the City of Wichita is amended as follows:

Court Costs and Establishing Court Costs for Post Conviction Motions.

(a) All parties shall be entitled to the use of subpoenas to compel attendance of witnesses within the state. The municipal court judge or clerk or any person so authorized by the judge's written authorization shall issue a subpoena which may be served by a law enforcement officer upon the named persons. Disobedience may constitute contempt.

(b) Fees and mileage of subpoenaed witnesses shall be assessed in the amount set forth in Section 1.04.070 of the Code of the City of Wichita, Kansas, and amendments thereto. The fees and mileage for the attendance of witnesses shall be assessed as costs; provided, the municipal judge, may direct that fees and mileage of witnesses subpoenaed by the accused person be charged against such person if the judge finds that there has been abuse of the use of subpoenas by the accused person.

(c) Whenever any motions or applications for the post conviction remedies are filed, the cost for filing such motion or application shall be assessed in the amount set forth in Section 1.04.070 of the Code of the City of Wichita and amendments thereto. The cost shall be paid by the person filing such motion or application. Provided however, that if it be shown to the Court that the person filing such motion or application is indigent, the Court may, in it’s discretion,

waive the costs provided for herein and the Court shall make a finding of indigency and shall note upon the motion, application or order resulting therefrom that the costs referred to herein have been waived.

SECTION 2. The original of Section 9 of Charter Ordinance No. 202 of the Code of the City of Wichita, is hereby repealed.

SECTION 3. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

SECTION 4. This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication, unless a sufficient petition for referendum is filed requiring a referendum to be held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3), of the Constitution of the State of Kansas, in which case, the ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED BY THE GOVERNING BODY, not less than two-thirds of the members elect voting in favor thereof, this _____ day of _____, 2009.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary Rebenstorf, Director of Law and City Attorney

Effective _____

(Delineated Copy)

(First Published in the Wichita Eagle on _____)

(Second Publication in the Wichita Eagle on _____)

Ordinance No. _____

A CHARTER ORDINANCE AMENDING SECTION 9 OF CHARTER ORDINANCE NO. 202 OF THE CODE OF THE CITY OF WICHITA, KANSAS RELATING TO COSTS AND WITNESS FEES IN CASES BEFORE THE MUNICIPAL COURT AND THE CODE OF PROCEDURE; AND REPEALING THE ORIGINAL OF SAID SECTION.

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

SECTION 1. The original of Section 9 of Charter Ordinance No. 202 amending Section 10 of Charter Ordinance No. 168, amending Charter Ordinance No. 122 Section 8 of the Code of the City of Wichita is amended as follows:

Court Costs and Establishing Court Costs for Post Conviction Motions.

(a) All parties shall be entitled to the use of subpoenas to compel attendance of witnesses within the state. The municipal court judge or clerk or any person so authorized by the judge's written authorization shall issue a subpoena which may be served by a law enforcement officer upon the named persons. Disobedience may constitute contempt.

(b) Fees and mileage of subpoenaed witnesses shall be assessed in the amount set forth in Section 1.04.070 of the Code of the City of Wichita, Kansas, and amendments thereto. The fees and mileage for the attendance of witnesses shall be assessed as costs; provided, the municipal judge, may direct that fees and mileage of witnesses subpoenaed by the accused person be charged against such person if the judge finds that there has been abuse of the use of subpoenas by the accused person.

(c) Whenever any motions or applications for the post conviction remedies are filed, the cost for filing such motion or application shall be ~~twenty-five ($25) dollars~~ assessed in the amount <u>set forth in Section 1.04.070 of the Code of the City of Wichita and amendments thereto.</u>

The cost ~~and~~ shall be paid by the person filing such motion or application. Provided however, that if it be shown to the Court that the person filing such motion or application is indigent, the Court may, in it's discretion, waive the costs provided for herein and the Court shall make a finding of indigency and shall note upon the motion, application or order resulting therefrom that the costs referred to herein have been waived.

SECTION 2. The original of Section 9 of Charter Ordinance No. 202 of the Code of the City of Wichita, is hereby repealed.

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PASSED BY THE GOVERNING BODY, not less than two-thirds of the members elect voting in favor thereof, this _____ day of _____, 2009.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law and City Attorney

Effective _____

(First Published in the Wichita Eagle on _____)

Ordinance No. 48-386

AN ORDINANCE AMENDING SECTION 1.04.070 OF THE CODE OF THE CITY OF WICHITA, KANSAS PERTAINING TO COSTS AND WITNESS FEES IN CASES BEFORE THE MUNICIPAL COURT

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

Section 1. 1.04.070. Costs and witness fees in cases before the Municipal Court. There is established the following schedule of costs for all municipal court cases.

(a) The sum of fifty-eight dollars shall be assessed as court costs against each person charged with such a violation of any of the ordinances of this city, unless found not guilty. The fifty-eight dollars in court costs shall include all costs required by state statute, as well as a three dollar domestic violence program fee and a four dollar public defender fee. However, this subsection shall not apply to persons who make payment to avoid prosecution of a charge that involves a parking violation as provided in Section 11.92.040 of this Code.

(b) The sum of two dollars shall be assessed as a court technology fee against each person charged with such a violation of any of the ordinances of this city, unless found not guilty. The court technology fee is to be used by the court to help offset the cost to maintain and/or purchase technology enhancements, including but not limited to computer systems, computer networks, computer hardware, computer software, imaging systems, electronic kiosks, electronic ticket writers and docket management systems for the City of Wichita Municipal Court System. However, this subsection shall not apply to persons who make payment to avoid prosecution of a charge that involves a parking violation as provided in Section 11.92.040 of this Code.

(c) For each person who is charged with a violation of any of the ordinances of this city and such matter is set for appearance, a charge of ten dollars will be assessed, unless found not guilty.

(d) For each continuance of any pre-trial appearance, trial, sentencing, disposition, or pre-sentence investigation granted at the request of the accused person, a cost of ten dollars shall be assessed against such accused person unless found not guilty.

(e) A cost of ten dollars shall be assessed for each extension of time to pay any fine, penalty or costs granted by the clerk of the municipal court at the request of an accused person.

(f) For each trial date attributable to the accused person for which subpoenas have been issued, and in addition to other costs provided for in this section, the sum of twenty-five dollars shall be assessed as court costs against such accused person, unless found not guilty by the court.

(g) In addition to other costs provided for in this section, the sum of ten dollars shall be assessed as court costs against each accused person who is found guilty and files a notice of appeal in district court.

(h) In addition to other court costs assessed pursuant to this section, fees and mileage for subpoenaed witnesses shall be assessed at the rate of ten dollars per day and forty cents per mile actually driven in excess of twenty miles.

(i) A cost of thirty-five dollars fifty dollars shall be assessed against each person for whom a municipal court bench warrant or show cause/probation violation warrant is ordered by the court for either failure to appear or failure to comply.

(j) A cost of fifty dollars shall be assessed against each person for whom a warrant is issued for failure to pay any fine, penalty or costs as provided in subsection (a) of this section.

(k) In addition to other court costs assessed pursuant to this section, the sum of twenty dollars shall be assessed as court costs against each accused person who fails to comply with a traffic citation, as set forth in Section 11.42.040(a) of this Code. This assessment shall be in addition to the reinstatement fee collected by the court pursuant to K.S.A. 8-2110(c) as amended, and as set forth in Section 11.42.040(c) of this Code, and shall be retained by the municipal court to be used to reimburse the court for expenses incurred in complying with the procedures required by state law. Such sum shall be assessed for each charge on which the person fails to make satisfaction, regardless of the disposition of the charge for which the citation was originally issued.

(l) In addition to any other court costs assessed pursuant to this section, the sum of five dollars shall be assessed as court costs against each accused person who fails to comply with a traffic citation as set forth in Section 11.42.040(a) of this Code. This assessment shall be in addition to the reinstatement fee collected by the court pursuant to K.S.A. 8-2110(c) and amendments thereto, and as set forth in Section 11.42.040(c) of this Code. This fee shall be retained by the municipal court to be used to reimburse expenses for mailing notice as mandated by Section 11.42.040(b) of this Code, and K.S.A. 8-2110(b), and amendments thereto.

(m) Each person placed under supervision of a probation officer shall pay a probation fee of one hundred fifty dollars for each probation case supervised, except that in any case in which there is a determination of indigency, the fee specified may be reduced or waived by the judge.

(n) For those misdemeanor offenses as set out in K.S.A. 21-2501 that require the individual be fingerprinted before final disposition of the case, a twenty dollar fingerprint fee will be assessed as costs.

(o) Should the court order urinalysis testing, a fee of twenty dollars per test shall be assessed to the defendant as costs.

(p) The assessment and imposition of the court costs pursuant to this section shall be mandatory and the court shall not waive, remit, suspend, parole, or otherwise excuse the payment thereof except as set forth in subparagraph (r).

(q) All court costs assessed and imposed by this section shall be paid no later than sixty days following imposition; provided that the court may extend the time for such payment to one hundred twenty days for good cause shown. In no case shall the court order the time for payment of court costs assessed pursuant to this section extended beyond one hundred twenty days from the date of initial imposition.

(r) In lieu of payment of court costs assessed pursuant to this section, the court may order that the defendant perform community service specified by the court only after the defendant has filed an affidavit of such defendant's financial condition in accordance with Section 1.04.210(e), and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the court

costs required herein. If the court also finds that such indigent defendant is unable to perform community service work, then the court may enter an order suspending the court costs imposed by this section.

(s) All court costs collected pursuant to this section shall be accounted for by the clerk of the municipal court and deposited to the general fund of the city and special trust fund with the exception of the two dollars court technology fee, which shall be deposited into the Court Technology Project Account.

Section 2. The original of Section 1.04.070 of the Code of the City of Wichita, Kansas, is hereby repealed.

Section 3. 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 and City Attorney

(Delineated Copy)

(First Published in the Wichita Eagle on _____)

Ordinance No. _____

AN ORDINANCE AMENDING SECTION 1.04.070 OF THE CODE OF THE CITY OF WICHITA, KANSAS PERTAINING TO COSTS AND WITNESS FEES IN CASES BEFORE THE MUNICIPAL COURT

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

Section 1. 1.04.070. Costs and witness fees in cases before the Municipal Court. There is established the following schedule of costs for all municipal court cases.

(a) The sum of ~~fifty-five~~ fifty-eight dollars shall be assessed as court costs against each person charged with such a violation of any of the ordinances of this city, unless found not guilty. The ~~fifty-five~~ fifty-eight dollars in court costs shall include all costs required by state statute, as well as a three dollar domestic violence program fee and a four dollar public defender fee. However, this subsection shall not apply to persons who make payment to avoid prosecution of a charge that involves a parking violation as provided in Section 11.92.040 of this Code.

(b) The sum of ~~one~~ two dollars shall be assessed as a court technology fee against each person charged with such a violation of any of the ordinances of this city, unless found not guilty. The court technology fee is to be used by the court to help offset the cost to maintain and/or purchase technology enhancements, including but not limited to computer systems, computer networks, computer hardware, computer software, imaging systems, electronic kiosks, electronic ticket writers and docket management systems for the City of Wichita Municipal Court System. However, this subsection shall not apply to persons who make payment to avoid prosecution of a charge that involves a parking violation as provided in Section 11.92.040 of this Code.

(c) For each person who is charged with a violation of any of the ordinances of this city and such matter is set for appearance, a charge of ten dollars will be assessed, unless found not guilty.

(d) For each continuance of any pre-trial appearance, trial, sentencing, disposition, or pre-sentence investigation granted at the request of the accused person, a cost of ten dollars shall be assessed against such accused person unless found not guilty.

(e) A cost of ten dollars shall be assessed for each extension of time to pay any fine, penalty or costs granted by the clerk of the municipal court at the request of an accused person.

(f) For each trial date attributable to the accused person for which subpoenas have been issued, and in addition to other costs provided for in this section, the sum of twenty-five dollars shall be assessed as court costs against such accused person, unless found not guilty by the court.

(g) In addition to other costs provided for in this section, the sum of ten dollars shall be assessed as court costs against each accused person who is found guilty and files a notice of appeal in district court.

(h) In addition to other court costs assessed pursuant to this section, fees and mileage for subpoenaed witnesses shall be assessed at the rate of ten dollars per day and forty cents per mile actually driven in excess of twenty miles.

(i) A cost of ~~thirty-five dollars~~ fifty dollars shall be assessed against each person for whom a municipal court bench warrant or show cause/probation violation warrant is ordered by the court for either failure to appear or failure to comply.

(j) A cost of ~~twenty dollars~~ fifty dollars shall be assessed against each person for whom a warrant is issued for failure to pay any fine, penalty or costs as provided in subsection (a) of this section.

(k) In addition to other court costs assessed pursuant to this section, the sum of twenty dollars shall be assessed as court costs against each accused person who fails to comply with a traffic citation, as set forth in Section 11.42.040(a) of this Code. This assessment shall be in addition to the reinstatement fee collected by the court pursuant to K.S.A. 8-2110(c) as amended, and as set forth in Section 11.42.040(c) of this Code, and shall be retained by the municipal court to be used to reimburse the court for expenses incurred in complying with the procedures required by state law. Such sum shall be assessed for each charge on which the person fails to make satisfaction, regardless of the disposition of the charge for which the citation was originally issued.

(l) In addition to any other court costs assessed pursuant to this section, the sum of five dollars shall be assessed as court costs against each accused person who fails to comply with a traffic citation as set forth in Section 11.42.040(a) of this Code. This assessment shall be in addition to the reinstatement fee collected by the court pursuant to K.S.A. 8-2110(c) and amendments thereto, and as set forth in Section 11.42.040(c) of this Code. This fee shall be retained by the municipal court to be used to reimburse expenses for mailing notice as mandated by Section 11.42.040(b) of this Code, and K.S.A. 8-2110(b), and amendments thereto.

(m) Each person placed under ~~the probation~~ supervision of a probation officer shall pay a probation fee of ~~fifty dollars~~ one hundred fifty dollars for each probation case supervised, except that in any case in which there is a determination of indigency, the fee specified may be reduced or waived by the judge.

(n) For those misdemeanor offenses as set out in K.S.A. 21-2501 that require the individual be fingerprinted before final disposition of the case, a ~~fifteen dollar~~ twenty dollar fingerprint fee will be assessed as costs.

(o) Should the court order urinalysis testing, a fee of ~~fifteen dollars~~ twenty dollars per test shall be assessed to the defendant as costs.

(p) The assessment and imposition of the court costs pursuant to this section shall be mandatory and the court shall not waive, remit, suspend, parole, or otherwise excuse the payment thereof except as set forth in subparagraph (r).

(q) All court costs assessed and imposed by this section shall be paid no later than sixty days following imposition; provided that the court may extend the time for such payment to one hundred twenty days for good cause shown. In no case shall the court order the time for payment of court costs assessed pursuant to this section extended beyond one hundred twenty days from the date of initial imposition.

(r) In lieu of payment of court costs assessed pursuant to this section, the court may order that the defendant perform community service specified by the court only after the defendant has filed an affidavit

of such defendant's financial condition in accordance with Section 1.04.210(e), and the court has found from the information contained in the affidavit that the defendant is financially unable to pay the court costs required herein. If the court also finds that such indigent defendant is unable to perform community service work, then the court may enter an order suspending the court costs imposed by this section.

(s) All court costs collected pursuant to this section shall be accounted for by the clerk of the municipal court and deposited to the general fund of the city and special trust fund with the exception of the ~~one~~ two dollars court technology fee, which shall be deposited into the Court Technology Project Account.

Section 2. The original of Section 1.04.070 of the Code of the City of Wichita, Kansas, is hereby repealed.

Section 3. 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 and City Attorney

(First Published in the Wichita Eagle on _____)

Ordinance No. 48-387

AN ORDINANCE CREATING SECTION 1.04.075 OF THE CODE OF THE CITY OF WICHITA, KANSAS PERTAINING TO COSTS FOR POST CONVICTION REMEDIES IN CASES BEFORE THE MUNICIPAL COURT

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

Section 1. 1.04.075. Post Conviction remedies in cases before the Municipal Court. There is established the following costs for all post conviction remedies in cases before the Municipal Court.

(a) Whenever any motions or applications for post conviction remedies are filed, the cost for filing such motion or application shall be seventy-five dollars and shall be paid by the person filing such motion or application. Provided however, that if it be shown to the Court that the person filing such motion or application is indigent, the Court may, in its discretion, waive the costs provided for herein and the Court shall make a finding of indigency and shall note upon the motion, application or order resulting therefrom that the costs referred to herein have been waived.

(b) The assessment and imposition of the court costs pursuant to this section shall be mandatory and the court shall not waive, remit, suspend, parole, or otherwise excuse the payment thereof except as set forth in subparagraph (s) of Section 1.04.070 of the Code of the City of Wichita.

(c) All court costs assessed and imposed by this section shall be paid no later than sixty days following imposition; provided that the court may extend the time for such payment to one hundred twenty days for good cause shown. In no case shall the court order the time for payment of court costs assessed pursuant to this section extended beyond one hundred twenty days from the date of initial imposition.

(d) All court costs collected pursuant to this section shall be accounted for by the clerk of the municipal court and deposited to the general fund of the city.

Section 2. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication in the official city paper and upon the effective date of Charter Ordinance 210.

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 and City Attorney

SUPPLEMENTAL AGREEMENT NO. 6

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED JUNE 8, 1999

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

LAW/KINGDON, INC.

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ARCHITECT"

WITNESSETH:

WHEREAS, there now exists a Contract (dated June 8, 1999) between the two parties covering architectural and engineering services to be provided by the ARCHITECT in conjunction with the construction of improvements to the **RIVER CORRIDOR IMPROVEMENT PROJECT**.

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 ARCHITECT 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:

East Bank between Second Street and Douglas (Phase 1C of the master plan)
(Final plans – see Exhibit C)

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

Payment to the ARCHITECT for the performance of the professional services as outlined in this supplemental agreement will increase the total contract by **$85,500.00.**

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 ARCHITECT 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:

_____

for Gary Rebenstorf, Director of Law

LAW/KINGDON, INC.

Jeffrey A Bost Director of Landscape Architecture

(Name and Title)

ATTEST:

_____

Architecture — Inspire. Create. Achieve.

DALLAS | WICHITA
345 Riverview, Suite 200
Wichita, Kansas 67203
T 316.268.0230
F 316.268.0205
lawkingdon.com

EXHIBIT C

June 25, 2009

Mr. Chris Carrier, Director of Public Works
City of Wichita, 8th Floor
455 North Main
Wichita, KS 67202

RE: Proposal for Design Services – Phase 1c River Corridor Improvement Project – Supplemental Agreement #6

Mr. Carrier,

Thank you for the opportunity to provide supplemental design services for the award-winning Arkansas River Corridor Improvement Project. We are excited about working with the City of Wichita and continuing the success which we started with the Keeper of the Plains project. We have been involved with the River Corridor Improvement project for nearly a decade and are anxious to see these improvements come to fruition.

The initial Supplemental Agreement was for schematic and design development of this section of the river. We are nearly complete with this contract and will complete during July, however, to meet the August deadline for construction documents, we need to proceed with production drawings immediately.

As discussed at the pre-scoping meeting on June 5, 2009, we have been instructed to proceed with construction documents and specifications for those improvements to the east bank of the Arkansas River between Second Street and Douglas as shown on the attachment. At that meeting, there was not a clear separation between those improvements to be done by the City of Wichita and those by Drury-Southwest. I have proposed a breakline between projects to expedite the contract. This breakline follows the current property line making deviations for constructability purposes. If the breakline between projects is adjusted during the process, we will need to discuss fee implications to the contract.

Project Description:

This proposal will encompass those services and scope we envision necessary for design of the east bank between Second Street and Douglas Ave (Phase 1c of the master plan). If changes occur prior to finalization of construction documents we will incorporate those in the drawing set.

It is our understanding that the City wishes to raise the river walk 12" above the current elevation. This will require additional modeling of the cross sections of the improvements to determine if the water surface elevation is impacted. This was a requirement of the Department of Water Resources per our meeting with them. The Consultant Team shall prepare all drawings, calculations and permit application to be submitted by the City of Wichita.

The project budget for the City of Wichita's portion of improvements is $2,000,000 less design fees and City of Wichita administrative and inspection fees. It is our intent to design all improvements indicated on the final design plans and allow for inclusion of add alternate bid items to ensure the base project is within the budget. Currently, this would include the large shade structure, however, may include a number of other items depending upon final estimates.

We have been informed that the City of Wichita is currently having a Phase II Environmental Report being done. If there are contaminated soils within the project boundary which we have not provided for in our estimate or contract, we will need to discuss those implications to the project and design services contract.

The project will include new sheet pile edge along the Arkansas River, concrete bicycle and pedestrian paths, plaza areas, retaining walls, lighting, landscaping and irrigation improvements as conceptualized on the attached exhibit drawing.

Construction Documents and Specifications:

- Rehabilitated sheet pile and edge treatment
- SWPPP and specifications
- Pedestrian and hardscape layout and details
- Bicycle path design.
- Grading and storm water Improvements
- Retaining wall layout and details
- Pedestrian lighting
- Shade structure design and specifications
- Site amenities layout and specifications
- Wayfinding Graphics
- Planting and Irrigation Plans
- Preparation of NPDES permit application and NOI
- Preparation of DWR permit application

Project Team:

It has been determined to retain as much of the original project team as practical for this project. Below is a listing of the project team members and discipline:

- Project Management/Coordination – LawKingdon Architecture
- Landscape Architecture – LawKingdon Architecture
- Architecture – LawKingdon Architecture
- Electrical Engineering – LawKingdon Architecture
- Design Consultant – Skinner Design Studios
- Civil Engineering – Wilson Company
- Structural Engineering – Wilson Company
- Environmental Graphics/Wayfinding – Greteman Group
- Artist Consultant – Brunner Sculpture

Preliminary Schedule:

- Field Check Plans & DWR Permit Application
  - August 17, 2009
- Office Check Plans and Specifications
  - August 31, 2009
- Final Plans and Specifications
  - September 11, 2009
- Project Bid Letting
  - October 10, 2009
- Begin Construction
  - November 3, 2009
- Construction Complete
  - April 24, 2010

Fee Proposal:

Our fee for the detailed scope of work is below. We welcome the opportunity to discuss both the scope of the project and our related fee with you in more detail to ensure that we are providing the best possible service to the City of Wichita. Included within the fee are the costs for printing and plotting for the project. If an excessive amount of additional printing is requested for presentations, (exceeding $2,000 of direct cost), this direct cost will be passed on to the City. At the completion of the Construction Document Phase, we shall provide the City of Wichita sealed drawings, pdf and dwg files and specifications.

Phase 1c

LawKingdon Architecture	$42,875.00
Project Management	
Landscape Architecture	
Electrical Engineering	
Architecture	
Wilson Company	$30,775.00
Civil Engineering	
Structural Engineering	
Greteman Group	$4,950.00
Wayfinding Graphics	
Skinner Design Studios	$3,400.00
Project Review/Quality Control	
Brunner Sculpture	$3,500.00
Artist Consultant	
Total Design Fee:	$85,500.00

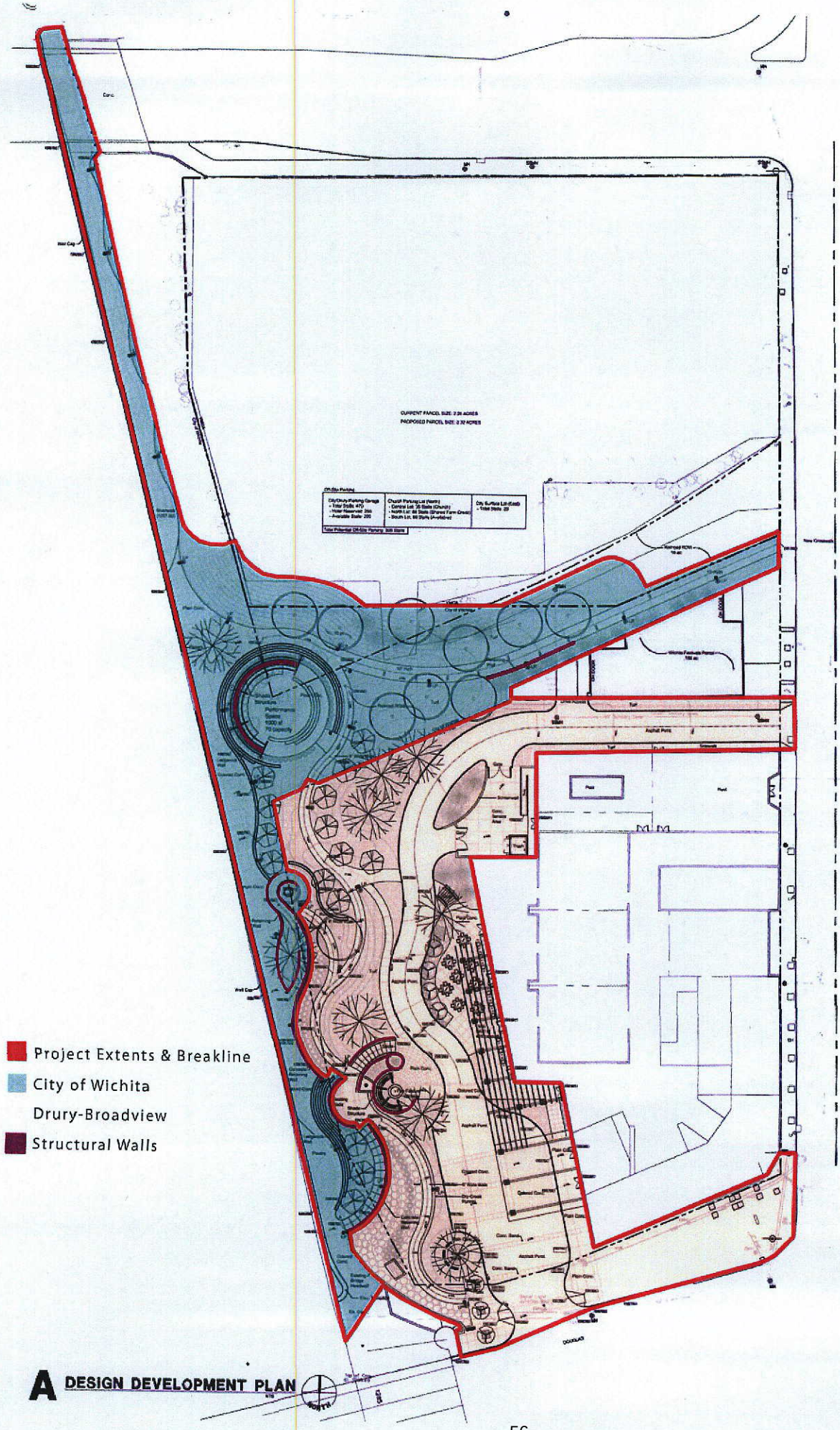
Billing and Additional Work:

Invoices will be submitted monthly in proportion to the percent complete of the project. For services outside the scope of this agreement, work will be performed on hourly rate or a mutually agreed upon lump sum. Services outside the scope of the contract shall be authorized by the Owner prior to beginning any work.

We have provided an acceptance block below for signature. If this proposal is acceptable to you, please sign in the appropriate space provided and return one (1) original to my attention. After we have resolved any modifications to the scope of work proposed for the project and a subsequent adjustment to the fee, we will convert this proposal letter to either a standard AIA (American Institute of Architects) Contract or Standard City Contract as our formal agreement. This letter will become an attachment to the formal Contract.

Again, we are looking forward to moving ahead with the next phase of the River Corridor Improvement Project and working with the City of Wichita to continue the success of the project. After you have had the opportunity to review this proposal we would like to schedule a meeting to discuss the final scope in greater detail.

No fees for construction observation or inspections have been included in this scope of work.



RIVER CORRIDOR PHASE 1c
DRURY-BROADVIEW
WICHITA - KANSAS

LAWKINSDON Architecture

DESIGN DEVELOPMENT PLAN

SHEET TITLE

PRINTS ISSUED

DATE	PURPOSE	NO.
1	FOR REVIEW	
1	FOR REVIEW	
2	FOR REVIEW	
4	FOR REVIEW	

SA2

Revised July 17, 2009

Agenda Item No. III-3

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: East Bank River Corridor Improvements, north of Douglas (District VI)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the design concept and supplemental agreement.

Background: On October 7, 2008, the City Council approved a project to improve the east bank of the Arkansas River adjacent to the Broadview Hotel between Douglas and the 1st Street Bridge. On November 4, 2008, the City Council approved a supplemental agreement with Law/Kingdon, Inc. to develop design concepts for the project. Law/Kingdon, Inc. designed previous riverbank corridor improvements including the Keeper Plaza and riverbank improvement immediately north of 1st Street. A new supplemental agreement has been prepared that authorizes Law/Kingdon to prepare construction plans.

Analysis: The proposed project consists of new sheet piling at the river edge with a concrete cap, bike/pedestrian path improvements, ornamental lighting, retaining walls and landscaping. In addition, plans for plazas and a shade structure will be prepared that can be bid as an add alternate.

Financial Considerations: The authorized total project budget is $2,000,000. Payment to Law/Kingdon for this supplemental agreement for construction plans will be on a lump sum basis of $85,500. Funding is available within the approved budget. ~~The funding source is General Obligation bonds~~. ***The budget approved on October 7, 2008, provided for General Obligation bond funding. The project has since been identified by the Kansas Secretary of Commerce as eligible for STAR bonds.***

Goal Impact: This project addresses the Efficient Infrastructure and Quality of Life goals by improving part of the Arkansas River Corridor.

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 design concept, approve the supplemental agreement and authorize the necessary signatures.

Attachments: Supplemental agreement.

Agenda Item No. III-4.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Intrust Bank Arena Wayfinding Signs (Districts I, IV, & VI)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the proposed wayfinding signs project.

Background: On December 16, 2008, the City Council approved an agreement with Sedgwick County which provides County funding to install wayfinding signs for the Intrust Bank Arena with the work to be administered by the City. The City will own and maintain the signs. On May 12, 2009, the City Council approved an agreement with PEC, consultant engineers, to design the project.

Analysis: The signs will be located generally within the same boundaries for the existing wayfinding signs – Seneca, Kellogg, I-135 and Central. The project will include signs establishing a new Arena Neighborhood district, with specific direction to designated parking lots. Also included in the project are dynamic message signs (DMS; electronic message boards) at four designated Arena parking lots and freeway signs on both Kellogg and I-135. The highway signs are being coordinated with and approved by the Kansas Department of Transportation. The Council is being asked to review this project to approve the project design as the City will have maintenance responsibilities in the future.

Financial Considerations: The project budget is $850,000. Funding source is Sedgwick County.

Goal Impact: The project addresses the Efficient Infrastructure and Vibrant Downtown Goals by improving traffic flow to the Intrust Bank Arena.

Legal Considerations: None.

Recommendation/Action: It is recommended that the City Council approve the wayfinding project design.

Attachments: None.

Agenda Item No. III-5.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: I-235 By-Pass and 13th Street Floodway Crossing (Districts V & VI)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the design project and agreement.

Background: On March 10, 2009, the City Council approved the design concept and authorized the issuance of a request for proposal to provide consultant engineering services for a bridge across the Wichita-Valley Center Floodway connecting the I-235 By-pass to 13th Street. A major part of the design services will be a required break-in-access study that will need the approval of Federal Highway Administration in order for the project to proceed.

Analysis: The Staff Screening and Selection Committee met on May 27, 2009, to interview two consultants (HNTB & Parsons Brinckerhoff). The committee selected the team of HNTB and PEC based on their recognition of all aspects of the scope of the project. The proposed agreement between the City and HNTB/PEC team provides for preliminary engineering of a floodway/I-235 crossing between Central and Zoo Boulevard for northbound I-235 to westbound 13th Street traffic and east bound 13th Street to southbound I-235 traffic. This phase of the project will develop concepts and criteria necessary to gain approval of the Federal Highway Administration (FHWA) for connection to I-235. Final design fees and plans will be developed through a separate agreement once FHWA approval is obtained.

Financial Considerations: A budget of $5,000,000 is requested to provide funding to complete the design of the project and to begin right-of-way acquisition. The current Capital Improvement Program (CIP) has $12.5 million programmed in 2010 for a floodway crossing. The proposed 2009-2018 CIP recommends $1 million in 2009 and $8 million in 2010. The HNTB/PEC fee totals $876,948. The funding source is Wichita's share of distributions from the County wide sales tax.

Goal Impact: The project addresses the Efficient Infrastructure goal by providing an additional connection from I-235 By-pass to west Wichita.

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

Recommendation/Action: It is recommended that the City Council approve the design project, approve the agreement, adopt the resolution and authorize the signing of state/federal agreements as required.

Attachments: CIP sheet, agreement and resolution.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

HNTB CORPORATION

for

I-235 FLOODWAY CROSSING

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 HNTB CORPORATION, party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

I-235 FLOODWAY CROSSING
(Phase I – Break in Access Study)
(Project No. 472 84817)

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing an I-235 Floodway Crossing 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 method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

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

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

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $100,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

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

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

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

III. <u>THE CITY AGREES</u>

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

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

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

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

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as

Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

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

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be based upon the ENGINEER'S actual costs and may be less than the estimated amount. Payment shall be full compensation for salary costs, expenses, overhead (overhead to be applied to straight-time salary cost only with premium overtime reimbursed at cost), profit, subcontracting and all other costs required in performing the work described herein. Overhead includes fringe benefits. The test of the allowability to be applied for this agreement shall be based on the provisions of the agreement and on the reasonableness of allocation of costs under generally accepted accounting principles and practices. Overhead costs shall be computed by multiplying an Overhead Factor times the actual salaries or wages paid to personnel assigned to the PROJECT. The Overhead Factor shall be **155.50** percent for the work required by this agreement. The ENGINEER shall submit to CITY the basis for the overhead rate prior to any payments.

Total payments to the ENGINEER for the preparation of the work associated with the PROJECT shall include the actual costs accruing in the performance of the professional services as outlined in this agreement which are estimated to amount to **$788,458.00** plus a fixed fee for profit of **$90,056.00** so that the total payments shall not exceed the sum of **$876,948.00** and shall generally be in accordance with the estimate provided as Attachment C. Profit shall not be applied to subcontractors, i.e., landscape architectural services, geotechnical services, etc.; or to direct expenses such as plan reproduction, CAD system services, etc.

During the progress of work covered by this agreement, partial payments may be made to the ENGINEER at intervals of one calendar month. The progress billings shall be supported by documentation acceptable to the City Engineer which shall include a project bar chart or other suitable progress chart indicating progress on the PROJECT and a record of the time period to complete the work, the time period elapsed, and the time period that remains to complete the work. Billings submitted during the progress of the work will be paid on the basis of the costs accrued to the PROJECT plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs. Accumulated partial payments for the PROJECT shall also be based on milestones in Exhibit A and shall not exceed eighty-five percent (85%) of the total fees for services prior to satisfactory completion of all work required by this agreement. The major tasks and accumulated partial payment amounts are listed below:

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, or because the services of the ENGINEER are unsatisfactory; PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the

services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

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

HNTB CORPORATION

_____

(Name & Title)

ATTEST:

_____

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-223

A RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE TO CONSTRUCT A FREEWAY INTERCHANGE AT THE I-235 FREEWAY AND 13TH STREET (472-84817).

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

SECTION 1: That the City of Wichita finds it necessary to make certain related improvements as follows:

The design, acquisition of right-of-way and construction of a freeway interchange.

SECTION 2: The total cost is estimated not to exceed $5,000,000, exclusive of the costs of interest on borrowed money, with the total paid by the issuance of bonds by the City of Wichita at large.

SECTION 3: That the advisability of said improvements is established as authorized by K.S.A. 13-1024c and 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 publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

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	2. Initiating Division	3. Date	4. Project Description & Location
Public Works	Eng	6/19/2009	I-235 Flyover at 13th

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
F-		2009	

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

12. Project Cost Estimate

ITEM	GO	SA	LST	TOTAL
Right of Way				
Paving, grading & const.			$5,000,000	$5,000,000
Bridge & Culverts				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
Bike Path				
Totals			$5,000,000	$5,000,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

Design and Right-of-Way

472-84817

13. Recommendation: Approve the project, agreement, resolution

Division Head	Department Head	Budget Officer	City Manager
Jim Aenoen	Cathy M. Con	Date	Date

SCOPE OF SERVICES

I-235 Floodway Crossing
Wichita Project No. FP930033

Phase I – Break in Access Study

Task 1. Traffic Engineering

1.1 Break in Access

1.1.1 Traffic Study – Previously developed AM and PM peak hour VISSIM and Synchro models of I-235 / Floodway Crossing will be used and updated to include the 13th St. / Ridge Rd. intersection as well as the north-facing ramps at the Kellogg / I-235 interchange. The final model limits will be I-235 from the north-facing ramps of Kellogg to and including the Zoo Blvd. interchange and 13th St. from Ridge Rd. to the proposed flyover. The entire Central interchange and the Zoo/Windmill intersection will also be included. One alternative (likely a full-access option) in addition to the four previously developed alternatives (Existing, No-Build, Build with CD roads, Build without CD roads) will be analyzed. Traffic projections will be extended using an annual growth rate from 2035 to a 2040 design year and coordinated with projections at Kellogg / I-235. KDOT will have an opportunity to review the simulation models.

1.1.2 Break in Access Report – Prepare a report that answers the eight questions required by KDOT and FHWA for a Break in Access Study as outlined in KDOT's Standard Operating Manual dated March 1, 1999. The report will also include an appended traffic technical report summarizing the traffic study. Coordinate with FHWA on an ongoing basis.

1.2 Design support to Highways to determine geometry at the 13th St./Ridge Rd. intersection and locations where the flyover will connect to the existing roadway network on I-235 and 13th St. Provide support on lane geometrics and storage bay needs for concept design.

1.3 Provide one 3-D video of VISSIM model to be used at a design council and/or public meeting. Overpasses and signals will be shown in three dimensions. Buildings and landscaping will be shown on a two-dimensional background aerial.

1.4 Attend bi-weekly internal coordination meetings (5 meetings assumed).

1.5 Attend monthly core meetings (3 meetings assumed).

1.6 Perform monthly task and quality reviews (3 reviews assumed).

Task 2. Roadway Concept Design

2.1 Data collection and coordination.

2.2 Process field surveys and develop DTM for use in developing cross sections and grading limits.

2.3 Establish Design Criteria.

2.4 Develop Typical Sections based on Design Criteria.

2.5 Develop 13th St./I-235 Interchange improvement alternatives. (Assumes 3 alternatives).

2.6 Develop 13th St. and Ridge Rd. improvement alternatives.

2.7 Develop 13th St./Ridge Rd. and 13th St./North Shore Blvd. Intersection improvement alternatives.

2.8 Develop Hoover Rd., Lakewind St., and Bayshore Dr. improvement alternatives.

2.9 Refine geometry for preferred improvement alternative.

2.10 Develop superelevation transitions for preferred improvement alternative.

2.11 Model footprint of construction using the proposed typical sections and geometry and determine approximate limits of construction.

2.12 Delineate conceptual right of way and easement requirements in project drawings.

2.13 Revise right of way and easements based on City and KDOT review and comments.

2.14 Develop preliminary right of way strip map for use at public meetings.

2.15 Evaluate and delineate retaining wall locations.

2.16 Provide conceptual information and coordinate with KDOT in their efforts to evaluate environmental documentation required for the project.

2.17 Prepare preliminary sequence of construction.

2.18 Perform signing inventory and compile existing sign data (Assumes 1 trip to Wichita).

2.19 Prepare preliminary signing plans for interstate signing as large scale layouts. (Assumes 2 meetings in Topeka).

2.20 Prepare construction cost estimate for the proposed improvements.

2.21 Prepare memorandum documenting preferred plan for City to proceed with preliminary and final design.

2.22 Perform quality control reviews.

2.23 Prepare for and meet with City and KDOT to review plan alternatives, alignments, etc. (Assumes 3 meetings in Wichita).

2.24 Prepare for and meet with public at hearings and DAB meetings.

2.25 Prepare for and meet with the City's Design Council. (Assumes 2 meetings)

2.26 Develop preliminary plans at approximately 30% Completion.

2.27 Submit preliminary plans and attend review meeting with City and KDOT.

Task 3. Environmental Assessment

3.1 Obtain NWI Wetlands Mapping & Soils Mapping for corridor screening.

3.2 Prepare project specific NWI and Soils mapping for field review of alignment.

3.3 Prepare field review, wetland delineation USACE consultation for alignment.

3.4 Prepare jurisdictional determination for Floodway.

3.5 Prepare Waters of the US and Wetlands Report for PEC who prepares 404 permit.

3.6 Prepare Kansas Stream Guidance Report for PEC as required.

3.7 Conceptual mitigation and/or wetland banking review and narrative.

3.8 Obtain habitat mapping from KDWP and USFWS for T&E species likely to be present.

3.9 Field review and coordination with USFWS and KDWP for the T&E species.

3.10 Prepare Action Permit for KDWP, as required.

3.11 Prepare Biological Assessment for USFWS, as required.

3.12 Coordinate with both KDWP and USFWS for clearances or habitat mitigation compliance.

3.13 Complete Noise study to be included in the environmental categorical exclusion.

Task 4. Conceptual Drainage Design

4.1 Prepare request for drainage surveys.

4.2 Visit the project site to observe current drainage.

4.3 Prepare conceptual Drainage Area Maps for the project site hydrology.

4.4 Prepare conceptual design of Culverts including culvert type and size, without pipe profiles or drainage table.

4.5 Design conceptual extents of culvert Outlet Protection, only expected to include rock blankets (no basin or dissipaters anticipated), to determine R/W concerns.

4.6 Design conceptual Area / Median Drains including structure type and size, without pipe profiles or drainage table.

4.7 Calculations of the Pavement Drainage spread and determine inlet spacing.

4.8 Design conceptual Closed Drainage system inlets and manholes including structure type and size, without pipe profiles or drainage table.

4.9 Determine conceptual Ditch Protection for cost estimation purposes only.

4.10 Determine the bridge Deck Drainage inlet type and spacing.

4.11 Review the PEC modifications/proposed construction in floodway within the project limits.

4.12 Determine conflicts with existing utilities within the conceptual drainage design.

4.13 Provide storm water ditch design guidance to roadway designers, limited to dimensions and flowline elevation.

4.14 Determine approximate conceptual drainage related Quantities.

4.15 Drainage design management and supervision.

4.16 Attend monthly team meetings.

4.17 Conduct Quality Assurance / Quality Control reviews.

4.18 Prepare for two submittals.

4.19 Attend meetings after each submittal.

4.20 Respond to City/KDOT comments.

Task 5. <u>Conceptual Bridge Design</u>

5.1 Participate in the project design kickoff meeting with the HNTB design team, the City of Wichita, and the Kansas DOT. Develop Bridge Design Criteria that is specific to the bridge type proposed for this project.

5.2 Coordinate with lead roadway designers to collect and organize critical design geometry for use in bridge layout designs – including horizontal baselines, vertical profiles, pavement superelevations, and special transitions.

5.3 Prepare typical section sketch for each bridge.

5.4 Perform geometric studies to evaluate alternative pier layout configurations for each bridge.

5.5 Perform preliminary structural design calculations, as needed, to support key decisions for bridge member type and size, especially where

selections of member type and size is critical for bridge clearance or for long span accommodation.

5.6 Prepare vertical and horizontal clearance calculations.

5.7 Coordinate with the lead engineer for hydraulic design tasks for placement of piers relative to channel and levees. Assist with development of HAC's.

5.8 Prepare preliminary bridge Field Check plans.

5.9 Establish geometry and typical sections for retaining walls.

5.10 Establish criteria and provide options and recommendations for aesthetic treatment of bridges and retaining walls. Develop renderings for three pier treatments.

5.11 Provide structural input during aesthetic treatment development. Develop preliminary details for recommended aesthetic enhancements.

5.12 Prepare engineer's estimate of probable construction costs for the proposed bridges and retaining walls.

5.13 Perform day to day supervision of bridge tasks and provide documentation for discussions, meetings, phone calls, and record decisions made.

5.14 Attend internal and external project meetings with the HNTB design team, the City of Wichita, and the Kansas DOT.

5.15 Perform internal HNTB quality assurance review of the preliminary bridge plans and supporting documentation by independent senior engineer not directly involved with their creation.

Task 6. Public Involvement

6.1 Public Involvement Plan

In coordination with the client, the consultant will develop a public involvement plan that will serve as the master schedule and work plan for all public involvement activities, including public meetings, updates, stakeholder outreach and coordination. The public involvement plan will be closely coordinated with the technical work program and schedule.

6.2 Database

Establish a project database. The database will include contact information for elected officials, and stakeholders as well as those members of the public participating in the project plan via meetings, letters, phone calls and/or the internet. The database will be structured with appropriate sorts and queries, and will be the property of the client.

6.3 Points of Contact/Issues Identification and Management

All calls, emails and letters will be logged into a consultant-developed issues database so that types of callers, issues of concern and other variables, including their response, can be tracked. The consultant will provide a bi-monthly issues report. Reports will include a summary of media coverage, review of content of public and stakeholder comments and discussion of emerging or existing issues and themes.

6.3.1 Project Helpline

The consultant will establish and promote a toll-free hotline with voicemail capability. All calls will be logged into the consultant-developed database so that types of callers, issues of concern and other variables, including their response, can be tracked. Phone calls and messages will be answered within two business days after they are received. An engineer or other appropriate staff will address technical questions as necessary.

6.3.2 Establish Email Point of Contact for Project Information

An email link will be used, with incoming comments and questions forwarded for appropriate response and logged accordingly. The consultant will promote and maintain the publiccomments@hntb.com email address. Email inquires will be acknowledged upon receipt and responded to substantively within two business days.

6.4 Community Interviews

Conduct up to 20 phone interviews with elected officials, local community leaders, property owners and residents to: (1) determine current project understanding and issues; (2) identify local communication channels; (3) identify key audiences, stakeholders and participants; (4) identify potential areas of concern or special needs relative to the project and the community. Interviews will last approximately 20-30 minutes. Written summaries of interviews will be provided to client, and information and insights gathered will be incorporated into detailed public involvement plan. The Client will have final approval on the list of interviewees.

6.5 Project Newsletters

Create initial project newsletter outlining project, including study area, issues and how to give input. This newsletter will be mailed to the project database, or sent electronically, at the start of the project to also notify landowners that survey workers will be in the area collecting data. Update newsletter up to 1 time at key milestones to illustrate project progress, findings and ultimately, conclusions. Each newsletter will be

up to 11"x17", color, 4-page, folded, self-mailer. The final layout size will depend on the information to be distributed. The consultant will produce up to 200 of each issue. Electronic updates through email will also be utilized.

6.6 District Advisory Board Meetings

Meet with established District Advisory Boards within the project area to provide input and as an opportunity for a constructive dialogue relative to the project and/or specific project challenges. Two (2) DABs districts span this project area (DAB districts 5 and 6). Anticipate up to two (2) meetings with each the advisory board prior to the public meetings – Four (4) total meetings. Task includes setting agenda, meeting arrangements, materials, invitations, facilitation and documentation.

6.7 Individual Stakeholder Meetings

Meet with individual property owners to discuss property concerns on an as needed basis. Each meeting will last approximately one hour. For estimating purposes, it is anticipated that up to 20 individual meetings would need to be held. These meetings are meant to be informal, but a general information handout will be provided. HNTB will coordinate appointments and schedule meetings. A meeting summary will also be developed from each meeting along with an action list of any follow-up that team members or the City needs to complete.

6.8 Design Council Collaboration Meeting

Conduct two (2) meetings with the City's Design Council to develop the aesthetic look of the project. A visual preferencing exercise will be used in the meeting to work through specific design elements, as well as the approach to landscaping features. The meeting will be open to the public as an opportunity for residents to comment on the aesthetics of the project. Includes identification of participants, meeting arrangements, materials, invitations and facilitation. A meeting summary will also be developed along with an action list of any follow-up that team members or the City needs to complete.

6.9 Public Meetings

Plan and conduct up to two (2) public meetings. The first meeting will be to present the initial design concept and capture public feedback, and the second meeting will present the client's preferred alternative. A fact sheet handout will be created for each meeting. Both meetings will be an open house format scheduled for up to 2 hours each. Includes producing and sending meeting postcard notices, doorhangers,

appropriate media relations, as well as location arrangements, materials, staffing, exhibits, handouts and documentation.

6.10 Develop Information Content for City's Website

Create a visual identity and develop content for information pages that can be posted on the City's Public Works web page. Information would include a project overview, schedule and FAQs that could be updated as the project progresses.

6.11 Paid Advertising

Produce and place paid advertising to serve the following purposes: (1) to enhance participation in public meetings; (2) to inform the public of project status; (3) to invite public input into the process. Advertising media and messages will be determined based on the identification of critical participants in the process.

6.12 Media Relations

Serve as a resource for the City of Wichita in media relations throughout the study, assisting with message development, information, media releases and coordination. The Client will be responsible for approving and distributing all media advisories and/or news releases.

6.13 Compile Public Involvement Log

The PI Log is a record of all public involvement activities and documents provided to the City in a notebook or CD format for their records. The log will include the contact log, written comments and meeting summaries.

6.14 QA/QC Plan

Prepare and carry out a project-specific QA/QC plan, including approval protocols and standards; management responsibilities; resource management; production realization; measurement, analysis and improvement.

Task 7. Landscape Design

7.1 Prepare preliminary landscape concept and rendering.

7.2 Prepare for and attend preliminary concept meeting.

7.3 Prepare for and attend design charrette in Wichita.

7.4 Prepare 30% design plans in Phase I of project.

Task 8. Project Coordination

8.1 Project Management

Provide general project management, supervision and coordination of concept team activities.

8.2 Monthly Project Meetings

Prepare for, attend and document meetings with design team, KDOT, Federal Highway Administration and City of Wichita.

8.3 Quality Assurance/Subconsultant Coordination

Provide and monitor project quality control plan and coordination with PEC.

8.4 Project Reporting

Prepare progress reports and invoices.

PROJECT DELIVERABLES
Deliverables Provided by HNTB Corporation

To be provided by PEC

- Survey, including dtm information, existing Right of Way, existing utilities, topo information, existing drainage structure flowlines and sizes and edge of pavement, section corners and benchmarks.
- Utility Coordination with the ULCC.
- Floodway Drainage Study.

Traffic Engineering

- Prepare and submit Break in Access Report to City, KDOT and FHWA.
- VISSIM models

Roadway Concepts

Memorandum of alternatives (included in Break in Access Report)

- Typical Sections
- Design Criteria
- Summary of Three Concept Alternatives

30% plans (for the Preferred Alternative only)

- Title Sheet
- Typical Sections
- Preliminary plan and profile sheets of the I-235 Ramps
- Preliminary Right of Way
- Preliminary bridge layouts
- Preliminary construction sequencing plans
- Preliminary signing layouts
- Drainage area maps

- Preliminary landscaping plans

Preliminary cost estimate

Deliverables Provided by The City of Wichita and/or KDOT

- As-Built Information (Roadway and Bridges), including cross sections and geology data.
- KDOT Standard Drawings.
- Right of Entry onto private property for surveys if negotiations with property owners are unsuccessful.
- Additional traffic information as required.
- Timely review and documentation of review comments of project submittals.

Attachment A

I-235 Floodway Crossing
Fee Summary and Task Breakout
HNTB JOB NO. 48091
Phase I: Break in Access

Printed : 7/9/2009

Task Breakout: Manhours

FEE SUMMARY

Direct Labor	Manhours	Total
Task 1 - Traffic Analysis	700	$25,268
Task 2 - Roadway Concept Design	1530	$56,776
Task 3 - Environmental Assessment	444	$18,360
Task 4 - Conceptual Drainage Design	586	$22,360
Task 5 - Conceptual Bridge Design	1226	$56,302
Task 6 - Public Involvement	1254	$34,756
Task 7 - Landscape Design	235	$8,229
Task 8 - Project Coordination	225	$12,930
TOTAL DIRECT LABOR:	6,200	$234,981

Overhead on direct labor	155.50%	$365,395
Subtotal Labor and Overhead		$600,376
Fixed Fee		$90,056
Subtotal direct labor, overhead and fixed fee		$690,432

Expenses	Amount
PEC	$161,377
Printing/Plotting/Reproduction	$14,946
Travel and Subsistence	$11,759

SUBTOTAL EXPENSES: $188,082

TOTAL (Direct Labor, Overhead, Fixed Fee, and Expenses) **$878,514**

Exhibit B

REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be

canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Wichita Employees' Retirement and Police and Fire Retirement Systems Actuarial Valuation Reports (January 1, 2008 – December 31, 2008)

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendations: Receive and file the Actuarial Reports and approve the 2010 employer contribution rates.

Background: The Board of Trustees for both the Wichita Employees' Retirement (WER) System and the Police and Fire (P&F) Retirement System employ Milliman, Inc. to serve as technical advisor/consultant, supplying the Boards with required actuarial services and information pertaining to the Retirement Systems. The actuary recommends the mortality, interest rates, and other required actuarial tables; prepares an annual valuation of assets and liabilities; and makes an annual determination of the amount of contributions necessary to meet requirements for annuities and benefits, certifying the results to the Boards; and reviews the operating experience of the Retirement Systems as an evaluation of the adequacy of the recommended actuarial standards.

Analysis: The funding objective of the WER and P&F Retirement Systems is to establish and receive contributions, expressed as percents of active member pensionable payroll, which will remain approximately level from year to year, minimizing increases for future generations of citizens. This funding objective should be attainable so long as the benefits and the demographic make-up of members does not change materially, and experience assumptions are realized. The Retirement Systems are supported by: (1) member contributions; (2) City contributions; and (3) investment income from the Retirement Systems' assets.

1. The actuary's valuations state that for the fiscal year beginning January 1, 2010, the City's required contribution to the WER System is 8.4%. The City's required contribution to the P&F System is 20.8%. Contribution rates are stated as a percent of active member pensionable payroll. These rates are based on the benefit provisions and active member contribution rates in effect on December 31, 2008. Of the total dollar amount contributed to WER, 4.7% of the City contributions for Plan 3 (a defined contribution plan) are allocated to Plan 3 individual members' accounts.

2. The funded ratios (liabilities covered by assets) and employer (City) contribution rates for the WER and P&F Retirement Systems over the past five (5) years are shown below:

				Employer Contributions	
WER	Period Ending	Budget Year	Funded Ratios	Pension Trust	Pension Reserve
	December 31, 2004	2006	112.1%	4.7%	0.0%
	December 31, 2005	2007	110.6%	4.7%	0.0%
	December 31, 2006	2008	110.2%	4.7%	0.3%
	December 31, 2007	2009	110.5%	4.7%	0.8%

December 31, 2008	2010	100.1%	8.4%	0.0%

				Employer Contributions	
P&F	Period Ending	Budget Year	Funded Ratios	Pension Trust	Pension Reserve
	December 31, 2004	2006	99.8%	18.4%	0.0%
	December 31, 2005	2007	99.7%	17.5%	0.9%
	December 31, 2006	2008	101.2%	17.5%	0.9%
	December 31, 2007	2009	102.7%	17.5%	0.0%
	December 31, 2008	2010	95.1%	20.8%	0.0%

3. In summary, the actuary's reports reflect that the aggregate experience of the Retirement Systems during the twelve (12) months ended December 31, 2008 resulted in net losses for both WER and P&F, due mainly to unfavorable investment experience. When compared to the expected return of 7.75%, the return on the Systems' assets was approximately 36% lower than expected. Such a dramatic decline in the asset value results in a significant increase in the required contribution rates to the Systems.

Financial Considerations: In conjunction with the actuary's recommendation and in keeping with the City's current policy of maintaining level contribution rates, the Department of Finance recommends the City's contribution rates, expressed as a percent of active member pensionable payroll, increase from 5.5% to 8.4% for WER, and increase from 17.5% to 20.8% for P&F for the fiscal year 2010.

Goal Impact: The Internal Perspective is impacted through the fair presentation of the financial condition of the City's pension systems to the City Council, the citizens of Wichita, plan participants and other interested parties.

Legal Considerations: Under the Ordinances creating the two pension systems, the City is statutorily required to contribute the actuarially required contributions to the Retirement Systems.

Recommendation/Actions: It is recommended that the City Council receive and file the Wichita Employees' Retirement and Police and Fire Retirement Systems' Actuarial Valuation Reports (January 1, 2008 – December 31, 2008) as submitted, and approve the 2010 employer retirement fund contribution rates.

Attachments: Wichita Employees' Retirement System *Actuarial Valuation Report* as of December 31, 2008 and Police and Fire Retirement System of Wichita, Kansas, *Actuarial Valuation Report* as of December 31, 2008.

POLICE AND FIRE RETIREMENT SYSTEM OF WICHITA, KANSAS

ACTUARIAL VALUATION REPORT AS OF DECEMBER 31, 2008

Prepared by:

Milliman, Inc.
1120 South 101st Street, Suite 400
Omaha, NE 68124-1088

Police and Fire Retirement System of Wichita, Kansas
Actuarial Valuation Report
as of December 31, 2008

Table of Contents

SECTIONS	Page
Actuarial Certification Letter	
Section 1 – Board Summary	1
Section 2 – Scope of the Report	8
Section 3 – Assets	9
Table 1 – Analysis of Net Assets at Market Value	10
Table 2 – Summary of Changes in Net Assets	11
Table 3 – Development of Actuarial Value of Assets	12
Section 4 – System Liabilities	13
Table 4 – Present Value of Future Benefits (PVFB)	14
Table 5 – Actuarial Liability	15
Section 5 – Employer Contributions	16
Table 6 – Derivation of Unfunded Actuarial Liability Contribution Rate	17
Table 7 – Derivation of Normal Cost Rate	18
Table 8 – Employer Contribution Rates	19
Table 9 – Historical Summary of City Contribution Rates	20
Table 10 – Derivation of System Experience Gain/(Loss)	21
Section 6 – Accounting Information	22
Table 11 – Required Supplementary Information Schedule of Funding Progress	23
Table 12 – Required Supplementary Information Schedule of Employer Contributions	24
Table 13 – Solvency Test	25

APPENDICES

A. Summary of Membership Data	26
B. Summary of Benefit Provisions	46
C. Actuarial Cost Method and Assumptions	50
D. Glossary of Terms	56

Milliman

This work product was prepared solely for the Police and Fire Retirement System of Wichita, Kansas for the purposes described herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work.

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milliman.com

April 6, 2009

The Board of Trustees
Police and Fire Retirement System of Wichita, Kansas
City Hall, 12th Floor
Wichita, KS 67202

Dear Members of the Board:

At your request, we have performed an annual actuarial valuation of the Police and Fire Retirement System of Wichita, Kansas as of December 31, 2008 for determining the contribution rate for fiscal year 2010. The major findings of the valuation are contained in this report. This report reflects the benefit provisions in effect as of December 31, 2008. There was no change in plan provisions or actuarial assumptions from the prior valuation.

In preparing this report, we relied, without audit, on information (some oral and some written) supplied by the System's staff. This information includes, but is not limited to, plan provisions, member data and financial information. In our examination of these data, we have found them to be reasonably consistent and comparable with data used for other purposes. Since the valuation results are dependent on the integrity of the data supplied, the results can be expected to differ if the underlying data is incomplete or missing. It should be noted that if any data or other information is inaccurate or incomplete, our calculations may need to be revised.

On the basis of the foregoing, we hereby certify that, to the best of our knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted principles and practices which are consistent with the Actuarial Standards of Practice promulgated by the Actuarial Standards Board (ASB) and the applicable Guides to Professional Conduct, amplifying Opinions and Supporting Recommendations of American Academy of Actuaries.

We further certify that all costs, liabilities, rates of interest and other factors for the System have been determined on the basis of actuarial assumptions and methods which are individually reasonable (taking into account the experience of the System and reasonable expectations of future experience); and which, in combination, offer our best estimate of anticipated experience affecting the System. Nevertheless, the emerging costs will vary from those presented in this report to the extent actual experience differs from that projected by the actuarial assumptions. The Board of Trustees has the final decision regarding the appropriateness of the assumptions and adopted them as outlined in Appendix C.

Future actuarial measurements may differ significantly from the current measurements presented in this report due to such factors as the following: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period or additional cost or contribution requirements based on the System's funded status); and changes in plan provisions or applicable law. Due to the limited scope of our assignment, we did not perform an analysis of the potential range of future measurements.

Actuarial computations presented in this report are for purposes of determining the actuarial contribution rates for funding the System. Actuarial computations presented in this report under GASB Statements No. 25 and 27 are for purposes of fulfilling financial accounting requirements. The computations prepared for these two purposes may differ as disclosed in our report. The calculations in the enclosed report have been made on a basis consistent with our understanding of the System's funding requirements and goals, and of GASB Statements No. 25 and 27. Determinations for purposes other than these requirements may be significantly different from the results contained in this report. Accordingly, additional determinations may be needed for other purposes.

Milliman's work product was prepared exclusively for the Police and Fire Retirement System of Wichita, Kansas for a specific and limited purpose. It is a complex, technical analysis that assumes a high level of knowledge concerning the Police and Fire Retirement System of Wichita, Kansas operations, and uses data from the Police and Fire Retirement System of Wichita, Kansas, which Milliman has not audited. It is not for the use or benefit of any third party for any purpose. Any third party recipient of Milliman's work product who desires professional guidance should not rely upon Milliman's work product, but should engage qualified professionals for advice appropriate to its own specific needs.

We would like to express our appreciation to Barbara Davis, Pension Manager, and to members of her staff, who gave substantial assistance in supplying the data on which this report is based.

I, Patrice A. Beckham, F.S.A. am a member of the American Academy of Actuaries and a Fellow of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

I, Brent A. Banister, F.S.A. am a member of the American Academy of Actuaries and a Fellow of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

We herewith submit the following report and look forward to discussing it with you.

Respectfully submitted,

MILLIMAN, INC.

Patrice Beckham

Patrice A. Beckham, F.S.A.
Consulting Actuary

Brent A. Banister, F.S.A.
Consulting Actuary

SECTION 1

BOARD SUMMARY

OVERVIEW

This report presents the results of the December 31, 2008 actuarial valuation of the Police and Fire Retirement System of Wichita, Kansas (WPF). The primary purposes of performing a valuation are to:

- determine the employer contribution rates required to fund the System on an actuarial basis,
- disclose asset and liability measures as of the valuation date,
- determine the experience of the System since the last valuation date, and
- analyze and report on trends in System contributions, assets, and liabilities over the past several years.

There was no change in the benefit provisions or actuarial assumptions from the last valuation. The valuation results provide a "snapshot" view of the System's financial condition on December 31, 2008. The Plan experienced an overall loss for the plan year due to an investment return far below the expected rate. As a result, the System no longer has an actuarial surplus (actuarial assets in excess of actuarial liability). The System had a surplus of $13 million in the 2007 valuation, but the 2008 valuation reflects an unfunded actuarial liability of $24 million. A detailed analysis of the change in the unfunded actuarial liability/(surplus) from December 31, 2007 to December 31, 2008 is shown on page 3.

ASSETS

As of December 31, 2008, the System had total assets, when measured on a market value basis, of $356 million. This was a decrease of $148 million from the December 31, 2007 figure of $504 million. The market value of assets is not used directly in the calculation of the City's contribution rate. An asset valuation method, which smoothes the effect of market fluctuations, is used to determine the value of assets used in the valuation, called the "actuarial value of assets". The actuarial value of assets is equal to the expected value (calculated using the actuarial assumed rate of 7.75%) plus 25% of the difference between the market and expected value. See Table 3 on page 12 for a detailed development of the actuarial value of assets. As a result of the severe market decline in 2008, the actuarial value is 33% higher than the actual market value

The components of the change in the market and actuarial value of assets for the Retirement System (in millions) are set forth below:

	Market Value ($M)	Actuarial Value ($M)
Assets, December 31, 2007	$503.9	$480.8
• City and Member Contributions	14.8	14.8
• Benefit Payments and Refunds	(21.5)	(21.5)
• Investment Loss (net of expenses)	(141.1)	(1.8)
Assets, December 31, 2008	$356.1	$472.3

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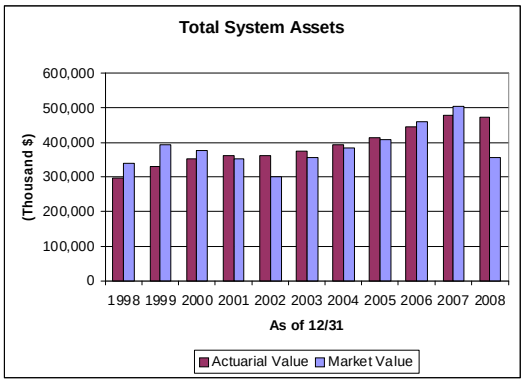
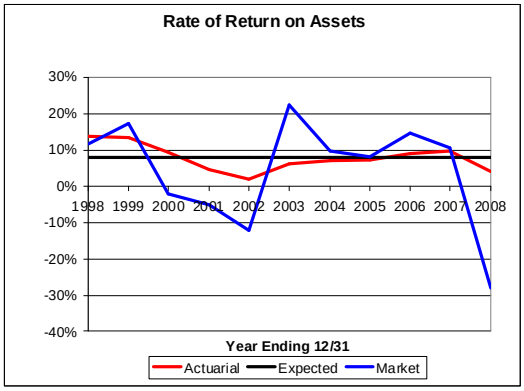
The annualized dollar-weighted rate of return, measured on the actuarial value of assets, was about 0% and, measured on the market value of assets, was approximately -28%. The actuarial value of assets as of December 31, 2008 was $472 million, which represents an actuarial loss of about $39 million. Due to the asset smoothing method, there remains a $116 million difference between the actuarial and market value of assets. As this deferred investment loss flows through the asset smoothing method in future valuations, the deferred losses will be recognized, absent any offsetting favorable investment experience.



The actuarial value of assets has both exceeded the market value and been less than the market value of assets, which is expected when using a smoothing method.



The rate of return on the actuarial value of assets has been less volatile than the market value return, which is the main reason for using an asset smoothing method.

LIABILITIES

The actuarial liability is that portion of the present value of future benefits that will not be paid by future employer normal costs or member contributions. The difference between this liability and the asset value at the same date is referred to as the unfunded actuarial liability (UAL), or (surplus) if the asset value exceeds the actuarial liability. The unfunded actuarial liability will be reduced if the employer's contributions exceed the employer's normal cost for the year, after allowing for interest earned on the previous balance of the unfunded actuarial liability. Benefit improvements, experience gains and losses, and changes in actuarial assumptions and procedures will also impact the total actuarial liability and the unfunded portion thereof.

The Actuarial Liability and Unfunded Actuarial Liability for the System as of December 31, 2008 are:

Actuarial Liability	$496,561,146
Actuarial Value of Assets	472,345,191
Unfunded Actuarial Liability/(Surplus)	24,215,955

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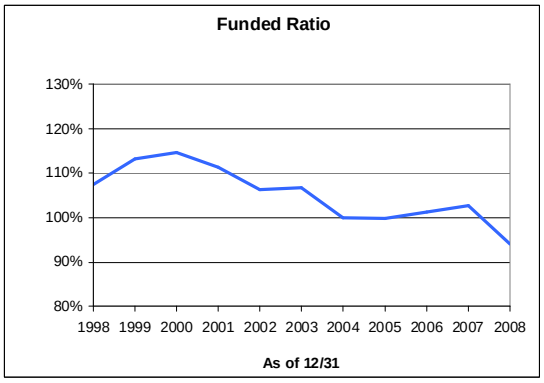
Between December 31, 2007 and December 31, 2008, the change in the unfunded actuarial liability for the System was as follows (in millions):

	$(M)
UAL, December 31, 2007	(12.7)
+ Normal cost for year	13.9
+ Assumed investment return for year	0.5
- Actual contributions (member + City)	14.8
- Assumed investment return on contributions	0.6
= Expected Unfunded Actuarial Liability, December 31, 2008	(13.7)
+ Change from amendments	0.0
+ Change from assumption changes	0.0
= Expected UAL after changes	(13.7)
Actual UAL, December 31, 2008	24.2
Experience gain/(loss) (Expected UAL – Actual UAL)	(37.9)

The experience loss for the 2008 plan year of $38 million was the result of an actuarial loss of $39 million on System assets (actuarial value) and a small actuarial gain of $1 million on System liabilities.

Analysis of the unfunded actuarial liability strictly as a dollar amount can be misleading. Another way to evaluate the unfunded actuarial liability and the progress made in its funding is to track the funded status, the ratio of the actuarial value of assets to the actuarial liability. This information for recent years is shown below (in millions). Historical information is shown in the graph following the chart.

	12/31/04	12/31/05	12/31/06	12/31/07	12/31/08
Actuarial Liability ($M)	$393.4	$414.0	$439.2	$468.1	$496.6
Actuarial Value of Assets ($M)	392.5	412.8	444.5	480.8	472.3
Funded Ratio (Actuarial Value)	99.8%	99.7%	101.2%	102.7%	95.1%
Funded Ratio (Market Value)	97.4%	98.2%	104.9%	107.6%	71.7%



Over the past decade, the funded status of the Retirement System has both improved and declined. The assumption changes and actuarial loss in 2004 caused the funded ratio to decline sharply. The strong asset performance in 2006 and 2007 returned the System to a surplus funded situation. The significant decline in the stock market in 2008 again dropped the funded ratio. If the stock market does not experience a bounceback in 2009 and 2010, the recognition of the deferred investment losses will lower the System's funded status significantly.

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As mentioned earlier in this report, due to the asset smoothing method there is about a $116 million difference between the actuarial and market value of assets. To the extent there is not favorable investment experience to offset the deferred losses, the $116 million loss will be recognized in future years and the System's funded status will decline. The System's funded status will be heavily dependent on investment returns in the next few years.

CONTRIBUTION RATES

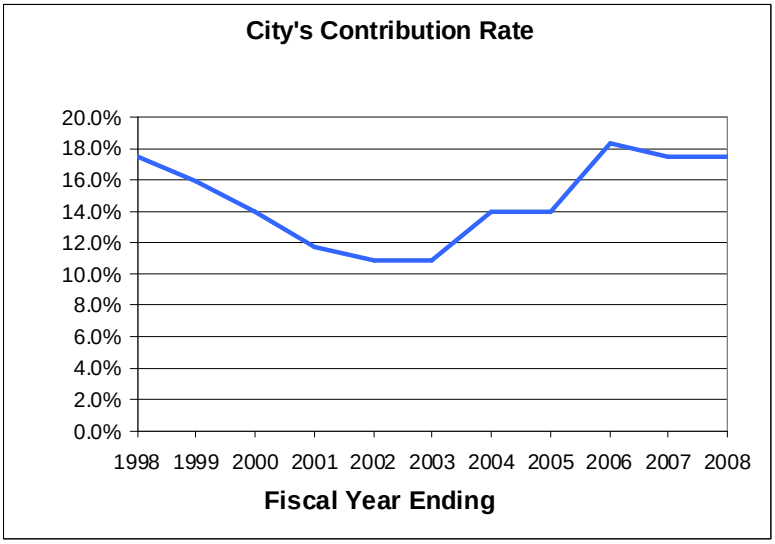
Generally, contributions to the System consist of:

- a "normal cost" for the portion of projected liabilities allocated to service of members during the year following the valuation date, by the actuarial cost method,
- an "unfunded actuarial liability or (surplus) contribution" for the excess of the portion of projected liabilities allocated to service to date over the actuarial value of assets.

Contribution rates are computed with the objective of developing costs that are level as a percentage of covered payroll. The contribution rate for fiscal year 2010 is computed based on the December 31, 2008 actuarial valuation.

As of December 31, 2008, the actuarial liability exceeds the actuarial value of assets so an unfunded actuarial liability (UAL) exists. In accordance with State statutes, the UAL is to be amortized over a rolling 20-year period. Amortization of the UAL results in a contribution in addition to the normal cost rate. This valuation indicates the City contribution should be 20.8% of pay (18.1% employer normal cost rate plus 2.7% UAL contribution).

A summary of the City's historical contribution rate for the system is shown below:



COMMENTS

The stock market performance in 2008 was the worst year since 1931. Most public retirement plans are feeling the pain of significant asset losses. The investment return on the market value of assets for 2008 was about -28%. When compared to the expected return of +7.75%, the assets were around 36% lower than expected. Such a dramatic drop in the asset value results in a significant increase in the contribution to the

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System. When the fixed nature of the employee contribution rate is factored into the calculation, the impact on the employer contribution amount is even more significant.

Retirement plans use several mechanisms to provide more stability in the contribution levels. These include an asset smoothing method, which smoothes out the peaks and valleys of investment returns and amortization of any actuarial gains or losses (WPF amortizes these over a 20-year period). The WPF System utilizes an asset smoothing method that determines the actuarial value of assets as 75% of the expected value (using the 7.75% actuarial assumed rate of return) and 25% of actual market value. The rate of return on the actuarial value of assets for the 2008 plan year was about 0% as compared to -28% on the pure market value.

Given the size of the investment loss in 2008, the increase in the contribution level could not be avoided, even with the use of these "stability mechanisms". The normal cost remained relatively stable as a percentage of payroll, but the System went from surplus assets in the 2007 valuation to an unfunded actuarial liability in the 2008 valuation. The payment on the UAL is 2.7% of pay. Along with the employer normal cost rate of 18.1%, the resulting actuarial contribution rate is 20.8% of pay. The market experience thus far in 2009 has also been negative. These losses, in addition to those from 2008 that are not yet recognized, may significantly reduce the System's funded status and increase the actuarial contribution rate in future valuations. The City should be prepared for significantly higher contribution rates in the next few years, and perhaps longer depending on future rates of return.

As mentioned above, the System utilizes an asset smoothing method in the valuation process. While this is a common procedure for public retirement systems, it is important to identify the potential impact of the deferred (unrecognized) investment experience. The key valuation results from the December 31, 2008 actuarial valuation are shown below using both the actuarial value of assets and the pure market value.

	Using Actuarial Value of Assets	**Using Market Value of Assets**
Actuarial Liability	$496,561,146	$496,561,146
Asset Value	472,345,191	356,056,234
Unfunded Actuarial Liability	$ 24,215,955	$140,504,912
Funded Ratio	95.1%	71.7%
Normal Cost Rate	25.1%	25.1%
UAL Contribution Rate	2.7%	15.7%
Total Contribution Rate	27.8%	40.8%
Employee Contribution Rate	(7.0%)	(7.0%)
Employer Contribution Rate	20.8%	33.8%

The asset smoothing method impacts only the timing of recognizing the actual market experience on the assets. Due to the dramatically negative return in 2008 (about -28%), the actuarial value of assets exceeds the pure market value by 33%. If there are not significantly higher returns consistently over the next few years, the $116 million of deferred investment experience will be recognized and the ultimate impact on the employer contribution rate can be expected to be similar to the column shown above using market value of assets.

The following graph shows the expected increase in the employer contribution rate in future years if 7.75% is earned in all future years and the full actuarial contribution rate is made by the City in all future years.

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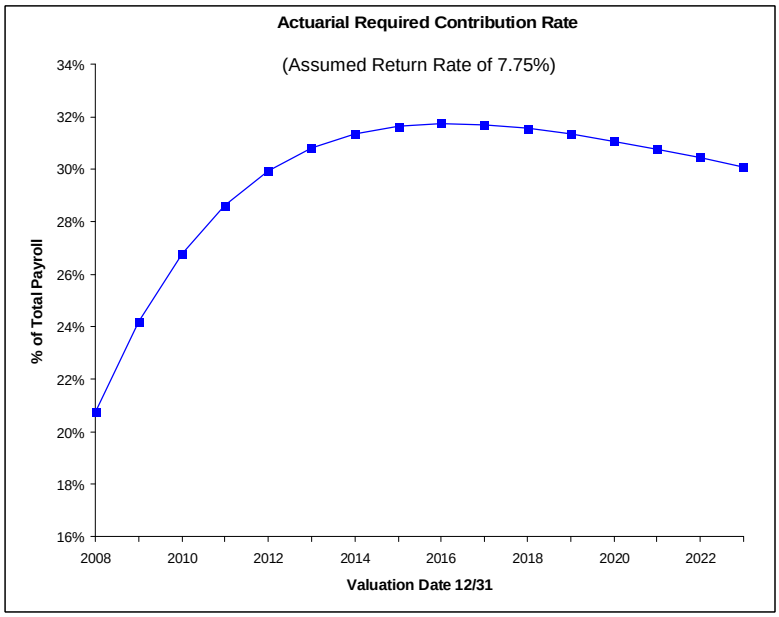

The challenge at this point in time is that the length and final depth of the market decline is unknown. Historically, markets have recovered and, if this happens, it should help offset some of the current deferred losses. The use of an asset smoothing method defers some of the investment experience from 2008 to later years. Consequently, absent a significant and sustained recovery in the market, part of the unrecognized loss from 2008 ($116 million) will be reflected in the December 31, 2009 and subsequent years' valuations. Actual investment returns over the next few years will determine exactly how much the System's funding will be affected and the magnitude of the increase in the unfunded actuarial liability and the contribution rate. The negative return in 2008 has had a substantial impact on the System's long-term funding outlook. While the System has sufficient assets to pay benefits for many years into the future, the long-term actuarial soundness of the System will be impacted if returns do not bounce back, contributions increase, or a combination of both.

We conclude this Board Summary with the following exhibit which compares the principal results of the current and prior actuarial valuations.

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SUMMARY OF PRINCIPAL RESULTS

1. PARTICIPANT DATA	12/31/2008 Valuation	12/31/2007 Valuation	% Change
Number of:			
Active Members			
Police	625	640	(2.3)%
Fire	451	452	(0.2)%
Total	1,076	1,092	(1.5)%
Retired Members and Beneficiaries	840	833	0.8%
Inactive Members	38	35	8.6%
Total Members	1,954	1,960	(0.3)%
Annual Valuation Payroll of Active Members			
Police	$ 36,468,890	$ 34,859,220	4.6%
Fire	24,483,548	23,301,156	5.1%
Total	60,952,438	58,160,376	4.8%
Annual Retirement Payments for Retired Members and Beneficiaries	$ 19,492,053	$ 18,777,464	3.8%
2. ASSETS AND LIABILITIES			
Total Actuarial Liability	$ 496,561,146	$ 468,114,640	6.1%
Market Value of Assets	356,056,234	503,915,248	(29.3)%
Actuarial Value of Assets	472,345,191	480,820,001	(1.8)%
Unfunded Actuarial Liability/(Surplus)	$ 24,215,955	$ (12,705,361)	(290.6)%
Funded Ratio	95.1%	102.7%	(7.4)%
3. EMPLOYER CONTRIBUTION RATES AS A PERCENT OF PAYROLL			
Normal Cost	25.1%	24.6%	2.0%
Member Financed	7.0%	7.1%	(1.4)%
Employer Normal Cost	18.1%	17.5%	3.4%
Amortization of Unfunded Actuarial Liability or (Surplus)	2.7%	(1.5)%	(280.0)%
Employer Contribution Rate			
Minimum (Normal Cost Rate)	NA	17.5%	NA
With Amortization (Credit)/Charge	20.8%	16.0%	30.0%

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SECTION 2

SCOPE OF THE REPORT

This report presents the actuarial valuation of the Police and Fire Retirement System of Wichita, Kansas (WPF) as of December 31, 2008. This valuation was prepared at the request of the System's Board of Trustees. The report is based on plan provisions and actuarial assumptions that are unchanged from last year.

Please pay particular attention to our cover letter, where the guidelines employed in the preparation of this report are outlined. We also comment on the sources and reliability of both the data and the actuarial assumptions upon which our findings are based. Those comments are the basis for our certification that this report is complete and accurate to the best of our knowledge and belief.

A summary of the findings which result from this valuation is presented in the previous section. Section 3 describes the assets and investment experience of the System. Sections 4 and 5 describe how the obligations of the System are to be met under the actuarial cost method in use. Section 6 includes the information required for the financial reporting standards established by the Governmental Accounting Standards Board (GASB).

This report includes several appendices:

- Appendix A — Schedules of valuation data classified by various categories of members.
- Appendix B — A summary of the current benefit structure, as determined by the provisions of governing law on December 31, 2008.
- Appendix C — A summary of the actuarial methods and assumptions used to estimate liabilities and determine contribution rates.
- Appendix D — A glossary of actuarial terms.

SECTION 3

ASSETS

In many respects, an actuarial valuation can be thought of as an inventory process. The inventory is taken as of the actuarial valuation date, which for this valuation is December 31, 2008. On that date, the assets available for the payment of benefits are appraised. The assets are compared with the liabilities of the System, which are generally in excess of assets. The actuarial process then leads to a method of determining the contributions needed by members and the employer in the future to balance the System assets and liabilities.

Market Value of Assets

The current market value represents the "snapshot" or "cash-out" value of System assets as of the valuation date. In addition, the market value of assets provides a basis for measuring investment performance from time to time. At December 31, 2008, the market value of assets for the System was $356 million. Table 1 is a comparison, at market values, of System assets as of December 31, 2008, and December 31, 2007, in total and by investment category. Table 2 summarizes the change in the market value of assets from December 31, 2007 to December 31, 2008.

Actuarial Value of Assets

Neither the market value of assets, representing a "cash-out" value of System assets, nor the book values of assets, representing the cost of investments, may be the best measure of the System's ongoing ability to meet its obligations.

To arrive at a suitable value for the actuarial valuation, a technique for determining the actuarial value of assets is used which dampens swings in the market value while still indirectly recognizing market values. This methodology, first adopted in the December 31, 2002 valuation, smoothes market experience by recognizing 25% of the difference between the expected value (based on the actuarial assumption) and market value. Table 3 shows the development of the actuarial value of assets (AVA) as of December 31, 2008.

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TABLE 1

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

ANALYSIS OF NET ASSETS AT MARKET VALUE

	As of December 31, 2008		As of December 31, 2007	
	Amount ($ Millions)	% of Total	Amount ($ Millions)	% of Total
Cash & Equivalents	$ 0.2	0.1 %	$ 0.7	0.1 %
Government Securities	29.0	8.1	50.0	9.9
Corporate debt	47.7	13.4	43.8	8.7
Mortgage Backed Securities	61.7	17.3	57.0	11.3
Pooled Funds	41.5	11.7	67.3	13.4
Domestic Equity	107.3	30.1	178.5	35.4
International Equity	60.5	17.0	101.3	20.1
Real Estate	24.8	7.0	28.4	5.6
Securities Lending Collateral Pool	52.1	14.6	80.1	15.9
Other	0.5	0.1	0.4	0.1
Receivables	8.2	2.3	8.5	1.7
Liabilities	(77.4)	(21.7)	(112.1)	(22.2)
Total	$ 356.1	100.0 %	$ 503.9	100.0 %

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TABLE 2

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

SUMMARY OF CHANGES IN NET ASSETS DURING YEAR ENDED DECEMBER 31, 2008

(Market Value)

1. Market Value of Assets as of December 31, 2007	$	503,915,248
2. Contributions:		
a. Members	$	4,277,247
b. City		10,549,401
c. Other		0
d. Total [2(a) + 2(b) + 2(c)]	$	14,826,648
3. Investment Income		
a. Interest and Dividends	$	14,761,021
b. Net Depreciation in Fair Value		(154,488,930)
c. Commission Recapture		15,788
d. Securities Lending Income		785,527
e. Total [3(a) + 3(b) + 3(c) + 3(d)]	$	(138,926,594)
4. Expenditures		
a. Refunds of Member Contributions	$	493,516
b. Benefits Paid:		
(1) Pension and Death Benefits		19,039,301
(2) Back DROP Payments		2,013,670
c. Administrative Expenses		452,431
d. Investment Expenses		1,760,150
e. Total [4(a) + 4(b) + 4(c) + 4(d)]	$	23,759,068
5. Net Change [2(d) + 3(e) - 4(e)]	$	(147,859,014)
6. Market Value of Assets as of December 31, 2008 (1) + (5)	$	356,056,234

TABLE 3

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

DEVELOPMENT OF ACTUARIAL VALUE OF ASSETS

As of December 31, 2008

1. Actuarial Value of Assets as of December 31, 2007	$	480,820,001
2. Actual Contribution/Disbursements		
a. Contributions	$	14,826,648
b. Benefit Payments and Refunds		(21,546,487)
c. Net	$	(6,719,839)
3. Expected Value of Assets as of December 31, 2008 [(1) x 1.0775] + [(2c) x $(1.0775)^{.5}$]	$	511,108,177
4. Market Value of Assets as of December 31, 2008	$	356,056,234
5. Difference Between Market and Expected Values (4) - (3)	$	(155,051,943)
6. Actuarial Value of Assets as of December 31, 2008 (3) + [(5) x 25%]	$	472,345,191
7. Actuarial Value of Assets divided by Market Value of Assets (6) / (4)		132.7%
8. Market Value of Assets less Actuarial Value of Assets (4) - (6)	$	(116,288,957)

SECTION 4

SYSTEM LIABILITIES

In the previous section, an actuarial valuation was compared with an inventory process, and an analysis was given of the inventory of assets of the System as of the valuation date, December 31, 2008. In this section, the discussion will focus on the commitments of the System, which are referred to as its liabilities.

Table 4 contains an analysis of the actuarial present value of all future benefits (PVFB) for contributing members, inactive members, retirees and their beneficiaries.

The liabilities summarized in Table 4 include the actuarial present value of all future benefits expected to be paid with respect to each member. For an active member, this value includes the measurement of both benefits already earned and future benefits to be earned. For all members, active and retired, the value extends over benefits earnable and payable for the rest of their lives and for the lives of the surviving beneficiaries.

All liabilities reflect the benefit provisions in place as of December 31, 2008.

Actuarial Liability

A fundamental principle in financing the liabilities of a retirement program is that the cost of its benefits should be related to the period in which benefits are earned, rather than to the period of benefit distribution. An actuarial cost method is a mathematical technique that allocates the present value of future benefits into annual costs. In order to do this allocation, it is necessary for the funding method to "breakdown" the present value of future benefits into two components:

(1) that which is attributable to the past and

(2) that which is attributable to the future.

Actuarial terminology calls the part attributable to the past the "past service liability" or the "actuarial liability". The portion allocated to the future is known as the present value of future normal costs, with the specific piece of it allocated to the current year being called the "normal cost". Table 5 contains the calculation of actuarial liability for the System. The Entry Age Normal actuarial cost method is used to develop the actuarial liability.

TABLE 4

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

PRESENT VALUE OF FUTURE BENEFITS (PVFB)
AS OF DECEMBER 31, 2008

	Plans A and B	Plan C	Total
1. Active employees			
a. Retirement Benefit	$ 36,740,508	$ 307,058,982	$ 343,799,490
b. Pre-Retirement Death Benefit	3,009	4,422,428	4,425,437
c. Withdrawal Benefit	0	13,891,450	13,891,450
d. Disability Benefit	24,960	47,918,037	47,942,997
e. Total	$ 36,768,477	$ 373,290,897	$ 410,059,374
2. Inactive Vested Members	$ 0	$ 9,951,524	$ 9,951,524
3. Inactive Nonvested Members	$ 0	$ 0	$ 0
4. In Pay Members			
a. Retirees	$ 144,932,916	$ 18,077,830	$ 163,010,746
b. Disabled Members	19,475,696	23,893,042	43,368,738
c. Beneficiaries	18,950,924	3,308,815	22,259,739
d. Total	$ 183,359,536	$ 45,279,687	$ 228,639,223
5. Total Present Value of Future Benefits (1e) + (2) + (3) + (4d)	$ 220,128,013	$ 428,522,108	$ 648,650,121

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TABLE 5

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

ACTUARIAL LIABILITY
AS OF DECEMBER 31, 2008

	Plans A and B	Plan C	Total
1. Active employees			
a. Present Value of Future Benefits	$ 36,768,477	$ 373,290,897	$ 410,059,374
b. Present Value of Future Normal Costs	2,026,137	150,062,838	152,088,975
c. Actuarial Liability (1a) - (1b)	$ 34,742,340	$ 223,228,059	$ 257,970,399
2. Inactive Vested Members	$ 0	$ 9,951,524	$ 9,951,524
3. Inactive Nonvested Members	$ 0	$ 0	$ 0
4. In Pay Members			
a. Retirees	$ 144,932,916	$ 18,077,830	$ 163,010,746
b. Disabled Members	19,475,696	23,893,042	43,368,738
c. Beneficiaries	18,950,924	3,308,815	22,259,739
d. Total	$ 183,359,536	$ 45,279,687	$ 228,639,223
5. Total Actuarial Liability (1c) + (2) + (3) + (4d)	$ 218,101,876	$ 278,459,270	$ 496,561,146

SECTION 5

EMPLOYER CONTRIBUTIONS

The previous two sections were devoted to a discussion of the assets and liabilities of the System. A comparison of Tables 3 and 4 indicates that current assets fall short of meeting the present value of future benefits (total liability). This is expected in all but a completely closed fund, where no further contributions are anticipated. In an active system, there will almost always be a difference between the actuarial value of assets and total liabilities. This deficiency has to be made up by future contributions and investment returns. An actuarial valuation sets out a schedule of future contributions that will deal with this deficiency in an orderly fashion.

The method used to determine the incidence of the contributions in various years is called the actuarial cost method. Under an actuarial cost method, the contributions required to meet the difference between current assets and current liabilities are allocated each year between two elements: (1) the normal cost rate and (2) the unfunded actuarial liability contribution rate.

The term "fully funded" is often applied to a system in which contributions at the normal cost rate are sufficient to pay for the benefits of existing employees as well as for those of new employees. More often than not, systems are not fully funded, either because of past benefit improvements that have not been completely funded or because of actuarial deficiencies that have occurred because experience has not been as favorable as anticipated. Under these circumstances, an unfunded actuarial liability (UAL) exists. Likewise, when the actuarial value of assets is greater than the actuarial liability, a surplus exists.

Description of Contribution Rate Components

The Entry Age Normal (EAN) actuarial cost method is used for the valuation. Under this method, the normal cost for each year from entry age to assumed exit age is a constant percentage of the member's year by year projected compensation. The portion of the present value of future benefits not provided by the present value of future normal costs is the actuarial liability. The unfunded actuarial liability/(surplus) represents the difference between the actuarial liability and the actuarial value of assets as of the valuation date. The unfunded actuarial liability is calculated each year and reflects experience gains/losses.

In general, contributions are computed in accordance with a level percent-of-payroll funding objective. The contribution rates based on this December 31, 2008 actuarial valuation will be used to determine employer contribution rates to the Police and Fire Retirement System of Wichita, Kansas for fiscal year 2010. In this context, the term "contribution rate" means the percentage, which is applied to a particular active member payroll to determine the actual employer contribution amount (i.e., in dollars) for the group.

As of December 31, 2008, the valuation assets were less than the actuarial liability so an unfunded actuarial liability exists. State statutes require any unfunded actuarial liability in municipal police and fire retirement systems to be amortized over a rolling 20-year period. The amortization of the UAL results in an employer contribution that is more than the normal cost rate.

Contribution Rate Summary

In Table 6, the amortization payment related to the unfunded actuarial liability/(surplus), as of December 31, 2008, is developed. Table 7 develops the normal cost rate for the System. The derivation of the contribution rate for the City is shown in Table 8. Table 9 shows the historical summary of the City's contribution rates. Table 10 develops the experience gain/(loss) for the year ended December 31, 2008.

The rates shown in this report are based on the actuarial assumptions and cost methods described in Appendix C.

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TABLE 6

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

DECEMBER 31, 2008 VALUATION

DERIVATION OF UNFUNDED ACTUARIAL LIABILITY CONTRIBUTION RATE

1. Actuarial Accrued Liability	$	496,561,146	
2. Actuarial Value of Assets	$	472,345,191	
3. Unfunded Actuarial Liability/(Surplus)	$	24,215,955	
4. Payment (Adjusted to Mid-Year) to Amortize Unfunded Actuarial Liability/(Surplus) Over 20 Years *	$	1,655,344	
5. Total Projected Payroll for the Year	$	62,308,778	
6. Amortization Payment as a Percent of Payroll		2.7	%

* In accordance with State statutes, unfunded actuarial liability/(surplus) may be amortized over a rolling 20-year period. The Board has elected to use this period.

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TABLE 7

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

DECEMBER 31, 2008 VALUATION

DERIVATION OF NORMAL COST RATE

Normal Cost at December 31, 2008			
Service pensions	$	10,351,707	
Disability pensions		3,229,670	
Survivor pensions		315,861	
Termination benefits			
- Deferred service pensions		639,685	
- Return of member contributions		319,982	
Total Normal Cost	$	14,856,905	
Normal Cost Adjusted to Mid-Year	$	15,421,868	
Projected Payroll for Members Under Certain Retirement Age	$	61,511,175	*
Total Normal Cost Rate for Year		25.1%	

* Effective with the 12/31/05 valuation, this amount includes payroll for all Plan A members who are past certain retirement age under Plan A assumptions, but not under Plan C assumptions.

TABLE 8

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
EMPLOYER CONTRIBUTION RATES
FOR FISCAL YEAR
COMMENCING IN 2010

	Contribution Requirement as % of Payroll
Normal Cost	
Service pensions	17.5 %
Disability pensions	5.5 %
Survivor pensions	0.5 %
Termination benefits	
- Deferred service pensions	1.1 %
- Return of member contributions	0.5 %
Total Normal Cost	25.1 %
Unfunded Actuarial Liability	
Retired members and beneficiaries (1)	0.0 %
Active and former members (2)	2.7 %
Total UAL Contribution	2.7 %
Total Contribution Requirement	
Member Financed Portion (3)	7.0 %
City Financed Portion	20.8 %
Total	27.8 %

(1) Actuarial accrued liability for retired members and beneficiaries was fully funded as of December 31, 2008.

(2) The excess of the actuarial liability over actuarial value of assets is amortized as a level percent of active member payroll over a rolling 20-year period.

(3) The weighted average of member contribution rates: 8.0% for Plan A, 6.0% for Plan B, and 7.0% for Plan C.

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TABLE 9

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

HISTORICAL SUMMARY OF CITY CONTRIBUTION RATES

Contribution rates are computed in accordance with a level percent of payroll funding objective. As of December 31, 2008, the actuarial liability exceeds the actuarial value of assets and the System has unfunded actuarial liability (UAL). The UAL is amortized as a level percent of pay over a rolling 20-year period.

		City Contributions as Percents of Active Member Pensionable Payroll	
Valuation Date	**Fiscal Year**	**Funding Objective**	**Amortization (Credit)/Payment**
11/30/90	1992	23.4%	-%
11/30/91	1993	22.9	-
11/30/92	1994	23.3	-
11/30/93	1995	22.7	-
11/30/94	1996	22.6	-
12/31/95	1997	18.3*	-
12/31/96	1998	17.5	-
12/31/97	1999	15.2 – 15.9	(0.7)
12/31/98	2000	12.3 – 15.9	(3.6)
12/31/99**	2001	9.6 – 16.8	(7.2)
12/31/00	2002	8.2 – 16.8	(8.7)
12/31/01	2003	10.0 – 16.8	(6.8)
12/31/02	2004	14.0 – 17.0	(3.0)
12/31/03	2005	13.6 – 17.0	(3.4)
12/31/04#	2006	18.4	0.1
12/31/05	2007	17.5	0.2
12/31/06	2008	16.8 – 17.5	(0.7)
12/31/07	2009	16.0 – 17.5	(1.5)
12/31/08	2010	20.8	2.7

* Reflects allocation of assets to fully fund retired life liabilities.
** Includes benefit provision and assumption changes and 1% decrease in member contribution rate.
\# Reflects assumption changes and elimination of surplus assets.

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TABLE 10

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

DERIVATION OF SYSTEM EXPERIENCE GAIN/(LOSS)

			($M) Year Ended 12/31/08
(1)		UAL* at start of year	(12.7)
(2)	+	Normal cost for year	13.9
(3)	+	Assumed investment return on (1) & (2)	0.5
(4)	-	Actual contributions (member + City)	14.8
(5)	-	Assumed investment return on (4)	0.6
(6)	=	Expected UAL at end of year	(13.7)
(7)	+	Increase (decr.) from amendments	0.0
(8)	+	Increase (decr.) from assumption changes	0.0
(9)	=	Expected UAL after changes	(13.7)
(10)	=	Actual UAL at year end	24.2
(11)	=	Experience gain (loss) (9) – (10)	(37.9) **
(12)	=	Percent of beginning of year AL	8.1%

** Unfunded Actuarial Liability/(Surplus)*

*** This amount reflects the net impact of about $38.8 million loss on the actuarial value of assets and a $0.9 million gain on liabilities.*

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SECTION 6

ACCOUNTING INFORMATION

The actuarial liability is a measure intended to help the reader assess (i) a retirement system's funded status on an on-going concern basis, and (ii) progress being made toward accumulating the assets needed to pay benefits as due. Allocation of the actuarial present value of projected benefits between past and future service was based on service using the Entry Age Normal actuarial cost method. Assumptions, including projected pay increases, were the same as used to determine the System's level percent of payroll annual required contribution between entry age and assumed exit age. Entry age was established by subtracting credited service from current age on the valuation date.

The preceding methods comply with the financial reporting standards established by the Governmental Accounting Standards Board.

The Entry Age Normal actuarial liability was determined as part of an actuarial valuation of the plan as of December 31, 2008. Significant actuarial assumptions used in determining the actuarial liability include:

(a) a rate of return on the investment of present and future assets of 7.75% per year compounded annually,

(b) projected salary increases of 4.50% per year compounded annually, (4.00% attributable to inflation, and 0.50% attributable to productivity),

(c) additional projected salary increases of 0.0% to 2.5% per year attributable to seniority/merit, and

(d) the assumption that benefits will increase 2.0% per year of retirement, non-compounded commencing 36 months after retirement.

Actuarial Liability:	
Active members	$ 257,970,399
Retired members and beneficiaries currently receiving benefits	228,639,223
Vested terminated members not yet receiving benefits	9,951,524
Total Actuarial Liability	$ 496,561,146
Actuarial Value of Assets (market value was $356,056,234)	$ 472,345,191
Unfunded Actuarial Liability	$ 24,215,955

During the year ended December 31, 2008, the Plan experienced a net increase of $28 million in the actuarial liability.

TABLE 11

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

REQUIRED SUPPLEMENTARY INFORMATION
SCHEDULE OF FUNDING PROGRESS

Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Liability (AL) (b)	Unfunded AL (UAL) (b)–(a)	Funded Ratio (a)/(b)	Active Member Covered Payroll (c)	UAL as a Percentage of Active Member Covered Payroll ((b-a)/c)
11/30/90*	$136,766	$173,071	$ 36,305	79.0%	$ 22,408	162.0%
11/30/91	152,162	183,423	31,261	83.0	23,675	132.0
11/30/92	165,132	198,656	33,524	83.1	25,000	134.1
11/30/93	180,457	208,966	28,509	86.4	26,008	109.6
11/30/94	192,668	220,596	27,928	87.3	27,819	100.4
12/31/95*	213,431	231,372	17,941	92.2	29,749	60.3
12/31/96	237,554	247,408	9,854	96.0	33,366	29.5
12/31/97	262,815	258,706	(4,109)	101.6	35,502	(11.6)
12/31/98	295,625	274,900	(20,725)	107.5	36,566	(56.7)
12/31/99*	330,072	291,633	(38,439)	113.2	37,969	(101.2)
12/31/00	354,044	308,894	(45,150)	114.6	38,613	(116.9)
12/31/01	362,493	325,335	(37,158)	111.4	42,286	(87.9)
12/31/02	361,687	340,524	(21,163)	106.2	45,696	(46.3)
12/31/03	374,171	350,444	(23,726)	106.8	45,876	(51.7)
12/31/04*	392,485	393,387	902	99.8	50,414	1.8
12/31/05	412,823	414,027	1,204	99.7	52,207	2.3
12/31/06	444,498	439,179	(5,319)	101.2	53,530	(9.9)
12/31/07	480,820	468,115	(12,705)	102.7	57,310	(22.2)
12/31/08	472,345	496,561	24,216	95.1	60,282	40.2

Rounded dollar amounts are in thousands.

**After changes in benefits and/or actuarial assumptions and/or actuarial cost methods.*

Analysis of the dollar amounts of actuarial value of assets, actuarial liability, or unfunded actuarial liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial liability provides one indication of the System's funded status on an on-going concern basis. Analysis of this percentage over time indicates whether the System is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan's funding. The unfunded actuarial liability and annual covered payroll are both affected by inflation. Expressing the unfunded actuarial liability as a percentage of covered payroll approximately adjusts for the effects of inflation and aids analysis of the progress being made in accumulating sufficient assets to pay benefits when due. Generally, the smaller this percentage, the stronger the plan's funding.

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TABLE 12

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

REQUIRED SUPPLEMENTARY INFORMATION
SCHEDULE OF EMPLOYER CONTRIBUTIONS

Fiscal Year	Actuarial Valuation Date	Annual Required Contribution	Percent Contribution
1995	11/30/93	$7,391,786	100.0%
1996	11/30/94	7,186,932	100.0
1997	12/31/95	6,343,027	100.0
1998	12/31/96	6,427,744	100.0
1999	12/31/97	6,043,455	100.0
2000	12/31/98	5,540,575	100.0
2001	12/31/99	4,796,863	100.0
2002	12/31/00	4,746,504	100.0
2003	12/31/01	5,043,505	100.0
2004	12/31/02	6,925,467	100.0
2005	12/31/03	7,308,916	100.0
2006	12/31/04	9,849,536	100.0
2007	12/31/05	10,029,253	100.0
2008	12/31/06	10,549,401	100.0

Notes to Required Supplementary Information
Summary of Actuarial Methods and Assumptions

Valuation Date	December 31, 2008
Actuarial Cost Method	Entry Age Normal
Amortization Method	Level percent of payroll, open
Remaining Amortization Period	20 years
Asset Valuation Method	Expected Value + 25% of (Market – Expected Values)
Actuarial Assumptions:	
Investment Rate of Return*	7.75%
Projected Salary Increases*	4.50% - 7.00%
* Includes Inflation of	4.00%
Cost-of-Living Adjustments	2.00% non-compounding commencing 36 months after retirement

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TABLE 13

WICHITA POLICE AND FIRE RETIREMENT SYSTEM

SOLVENCY TEST

	Aggregate Actuarial Liability For				Portion of Actuarial Liabilities Covered by Reported Assets		
Valuation Date	(1) Active Member Contributions	(2) Retirants and Beneficiaries*	(3) Active Members (Employer Financed Portion)	Reported Valuation Assets	(1)	(2)	(3)
11/30/93	$17,293,762	$120,075,516	$71,956,393	$180,457,134	100.0%	100.0%	59.9%
11/30/94	18,003,627	127,670,273	74,921,662	192,667,974	100.0	100.0	62.7
12/31/95	19,597,012	132,215,980	79,559,050	213,431,416	100.0	100.0	77.4
12/31/96	20,807,624	141,902,560	84,497,686	237,553,602	100.0	100.0	88.6
12/31/97	22,518,199	146,068,362	90,119,236	262,814,796	100.0	100.0	104.6
12/31/98	23,845,658	157,021,415	94,033,095	295,624,986	100.0	100.0	122.0
12/31/99	24,759,118	170,478,501	96,395,412	330,071,866	100.0	100.0	139.9
12/31/00	27,152,206	183,463,718	98,277,967	354,044,311	100.0	100.0	145.9
12/31/01	27,694,761	183,034,623	114,605,637	362,493,060	100.0	100.0	132.4
12/31/02	34,440,696	182,063,498	124,019,921	361,687,109	100.0	100.0	117.1
12/31/03	37,027,041	186,930,565	126,486,746	374,170,781	100.0	100.0	118.8
12/31/04	40,959,525	201,051,248	151,375,876	392,484,697	100.0	100.0	99.4
12/31/05	44,057,922	210,560,068	159,408,592	412,822,760	100.0	100.0	99.2
12/31/06	48,361,719	216,449,174	174,368,239	444,497,827	100.0	100.0	103.1
12/31/07	53,686,866	230,893,426	183,534,348	480,820,001	100.0	100.0	106.9
12/31/08	58,050,319	238,590,747	199,920,080	472,345,191	100.0	100.0	87.9

During the twelve months ended December 31, 2008, the Wichita Police and Fire Retirement System of Wichita, Kansas generated a net experience loss of $37.9 million dollars. The amount is 8.1% of the actuarial liability at the beginning of the year.

**Includes vested terminated members*

APPENDIX A

SUMMARY OF MEMBERSHIP DATA

MEMBER DATA RECONCILIATION

December 31, 2007 to December 31, 2008

The number of members included in the valuation, as summarized in the table below, is in accordance with the data submitted by the System for members as of the valuation date.

	Active Participants		Retirees & Beneficiaries		Terminated Vested		Total
	Police	**Fire**	**Police**	**Fire**	**Police**	**Fire**	
Members as of 12/31/07	640	452	403	430	24	11	1,960
New Members	+11	+20	+13	+6	0	0	+50
Transfers	-1	0	0	0	0	0	-1
Terminations							
Refunded	-12	-10	0	0	0	0	-22
Deferred Vested	-4	-2	0	0	+4	+2	0
Completion of payments to minor child	0	0	-1	0	0	0	-1
Retirements							
Service	-7	-9	+9	+10	-2	-1	0
Disability	-1	0	+1	0	0	0	0
Deaths							
Cashed Out	0	0	0	0	0	0	0
With Beneficiary	0	0	-5	-3	0	0	-8
Without Beneficiary	-1	0	-8	-14	0	0	-23
Data Adjustments	0	0	0	-1	0	0	-1
Members as of 12/31/08	**625**	**451**	**412**	**428**	**26**	**12**	**1,954**

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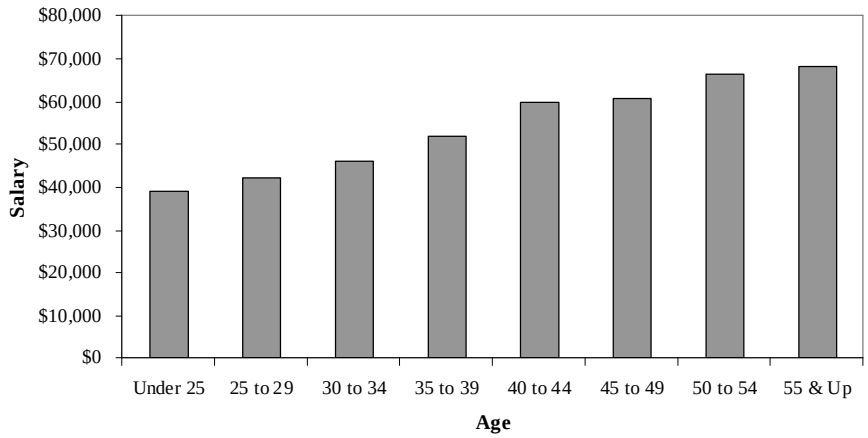
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
SUMMARY OF ACTIVE MEMBERS
as of December 31, 2008

	Number			Valuation Salaries		
Age	Fire	Police	Total	Fire	Police	Total
Under 25	11	7	18	$ 411,913	$ 294,832	$ 706,745
25 to 29	57	71	128	2,240,822	3,136,024	5,376,846
30 to 34	63	99	162	2,673,169	4,801,586	7,474,755
35 to 39	65	154	219	3,136,231	8,232,714	11,368,945
40 to 44	71	130	201	3,985,099	8,064,434	12,049,533
45 to 49	75	84	159	4,384,653	5,280,222	9,664,875
50 to 54	83	64	147	5,207,045	4,575,818	9,782,863
55 & Up	26	16	42	1,792,529	1,069,741	2,862,270
Total	451	625	1,076	$ 23,831,461	$ 35,455,371	$ 59,286,832

Average Salary by Age



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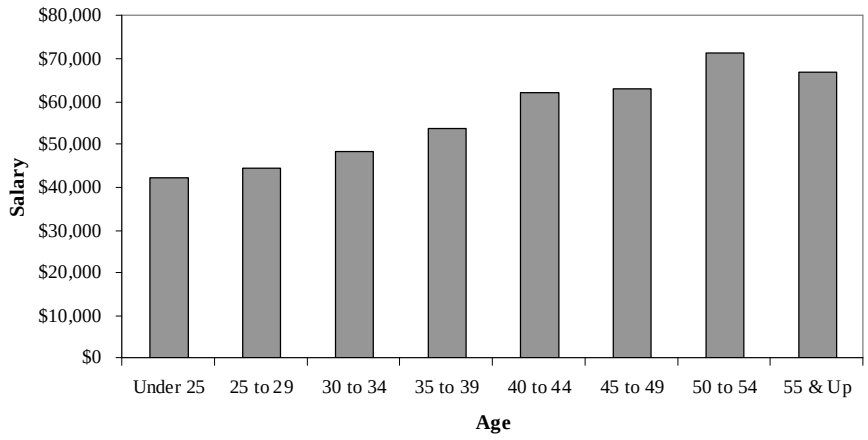
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
SUMMARY OF ACTIVE MEMBERS
as of December 31, 2008

Police

Age	Number			Valuation Salaries		
	Male	Female	Total	Male	Female	Total
Under 25	7	0	7	$ 294,832	$ -	$ 294,832
25 to 29	62	9	71	2,747,526	388,498	3,136,024
30 to 34	79	20	99	3,829,074	972,512	4,801,586
35 to 39	131	23	154	7,038,353	1,194,361	8,232,714
40 to 44	124	6	130	7,701,202	363,232	8,064,434
45 to 49	82	2	84	5,156,166	124,056	5,280,222
50 to 54	56	8	64	3,993,282	582,536	4,575,818
55 & Up	16	0	16	1,069,741	-	1,069,741
Total	557	68	625	$ 31,830,176	$ 3,625,195	$ 35,455,371

Average Salary by Age



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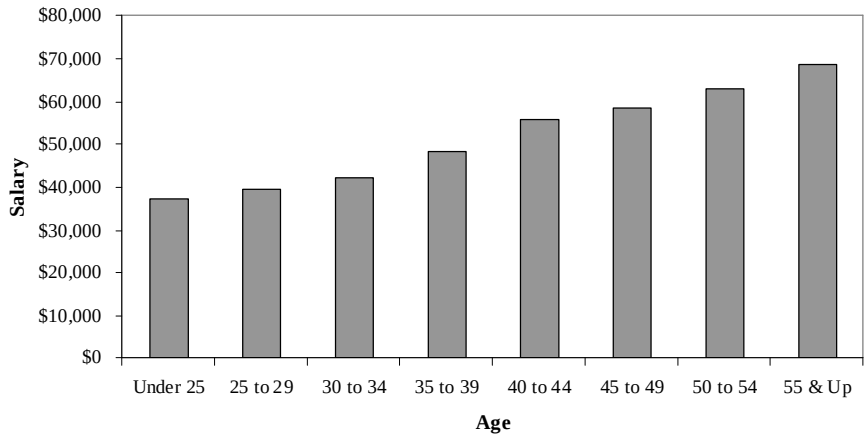
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
SUMMARY OF ACTIVE MEMBERS
as of December 31, 2008

Fire

Age	Number			Valuation Salaries		
	Male	Female	Total	Male	Female	Total
Under 25	11	0	11	$ 411,913	$ -	$ 411,913
25 to 29	55	2	57	2,164,935	75,887	2,240,822
30 to 34	62	1	63	2,629,928	43,241	2,673,169
35 to 39	65	0	65	3,136,231	-	3,136,231
40 to 44	68	3	71	3,820,203	164,896	3,985,099
45 to 49	75	0	75	4,384,653	-	4,384,653
50 to 54	82	1	83	5,138,293	68,752	5,207,045
55 & Up	26	0	26	1,792,529	-	1,792,529
Total	444	7	451	$ 23,478,685	$ 352,776	$ 23,831,461

Average Salary by Age



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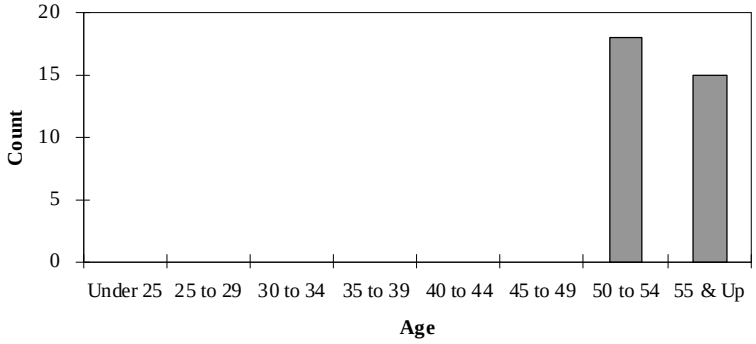
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
DISTRIBUTION OF ACTIVE MEMBERS
as of December 31, 2008

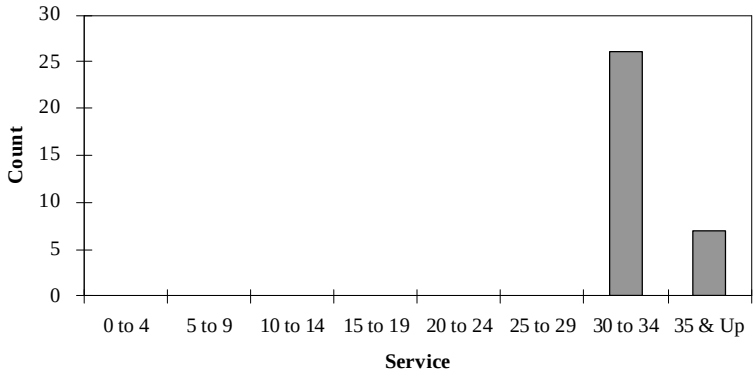
Fire - Plan A

	Years of Service								
Age	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	Total
Under 25	0	0	0	0	0	0	0	0	0
25 to 29	0	0	0	0	0	0	0	0	0
30 to 34	0	0	0	0	0	0	0	0	0
35 to 39	0	0	0	0	0	0	0	0	0
40 to 44	0	0	0	0	0	0	0	0	0
45 to 49	0	0	0	0	0	0	0	0	0
50 to 54	0	0	0	0	0	0	18	0	18
55 & Up	0	0	0	0	0	0	8	7	15
Total	0	0	0	0	0	0	26	7	33

Age Distribution



Service Distribution



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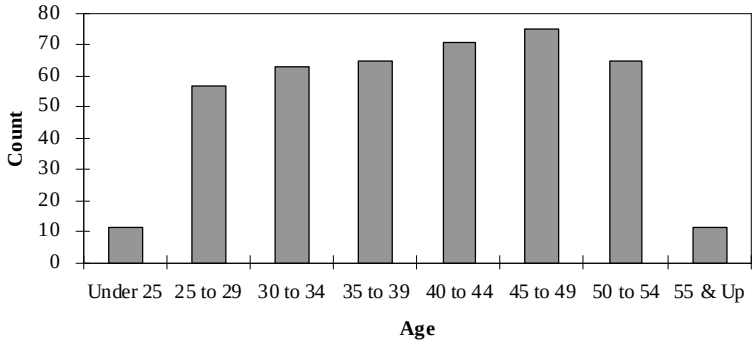
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
DISTRIBUTION OF ACTIVE MEMBERS
as of December 31, 2008

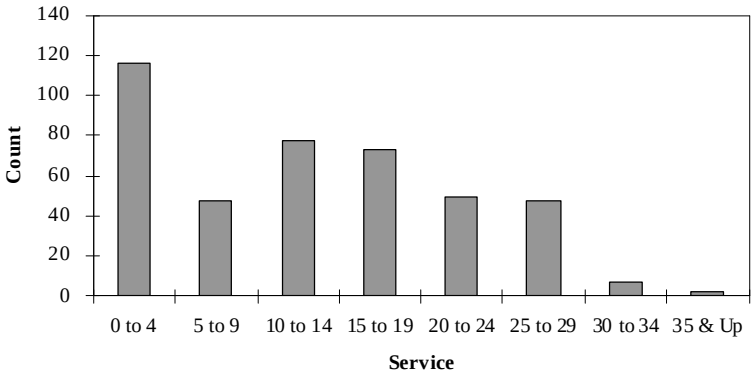
Fire - Plan C

	Years of Service								
Age	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	Total
Under 25	11	0	0	0	0	0	0	0	11
25 to 29	50	7	0	0	0	0	0	0	57
30 to 34	37	18	8	0	0	0	0	0	63
35 to 39	15	15	32	3	0	0	0	0	65
40 to 44	1	5	27	31	7	0	0	0	71
45 to 49	2	2	7	23	25	16	0	0	75
50 to 54	0	0	3	15	15	26	6	0	65
55 & Up	0	0	0	1	2	5	1	2	11
Total	116	47	77	73	49	47	7	2	418

Age Distribution



Service Distribution



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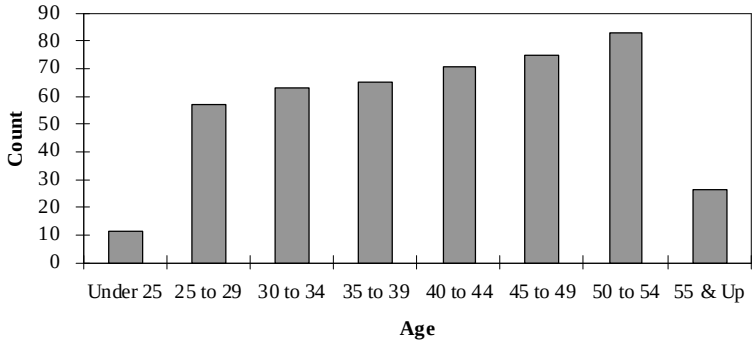
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
DISTRIBUTION OF ACTIVE MEMBERS
as of December 31, 2008

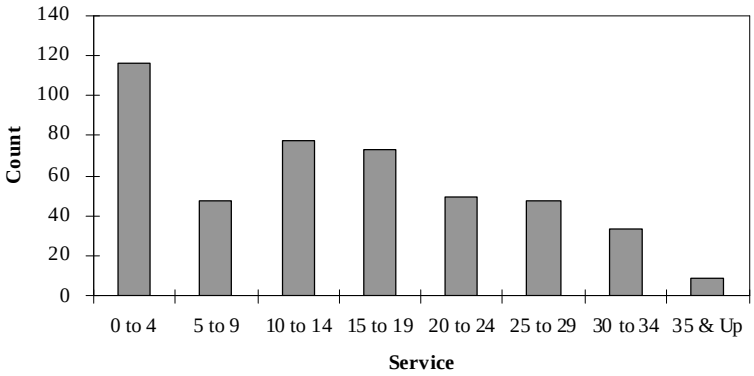
Fire

	Years of Service								
Age	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	Total
Under 25	11	0	0	0	0	0	0	0	11
25 to 29	50	7	0	0	0	0	0	0	57
30 to 34	37	18	8	0	0	0	0	0	63
35 to 39	15	15	32	3	0	0	0	0	65
40 to 44	1	5	27	31	7	0	0	0	71
45 to 49	2	2	7	23	25	16	0	0	75
50 to 54	0	0	3	15	15	26	24	0	83
55 & Up	0	0	0	1	2	5	9	9	26
Total	116	47	77	73	49	47	33	9	451

Age Distribution



Service Distribution



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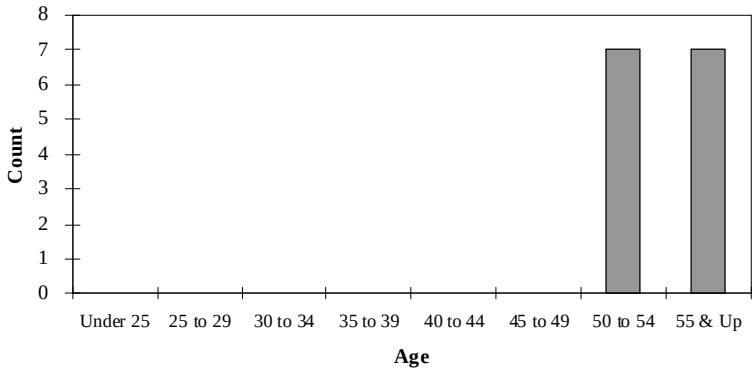
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
DISTRIBUTION OF ACTIVE MEMBERS
as of December 31, 2008

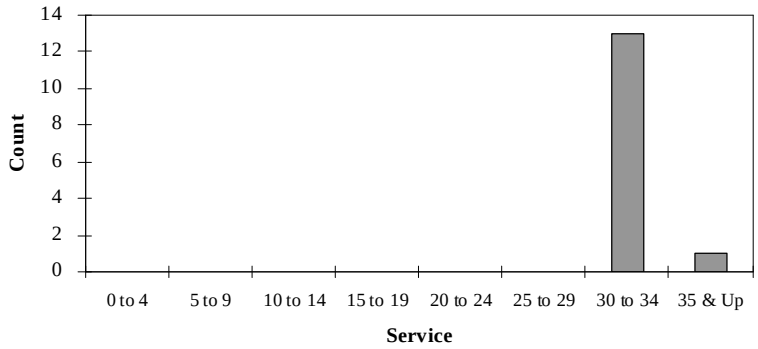
Police - Plan A

Age	Years of Service 0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	Total
Under 25	0	0	0	0	0	0	0	0	0
25 to 29	0	0	0	0	0	0	0	0	0
30 to 34	0	0	0	0	0	0	0	0	0
35 to 39	0	0	0	0	0	0	0	0	0
40 to 44	0	0	0	0	0	0	0	0	0
45 to 49	0	0	0	0	0	0	0	0	0
50 to 54	0	0	0	0	0	0	7	0	7
55 & Up	0	0	0	0	0	0	6	1	7
Total	0	0	0	0	0	0	13	1	14

Age Distribution



Service Distribution



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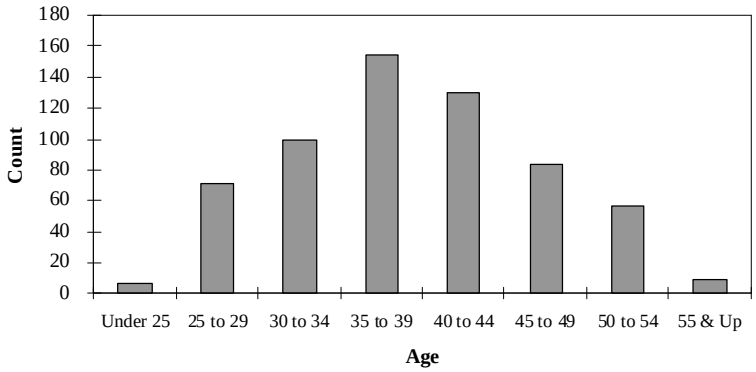
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
DISTRIBUTION OF ACTIVE MEMBERS
as of December 31, 2008

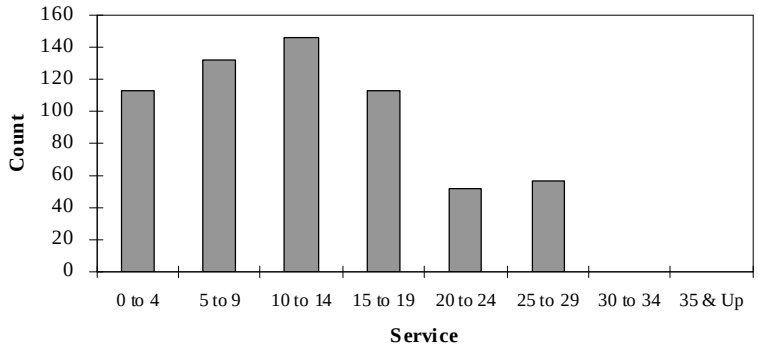
Police - Plan C

	Years of Service								
Age	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	Total
Under 25	7	0	0	0	0	0	0	0	7
25 to 29	57	14	0	0	0	0	0	0	71
30 to 34	27	55	17	0	0	0	0	0	99
35 to 39	14	49	74	17	0	0	0	0	154
40 to 44	3	7	43	63	14	0	0	0	130
45 to 49	4	4	11	27	28	10	0	0	84
50 to 54	1	1	1	4	9	41	0	0	57
55 & Up	0	1	0	2	1	5	0	0	9
Total	113	131	146	113	52	56	0	0	611

Age Distribution



Service Distribution



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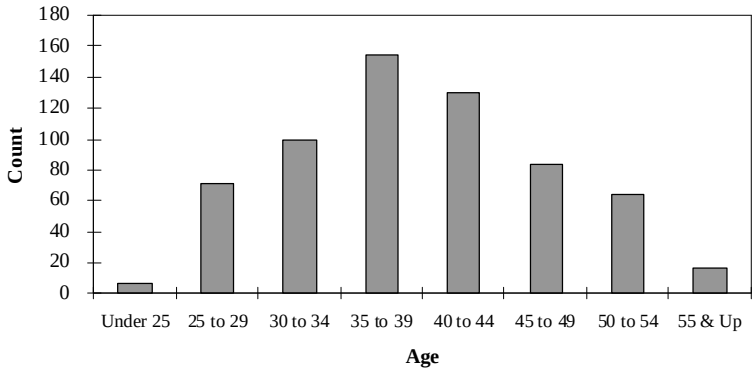
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
DISTRIBUTION OF ACTIVE MEMBERS
as of December 31, 2008

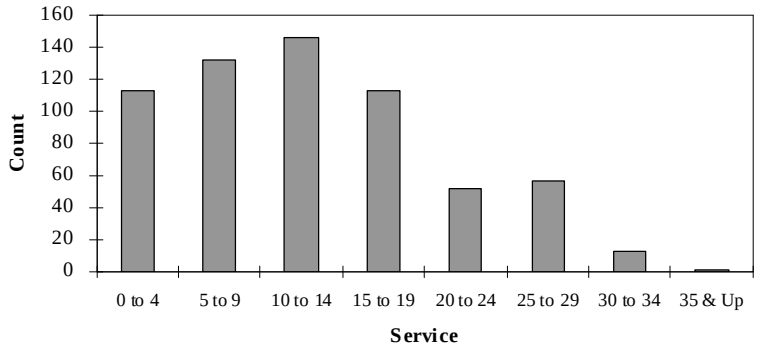
Police

	Years of Service								
Age	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	Total
Under 25	7	0	0	0	0	0	0	0	7
25 to 29	57	14	0	0	0	0	0	0	71
30 to 34	27	55	17	0	0	0	0	0	99
35 to 39	14	49	74	17	0	0	0	0	154
40 to 44	3	7	43	63	14	0	0	0	130
45 to 49	4	4	11	27	28	10	0	0	84
50 to 54	1	1	1	4	9	41	7	0	64
55 & Up	0	1	0	2	1	5	6	1	16
Total	113	131	146	113	52	56	13	1	625

Age Distribution



Service Distribution



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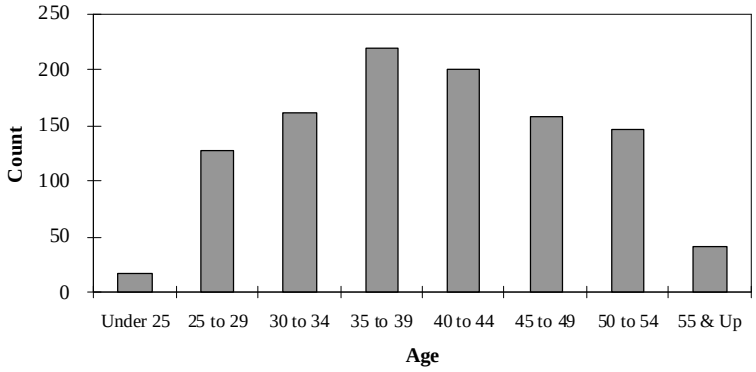
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
DISTRIBUTION OF ACTIVE MEMBERS
as of December 31, 2008

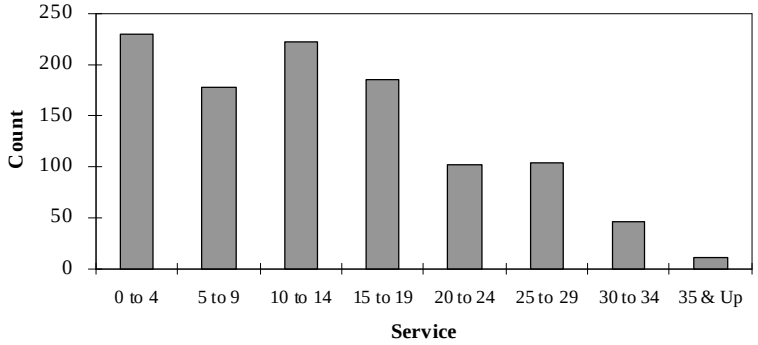
Fire & Police

	Years of Service								
Age	0 to 4	5 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	Total
Under 25	18	0	0	0	0	0	0	0	18
25 to 29	107	21	0	0	0	0	0	0	128
30 to 34	64	73	25	0	0	0	0	0	162
35 to 39	29	64	106	20	0	0	0	0	219
40 to 44	4	12	70	94	21	0	0	0	201
45 to 49	6	6	18	50	53	26	0	0	159
50 to 54	1	1	4	19	24	67	31	0	147
55 & Up	0	1	0	3	3	10	15	10	42
Total	229	178	223	186	101	103	46	10	1,076

Age Distribution



Service Distribution



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APPENDIX A (continued)

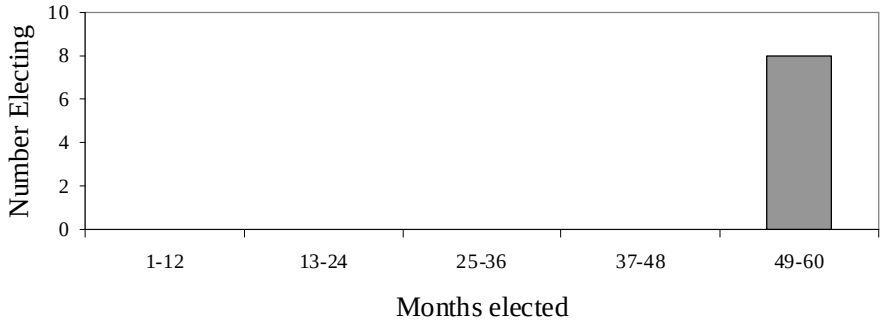
WICHITA POLICE AND FIRE RETIREMENT SYSTEM
BackDROP Experience for the 2008 Plan Year

Fire

Number Electing BackDROP

	Final Benefit as a Proportion of Final Average Pay					
Age	50%-55%	55%-60%	60%-65%	65%-70%	70%-75%	Total
Under 55	0	0	0	0	1	1
55-59	0	0	0	0	3	3
60-64	0	0	0	0	4	4
65+	0	0	0	0	0	0
Total	0	0	0	0	8	8

Distribution of BackDROP Election Period



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APPENDIX A (continued)

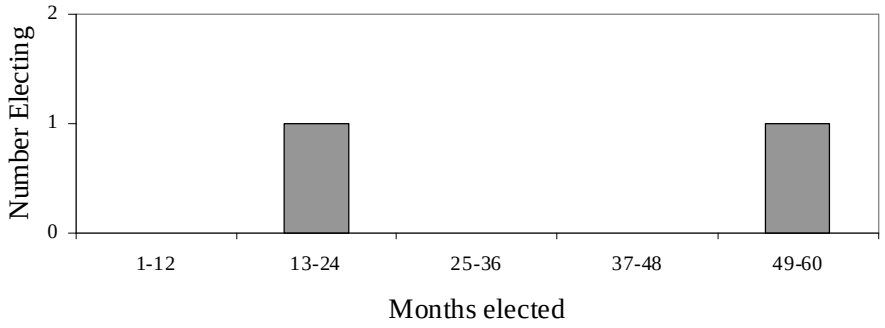
WICHITA POLICE AND FIRE RETIREMENT SYSTEM
BackDROP Experience for the 2008 Plan Year

Police

Number Electing BackDROP

	Final Benefit as a Proportion of Final Average Pay					
Age	50%-55%	55%-60%	60%-65%	65%-70%	70%-75%	Total
Under 55	0	0	0	0	0	0
55-59	0	0	0	0	2	2
60-64	0	0	0	0	0	0
65+	0	0	0	0	0	0
Total	0	0	0	0	2	2

Distribution of BackDROP Election Period



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APPENDIX A (continued)

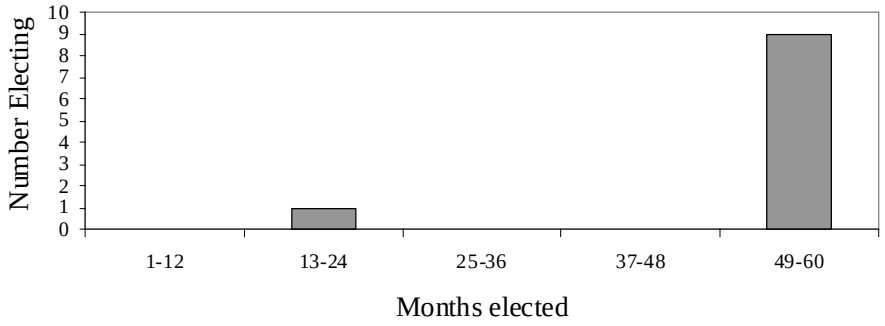
WICHITA POLICE AND FIRE RETIREMENT SYSTEM
BackDROP Experience for the 2008 Plan Year

Fire & Police

Number Electing BackDROP

	Final Benefit as a Proportion of Final Average Pay					
Age	50%-55%	55%-60%	60%-65%	65%-70%	70%-75%	Total
Under 55	0	0	0	0	1	1
55-59	0	0	0	0	5	5
60-64	0	0	0	0	4	4
65+	0	0	0	0	0	0
Total	0	0	0	0	10	10

Distribution of BackDROP Election Period



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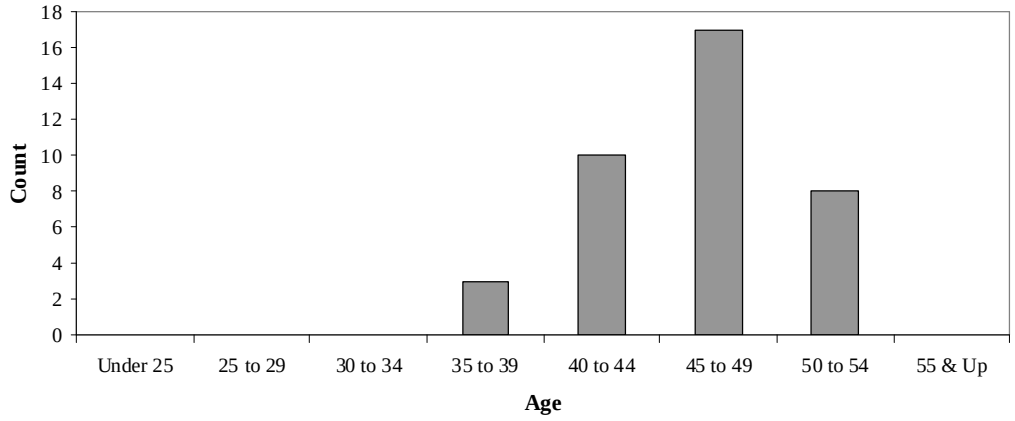
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
SUMMARY OF DEFERRED VESTED MEMBERS
as of December 31, 2008

	Number			Current Monthly Benefit at Retirement		
Age	Fire	Police	Total	Fire	Police	Total
Under 25	0	0	0	$ -	$ -	$ -
25 to 29	0	0	0	-	-	-
30 to 34	0	0	0	-	-	-
35 to 39	0	3	3	-	3,824	3,824
40 to 44	3	7	10	3,279	12,109	15,388
45 to 49	5	12	17	11,399	33,104	44,503
50 to 54	4	4	8	5,634	5,108	10,742
55 & Up	0	0	0	-	-	-
Total	12	26	38	$ 20,312	$ 54,145	$ 74,457

Age Distribution



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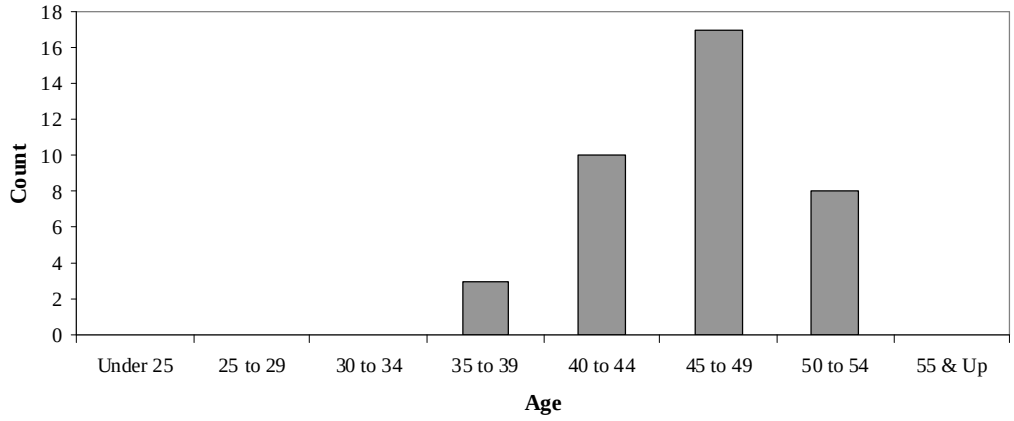
APPENDIX A (continued)

WICHITA POLICE AND FIRE RETIREMENT SYSTEM
SUMMARY OF DEFERRED VESTED MEMBERS
as of December 31, 2008

	Number			Current Monthly Benefit at Retirement		
Age	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	$ -	$ -	$ -
25 to 29	0	0	0	-	-	-
30 to 34	0	0	0	-	-	-
35 to 39	2	1	3	2,741	1,083	3,824
40 to 44	10	0	10	15,388	-	15,388
45 to 49	16	1	17	41,341	3,162	44,503
50 to 54	7	1	8	9,675	1,067	10,742
55 & Up	0	0	0	-	-	-
Total	35	3	38	$ 69,145	$ 5,312	$ 74,457

Age Distribution



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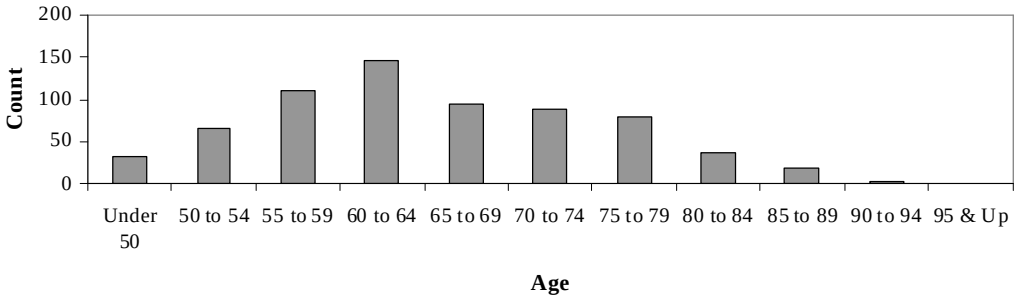
APPENDIX A (continued)

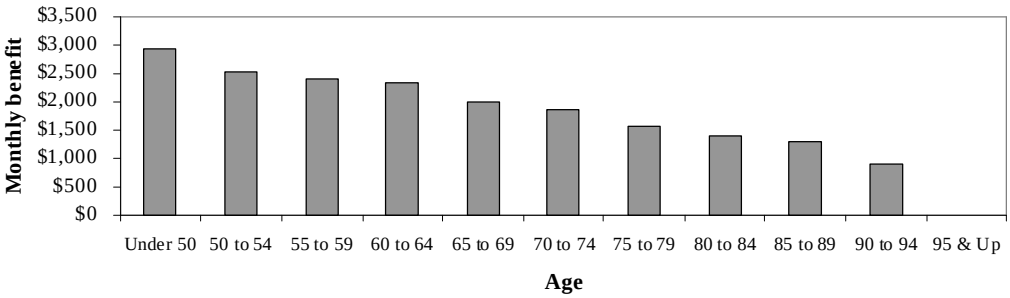
WICHITA POLICE AND FIRE RETIREMENT SYSTEM
SUMMARY OF RETIRED MEMBERS
as of December 31, 2008

	Number			Monthly Benefit		
Age	Fire	Police	Total	Fire	Police	Total
Under 50	9	22	31	$ 25,902	$ 64,939	$ 90,841
50 to 54	30	35	65	75,806	90,004	165,810
55 to 59	56	54	110	135,808	129,455	265,264
60 to 64	71	74	145	174,471	165,917	340,388
65 to 69	49	45	94	94,838	93,125	187,963
70 to 74	50	38	88	100,363	65,533	165,896
75 to 79	44	36	80	69,638	57,550	127,189
80 to 84	23	14	37	33,609	18,330	51,939
85 to 89	6	12	18	7,658	15,974	23,633
90 to 94	3	1	4	2,414	1,246	3,660
95 & Up	0	0	0	-	-	-
Total	341	331	672	$ 720,508	$ 702,073	$ 1,422,581

Age Distribution



Average Benefit



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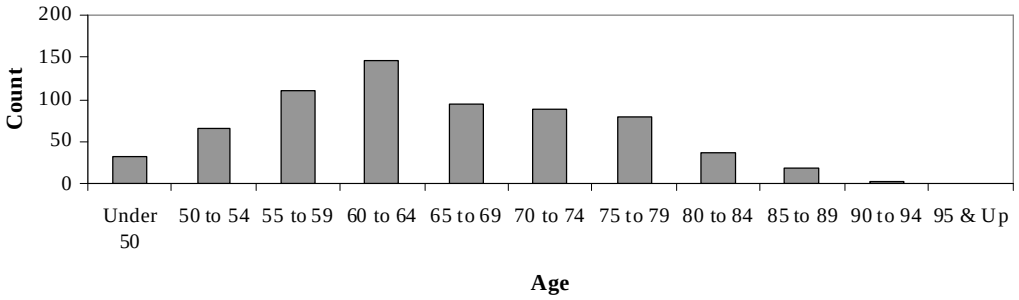
APPENDIX A (continued)

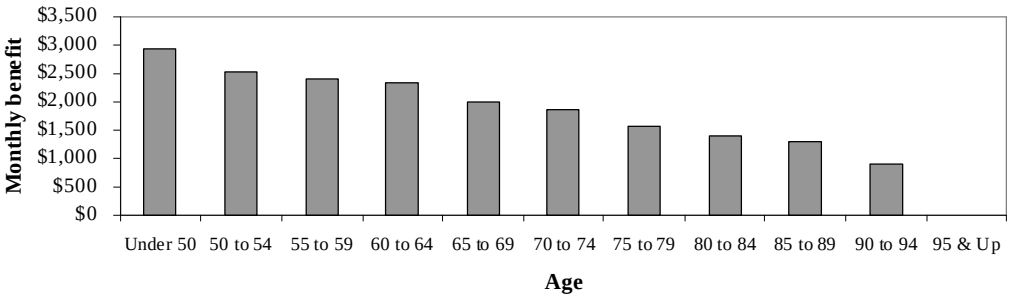
WICHITA POLICE AND FIRE RETIREMENT SYSTEM
SUMMARY OF RETIRED MEMBERS
as of December 31, 2008

	Number			Monthly Benefit		
Age	Male	Female	Total	Male	Female	Total
Under 50	27	4	31	$ 79,805	$ 11,035	$ 90,841
50 to 54	64	1	65	163,243	2,567	165,810
55 to 59	110	0	110	265,264	-	265,264
60 to 64	142	3	145	334,823	5,565	340,388
65 to 69	91	3	94	182,958	5,005	187,963
70 to 74	86	2	88	163,036	2,860	165,896
75 to 79	78	2	80	123,865	3,323	127,189
80 to 84	37	0	37	51,939	-	51,939
85 to 89	16	2	18	22,023	1,609	23,633
90 to 94	4	0	4	3,660	-	3,660
95 & Up	0	0	0	-	-	-
Total	655	17	672	$ 1,390,617	$ 31,964	$ 1,422,581

Age Distribution



Average Benefit



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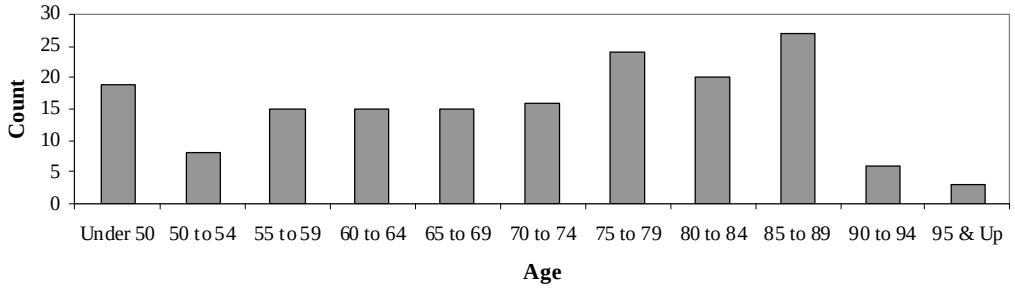
APPENDIX A (continued)

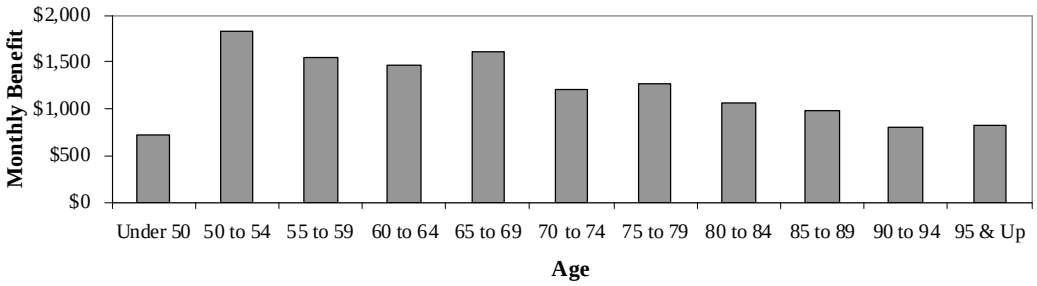
WICHITA POLICE AND FIRE RETIREMENT SYSTEM
SUMMARY OF BENEFICIARIES
as of December 31, 2008

	Number			Monthly Benefit		
Age	Fire	Police	Total	Fire	Police	Total
Under 50	5	14	19	$ 3,995	$ 9,460	$ 13,455
50 to 54	4	4	8	8,763	5,826	14,589
55 to 59	10	5	15	14,106	9,077	23,183
60 to 64	5	10	15	6,509	15,470	21,979
65 to 69	6	9	15	10,813	13,272	24,085
70 to 74	8	8	16	7,867	11,431	19,298
75 to 79	11	13	24	16,215	14,132	30,347
80 to 84	14	6	20	13,952	7,275	21,226
85 to 89	21	6	27	20,795	5,574	26,368
90 to 94	2	4	6	1,548	3,195	4,743
95 & Up	1	2	3	805	1,679	2,484
Total	87	81	168	$ 105,366	$ 96,391	$ 201,757

Age Distribution



Average Benefit



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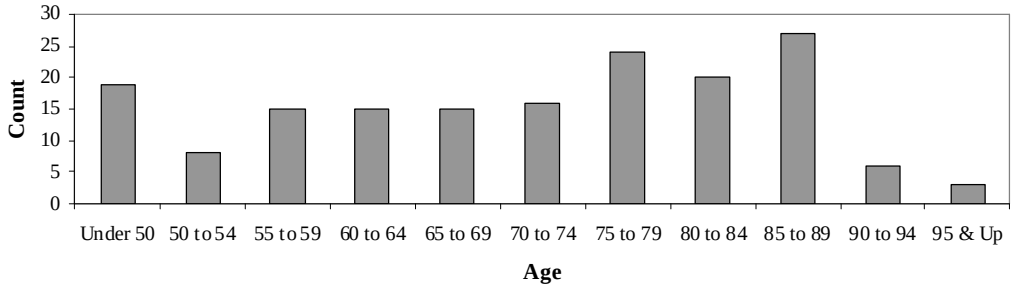
APPENDIX A (continued)

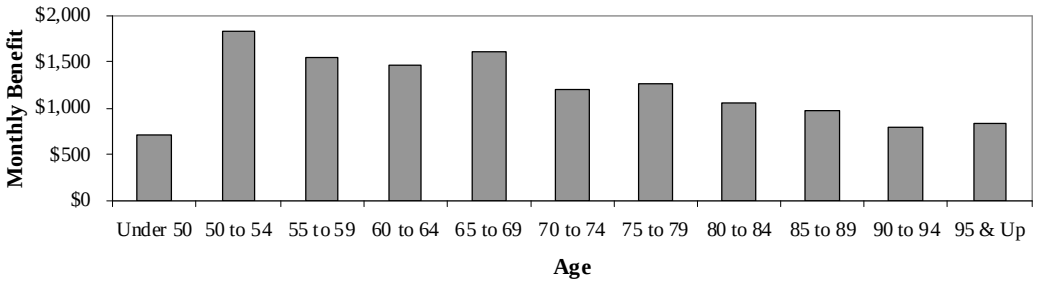
WICHITA POLICE AND FIRE RETIREMENT SYSTEM
SUMMARY OF BENEFICIARIES
as of December 31, 2008

	Number			Monthly Benefit		
Age	Male	Female	Total	Male	Female	Total
Under 50	10	9	19	$ 3,949	$ 9,505	$ 13,455
50 to 54	0	8	8	-	14,589	14,589
55 to 59	0	15	15	-	23,183	23,183
60 to 64	1	14	15	2,081	19,899	21,979
65 to 69	0	15	15	-	24,085	24,085
70 to 74	0	16	16	-	19,298	19,298
75 to 79	0	24	24	-	30,347	30,347
80 to 84	0	20	20	-	21,226	21,226
85 to 89	0	27	27	-	26,368	26,368
90 to 94	0	6	6	-	4,743	4,743
95 & Up	0	3	3	-	2,484	2,484
Total	11	157	168	$ 6,030	$ 195,727	$ 201,757

Age Distribution



Average Benefit



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APPENDIX B

SUMMARY OF BENEFIT PROVISIONS
(DECEMBER 31, 2008)

Plan A is applicable to members who entered the System between January 1, 1965 and December 31, 1978 and members who entered prior to January 1, 1965 and elected Plan A coverage.

Plan B is applicable to members who entered the System prior to January 1, 1965 and elected Plan B coverage.

Plan C is applicable to members entering the System after December 31, 1978.

Service Retirement

Eligibility – Plan A and Plan B: 20 years of service, without regard to age.

Eligibility – Plan C: 30 years of service, without regard to age; or 20 years of service and attainment of age 50 years; or, if 10 or more years of service but less than 20, age 55.

Amount of Pension – all plans: Service times 2.5% of Final Average Salary to a maximum of 75% of Final Average Salary.

Final Average Salary – all plans: average for the 3 consecutive years of service which produce the highest average and which are within the last 10 years of service.

Deferred Retirement (Vested Termination)

Eligibility – all plans: 10 years of service (does not include survivor benefits if service is less than 20 years).

Amount of Pension – all plans: 2.5% of Final Average Salary times years of service with payment deferred until age 55 (age 50 for Plan C members with 20 or more years of service). Vested deferred pensions for Plan C are adjusted during the deferral period based on changes in National Average Earnings, up to 5.5% annual adjustments (effective for post-1999 terminations).

Service-Connected Disability

Eligibility – all plans: permanent inability to perform the duties of position; no service retirement.

Amount of Pension – all plans: 75% of final salary rate if accident, 50% if disease.

Miscellaneous Conditions – all plans: pension plus earnings from gainful employment cannot exceed current salary for rank held at time of disability. Pension recomputed at age 55 using service retirement formula, updated final average salary and service credit for period of disability.

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Non-Service Disability

Eligibility – all plans: permanent inability to perform duties of position; requires 7 years of service and under age 55 years old.

Amount of Pension – all plans: 30% of Final Average Salary plus 1% of Final Average Salary times service over 7 years; maximum is 50% of Final Average Salary.

Miscellaneous Conditions – all plans: pension plus earnings from gainful employment cannot exceed current salary for rank held at time of disability.

Service-Connected Death

Eligibility – all plans: death resulting directly from service-connected causes; no service requirement.

Amount of Pension – all plans: surviving spouse – 50% of final salary plus 10% of final salary for each child under age 18 years to a maximum of 75% of final salary; terminates upon remarriage prior to age 40 years for pensions effective prior to January 1, 2000.

Children (no surviving spouse's pension payable) – 20% of final salary for each child under age 18 to a maximum of 60% of final salary.

Non-Service Death

Eligibility – Plan A and Plan C: death after 3 years of service.

Eligibility – Plan B: death after 20 years of service.

Amount of Pension – Plan A and Plan C: surviving spouse – 35% of Final Average Salary plus 1% of Final Average Salary times Service over 3 years to a maximum of 50% of Final Average Salary, plus 10% of Final Average Salary for each child under age 18 to an overall maximum of 66⅔% of Final Average Salary. Terminates upon remarriage prior to age 40 years for pensions effective prior to January 1, 2000.

Children (no surviving spouse's pension payable) – 15% of Final Average Salary for each child under age 18 years to a maximum of 50% of Final Average Salary.

Amount of Pension – Plan B: surviving spouse – 50% of final salary.

Children (no surviving spouse's pension payable) – children under age 18 share equally a benefit of 50% of final salary.

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Death After Retirement

Eligibility – all plans: surviving spouse must have been married to retired employee for one year or more at time of death, if retired after January 1, 2000. If retired prior to January 1, 2000, must have been married to retired employee at retirement. Member must have retired with at least 20 years of service.

Amount of Pension – Plan A and Plan C: surviving spouse – 35% of Final Average Salary plus 1% of Final Average Salary times Service over 3 years to a maximum of 50% of Final Average Salary, plus 10% of Final Average Salary for each child under age 18 to an overall maximum of 66⅔% of Final Average Salary. Post-retirement adjustments are granted from date of retirement to date of death. Terminates upon remarriage prior to age 40 years for those retiring prior to January 1, 2000.

Children (no surviving spouse's pension payable) – 15% of Final Average Salary for each child under age 18 years to a maximum of 50% of Final Average Salary.

Amount of Pension – Plan B: surviving spouse – 50% of final salary.

Children (no surviving spouse's pension payable) – children under age 18 share equally a benefit of 50% of final salary.

Non-Vested Termination

Eligibility – all plans: termination of employment and no pension is or will become payable.

Amount of Benefit – all plans: refund of member's contributions plus 5% annual interest.

Funeral Benefit

Eligibility – Plan A and Plan C: death of member who retired after November 21, 1973.

Amount of Benefit – Plan A and Plan C: $750.

Eligibility – Plan B: death of retired member.

***Amount of Benefit – Plan B*:** $100 if member retired on or prior to November 21, 1973; $750 if member retired after November 21, 1973.

Post-Retirement Adjustments of Pensions

Eligibility – all Plans: Completion of 36 months of retirement.

Annual Amount – all Plans: 2% of the base amount of benefit (increases are not compounded).

Back DROP (Deferred Retirement Option Plan)

Eligibility: Member must be eligible to retire under normal retirement provisions at the effective date of the Back DROP.

Amount: Under the Back DROP, the member may elect a benefit based on a retirement date up to 60 months prior to the current date. The monthly benefit is computed based on Service, Final Average Salary and benefit formula at the selected prior date. The DROP account available to the retiring member is the computed benefit multiplied by the number of months of Back DROP plus applicable post-retirement adjustments and 5% annual interest, compounded monthly. Members are eligible to elect a sixty month Back DROP beginning January 1, 2003.

Employee Contributions

Plan A: 8% of salary.
Plan B: 6% of salary.
Plan C: 7% of salary.

These member contribution rates include the 1% decrease effective in 1998 in recognition of the full funding of actuarial liabilities.

City Contributions

Actuarially determined amounts sufficient to satisfy K.S.A. 1977 Suppl. 12-5002.

Unused Sick Leave

Each bi-weekly service credit of accumulated unused sick leave is converted to a service credit for the purpose of computing annual benefit amounts.

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APPENDIX C

ACTUARIAL COST METHOD AND ASSUMPTIONS

Actuarial Cost Method

The actuarial cost method is a procedure for allocating the actuarial present value of pension benefits and expenses to time periods. The method used for the valuation is known as the Entry Age Normal actuarial cost method, and has the following characteristics.

(i) The annual normal costs for each individual active member are sufficient to accumulate the value of the member's pension at time of retirement.

(ii) Each annual normal cost is a constant percentage of the member's year-by-year projected covered compensation.

(iii) Normal costs for Plans A and B (closed plans) were based on Plan C (open plan) assumptions and benefit conditions.

The Entry Age Normal actuarial cost method allocates the actuarial present value of each member's projected benefits on a level basis over the member's assumed pensionable compensation rates between the entry age of the member and the assumed exit ages. By applying the Entry Age Normal cost method in the fashion described in (iii), the ultimate normal cost will remain level as a percent of active member payroll (if actuarial assumptions are realized) as Plan A and Plan B members leave active status and are replaced by members entering Plan C.

The portion of the actuarial present value allocated to the valuation year is called the normal cost. The portion of the actuarial present value not provided for by the actuarial present value of future normal costs is called actuarial liability. Deducting actuarial assets from the actuarial liability determines the unfunded actuarial liability or (surplus). The unfunded actuarial liability/(surplus) is financed as a level percent of member payroll over an open 20 year period.

Actuarial Assumptions

Retirement System contribution requirements and actuarial present values are calculated by applying experience assumptions to the benefit provisions and membership information of the Retirement System, using the actuarial cost method.

The principal areas of risk which require experience assumptions about future activities of the Retirement System are:

(i) long-term rate of investment return to be generated by the assets of the System

(ii) patterns of pay increases to members

(iii) rates of mortality among members, retirants and beneficiaries

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(iv) rates of withdrawal of active members

(v) rates of disability among active members

(vi) the age patterns of actual retirements.

In making a valuation, the monetary effect of each assumption is calculated for as long as a present covered person survives - - a period of time which can be as long as a century.

Actual experience of the Retirement System will not coincide exactly with assumed experience. Each valuation provides a complete recalculation of assumed future experience and takes into account all past differences between assumed and actual experiences. The result is a continual series of adjustments (usually small) to the computed contribution rate.

From time-to-time one or more of the assumptions are modified to reflect experience trends (but not random or temporary year-to-year fluctuations). A complete review of the experience assumptions was completed in 2004 and resulted in the use of updated assumptions for subsequent actuarial valuations.

Investment Return Rate (net of administrative expenses). This assumption is 7.75% a year, compounded annually, and consists of 4.00% long term price inflation and a 3.75% real rate of return over price inflation. This assumption, used to equate the value of payments due at different points in time, was adopted by the Board and was first used for the December 31, 1980 valuation, although the allocation between inflation and real return has changed periodically, most recently in 2004.

Salary Increase Rates. These rates are used to project current pay amounts to those upon which a benefit will be based.

Years of Service	Annual Rate of Salary Increase for Sample Ages			
	Inflation	**Productivity**	**Merit & Longevity**	**Total**
1	4.00%	0.50%	2.5%	7.0%
5	4.00%	0.50%	2.5%	7.0%
10	4.00%	0.50%	2.5%	7.0%
15	4.00%	0.50%	2.5%	7.0%
20	4.00%	0.50%	0.0%	4.5%
25	4.00%	0.50%	0.0%	4.5%
30	4.00%	0.50%	0.0%	4.5%

This assumption was first used for the December 31, 2004 valuation.

APPENDIX C (continued)

The salary increase assumptions will produce 4.5% annual increases in active member payroll (the inflation rate plus the productivity rate) given a constant active member group size. This is the same payroll growth assumptions used to amortize unfunded actuarial liability. The real rate of return over assumed wage growth is 3.25% per year.

Changes actually experienced in average pay and total payroll have been as follows:

	Year Ended					5 Year (Average) Compounded Annual Increase
	12-31-08	12-31-07	12-31-06*	12-31-05	12-31-04	
Average pay	6.4%	5.6%	4.1%	2.3%	5.6%	4.8%
Total payroll	4.8%	6.7%	7.1%	1.0%	9.9%	5.9%

* Includes estimated GPA increase of 3% for 2007.

Mortality Table. This assumption is used to measure the probabilities of members dying before retirement and the probabilities of each pension payment being made after retirement.

Healthy Retirees and Beneficiaries: RP-2000 Healthy Annuitant Table for Males and Females.
Disabled Retirees: RP-2000 Disabled Table for Males and Females.
Active Members: RP-2000 Employee Table for Males and Females.

The RP-2000 Tables are used with generational mortality.

Sample Ages(1)	Present Value of $1 Monthly for Life		Future Life Expectancy (Years)	
	Men	Women	Men	Women
50	$138.63	$141.98	32.3	34.6
55	132.05	135.41	27.6	29.7
60	122.80	127.04	23.0	25.1
65	111.13	116.91	18.5	20.7
70	97.31	104.80	14.5	16.7
75	81.63	90.90	10.9	13.0
80	65.36	75.76	7.9	9.8
85	49.97	60.2	5.6	7.1

(1) Ages in 2000

These tables were first used for the December 31, 2004 valuation.

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APPENDIX C (continued)

Rates of Retirement. This assumption is used to measure the probability of eligible members retiring from active employment.

Percent Retiring within Year

Plans A & B			Plan C		
Service of Member	**Police**	**Fire**	**Age of Member**	**Police**	**Fire**
20	28%	20%	50	35%	20%
21	28	15	51	25	15
22	26	10	52	20	10
23	15	10	53	15	10
24	12	10	54	15	10
25	15	15	55	15	10
26	15	10	56	15	10
27	15	10	57	15	15
28	15	10	58	25	25
29	15	30	59	30	30
30	100	10	60	100	100
31	100	100	Over 60	100	100

The current rates were first used for the December 31, 1999 valuation.

Rates of Separation from Active Membership. This assumption measures the probabilities of a member terminating employment. The rates do not apply to members who are eligible to retire.

Sample Ages	Years of Service	Percent Separating Within Year	
		Police	**Fire**
ALL	0	10.0%	8.0%
	1	8.0	6.0
	2	6.0	4.5
	3	4.0	3.0
	4	3.0	2.0
25	Over 4	3.0	1.0
30		2.4	1.0
35		1.7	1.0
40		1.2	0.9
45		1.0	0.8
50		0.9	0.7
55		0.8	0.6

These rates were first used for the December 31, 1999 valuation.

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Forfeiture of Vested Benefits. The assumption is that a percentage of the actuarial present value of vested termination benefits will be forfeited by a withdrawal of accumulated contributions.

Years of Service	% Forfeiting
10 - 14	100
15	0

This table was first used for the December 31, 2004 valuation.

Rates of Disability. This assumption measures the probability of a member becoming disabled.

Sample Ages	Percent Becoming Disabled Within Year	
	Police	Fire
20	0.10%	0.09%
25	0.16	0.14
30	0.33	0.30
35	0.55	0.49
40	0.77	0.68
45	0.98	0.87
50	1.20	1.06
55	1.42	1.14

These rates were first used for the December 31, 1999 valuation.

Rates of Recovery from Disability. Assumed to be zero.

Administrative Expenses. Assumed to be paid from investment earnings.

Active Member Group Size. Assumed to remain constant.

Vested Deferred Pensions. Amounts for Plan C are assumed to increase during the deferral period at 4.5% per year. This assumption was changed with the December 31, 2004 valuation.

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Miscellaneous and Technical Assumptions

Marriage Assumption:	80% of participants are assumed to be married for purposes of death benefits. In each case, the male was assumed to be 3 years older than the female.
Service Related Death and Disability:	All active member deaths and 75% of active member disablements are assumed to be service related.
Pay Increase Timing:	Assumed to occur mid-year.
Decrement Timing:	Decrements of all types are assumed to occur mid-year.
Eligibility Testing:	Eligibility for benefits is determined based upon the age nearest birthday and service nearest whole year at the start of the year in which the decrement is assumed to occur.
Benefit Service:	Service calculated to the nearest month, as of the decrement date, is used to determine the amount of benefit payable.
Other:	Disability and turnover decrements do not operate during retirement eligibility.
Miscellaneous Loading Factors:	The calculated normal retirement benefits were increased by 4% to account for the inclusion of unused sick leave in the calculation of Service Credit. This assumption was changed with the December 31, 2004 valuation.

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APPENDIX D

GLOSSARY OF TERMS

Actuarial Liability	The difference between the actuarial present value of system benefits and the actuarial value of future normal costs. Also referred to as "accrued liability" or "actuarial accrued liability."
Actuarial Assumptions	Estimates of future experience with respect to rates of mortality, disability, turnover, retirement, rate or rates of investment income and salary increases. Decrement assumptions (rates of mortality, disability, turnover and retirement) are generally based on past experience, often modified for projected changes in conditions. Economic assumptions (salary increases and investment income) consist of an underlying rate in an inflation-free environment plus a provision for a long-term average rate of inflation.
Accrued Service	Service credited under the system which was rendered before the date of the actuarial valuation.
Actuarial Equivalent	A single amount or series of amounts of equal actuarial value to another single amount or series of amounts, computed on the basis of appropriate assumptions.
Actuarial Cost Method	A mathematical budgeting procedure for allocating the dollar amount of the actuarial present value of retirement system benefit between future normal cost and actuarial accrued liability. Sometimes referred to as the "actuarial funding method."
Experience Gain (Loss)	The difference between actual experience and actuarial assumptions anticipated experience during the period between two actuarial valuation dates.
Actuarial Present Value	The amount of funds currently required to provide a payment or series of payments in the future. It is determined by discounting future payments at predetermined rates of interest and by probabilities of payment.
Amortization	Paying off an interest-discounted amount with periodic payments of interest and principal, as opposed to paying off with lump sum payment.
Normal Cost	The actuarial present value of retirement system benefits allocated to the current year by the actuarial cost method.

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Unfunded Actuarial Liability

The difference between actuarial liability and the valuation assets.

Most retirement systems have an unfunded actuarial liability. They arise each time new benefits are added and each time an actuarial loss is realized.

The existence of unfunded actuarial liability is not in itself bad, any more than a mortgage on a house is bad. Unfunded actuarial liability does not represent a debt that is payable today. What is important is the ability to amortize the unfunded actuarial liability and the trend in its amount.

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WICHITA EMPLOYEES' RETIREMENT SYSTEM

ACTUARIAL VALUATION REPORT AS OF DECEMBER 31, 2008

Prepared by:

Milliman, Inc.
1120 South 101st Street, Suite 400
Omaha, NE 68124-1088

Wichita Employees' Retirement System
Actuarial Valuation Report
as of December 31, 2008

Table of Contents

Section	Page
Actuarial Certification Letter	
Section 1 – Board Summary	1
Section 2 – Scope of the Report	9
Section 3 – Assets	10
Table 1 – Analysis of Net Assets at Market Value	11
Table 2 – Summary of Changes in Net Assets	12
Table 3 – Development of Actuarial Value of Assets	13
Section 4 – System Liabilities	14
Table 4 – Present Value of Future Benefits (PVFB)	15
Table 5 – Actuarial Liability	16
Table 6 – Present Value of Accrued Benefits	17
Section 5 – Employer Contributions	18
Table 7 – Derivation of Unfunded Actuarial Liability Contribution Rate	19
Table 8 – Derivation of Normal Cost Rate	20
Table 9 – Employer Contribution Rates	21
Table 10 – Historical Summary of City Contribution Rates	22
Table 11 – Derivation of System Experience Gain/(Loss)	23
Section 6 – Accounting Information	24
Table 12 – Required Supplementary Information Schedule of Funding Progress	25
Table 13 – Required Supplementary Information Schedule of Employer Contributions	26
Table 14 – Solvency Test	27
Appendices	
A. Summary of Membership Data	28
B. Summary of Benefit Provisions	48
C. Actuarial Cost Method and Assumptions	53
D. Glossary of Terms	60

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April 6, 2009

The Board of Trustees
Wichita Employees' Retirement System
City Hall, 12th Floor
Wichita, KS 67202

Dear Members of the Board:

At your request, we have performed an annual actuarial valuation of the Wichita Employees' Retirement System as of December 31, 2008 for determining the contribution rate for fiscal year 2010. The major findings of the valuation are contained in this report. This report reflects the benefit provisions in effect as of December 31, 2008. There was no change in the actuarial methods from the prior valuation. There were minor changes to the provisions related to the Deferred Retirement Option Plan (DROP). They did not have a material impact on the valuation results.

In preparing this report, we relied, without audit, on information (some oral and some written) supplied by the System's staff. This information includes, but is not limited to, plan provisions, member data and financial information. In our examination of these data, we have found them to be reasonably consistent and comparable with data used for other purposes. Since the valuation results are dependent on the integrity of the data supplied, the results can be expected to differ if the underlying data is incomplete or missing. It should be noted that if any data or other information is inaccurate or incomplete, our calculations may need to be revised.

On the basis of the foregoing, we hereby certify that, to the best of our knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted principles and practices which are consistent with the Actuarial Standards of Practice promulgated by the Actuarial Standards Board (ASB) and the applicable Guides to Professional Conduct, amplifying Opinions and supporting Recommendations of the American Academy of Actuaries.

We further certify that all costs, liabilities, rates of interest and other factors for the System have been determined on the basis of actuarial assumptions and methods which are individually reasonable (taking into account the experience of the System and reasonable expectations of future experience); and which, in combination, offer our best estimate of anticipated experience affecting the System. Nevertheless, the emerging costs will vary from those presented in this report to the extent actual experience differs from that projected by the actuarial assumptions. The Board of Trustees has the final decision regarding the appropriateness of the assumptions and adopted them as outlined in Appendix C.

Future actuarial measurements may differ significantly from the current measurements presented in this report due to such factors as the following: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period or additional cost or contribution requirements based on the System's funded status); and changes in plan provisions or applicable law. Due to the limited scope of our assignment, we did not perform an analysis of the potential range of future measurements.

Actuarial computations presented in this report are for purposes of determining the actuarial contribution rates for funding the System. Actuarial computations presented in this report under GASB Statement No. 25 and 27 are for purposes of fulfilling financial accounting requirements. The computations prepared for these two purposes may differ as disclosed in our report. The calculations in the enclosed report have been made on a basis consistent with our understanding of the System's funding requirements and goals, and of GASB Statements No. 25 and 27. Determinations for purposes other than these requirements may be significantly different from the results contained in this report. Accordingly, additional determinations may be needed for other purposes.

Milliman's work product was prepared exclusively for the Wichita Employees' Retirement System for a specific and limited purpose. It is a complex, technical analysis that assumes a high level of knowledge concerning Wichita Employees' Retirement System operations, and uses data from the Wichita Employees' Retirement System, which Milliman has not audited. It is not for the use or benefit of any third party for any purpose. Any third party recipient of Milliman's work product who desires professional guidance should not rely upon Milliman's work product, but should engage qualified professionals for advice appropriate to its own specific needs.

We would like to express our appreciation to Barbara Davis, Pension Manager, and to members of her staff, who gave substantial assistance in supplying the data on which this report is based.

I, Patrice A. Beckham, F.S.A. am a member of the American Academy of Actuaries and a Fellow of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

I, Brent A. Banister, F.S.A. am a member of the American Academy of Actuaries and a Fellow of the Society of Actuaries, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

We herewith submit the following report and look forward to discussing it with you.

Respectfully Submitted,

MILLIMAN, Inc.

Patrice Beckham

Patrice A. Beckham, F.S.A.
Consulting Actuary

Brent A. Banister

Brent A. Banister, F.S.A.
Actuary

SECTION 1

BOARD SUMMARY

OVERVIEW

This report presents the results of the December 31, 2008 actuarial valuation of the Wichita Employees' Retirement System (WER). The primary purposes of performing a valuation are to:

- determine the employer contribution rates required to fund the System on an actuarial basis,
- disclose asset and liability measures as of the valuation date,
- determine the experience of the System since the last valuation date, and
- analyze and report on trends in System contributions, assets, and liabilities over the past several years.

All new employees hired by the City participate in Plan 3 (a defined contribution plan) for the first seven years. After seven years, the member makes an election to either remain in the defined contribution plan or move to Plan 2. The members that elect to remain in the defined contribution plan are referred to as Plan 3b members in this report. This report is intended to value assets and liabilities only for employees who are members of the defined benefit plans (Plan 1 and 2) or Plan 3 members who will have the right to elect such coverage in the future. Therefore, the member data, liability and asset values shown in this report exclude Plan 3b members.

The valuation results provide a "snapshot" view of the System's financial condition on December 31, 2008. Due to experience during the year, the System's funded status changed from a surplus of $51 million as of December 31, 2007 to a surplus of $1 million at December 31, 2008. A detailed analysis of the change in the unfunded actuarial liability/(surplus) from December 31, 2007 to December 31, 2008 is shown on page 3.

ASSETS

As of December 31, 2008, the System had total assets, when measured on a market value basis, of $386 million, excluding Plan 3b assets for those members who have elected to stay in Plan 3. This was a decrease in net assets of $174 million from the December 31, 2007 figure of $560 million.

The market value of assets is not used directly in the calculation of the City's contribution rate. An asset valuation method is used to smooth the effect of market fluctuations. The actuarial value of assets is equal to the expected value (calculated using the actuarial assumed rate of 7.75%) plus 25% of the difference between the market and expected value. See Table 3 on page 13 for a detailed development of the actuarial value of assets. As a result of the severe market decline in 2008, the actuarial value is 33% higher than the actual market value.

The components of the change in the market and actuarial value of assets for the Retirement System (in millions) are set forth below:

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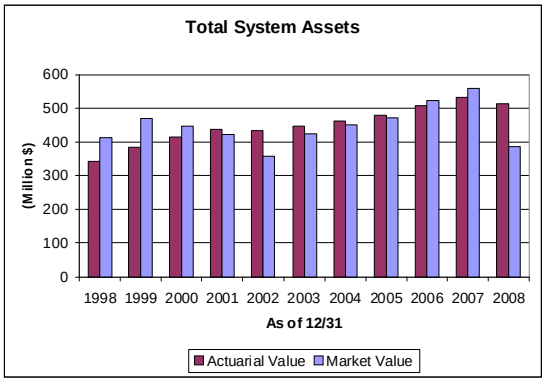
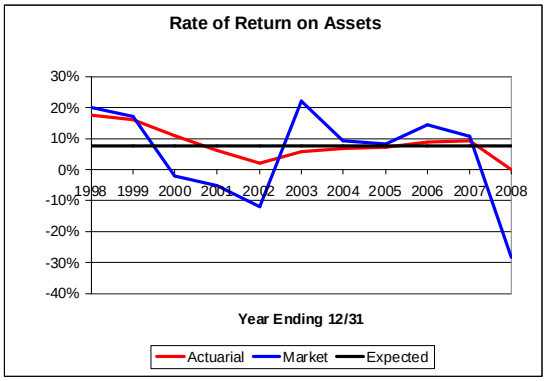
	Market Value ($M)	Actuarial Value ($M)
Assets, December 31, 2007	$559.8	$533.9
• City and Member Contributions	7.8	7.8
• Benefit Payments, Refunds and Transfers	(26.0)	(26.0)
• Investment Loss (net of expenses)	(156.0)	(2.8)
Assets, December 31, 2008	$385.6	$512.9

The annualized dollar-weighted rate of return, measured on the actuarial value of assets, was 0% and, measured on the market value of assets, was approximately -28%. The actuarial value of assets as of December 31, 2008 was $513 million, which represents an actuarial loss of about $42 million. Due to the asset smoothing method, there remains $127 million difference between the actuarial and market value of assets. As this unrecognized investment loss flows through the asset smoothing method in future valuations, the deferred losses will be recognized and the Plan's funded status will decline, absent any offsetting favorable investment experience.



The actuarial value of assets has both been greater than and less than the market value of assets during this period, which is expected when using a smoothing method. Due to investment experience in 2008, the actuarial value exceeds the market value by over $127 million.



The rate of return on the actuarial value of assets has been less volatile than the market value return, which is the goal of using an asset smoothing method.

LIABILITIES

The actuarial liability is that portion of the present value of future benefits that will not be paid by future employer normal costs or member contributions. The difference between this liability and asset values at the same date is referred to as the unfunded actuarial liability (UAL), or (surplus) if the asset value exceeds the actuarial liability. The unfunded actuarial liability will be reduced if the employer's contributions exceed the

employer's normal cost for the year, after allowing for interest earned on the previous balance of the unfunded actuarial liability. Benefit improvements, experience gains and losses, and changes in actuarial assumptions and procedures will also impact the total actuarial liability and the unfunded portion thereof.

The Actuarial Liability and Unfunded Actuarial Liability for the System are:

Actuarial Liability	$512,373,522
Actuarial Value of Assets	512,853,345
Unfunded Actuarial Liability/(Surplus)	(479,823)

Between December 31, 2007 and December 31, 2008 the change in the unfunded actuarial liability for the System was as follows (in millions):

	$(M)
UAL, December 31, 2007	(50.5)
+ Normal cost for year	9.8
+ Assumed investment return for year	(3.2)
- Actual contributions (member + City)	7.8
- Assumed investment return on contributions	0.3
= Expected Unfunded Actuarial Liability, December 31, 2008	(52.0)
+ Change from amendments	0.0
+ Change from assumption changes	0.0
= Expected UAL after changes	(52.0)
Actual UAL, December 31, 2008	(0.5)
Experience gain/(loss) (Expected UAL – Actual UAL)	(51.5)

The experience loss for the 2008 plan year of $52 million reflects the combined impact of an actuarial loss of about $42 million on System assets (actuarial value), and an actuarial loss of about $9 million on System liabilities. The loss is primarily attributable to more retirements than expected and mortality experience for retirees.

Analysis of the unfunded actuarial liability strictly as a dollar amount can be misleading. Another way to evaluate the unfunded actuarial liability and the progress made in its funding is to track the funded status, the ratio of the actuarial value of assets to the actuarial liability. This information for recent years is shown below (in millions). Historical information is shown in the graph following the chart.

	12/31/04	12/31/05	12/31/06	12/31/07	12/31/08
Actuarial Liability ($M)	$413.2	$433.3	$459.1	$483.4	$512.4
Actuarial Value of Assets ($M)	463.0	479.3	505.8	533.9	512.9
Funded Ratio (Actuarial Value)	112.1%	110.6%	110.2%	110.5%	100.1%
Funded Ratio (Market Value)	109.1%	108.8%	114.1%	115.8%	75.3%

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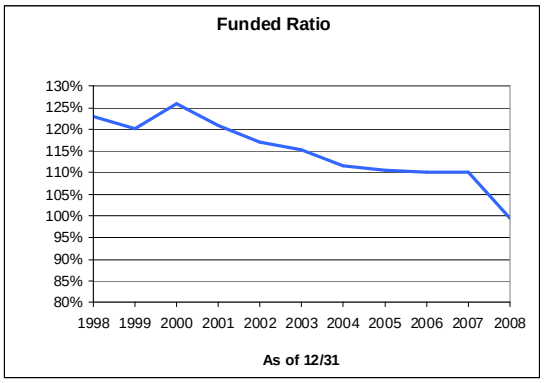


In general, over the past decade, the funded status of the Retirement System has declined. Benefit improvements effective in 2000 decreased the funded ratio. Assumption changes in 2004 and investment experience in the early part of the decade also caused the funded ratio to decline. The strong asset performance in 2006 and 2007 stabilized the System's funded status. The significant decline in the stock market in 2008 again dropped the funded ratio significantly. If the stock market does not experience a significant bounceback in 2009 and 2010, the recognition of the deferred investment losses will be recognized in the actuarial value of assets and the System's funded status will decline further.

As mentioned earlier in this report, due to the asset smoothing method there is currently about $127 million difference between the actuarial value and the market value of assets. The funded ratio of the System on a market value basis is 75%. To the extent there is not favorable investment experience to offset the deferred losses, the $127 million loss will be recognized in future years and the System's funded status will decline. The System's funded status and the size of the UAL in future years will be heavily dependent on actual investment returns.

CONTRIBUTION RATES

Generally, contributions to the System consist of:

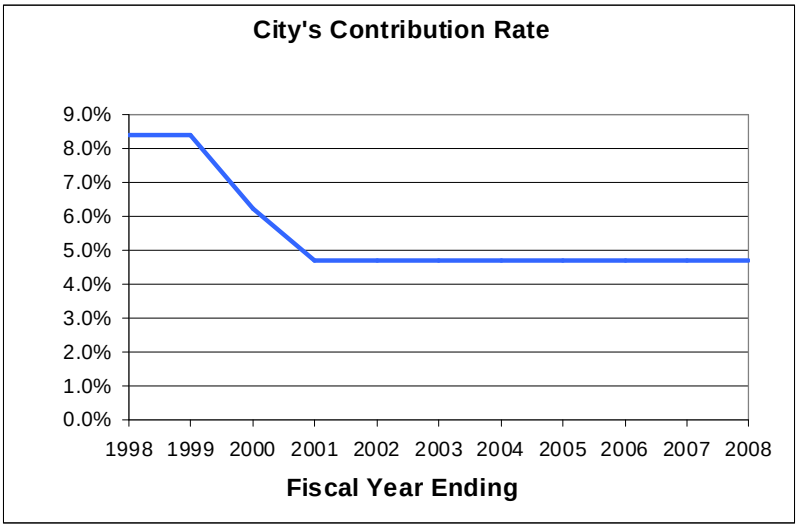
- a "normal cost" for the portion of projected liabilities allocated to service of members during the year following the valuation date, by the actuarial cost method, and

- an "unfunded actuarial liability or (surplus) contribution" for the excess of the portion of projected liabilities allocated to service to date over the actuarial value of assets.

Contribution rates are computed with the objective of developing costs that are level as a percentage of covered payroll. The contribution rate for fiscal year 2010 is based on the December 31, 2008 actuarial valuation results.

As of December 31, 2008, the actuarial value of assets is just slightly larger than the actuarial liability. The resulting small surplus, when amortized over a 20-year rolling period, results in an amortization credit of 0.0% of pay. The contribution rate is the sum of the employer portion of the normal cost rate and the amortization credit. This valuation indicates the City contribution rate to be 8.4%.

A summary of the City's historical contribution rate for the system is shown below:



COMMENTS

The stock market performance in 2008 was the worst since 1931. Most public retirement plans are feeling the pain of significant asset losses. The investment return on the market value of assets for 2008 was about -28%. When compared to the expected return of +7.75%, the assets were around 36% lower than expected. Such a dramatic drop in the asset value results in a significant increase in the contribution to the System. When the fixed nature of the employee contribution rate is factored into the calculation, the impact on the employer contribution amount is even more significant.

Retirement plans use several mechanisms to provide more stability in the contribution levels. These include an asset smoothing method, which smoothes out the peaks and valleys of investment returns and amortization of any actuarial gains or losses (WER amortizes these over a 20-year period). The System utilizes an asset smoothing method that determines the actuarial value of assets as 75% of the expected value (using the 7.75% actuarial assumed rate of return) and 25% of actual market value. Due to the smoothing method, the rate of return on the actuarial value of assets for the 2008 plan year was about 0% as compared to -28% on the pure market value.

Given the size of the investment loss in 2008, an increase in the minimum contribution level could not be avoided, even with the use of these "stability mechanisms". The normal cost remained stable as a percentage of payroll, but the System's surplus assets were nearly eliminated. There is no surplus credit in this valuation (it is 0.0% of pay). Along with the employer normal cost rate of 8.4%, the resulting actuarial contribution rate is 8.4% of pay. The market experience thus far in 2009 has also been negative. These losses, in addition to those from 2008 that are not yet recognized, may significantly reduce the System's funded status and increase the actuarial contribution rate in future valuations. The City should be prepared for significantly higher contribution rates in the next few years and possibly beyond, depending on future rates of return.

As mentioned above, the System utilizes an asset smoothing method in the valuation process. While this is a common procedure for public retirement systems, it is important to identify the potential impact of the deferred (unrecognized) investment experience. The key valuation results from the December 31, 2008 actuarial valuation are shown below using both the actuarial value of assets and the pure market value.

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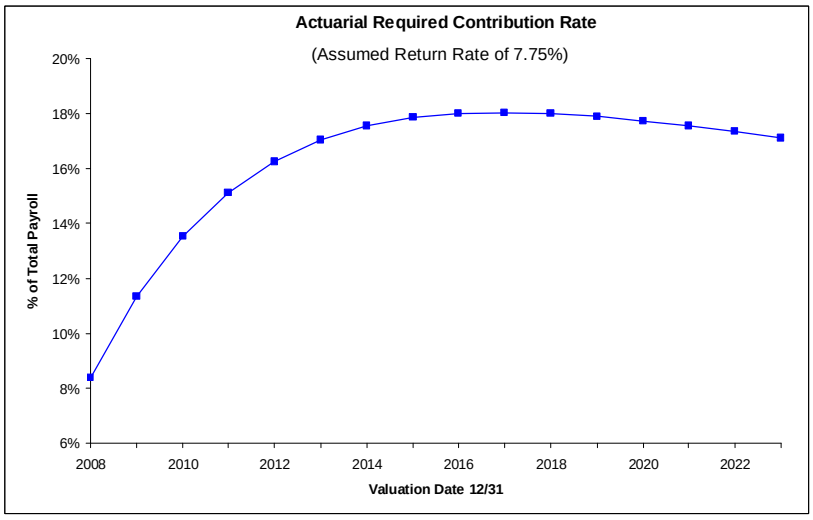
	Using Actuarial Value of Assets	Using Market Value of Assets
Actuarial Liability	$512,373,522	$512,373,522
Asset Value	512,853,345	385,599,194
Unfunded Actuarial Liability	$ (479,823)	$126,774,328
Funded Ratio	100.1%	75.3%
Normal Cost Rate	13.2%	13.2%
UAL Contribution Rate	0.0%	10.3%
Total Contribution Rate	13.2%	23.5%
Employee Contribution Rate	(4.8%)	(4.8%)
Employer Contribution Rate	8.4%	18.7%

The asset smoothing method impacts only the timing of recognizing the actual market experience on the assets. Due to the dramatically negative return in 2008 (about -28%), the actuarial value of assets exceeded the pure market value by 33%. If asset returns are not significantly higher than 7.75% over the next few years, the $127 million of deferred investment experience will be recognized and the ultimate impact on the employer contribution rate can be expected to be similar to the column shown above using market value of assets.

The following graph shows the expected increase in the employer contribution rate in future years if 7.75% is earned in 2009 and all future years and the City contributes the full actuarial contribution rate each year.



The challenge at this point in time is that the length and final depth of the market decline is unknown and the market continues to exhibit extreme volatility. Historically, markets have recovered and, if this happens, it should help offset some of the current deferred losses. The use of an asset smoothing method defers some of the investment experience from 2008 to later years. Consequently, absent a significant and sustained recovery in the market, part of the unrecognized loss from 2008 ($127 million) will be reflected in the December 31, 2009 and subsequent years' valuations. Actual investment returns over the next few years will determine exactly how much the System's funding will be affected and the magnitude of the increase in the unfunded actuarial liability and contribution rate.

It would be prudent for the City to plan on higher contribution rates in future years. The negative return in 2008 has had a substantial impact on the System's long-term funding outlook. While the System has sufficient assets to pay benefits for many years into the future, the long-term actuarial soundness of the System will be impacted if returns do not bounce back, contributions increase, or a combination of both.

We conclude this Board Summary with the following exhibit which compares the principal results of the current and prior actuarial valuations.

SUMMARY OF PRINCIPAL RESULTS

1. PARTICIPANT DATA	12/31/2008 Valuation	12/31/2007 Valuation	% Change
Number of:			
Active Members			
Plan 1	34	56	(39.3)%
Plan 2	941	931	1.1%
Plan 3 (excluding Plan 3b)	852	838	1.7%
Total	1,827	1,825	0.1%
DROP Members			
Plan 1	58	57	1.8%
Plan 2	17	16	6.3%
Total	75	73	2.7%
Retired Members and Beneficiaries	1,167	1,132	3.1%
Inactive Vested Members	131	138	(5.1)%
Total Members	3,200	3,168	1.0%
Annual Valuation Payroll of Active Members (Including DROP)			
Plan 1	$ 5,233,211	$ 6,034,708	(13.3)%
Plan 2	46,988,203	44,198,149	6.3%
Plan 3	29,824,401	29,365,696	1.6%
Total	$ 82,045,815	$ 79,598,553	3.1%
Annual Retirement Payments for Retired Members and Beneficiaries	$ 27,520,308	$ 25,757,557	6.8%
2. ASSETS AND LIABILITIES			
Total Actuarial Liability	$ 512,373,522	$ 483,387,028	6.0%
Market Value of Assets	385,599,194	559,775,195	(31.1)%
Assets for Valuation Purposes	512,853,345	533,911,465	(3.9)%
Unfunded Actuarial Liability/(Surplus)	$ (479,823)	$ (50,524,437)	(99.1)%
Funded Ratio	100.1%	110.5%	(9.4)%
3. EMPLOYER CONTRIBUTION RATES AS A PERCENT OF PAYROLL			
Normal Cost	13.2%	13.2%	0.0%
Member Financed	4.8%	4.8%	0.0%
Employer Normal Cost	8.4%	8.4%	0.0%
Amortization of Unfunded Actuarial Liability/(Surplus)	0.0%	(4.2)%	(100.0)%
Range of Employer Contribution Rates			
Full Normal Cost Rate	8.4%	8.4%	0.0%
With Amortization Charge/(Credit)	8.4%	4.2%	100.0%

SECTION 2

SCOPE OF THE REPORT

This report presents the actuarial valuation of the Wichita Employees' Retirement System (WER) as of December 31, 2008. This valuation was prepared at the request of the System's Board of Trustees.

Please pay particular attention to our cover letter, where the guidelines employed in the preparation of this report are outlined. We also comment on the sources and reliability of both the data and the actuarial assumptions upon which our findings are based. Those comments are the basis for our certification that this report is complete and accurate to the best of our knowledge and belief.

A summary of the findings resulting from this valuation is presented in the previous section. Section 3 describes the assets and investment experience of the System. Sections 4 and 5 describe how the obligations of the System are to be met under the actuarial cost method in use. Section 6 includes the information required for the financial reporting standards established by the Governmental Accounting Standards Board (GASB).

This report includes several appendices:

- Appendix A — Schedules of valuation data classified by various categories of members.
- Appendix B — A summary of the current benefit structure, as determined by the provisions of governing law on the valuation date.
- Appendix C — A summary of the actuarial methods and assumptions used to estimate liabilities and determine contribution rates.
- Appendix D — A glossary of actuarial terms.

SECTION 3

ASSETS

In many respects, an actuarial valuation can be thought of as an inventory process. The inventory is taken as of the actuarial valuation date, which for this valuation is December 31, 2008. On that date, the assets available for the payment of benefits are appraised. The assets are compared with the liabilities of the System. The actuarial process then leads to a method of determining the contributions needed by members and the employer in the future to balance the System assets and liabilities.

Market Value of Assets

The current market value represents the "snapshot" or "cash-out" value of System assets as of the valuation date. In addition, market values of assets provide a basis for measuring investment performance from time to time. At December 31, 2008 the market value of assets for the System, excluding Plan 3b assets for members who have elected to remain in Plan 3, was $386 million. Table 1 is a comparison, at market values, of System assets as of December 31, 2007, and December 31, 2008, in total and by investment category. Table 2 summarizes the change in the market value of assets from December 31, 2007 to December 31, 2008.

Actuarial Value of Assets

Neither the market value of assets, representing a "cash-out" value of System assets, nor the book values of assets, representing the cost of investments, may be the best measure of the System's ongoing ability to meet its obligations.

To arrive at a suitable value for the actuarial valuation, a technique for determining the actuarial value of assets is used which dampens swings in the market value while still indirectly recognizing market values. This methodology, first adopted for the December 31, 2002 valuation, smoothes market experience by recognizing 25% of the difference between expected value (based on the actuarial assumption) and market value. Table 3 shows the development of the actuarial value of assets (AVA) as of December 31, 2008.

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TABLE 1

WICHITA EMPLOYEES' RETIREMENT SYSTEM

ANALYSIS OF NET ASSETS AT MARKET VALUE

	As of December 31, 2008		As of December 31, 2007	
	Amount ($ Millions)	% of Total	Amount ($ Millions)	% of Total
Cash & Equivalents	$ 0.1	0.0 %	$ 0.2	0.0 %
Government Securities	30.7	8.2	54.2	9.9
Corporate Debt	50.5	13.4	47.4	8.7
Mortgage Backed Securities	65.1	17.3	61.8	11.3
Pooled Funds	43.9	11.7	72.9	13.4
Domestic Equity	113.4	30.2	193.5	35.4
International Equity	63.9	17.0	109.8	20.1
Real Estate	26.2	7.0	30.8	5.7
Securities Lending Collateral Pool	55.2	14.7	86.8	15.9
Other	0.4	0.1	0.5	0.1
Receivables	8.6	2.3	9.2	1.7
Liabilities	(82.1)	(21.9)	(121.2)	(22.2)
Total Plans 1 and 2	$ 375.9	100.0 %	$ 545.9	100.0 %
Plan 3 Assets				
Members Electing to Stay in Plan 3	$ 2.2		$ 2.2	
Other Plan 3 Members	9.7		13.9	
Total Plan 3 and 3b	11.9		16.1	
Net Assets (Plans 1, 2, and 3)	$ 387.8		$ 562.0	

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TABLE 2

WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF CHANGES IN NET ASSETS DURING YEAR ENDED DECEMBER 31, 2008

(Market Value)

	Plans 1 & 2	Plan 3*	Total
1. Market Value of Assets as of December 31, 2007	$ 545,880,881	$ 13,894,314	$ 559,775,195
2. Contributions:			
a. Members	$ 2,621,076	$ 1,384,108	$ 4,005,184
b. City	2,450,162	1,384,108	3,834,270
c. Other	0	0	0
d. Transfers	2,019,289	(2,598,155)	(578,866)
e. Total [2(a) + 2(b) + 2(c) + 2(d)]	$ 7,090,527	$ 170,061	$ 7,260,588
3. Investment Income			
a. Interest and Dividends	$ 15,813,329	$ 398,907	$ 16,212,236
b. Net Depreciation in Fair Value	(165,321,684)	(4,165,909)	(169,487,593)
c. Commission Recapture	16,915	426	17,341
d. Securities Lending Income	841,779	21,253	863,032
e. Total [3(a) + 3(b) + 3(c) + 3(d)]	$ (148,649,661)	$ (3,745,323)	$ (152,394,984)
4. Expenditures			
a. Refunds of Member Contributions	$ 313,595	$ 436,515	$ 750,110
b. Benefits Paid:			
(1) Pension and death benefits	23,974,743	0	23,974,743
(2) DROP payments	1,820,599	0	1,820,599
c. Administrative Expenses	472,677	96,813	569,490
d. Investment Expenses	1,875,979	50,684	1,926,663
e. Total [4(a) + 4(b) + 4(c) + 4(d)]	$ 28,457,593	$ 584,012	$ 29,041,605
5. Net Change [2(e) + 3(e) - 4(e)]	$ (170,016,727)	$ (4,159,274)	$ (174,176,001)
6. Market Value of Assets as of December 31, 2008 (1) + (5)	$ 375,864,154	$ 9,735,040	$ 385,599,194

* Excludes assets for Plan 3b members. The December 31, 2008 value of the assets for this group was $2,169,396.

TABLE 3

WICHITA EMPLOYEES' RETIREMENT SYSTEM

DEVELOPMENT OF ACTUARIAL VALUE OF ASSETS

AS OF DECEMBER 31, 2008

		Plans 1 & 2		Plan 3*		Total
1. Actuarial Value of Assets as of December 31, 2007	$	520,704,005	$	13,207,460	$	533,911,465
2. Actual Contributions/Disbursements						
a. Contributions	$	5,071,238	$	2,768,216	$	7,839,454
b. Transfers		2,019,289		(2,598,155)		(578,866)
c. Benefit Payments and Refunds		(26,108,937)		(436,515)		(26,545,452)
d. Net (a + b + c)	$	(19,018,410)	$	(266,454)	$	(19,284,864)
3. Expected Value of Assets as of December 31, 2008 [(1) x 1.0775] + [(2d) x $(1.0775)^{.5}$]	$	541,316,943	$	13,954,452	$	555,271,395
4. Market Value of Assets as of December 31, 2008	$	375,864,154	$	9,735,040	$	385,599,194
5. Difference Between Market and Expected Values (4) - (3)	$	(165,452,789)	$	(4,219,412)	$	(169,672,201)
6. Actuarial Value of Assets as of December 31, 2008 (3) + [(5) x 25%]	$	499,953,746	$	12,899,599	$	512,853,345
7. Actuarial Value of Assets/Market Value of Assets (6) / (4)		133.01%		132.51%		133.00%
8. Market Value less Actuarial Value of Assets (4) - (6)	$	(124,089,592)	$	(3,164,559)	$	(127,254,151)

* Excludes Plan 3b.

SECTION 4

SYSTEM LIABILITIES

In the previous section, an actuarial valuation was compared with an inventory process, and an analysis was given of the inventory of assets of the System as of the valuation date, December 31, 2008. In this section, the discussion will focus on the commitments of the System, which are referred to as its liabilities.

Table 4 contains an analysis of the actuarial present value of all future benefits (PVFB) for contributing members, inactive members, retirees and their beneficiaries.

The liabilities summarized in Table 4 include the actuarial present value of all future benefits expected to be paid with respect to each member. For an active member, this value includes the measurement of both benefits already earned and future benefits to be earned. For all members, active and retired, the value extends over benefits earnable and payable for the rest of their lives and for the lives of the surviving beneficiaries.

All liabilities reflect the benefit provisions in place as of December 31, 2008.

Actuarial Liability

A fundamental principle in financing the liabilities of a retirement program is that the cost of its benefits should be related to the period in which benefits are earned, rather than to the period of benefit distribution. An actuarial cost method is a mathematical technique that allocates the present value of future benefits into annual costs. In order to do this allocation, it is necessary for the funding method to "breakdown" the present value of future benefits into two components:

(1) that which is attributable to the past and

(2) that which is attributable to the future.

Actuarial terminology calls the part attributable to the past the "past service liability" or the "actuarial liability". The portion allocated to the future is known as the present value of future normal costs, with the specific piece of it allocated to the current year being called the "normal cost". Table 5 contains the calculation of actuarial liability for the System. The Entry Age Normal actuarial cost method is used to develop the actuarial liability.

TABLE 4

WICHITA EMPLOYEES' RETIREMENT SYSTEM

PRESENT VALUE OF FUTURE BENEFITS (PVFB)
AS OF DECEMBER 31, 2008

	Plan 1	Plan 2	Plan 3	Total
1. Active employees				
a. Retirement Benefit	$ 16,312,579	$ 181,702,024	$ 46,594,262	$ 244,608,865
b. Pre-Retirement Death Benefit	22,209	2,145,172	636,284	2,803,665
c. Withdrawal Benefit	309,156	13,102,271	7,924,670	21,336,097
d. Disability Benefit	66,597	6,486,540	2,331,430	8,884,567
e. Total	$ 16,710,541	$ 203,436,007	$ 57,486,646	$ 277,633,194
2. DROP Members				
a. DROP Account Balance	$ 6,136,903	$ 704,961	$ 0	$ 6,841,864
b. Monthly Retirement Benefit	36,454,247	4,393,505	0	40,847,752
c. Total	$ 42,591,150	$ 5,098,466	$ 0	$ 47,689,616
3. Inactive Vested Members	$ 1,346,346	$ 18,120,336	$ 0	$ 19,466,682
4. Inactive Nonvested Members	$ 0	$ 0	$ 0	$ 0
5. In Pay Members				
a. Disabled Members	$ 2,040,891	$ 1,349,460	$ 0	$ 3,390,351
b. Retirees	192,456,012	36,454,745	0	228,910,757
c. Beneficiaries	17,058,763	3,349,867	0	20,408,630
d. Total	$ 211,555,666	$ 41,154,072	$ 0	$ 252,709,738
6. Total PVFB				
(1e) + (2c) + (3) + (4) + (5d)	$ 272,203,703	$ 267,808,881	$ 57,486,646	$ 597,499,230

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TABLE 5

WICHITA EMPLOYEES' RETIREMENT SYSTEM

ACTUARIAL LIABILITY
AS OF DECEMBER 31, 2008

	Plan 1	Plan 2	Plan 3	Total
1. Active employees				
a. Present Value of Future Benefits	$ 16,710,541	$ 203,436,007	$ 57,486,646	$ 277,633,194
b. Present Value of Future Normal Costs	1,791,683	46,855,617	39,642,967	88,290,267
c. Actuarial Liability (1a) - (1b)	$ 14,918,858	$ 156,580,390	$ 17,843,679	$ 189,342,927
2. DROP Members	$ 42,591,150	$ 5,098,466	$ 0	$ 47,689,616
3. Inactive Vested Members	$ 1,346,346	$ 18,120,336	$ 0	$ 19,466,682
4. Inactive Nonvested Members	$ 0	$ 0	$ 0	$ 0
5. In Pay Members				
a. Disabled Members	$ 2,040,891	$ 1,349,460	$ 0	$ 3,390,351
b. Retirees	192,456,012	36,454,745	0	228,910,757
c. Beneficiaries	17,058,763	3,349,867	0	20,408,630
d. Total	$ 211,555,666	$ 41,154,072	$ 0	$ 252,709,738
6. Reserve for Plan 3 Members	$ 0	$ 0	$ 3,164,559	$ 3,164,559
7. Total Actuarial Liability (1c) + (2) + (3) + (4) + (5d) + (6)	$ 270,412,020	$ 220,953,264	$ 21,008,238	$ 512,373,522

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TABLE 6

WICHITA EMPLOYEES' RETIREMENT SYSTEM

PRESENT VALUE OF ACCRUED BENEFITS
AS OF DECEMBER 31, 2008

The present value of accrued benefits for the System reflects the benefits earned based on service, earnings, and the System provisions as of the valuation date. It also reflects the on-going nature of the System by using the same actuarial assumptions as are used for funding purposes. Further, although the System provides that the accrued benefits of deferred vested members are indexed until benefits begin, the present value of accrued benefit liability does not reflect this provision until the assumed termination of employment.

	Plan 1	Plan 2	Plan 3	Total
1. Active Members	$ 14,437,855	$ 99,691,843	$ 9,735,040	$ 123,864,738
2. DROP Members	$ 42,591,150	$ 5,098,466	$ 0	$ 47,689,616
3. Inactive Vested Members	$ 1,346,346	$ 18,120,336	$ 0	$ 19,466,682
4. In Pay Members				
a. Disabled Members	$ 2,040,891	$ 1,349,460	$ 0	$ 3,390,351
b. Retirees	192,456,012	36,454,745	0	228,910,757
c. Beneficiaries	17,058,763	3,349,867	0	20,408,630
d. Total	$ 211,555,666	$ 41,154,072	$ 0	$ 252,709,738
5. Total	$ 269,931,017	$ 164,064,717	$ 9,735,040	$ 443,730,774
6. Market Value of Assets*	$ 233,775,094	$ 142,089,060	$ 9,735,040	$ 385,599,194
7. Funded Ratio (6)/(5)	87%	87%	100%	87%

* Split of assets between Plan 1 and Plan 2 is in proportion to the liabilities for illustrative purposes only.

SECTION 5

EMPLOYER CONTRIBUTIONS

The previous two sections were devoted to a discussion of the assets and liabilities of the System. A comparison of Tables 3 and 4 indicates that current assets fall short of meeting the present value of future benefits (total liability). This is expected in all but a completely closed fund, where no further contributions are anticipated. In an active system, there will almost always be a difference between the actuarial value of assets and total liabilities. This deficiency has to be made up by future contributions and investment returns. An actuarial valuation sets out a schedule of future contributions that will deal with this deficiency in an orderly fashion.

The method used to determine the incidence of the contributions in various years is called the actuarial cost method. Under an actuarial cost method, the contributions required to meet the difference between current assets and current liabilities are allocated each year between two elements: (1) the normal cost rate and (2) the unfunded actuarial liability contribution rate.

The term "fully funded" is often applied to a system in which contributions at the normal cost rate are sufficient to pay for the benefits of existing employees as well as for those of new employees. More often than not, systems are not fully funded, either because of past benefit improvements that have not been completely funded or because of actuarial deficiencies that have occurred because experience has not been as favorable as anticipated. Under these circumstances, an unfunded actuarial liability (UAL) exists. Likewise, when the actuarial value of assets is greater than the actuarial liability, a surplus exists.

Description of Contribution Rate Components

The Entry Age Normal (EAN) actuarial cost method is used for the valuation. Under this method, the normal cost for each year from entry age to assumed exit age is a constant percentage of the member's year by year projected compensation. The portion of the present value of future benefits not provided by the present value of future normal costs is the actuarial liability. The unfunded actuarial liability/(surplus) represents the difference between the actuarial liability and the actuarial value of assets as of the valuation date. The unfunded actuarial liability is calculated each year and reflects experience gains/losses.

In general, contributions are computed in accordance with a level percent-of-payroll funding objective. The contribution rates based on this December 31, 2008 actuarial valuation will be used to determine employer contribution rates to the Wichita Employees' Retirement System for fiscal year 2010. In this context, the term "contribution rate" means the percentage, which is applied to a particular active member payroll to determine the actual employer contribution amount (i.e., in dollars) for the group.

As of December 31, 2008, the actuarial value of assets was slightly larger than the actuarial liability. The City's funding policy is to amortize the surplus over a rolling 20-year period. The amortization of the surplus results in a temporary amortization credit, thereby reducing the employer contribution rate.

Contribution Rate Summary

In Table 7, the amortization credit related to the surplus, as of December 31, 2008, is developed. Table 8 develops the normal cost rate for the System. The derivation of the contribution rate for the City is shown in Table 9. Table 10 shows the historical summary of the City's contribution rates. Table 11 develops the experience gain/(loss) for the year ended December 31, 2008.

The rates shown in this report are based on the actuarial assumptions and cost methods described in Appendix C.

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TABLE 7

WICHITA EMPLOYEES' RETIREMENT SYSTEM

DECEMBER 31, 2008 VALUATION

DERIVATION OF UNFUNDED ACTUARIAL LIABILITY CONTRIBUTION RATE

1. Actuarial Accrued Liability	$	512,373,522	
2. Actuarial Value of Assets	$	512,853,345	
3. Unfunded Actuarial Liability/(Surplus)	$	(479,823)	
4. Payment (Adjusted to Mid-Year) to Amortize Unfunded Actuarial Liability/(Surplus) Over 20 Years *	$	(32,800)	
5. Total Projected Payroll for the Year	$	83,871,532	
6. Amortization Payment as a Percent of Payroll		0.0	%

* The City has elected to amortize the UAL as a level percent of payroll over a rolling 20-year period.

TABLE 8

WICHITA EMPLOYEES' RETIREMENT SYSTEM

DECEMBER 31, 2008 VALUATION

DERIVATION OF NORMAL COST RATE

Normal Cost at December 31, 2008		
Service pensions	$	7,766,655
Disability pensions		396,090
Survivor pensions		124,347
Termination benefits		
- Deferred service pensions		1,018,657
- Return of member contributions		769,057
Total Normal Cost	$	10,074,806
Normal Cost Adjusted to Mid-Year	$	10,457,920
Projected Payroll for Members Under Certain Retirement Age	$	78,937,469
Total Normal Cost Rate for Year		13.2%

TABLE 9

WICHITA EMPLOYEES' RETIREMENT SYSTEM
EMPLOYER CONTRIBUTION RATES
FOR FISCAL YEAR
COMMENCING IN 2010

	Contribution Requirements as % of Payroll
Normal Cost	
Service pensions	10.2 %
Disability pensions	0.5 %
Survivor pensions	0.2 %
Termination benefits	
- Deferred service pensions	1.3 %
- Return of member contributions	1.0 %
Total Normal Cost	13.2 %
Unfunded Actuarial Liability	
Retired members and beneficiaries (1)	0.0 %
Active and former members (2)	0.0 %
Total UAL Contribution	0.0 %
Total Contribution Requirement	
Member Financed Portion (3)	4.8 %
City Financed Portion	8.4 %
Total	13.2 %

(1) Actuarial value of assets exceeds the actuarial liability for retirees and beneficiaries as of December 31, 2008.

(2) The surplus assets are amortized as a level percent of active member payroll over a rolling 20-year period. The amortization of surplus amount rounds to 0.0% in this valuation.

(3) The weighted average of member contribution rates: 6.4% for Plan 1, 4.7% for Plan 2, and 4.7% for Plan 3.

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TABLE 10

WICHITA EMPLOYEES' RETIREMENT SYSTEM

HISTORICAL SUMMARY OF CITY CONTRIBUTION RATES

Contribution rates are computed in accordance with a level percent of payroll funding objective. As of December 31, 2008, actuarial liabilities continue to be fully covered by valuation assets. The excess is amortized over a rolling 20 year period, resulting in an amortization credit.

		City Contributions as Percents of Active Member Pensionable Payroll	
Valuation Date	**Fiscal Year**	**Funding Objective**	**Amortization Credit**
11/30/90	1992	11.0%	-%
11/30/91	1993	10.0	-
11/30/92	1994	9.5	-
11/30/93	1995	9.5	-
11/30/94	1996	9.4	-
12/31/95	1997	9.0	-
12/31/96	1998	6.9 – 8.4	(1.5)
12/31/97	1999	4.6 – 8.5	(3.9)
12/31/98	2000	0.8 – 8.3	(7.5)
12/31/99	2001	2.5 – 9.8	(7.3)
12/31/00	2002	0.5 – 9.7	(9.2)
12/31/01	2003	1.9 – 9.4	(7.5)
12/31/02	2004	2.7 – 8.8	(6.1)
12/31/03	2005	3.1 – 8.9	(5.8)
12/31/04	2006	3.5 – 8.2	(4.7)
12/31/05	2007	3.9 – 8.2	(4.3)
12/31/06	2008	4.2 – 8.3	(4.1)
12/31/07	2009	4.2 – 8.4	(4.2)
12/31/08	2010	8.4	0.0

TABLE 11

WICHITA EMPLOYEES' RETIREMENT SYSTEM

DERIVATION OF SYSTEM EXPERIENCE GAIN/(LOSS)

			($M) Year Ended 12/31/08
(1)		UAL* at start of year	(50.5)
(2)	+	Normal cost for year	9.8
(3)	+	Assumed investment return on (1) & (2)	(3.2)
(4)	-	Actual contributions (member + City)	7.8
(5)	-	Assumed investment return on (4)	0.3
(6)	=	Expected UAL at end of year	(52.0)
(7)	+	Increase (decr.) from amendments	0.0
(8)	+	Increase (decr.) from assumption change	0.0
(9)	=	Expected UAL after changes	(52.0)
(10)	=	Actual UAL at year end	(0.5)
(11)	=	Experience gain (loss) (9) – (10)	(51.5)**
(12)	=	Percent of beginning of year AL	10.6%

* *Unfunded Actuarial Liability/(Surplus)*

** *Of this amount, $42.4 million of the experience loss is due to an experience loss on the actuarial value of assets and $9.1 million represents an experience loss on liabilities.*

SECTION 6

ACCOUNTING INFORMATION

The actuarial liability is a measure intended to help the reader assess (i) a retirement system's funded status on an on-going concern basis, and (ii) progress being made toward accumulating the assets needed to pay benefits as due. Allocation of the actuarial present value of projected benefits between past and future service was based on service using the Entry Age Normal actuarial cost method. Assumptions, including projected pay increases, were the same as used to determine the System's level percent of payroll annual required contribution between entry age and assumed exit age. Entry age was established by subtracting credited service from current age on the valuation date.

The preceding methods comply with the financial reporting standards established by the Governmental Accounting Standards Board.

The Entry Age Normal actuarial liability was determined as part of an actuarial valuation of the plan as of December 31, 2008. Significant actuarial assumptions used in determining the actuarial liability include:

(a) a rate of return on the investment of present and future assets of 7.75% per year compounded annually,

(b) projected salary increases of 4.50% per year compounded annually, (4.0% attributable to inflation, and 0.50% attributable to productivity),

(c) additional projected salary increases of 0.0% to 5.5% per year attributable to seniority/merit, and

(d) the assumption that benefits will increase 3.0% per year of retirement (non-compounded) for Plan 1 and 2.0% per year of retirement (non-compounded) for Plan 2.

Actuarial Liability:	
Active members	$192,507,486
DROP members	47,689,616
Retired members and beneficiaries currently receiving benefits	252,709,738
Vested terminated members not yet receiving benefits	19,466,682
Total Actuarial Liability	$512,373,522
Actuarial Value of Assets (market value was $385,599,194)	$512,853,345
Assets in Excess of Actuarial Liability	$(479,823)

During the year ended December 31, 2008, the Plan experienced a net increase of $29.0 million in the actuarial liability.

TABLE 12

WICHITA EMPLOYEES' RETIREMENT SYSTEM

REQUIRED SUPPLEMENTARY INFORMATION
SCHEDULE OF FUNDING PROGRESS

Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Liability (AL) (b)	Unfunded AL (UAL) (b)–(a)	Funded Ratio (a)/(b)	Active Member Covered Payroll (c)	UAL as a Percentage of Active Member Covered Payroll ((b-a)/c)
11/30/90	$143,758	$178,659	$ 34,901	80.5%	$ 44,509	78.4%
11/30/91	163,047	190,748	27,701	85.5	47,017	58.9
11/30/92	182,186	204,730	22,544	89.0	49,552	45.5
11/30/93	200,853	218,603	17,750	91.9	52,093	34.1
11/30/94	215,385	230,217	14,832	93.6	52,169	28.4
12/31/95	238,441	242,354	3,913	98.4	54,039	7.2
12/31/96	266,404	252,968	(13,436)	105.3	53,534	(25.1)
12/31/97	296,705	263,573	(33,132)	112.6	54,346	(61.0)
12/31/98	340,417	276,980	(63,437)	122.9	56,093	(113.1)
12/31/99*	383,338	319,289	(64,049)	120.1	57,562	(111.3)
12/31/00	414,643	329,390	(85,253)	125.9	61,112	(139.5)
12/31/01	428,204	353,158	(75,046)	121.2	65,347	(114.8)
12/31/02	433,366**	370,399	(62,967)	117.0	68,117	(92.4)
12/31/03	446,794**	387,037	(59,757)	115.4	69,161	(86.4)
12/31/04*	462,994**	413,159	(49,835)	112.1	72,154	(69.1)
12/31/05*	479,275**	433,297	(45,978)	110.6	72,367	(63.5)
12/31/06*	505,756**	459,062	(46,694)	110.2	75,881	(61.5)
12/31/07*	533,911**	483,387	(50,524)	110.5	78,736	(64.2)
12/31/08*	512,853**	512,374	(480)	100.1	81,580	(0.6)

Rounded dollar amounts are in thousands.

**After changes in benefits and/or actuarial assumptions and/or actuarial cost methods.*
***Includes all members except Plan 3b.*

Analysis of the dollar amounts of actuarial value of assets, actuarial liability, or unfunded actuarial liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial liability provides one indication of the System's funded status on an on-going concern basis. Analysis of this percentage over time indicates whether the System is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan's funding. The unfunded actuarial liability and annual covered payroll are both affected by inflation. Expressing the unfunded actuarial liability as a percentage of covered payroll approximately adjusts for the effects of inflation and aids analysis of the progress being made in accumulating sufficient assets to pay benefits when due. Generally, the smaller this percentage, the stronger the plan's funding.

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TABLE 13

WICHITA EMPLOYEES' RETIREMENT SYSTEM

REQUIRED SUPPLEMENTARY INFORMATION
SCHEDULE OF EMPLOYER CONTRIBUTIONS

Fiscal Year	Actuarial Valuation Date	Annual Required Contribution	Percent Contribution
1995	11/30/93	$5,688,326	100.0%
1996	11/30/94	4,751,698	100.0
1997	12/31/95	4,459,654	100.0
1998	12/31/96	4,140,163	100.0
1999	12/31/97	4,134,826	100.0
2000	12/31/98	2,751,084	100.0
2001	12/31/99	1,843,213	100.0
2002	12/31/00	3,137,912*	100.0
2003	12/31/01	3,189,513*	100.0
2004	12/31/02	3,266,706*	100.0
2005	12/31/03	3,589,063*	100.0
2006	12/31/04	3,566,429*	100.0
2007	12/31/05	3,700,590*	100.0
2008	12/31/06	3,834,270*	100.0

**Reflects contributions to Plans 1, 2 and 3. Excludes contributions for Plan 3b members.*

Notes to Required Supplementary Information
Summary of Actuarial Methods and Assumptions

Valuation Date	December 31, 2008
Actuarial Cost Method	Entry Age Normal
Amortization Method	Level percent of payroll, open
Remaining Amortization Period	20 years
Asset Valuation Method	Expected + 25% of (Market – Expected Values)
Actuarial Assumptions:	
Investment Rate of Return*	7.75%
Projected Salary Increases*	4.50% - 10.00%
* Includes Inflation at	4.00%
Cost-of-Living Adjustments	3.00% Non-compounded (Plan 1) 2.00% Non-compounded (Plan 2)

TABLE 14

WICHITA EMPLOYEES' RETIREMENT SYSTEM

SOLVENCY TEST

Valuation Date	Aggregate Actuarial Liability For (1) Active Member Contributions	(2) Retirants and Beneficiaries*	(3) Active Members (Employer Financed Portion)	Reported Valuation Assets	Portion of Actuarial Liabilities Covered by Reported Assets (1)	(2)	(3)
11/30/94	$25,426,998	$111,681,938	$93,108,469	$215,385,559	100.0%	100.0%	84.1%
12/31/95	28,549,082	123,759,638	90,046,029	238,441,351	100.0	100.0	95.7
12/31/96	28,996,944	133,093,326	90,877,809	266,403,759	100.0	100.0	114.8
12/31/97	29,881,922	141,922,445	91,768,436	296,704,769	100.0	100.0	136.1
12/31/98	29,694,389	156,764,183	90,521,375	340,417,265	100.0	100.0	170.1
12/31/99	32,017,094	169,602,958	117,669,351	383,337,991	100.0	100.0	154.4
12/31/00	34,189,528	177,095,907	118,104,491	414,642,694	100.0	100.0	172.2
12/31/01	33,516,616	179,374,487	140,266,410	428,204,828	100.0	100.0	153.5
12/31/02	38,291,472	192,615,216	139,492,410	433,365,890	100.0	100.0	145.1
12/31/03	39,847,119	205,799,341	141,390,445	446,794,052	100.0	100.0	142.3
12/31/04	41,852,724	218,518,676	152,632,267	462,994,047	100.0	100.0	132.8
12/31/05	43,397,403	228,408,201	161,491,272	479,274,508	100.0	100.0	128.5
12/31/06	45,475,389	237,860,848	175,725,905	505,755,995	100.0	100.0	126.6
12/31/07	46,189,489	256,374,002	180,823,537	533,911,465	100.0	100.0	127.9
12/31/08	46,541,280	272,176,420	193,655,822	512,853,345	100.0	100.0	100.2

During the twelve months ended December 31, 2008, the Wichita Employees' Retirement System generated a net experience loss of $51.5 million dollars. The amount is 10.6% of the actuarial liability at the beginning of the year.

**Includes vested terminated members*

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APPENDIX A

SUMMARY OF MEMBERSHIP DATA

MEMBER DATA RECONCILIATION

December 31, 2007 to December 31, 2008

The number of members included in the valuation, as summarized in the table below, is in accordance with the data submitted by the System for members as of the valuation date.

	Active Participants			DROP Participants		Retirees & Beneficiaries		Terminated Vested		Total
	Plan 1	**Plan 2**	**Plan 3**	**Plan 1**	**Plan 2**	**Plan 1**	**Plan 2**	**Plan 1**	**Plan 2**	
Members as of 12/31/07	56	931	838	57	16	868	264	9	129	3,168
New Members	0	+2	+176	0	0	+12	+6	0	0	+196
Transfers	0	+53	-71	0	0	0	0	0	0	-18
Terminations				0	0					
Refunded	0	-6	-91	0	0	0	0	0	-2	-99
Deferred Vested	0	-8	0	0	0	0	-1	0	+8	-1
Retirements										
Service	-8	-23	0	-14	-5	+24	+34	-2	-6	0
Disability	-0	-1	0	0	0	0	+3	0	-2	0
DROP	-14	-6	0	+15	+6	0	0	-1	0	0
Deaths				0	0					
Cashed Out	0	-1	0	0	0	0	0	0	-1	-2
With Beneficiary	0	-1	0	0	0	-12	0	0	-1	-14
Without Beneficiary	0	0	0	0	0	-25	-6	0	0	-31
Data Adjustments	0	+1	0	0	0	0	0	0	0	+1
Members as of 12/31/08	**34**	**941**	**852**	**58**	**17**	**867**	**300**	**6**	**125**	**3,200**

APPENDIX A (continued)

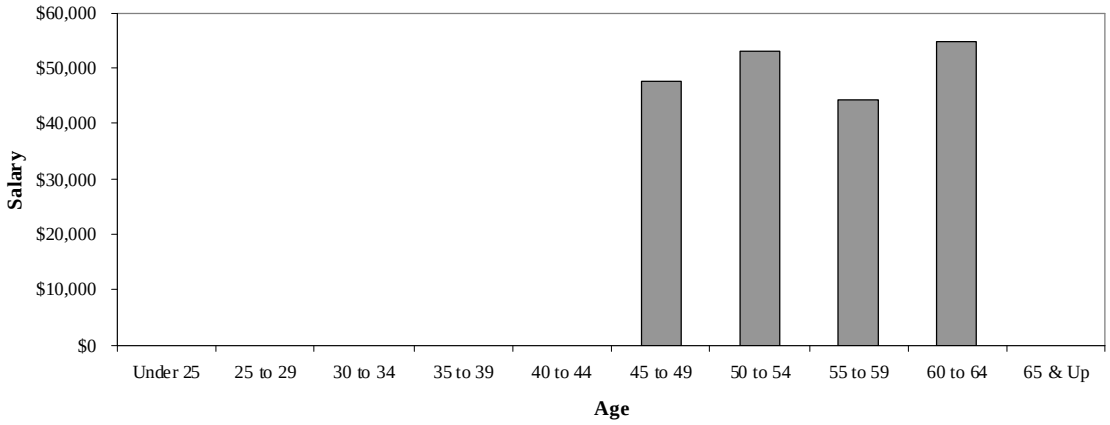
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF ACTIVE MEMBERS
(Excluding DROP Members)
as of December 31, 2008

Plan 1

	Number			Valuation Salaries		
Age	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	$ -	$ -	$ -
25 to 29	0	0	0	-	-	-
30 to 34	0	0	0	-	-	-
35 to 39	0	0	0	-	-	-
40 to 44	0	0	0	-	-	-
45 to 49	5	0	5	238,616	-	238,616
50 to 54	12	4	16	636,139	214,522	850,661
55 to 59	8	4	12	360,567	168,424	528,991
60 to 64	0	1	1	-	54,943	54,943
65 & Up	0	0	0	-	-	-
Total	25	9	34	$ 1,235,322	$ 437,889	$ 1,673,211

Average Salary by Age



APPENDIX A (continued)

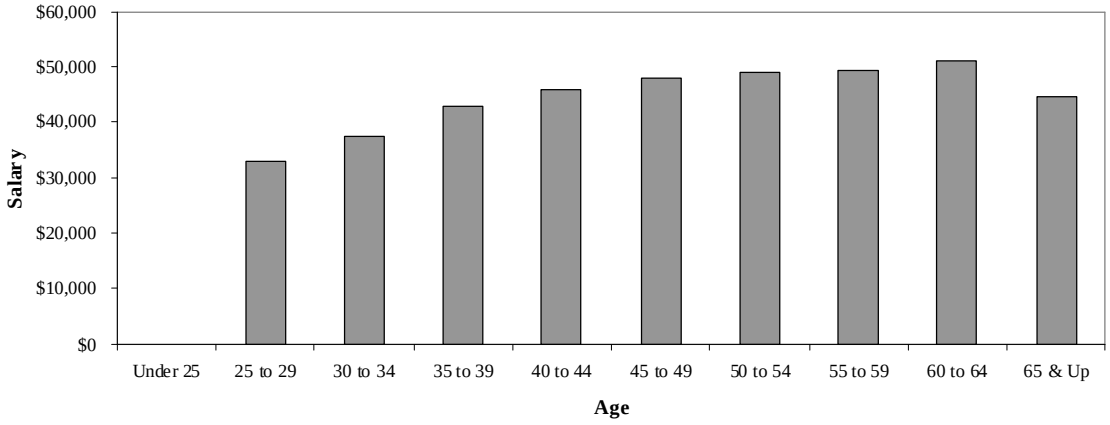
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF ACTIVE MEMBERS
(Excluding DROP Members)
as of December 31, 2008

Plan 2

	Number			Valuation Salaries		
Age	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	$ -	$ -	$ -
25 to 29	4	1	5	131,322	34,346	165,668
30 to 34	19	12	31	667,721	494,679	1,162,400
35 to 39	35	21	56	1,559,570	831,876	2,391,446
40 to 44	76	50	126	3,476,049	2,311,991	5,788,040
45 to 49	103	77	180	4,972,888	3,670,093	8,642,981
50 to 54	136	81	217	6,598,855	4,060,107	10,658,962
55 to 59	132	85	217	6,586,917	4,113,488	10,700,405
60 to 64	60	38	98	3,314,706	1,680,110	4,994,816
65 & Up	7	4	11	322,589	166,349	488,938
Total	572	369	941	$ 27,630,617	$ 17,363,039	$ 44,993,656

Average Salary by Age



APPENDIX A (continued)

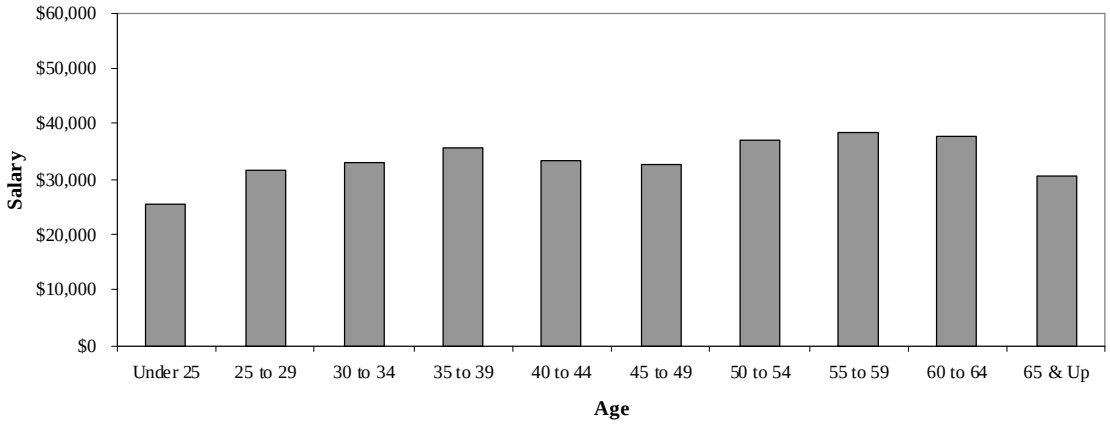
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF ACTIVE MEMBERS
as of December 31, 2008

Plan 3

Age	Number			Valuation Salaries		
	Male	Female	Total	Male	Female	Total
Under 25	43	18	61	$ 1,090,567	$ 457,888	$ 1,548,455
25 to 29	85	48	133	2,718,048	1,483,890	4,201,938
30 to 34	70	49	119	2,165,393	1,774,877	3,940,270
35 to 39	57	45	102	2,081,471	1,548,276	3,629,747
40 to 44	67	35	102	2,168,349	1,246,166	3,414,515
45 to 49	79	39	118	2,577,689	1,274,041	3,851,730
50 to 54	64	36	100	2,423,621	1,281,997	3,705,618
55 to 59	44	32	76	1,723,530	1,197,480	2,921,010
60 to 64	25	10	35	964,715	357,145	1,321,860
65 & Up	5	1	6	138,273	44,997	183,270
Total	539	313	852	$ 18,051,656	$ 10,666,757	$ 28,718,413

Average Salary by Age



APPENDIX A (continued)

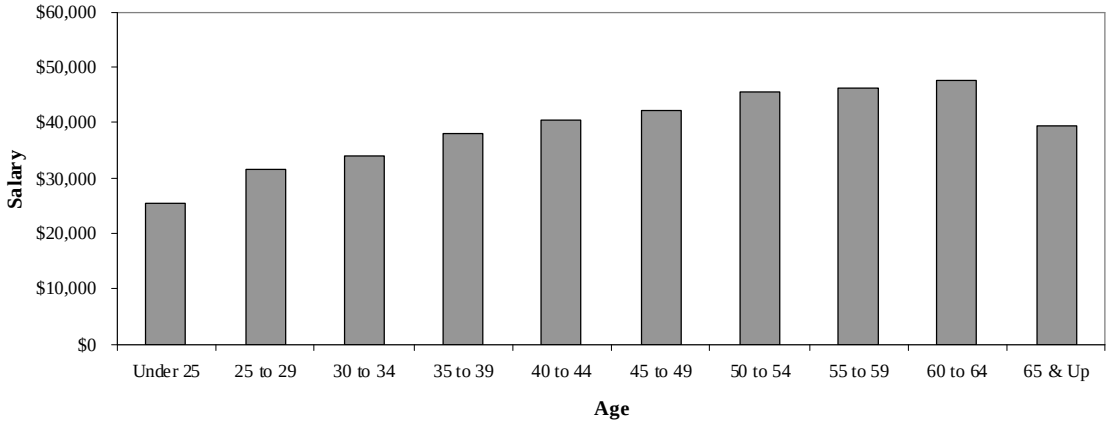
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF ACTIVE MEMBERS
(Excluding DROP Members)
as of December 31, 2008

All Plans

	Number			Valuation Salaries		
Age	Male	Female	Total	Male	Female	Total
Under 25	43	18	61	$ 1,090,567	$ 457,888	$ 1,548,455
25 to 29	89	49	138	2,849,370	1,518,236	4,367,606
30 to 34	89	61	150	2,833,114	2,269,556	5,102,670
35 to 39	92	66	158	3,641,041	2,380,152	6,021,193
40 to 44	143	85	228	5,644,398	3,558,157	9,202,555
45 to 49	187	116	303	7,789,193	4,944,134	12,733,327
50 to 54	212	121	333	9,658,615	5,556,626	15,215,241
55 to 59	184	121	305	8,671,014	5,479,392	14,150,406
60 to 64	85	49	134	4,279,421	2,092,198	6,371,619
65 & Up	12	5	17	460,862	211,346	672,208
Total	1,136	691	1,827	$ 46,917,595	$ 28,467,685	$ 75,385,280

Average Salary by Age



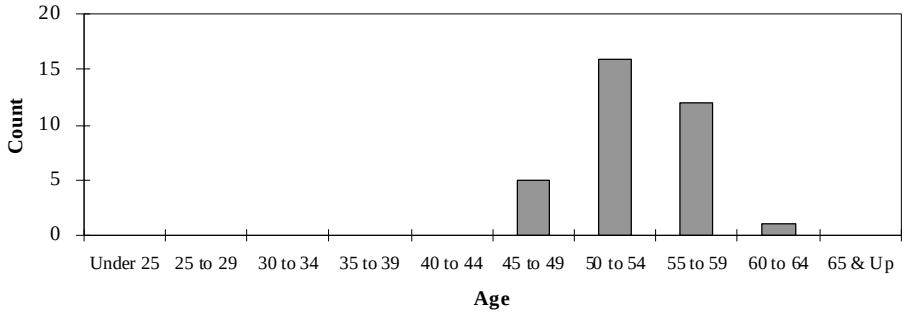
APPENDIX A (continued)

WICHITA EMPLOYEES' RETIREMENT SYSTEM
DISTRIBUTION OF ACTIVE MEMBERS
(Excluding DROP Members)
as of December 31, 2008

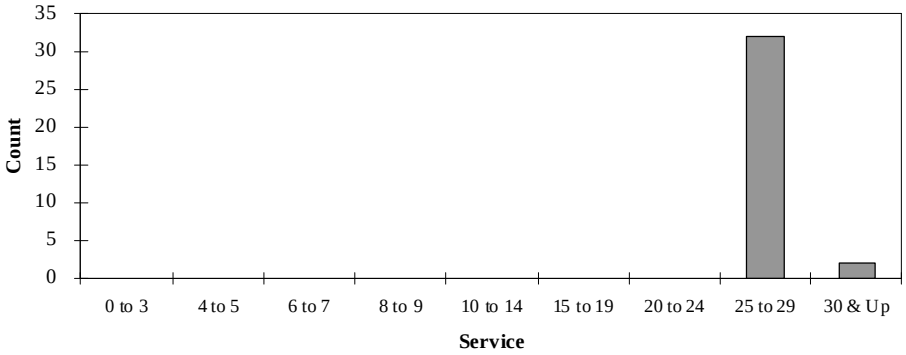
Plan 1

	Years of Service									
Age	0 to 3	4 to 5	6 to 7	8 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 & Up	Total
Under 25	0	0	0	0	0	0	0	0	0	0
25 to 29	0	0	0	0	0	0	0	0	0	0
30 to 34	0	0	0	0	0	0	0	0	0	0
35 to 39	0	0	0	0	0	0	0	0	0	0
40 to 44	0	0	0	0	0	0	0	0	0	0
45 to 49	0	0	0	0	0	0	0	5	0	5
50 to 54	0	0	0	0	0	0	0	16	0	16
55 to 59	0	0	0	0	0	0	0	10	2	12
60 to 64	0	0	0	0	0	0	0	1	0	1
65 & Up	0	0	0	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0	32	2	34

Age Distribution



Service Distribution



Average age: 53.1 Average service: 28.7

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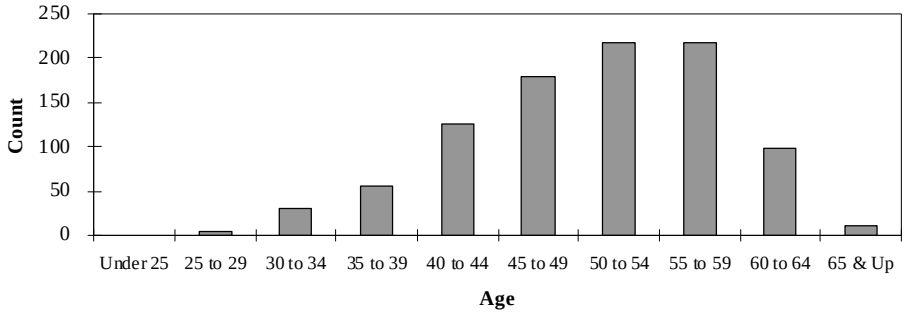
APPENDIX A (continued)

WICHITA EMPLOYEES' RETIREMENT SYSTEM
DISTRIBUTION OF ACTIVE MEMBERS
(Excluding DROP Members)
as of December 31, 2008

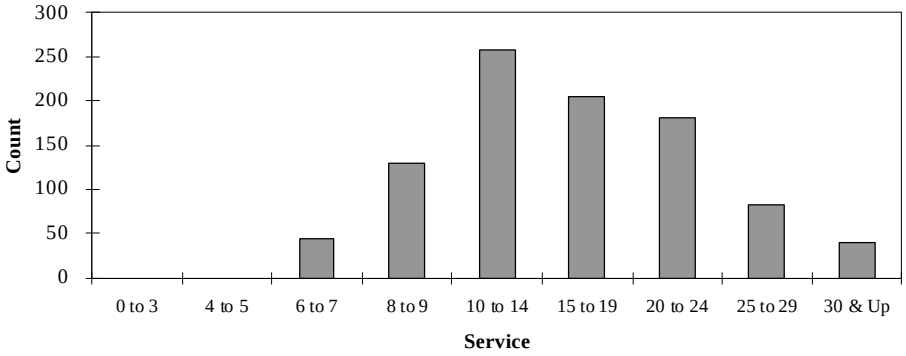
Plan 2

	Years of Service									
Age	0 to 3	4 to 5	6 to 7	8 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 & Up	Total
Under 25	0	0	0	0	0	0	0	0	0	0
25 to 29	0	0	2	2	1	0	0	0	0	5
30 to 34	0	0	6	16	9	0	0	0	0	31
35 to 39	0	0	4	18	26	7	1	0	0	56
40 to 44	0	0	3	19	41	49	14	0	0	126
45 to 49	0	0	7	21	42	47	46	17	0	180
50 to 54	0	0	10	20	56	43	49	28	11	217
55 to 59	0	0	6	24	50	39	50	29	19	217
60 to 64	0	0	5	9	31	15	20	9	9	98
65 & Up	0	0	2	1	3	4	1	0	0	11
Total	0	0	45	130	259	204	181	83	39	941

Age Distribution



Service Distribution



Average age: 50.5 Average service: 16.7

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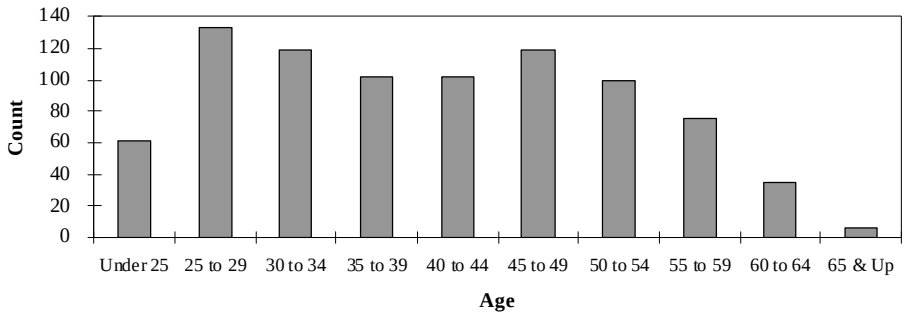
APPENDIX A (continued)

WICHITA EMPLOYEES' RETIREMENT SYSTEM
DISTRIBUTION OF ACTIVE MEMBERS
as of December 31, 2008

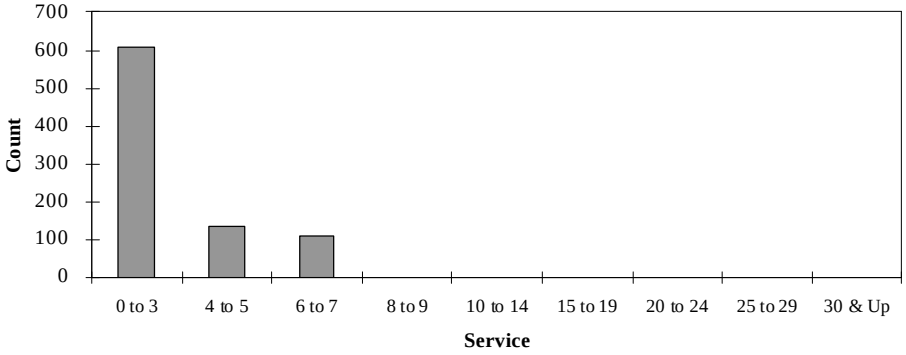
Plan 3

	Years of Service									
Age	0 to 3	4 to 5	6 to 7	8 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 & Up	Total
Under 25	58	2	1	0	0	0	0	0	0	61
25 to 29	108	15	10	0	0	0	0	0	0	133
30 to 34	96	13	10	0	0	0	0	0	0	119
35 to 39	67	20	15	0	0	0	0	0	0	102
40 to 44	67	17	18	0	0	0	0	0	0	102
45 to 49	71	23	24	0	0	0	0	0	0	118
50 to 54	59	24	17	0	0	0	0	0	0	100
55 to 59	53	12	11	0	0	0	0	0	0	76
60 to 64	26	6	3	0	0	0	0	0	0	35
65 & Up	2	1	3	0	0	0	0	0	0	6
Total	607	133	112	0	0	0	0	0	0	852

Age Distribution



Service Distribution



Average age: 40.5 Average service: 3.1

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APPENDIX A (continued)

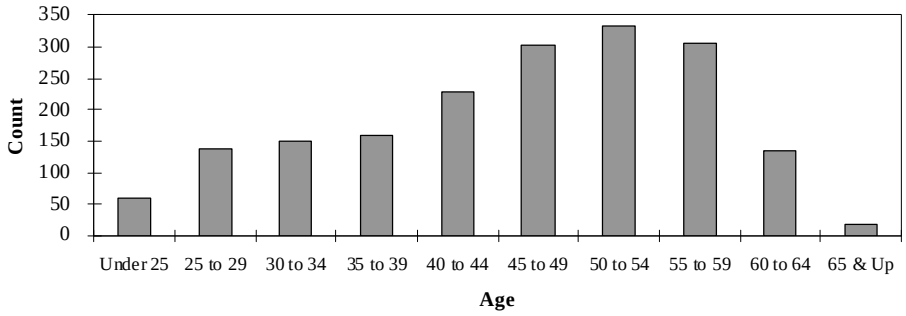
WICHITA EMPLOYEES' RETIREMENT SYSTEM

DISTRIBUTION OF ACTIVE MEMBERS
(Excluding DROP Members)
as of December 31, 2008

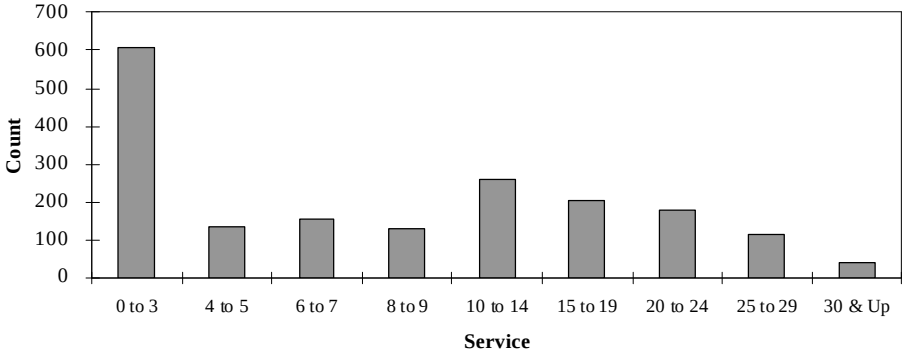
All Plans

	Years of Service									
Age	0 to 3	4 to 5	6 to 7	8 to 9	10 to 14	15 to 19	20 to 24	25 to 29	30 & Up	Total
Under 25	58	2	1	0	0	0	0	0	0	61
25 to 29	108	15	12	2	1	0	0	0	0	138
30 to 34	96	13	16	16	9	0	0	0	0	150
35 to 39	67	20	19	18	26	7	1	0	0	158
40 to 44	67	17	21	19	41	49	14	0	0	228
45 to 49	71	23	31	21	42	47	46	22	0	303
50 to 54	59	24	27	20	56	43	49	44	11	333
55 to 59	53	12	17	24	50	39	50	39	21	305
60 to 64	26	6	8	9	31	15	20	10	9	134
65 & Up	2	1	5	1	3	4	1	0	0	17
Total	607	133	157	130	259	204	181	115	41	1,827

Age Distribution



Service Distribution



Average age: 46.2 Average service: 11.2

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APPENDIX A (continued)

WICHITA EMPLOYEES' RETIREMENT SYSTEM

DISTRIBUTION OF DROP MEMBERS
as of December 31, 2008

Plan 1

	Service					
Age	Under 20	20 to 24	25 to 29	30 to 34	35 & Up	Total
Under 50	0	0	2	0	0	2
50-54	0	0	25	1	0	26
55-59	1	1	17	0	0	19
60-64	0	0	9	2	0	11
65 & Up	0	0	0	0	0	0
Total	1	1	53	3	0	58

	DROP Duration Elected (months)					
Age	1 to 12	13 to 24	25 to 36	37 to 48	48 to 60	Total
Under 50	1	0	0	0	1	2
50-54	0	0	0	1	25	26
55-59	1	1	0	0	17	19
60-64	0	0	1	2	8	11
65 & Up	0	0	0	0	0	0
Total	2	1	1	3	51	58

Age	Monthly Benefits	Current Balance
Under 50	$ 5,128	$ 53,989
50-54	85,280	2,250,167
55-59	66,868	2,259,708
60-64	40,942	1,573,040
65 & Up	0	0
Total	$ 198,219	$ 6,136,903

Covered Payroll: $3,447,324

APPENDIX A (continued)

WICHITA EMPLOYEES' RETIREMENT SYSTEM

DISTRIBUTION OF DROP MEMBERS
as of December 31, 2008

Plan 2

	Service							
Age	Under 10	10 to 14	15 to 19	20 to 24	25 to 29	30 to 34	35 & Up	Total
Under 50	0	0	0	0	0	0	0	0
50-55	0	0	0	0	0	0	0	0
55-59	0	0	0	0	0	0	0	0
60-64	0	1	5	4	1	1	0	12
65 & Up	1	0	3	0	1	0	0	5
Total	1	1	8	4	2	1	0	17

	DROP Duration Elected (months)					
Age	1 to 12	13 to 24	25 to 36	37 to 48	48 to 60	Total
Under 50	0	0	0	0	0	0
50-55	0	0	0	0	0	0
55-59	0	0	0	0	0	0
60-64	1	2	5	1	3	12
65 & Up	0	2	1	0	2	5
Total	1	4	6	1	5	17

Age	Monthly Benefits	Current Balance
Under 50	$ 0	$ 0
50-54	0	0
55-59	0	0
60-64	24,107	495,734
65 & Up	6,565	209,227
Total	$ 30,672	$ 704,961

Covered Payroll: $849,048

APPENDIX A (continued)

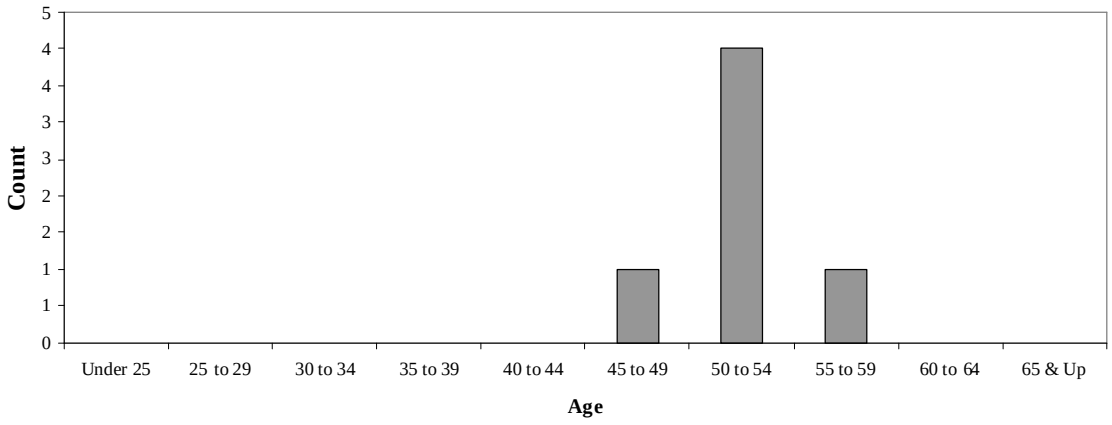
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF DEFERRED VESTED MEMBERS
as of December 31, 2008

Plan 1

	Number			Current Monthly Benefit at Retirement		
Age	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	$ -	$ -	$ -
25 to 29	0	0	0	-	-	-
30 to 34	0	0	0	-	-	-
35 to 39	0	0	0	-	-	-
40 to 44	0	0	0	-	-	-
45 to 49	0	1	1	-	1,310	1,310
50 to 54	1	3	4	1,862	5,677	7,538
55 to 59	1	0	1	2,309	-	2,309
60 to 64	0	0	0	-	-	-
65 & Up	0	0	0	-	-	-
Total	2	4	6	$ 4,171	$ 6,986	$ 11,157

Age Distribution



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APPENDIX A (continued)

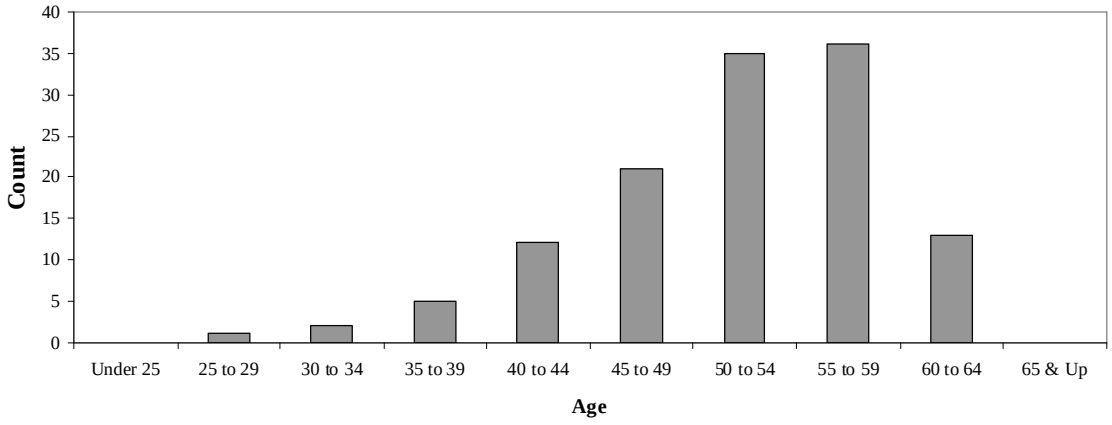
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF DEFERRED VESTED MEMBERS
as of December 31, 2008

Plan 2

Age	Number			Current Monthly Benefit at Retirement		
	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	$ -	$ -	$ -
25 to 29	1	0	1	363	-	363
30 to 34	2	0	2	1,577	-	1,577
35 to 39	2	3	5	1,394	2,732	4,127
40 to 44	6	6	12	6,122	8,516	14,638
45 to 49	8	13	21	13,049	18,216	31,265
50 to 54	17	18	35	24,373	21,821	46,194
55 to 59	19	17	36	27,172	22,045	49,216
60 to 64	7	6	13	9,716	10,075	19,791
65 & Up	0	0	0	-	-	-
Total	62	63	125	$ 83,766	$ 83,405	$ 167,171

Age Distribution



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APPENDIX A (continued)

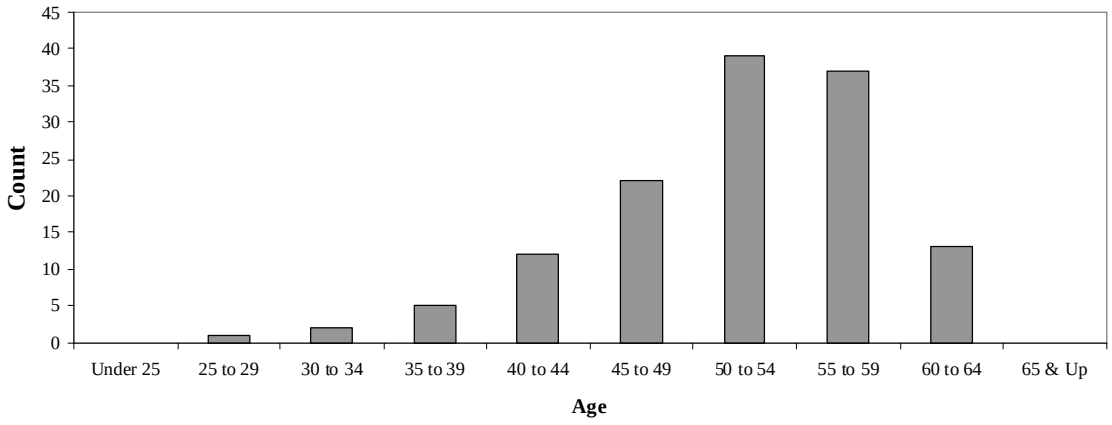
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF DEFERRED VESTED MEMBERS
as of December 31, 2008

All Plans

	Number			Current Monthly Benefit at Retirement		
Age	Male	Female	Total	Male	Female	Total
Under 25	0	0	0	$ -	$ -	$ -
25 to 29	1	0	1	363	-	363
30 to 34	2	0	2	1,577	-	1,577
35 to 39	2	3	5	1,394	2,732	4,127
40 to 44	6	6	12	6,122	8,516	14,638
45 to 49	8	14	22	13,049	19,526	32,575
50 to 54	18	21	39	26,235	27,497	53,732
55 to 59	20	17	37	29,481	22,045	51,525
60 to 64	7	6	13	9,716	10,075	19,791
65 & Up	0	0	0	-	-	-
Total	64	67	131	$ 87,937	$ 90,391	$ 178,328

Age Distribution



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APPENDIX A (continued)

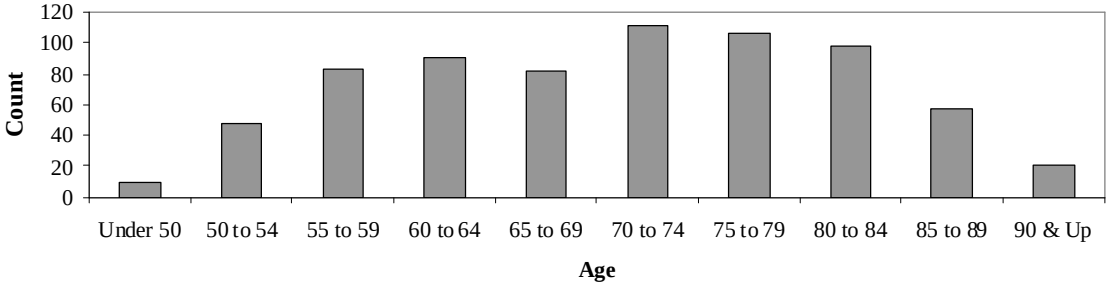
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF RETIRED MEMBERS*
as of December 31, 2008

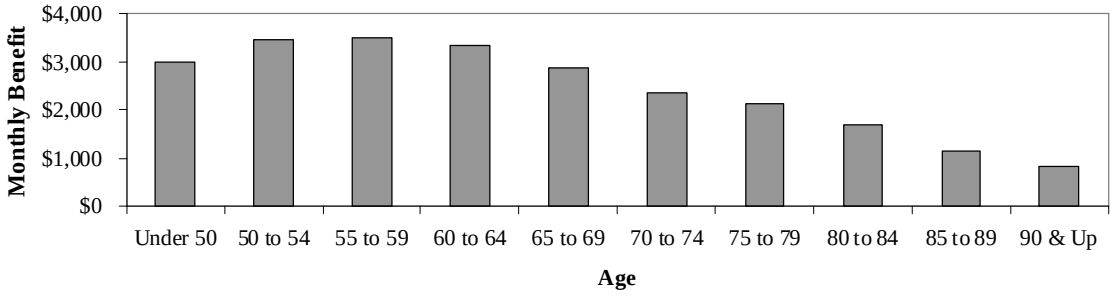
Plan 1

Age	Number			Monthly Benefit		
	Male	Female	Total	Male	Female	Total
Under 50	5	4	9	$ 16,346	$ 10,380	$ 26,727
50 to 54	31	17	48	111,737	53,877	165,614
55 to 59	60	23	83	226,193	62,398	288,591
60 to 64	65	26	91	232,071	72,211	304,282
65 to 69	54	28	82	171,166	62,944	234,109
70 to 74	72	39	111	187,992	73,794	261,786
75 to 79	64	43	107	153,835	72,396	226,231
80 to 84	56	42	98	122,988	43,098	166,086
85 to 89	21	36	57	30,096	35,711	65,807
90 & Up	6	15	21	4,940	11,882	16,822
Total	434	273	707	$ 1,257,363	$ 498,692	$ 1,756,055

Age Distribution



Average Benefit



* Includes DROP members.

APPENDIX A (continued)

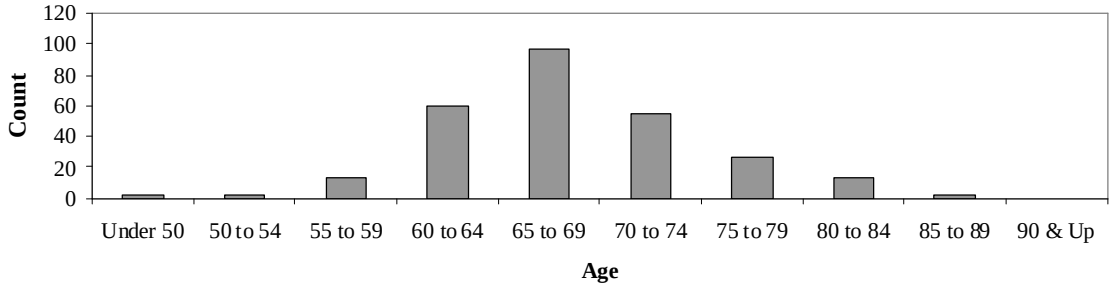
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF RETIRED MEMBERS*
as of December 31, 2008

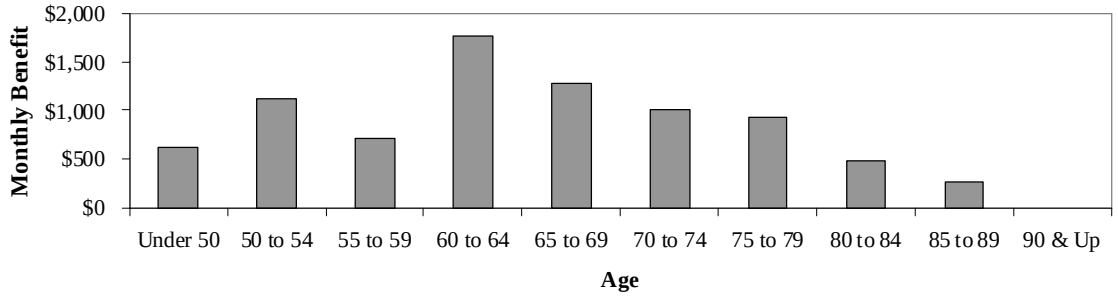
Plan 2

Age	Number			Monthly Benefit		
	Male	Female	Total	Male	Female	Total
Under 50	1	1	2	$ 494	$ 757	$ 1,251
50 to 54	1	1	2	810	1,435	2,245
55 to 59	9	4	13	7,328	2,118	9,447
60 to 64	31	29	60	58,837	47,227	106,064
65 to 69	51	46	97	68,659	55,792	124,451
70 to 74	26	29	55	26,479	28,477	54,955
75 to 79	18	9	27	16,212	9,119	25,331
80 to 84	3	10	13	1,614	4,747	6,361
85 to 89	0	2	2	-	535	535
90 & Up	0	0	0	-	-	-
Total	140	131	271	$ 180,434	$ 150,206	$ 330,640

Age Distribution



Average Benefit



* Includes DROP members.

APPENDIX A (continued)

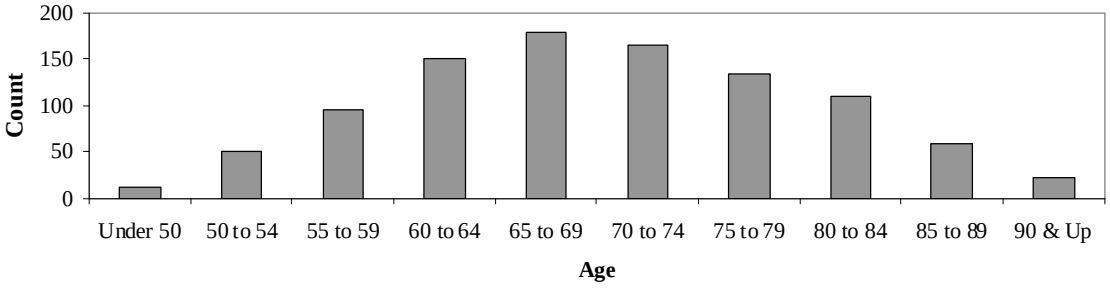
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF RETIRED MEMBERS*
as of December 31, 2008

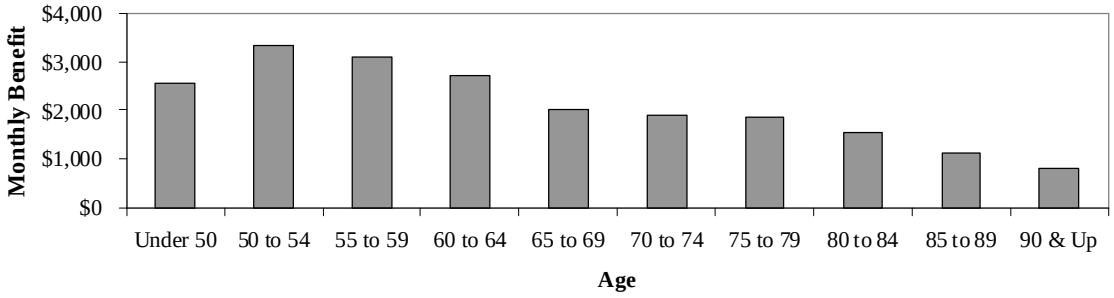
All Plans

Age	Number			Monthly Benefit		
	Male	Female	Total	Male	Female	Total
Under 50	6	5	11	$ 16,840	$ 11,137	$ 27,978
50 to 54	32	18	50	112,547	55,312	167,859
55 to 59	69	27	96	233,521	64,517	298,038
60 to 64	96	55	151	290,908	119,438	410,346
65 to 69	105	74	179	239,825	118,736	358,561
70 to 74	98	68	166	214,471	102,270	316,741
75 to 79	82	52	134	170,048	81,515	251,562
80 to 84	59	52	111	124,602	47,845	172,447
85 to 89	21	38	59	30,096	36,246	66,342
90 & Up	6	15	21	4,940	11,882	16,822
Total	574	404	978	$ 1,437,797	$ 648,899	$ 2,086,695

Age Distribution



Average Benefit



* Includes DROP members.

APPENDIX A (continued)

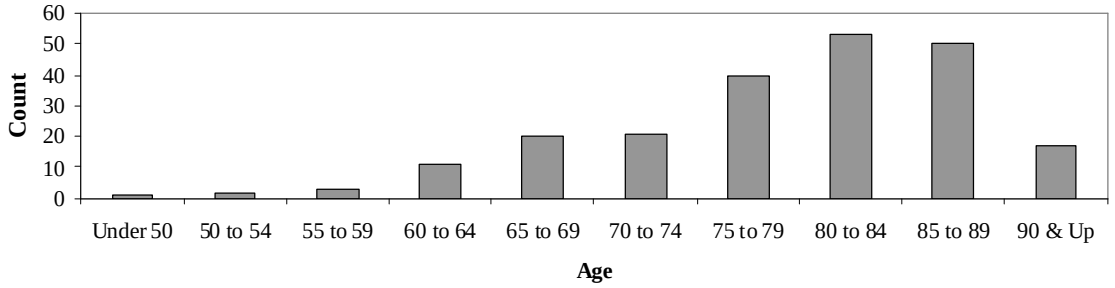
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF BENEFICIARIES
as of December 31, 2008

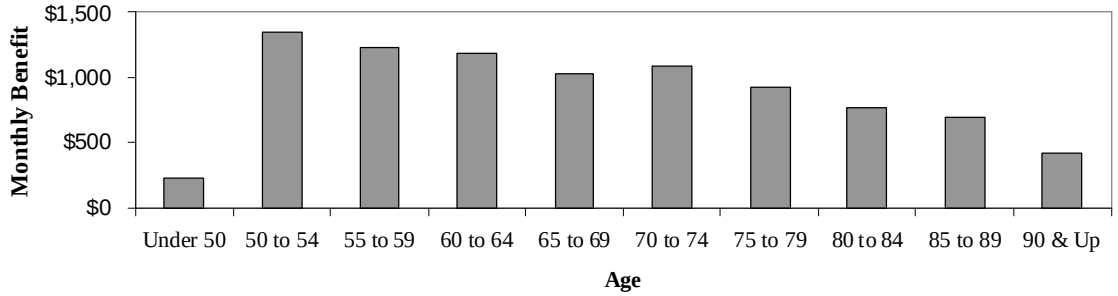
Plan 1

Age	Number			Monthly Benefit		
	Male	Female	Total	Male	Female	Total
Under 50	0	1	1	$ -	$ 233	$ 233
50 to 54	0	2	2	-	2,690	2,690
55 to 59	0	3	3	-	3,683	3,683
60 to 64	1	10	11	704	12,324	13,028
65 to 69	2	18	20	1,148	19,400	20,548
70 to 74	4	17	21	2,651	20,236	22,887
75 to 79	7	33	40	4,814	31,982	36,796
80 to 84	8	45	53	3,755	37,258	41,013
85 to 89	4	46	50	1,510	33,606	35,116
90 & Up	0	17	17	-	7,187	7,187
Total	26	192	218	$ 14,583	$ 168,598	$ 183,181

Age Distribution



Average Benefit



APPENDIX A (continued)

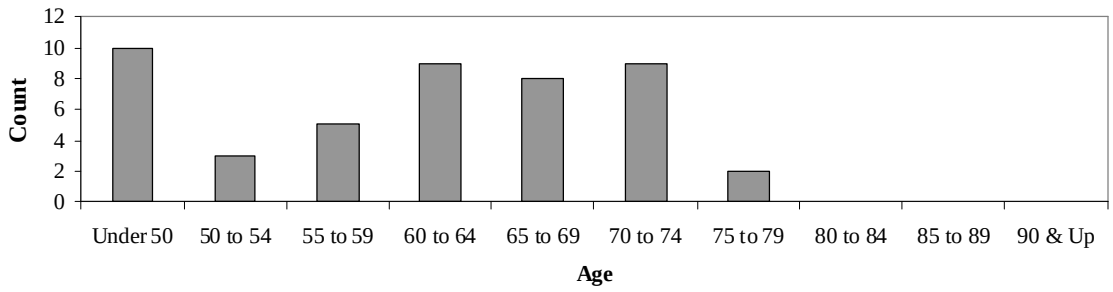
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF BENEFICIARIES
as of December 31, 2008

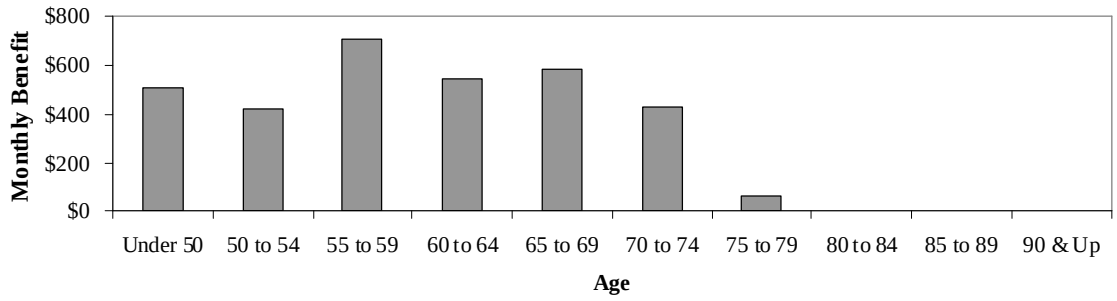
Plan 2

Age	Number			Monthly Benefit		
	Male	Female	Total	Male	Female	Total
Under 50	3	7	10	$ 1,726	$ 3,378	$ 5,104
50 to 54	1	2	3	884	380	1,264
55 to 59	0	5	5	-	3,553	3,553
60 to 64	1	8	9	583	4,342	4,925
65 to 69	1	7	8	151	4,507	4,658
70 to 74	0	9	9	-	3,854	3,854
75 to 79	0	2	2	-	126	126
80 to 84	0	0	0	-	-	-
85 to 89	0	0	0	-	-	-
90 & Up	0	0	0	-	-	-
Total	6	40	46	$ 3,343	$ 20,139	$ 23,483

Age Distribution



Average Benefit



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APPENDIX A (continued)

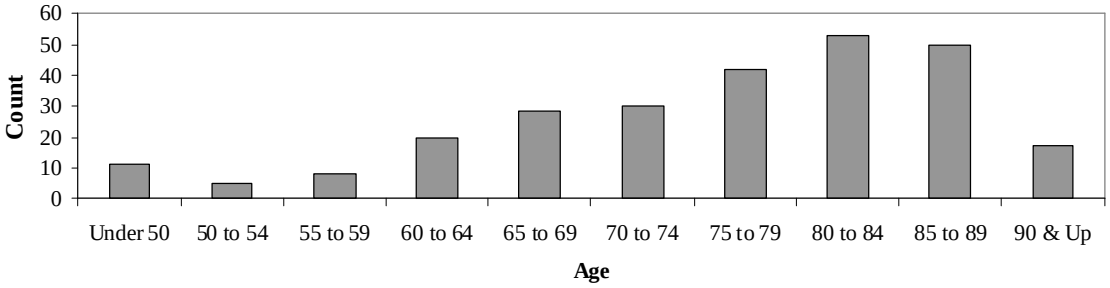
WICHITA EMPLOYEES' RETIREMENT SYSTEM

SUMMARY OF BENEFICIARIES
as of December 31, 2008

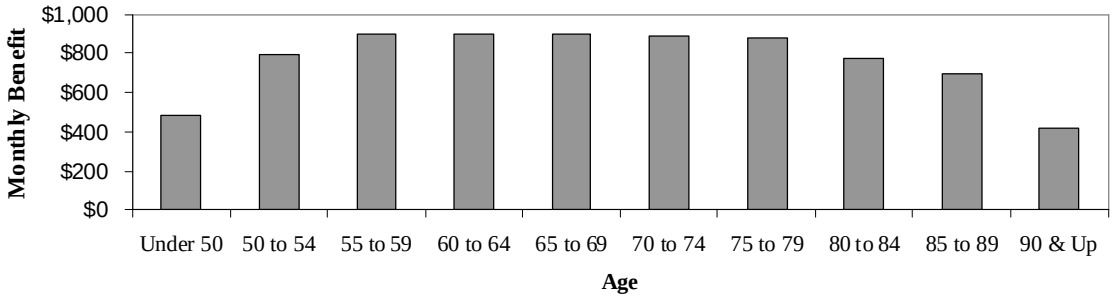
All Plans

Age	Number			Monthly Benefit		
	Male	Female	Total	Male	Female	Total
Under 50	3	8	11	$ 1,726	$ 3,611	$ 5,337
50 to 54	1	4	5	884	3,070	3,954
55 to 59	0	8	8	-	7,235	7,235
60 to 64	2	18	20	1,287	16,666	17,952
65 to 69	3	25	28	1,300	23,907	25,206
70 to 74	4	26	30	2,651	24,090	26,741
75 to 79	7	35	42	4,814	32,108	36,923
80 to 84	8	45	53	3,755	37,258	41,013
85 to 89	4	46	50	1,510	33,606	35,116
90 & Up	0	17	17	-	7,187	7,187
Total	32	232	264	$ 17,926	$ 188,738	$ 206,664

Age Distribution



Average Benefit



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APPENDIX B

SUMMARY OF BENEFIT PROVISIONS

DEFINED BENEFIT PLANS 1 AND 2

Plan 1 is applicable to members employed prior to July 18, 1981 who have not elected to be covered by Plan 2.

Plan 2 is applicable to members employed or re-employed on or after July 18, 1981 and before January 1, 1994 and to other employees who have elected Plan 2 coverage.

Normal Retirement (no reduction factor)

Eligibility – Plan 1: Age 60 with 7 or more years of service, or any age with 30 or more years of service.
Plan 2: Age 62 with 7 or more years of service (effective August 1, 1990).

Annual Amount – Plan 1: Service times 2.5% of Final Average Salary to a maximum of 75% of Final Average Salary.
Plan 2: Service times 2.25% of Final Average Salary, to a maximum of 75% of Final Average Salary (effective January 1, 2000).

Final Average Salary – all plans: Average for the 3 consecutive years of service which produce the highest average and which are within the last 10 years of service.

Early Retirement (with reduction factor)

Eligibility – Plan 1: Age 55 with 7 or more years of service.
Plan 2: Age 55 with 7 or more years of service.

Annual Amount – An amount computed as for normal retirement but reduced for each month retirement precedes age 60 under Plan 1 and age 62 under Plan 2. The amount of reduction per month of early retirement is:

Plan 1	Plan 2
A service graduated percentage for each month retirement precedes age 60. The percentage is .05 of 1% if service is 29 years but less than 30 years, increasing by .05 of 1% for each additional year service is less than 30 years, to a maximum of .50 of 1% if service is less than 20 years.	An age graduated percentage for each month retirement precedes age 62. The percentage is 0.6% for each month that the member's age precedes age 62, up to maximum of 50.4% at age 55.

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Deferred Retirement (Vested Termination)

Eligibility – 7 or more years of service. A terminated employee may apply for a reduced pension upon meeting the applicable age requirement for early retirement or an unreduced pension upon meeting the applicable age requirement for normal retirement. A terminated employee may elect a refund of employee contributions, plus applicable interest, in lieu of a deferred retirement benefit.

Annual Amount – An amount computed as for normal retirement. Vested deferred pensions are adjusted during the deferral period based on changes in National Average Earnings, up to 5.5% annual adjustments.

Deferred Retirement Option Plan (DROP)

Eligibility – Member must be eligible to retire under early reduced or normal age and/or service requirements and elect to participate in DROP for up to 5 years.

Amount – Benefit computed based on years of service, final average salary as of the DROP election date, and length of DROP period. Benefit is paid into member's notational DROP account during the deferral period. Member continues to make required employee contributions during the deferral period. Interest at an annual rate of 5%, compounded monthly, is credited to the notational DROP account. Voluntary termination of employment during the DROP period results in loss of accrued interest. Balance of DROP account is payable within 90 days of actual termination of employment.

Service-Connected Disability

Eligibility – No age or service requirement. Requires total and permanent disability, as defined in State worker's compensation act, for employment by the City in a position commensurate with the employee's training, experience and education.

Annual Amount – Plan 1: 60% of final rate of salary.
Plan 2: 50% of final rate of salary.

Non Service-Connected Disability

Eligibility – 7 or more years of service. Requires total and permanent disability for employment by the City in a position commensurate with the employee's training, experience and education.

Annual Amount – Plan 1: 30% of Final Average Salary plus 1% of Final Average Salary for each year of service in excess of 7 years. Maximum is 50% of Final Average Salary.
Plan 2: 25% of final rate of salary.

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Post-Retirement Survivor Benefits

Eligibility: Surviving Spouse - must have been married to retired employee for one year or more, at time of death if retired after January 1, 2000. If retired prior to January 1, 2000, must have been married to retired employee at retirement.

Minor Children – under age 18.

Annual Amount: Surviving Spouse - 50% of amount that was being paid to retiree.

Minor Child with Surviving Spouse - 10% of the member's Final Average Salary for each child under age 18. Maximum, including surviving spouse benefit, is 75% of Final Average Salary.

Minor Child without Surviving Spouse - 20% of the member's Final Average Salary for each child under age 18. Maximum benefit is 60% of Final Average Salary.

Post-Retirement Funeral Benefit

Eligibility: Designated Beneficiary – must have been designated by the retired employee.

Amount - Plan 1: $1,500 funeral benefit.
Plan 2: No funeral benefit provided.

Pre-Retirement Survivor Benefits

Eligibility: Surviving Spouse – Plan 1: Death of employee with 7 or more years of credited service.
Plan 2: Death of employee with 7 or more years of credited service.

Annual Amount - 50% of amount that the deceased employee would have been entitled to had he/she been on an unreduced retirement at time of death.

Eligibility: Designated Beneficiary – The beneficiary designated by an unmarried member or by a member who fails to meet the 7 year service requirement for the surviving spouse benefit.

Amount – The deceased employee's contributions, plus applicable interest, plus one month's salary for each full year of service up to a maximum of 6 years.

Other Termination Benefits

Eligibility – Termination of employment without eligibility for any other benefit.

Amount – Accumulated employee contributions with interest are refunded.

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Post-Retirement Adjustment of Benefits

Eligibility – Plan 1: Completion of 12 months of retirement and annually thereafter.
Plan 2: If retired on or after January 1, 2000: Completion of 12 months of retirement.
If retired before January 1, 2000: Benefit not provided (effective 2/18/2000).

Annual Amount – Plan 1: 3.0% of the base amount of benefit (increases are not compounded).
Plan 2: 2.0% of the base amount of benefit (increases are not compounded).

Employee Contributions

Plan 1: 6.4% of total compensation.
Plan 2: 4.7% of base salary and longevity pay (effective February 19, 2000).

City Contributions

Actuarially determined amount which together with employee contributions and investment earnings will fund the obligations of the Plan in accordance with accepted actuarial principles.

Unused Sick Leave

Each bi-weekly service credit of accumulated unused sick leave is converted to a service credit for the purpose of computing annual benefit amounts.

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APPENDIX B (continued)

SUMMARY OF BENEFIT PROVISIONS
DEFINED CONTRIBUTION PLAN 3

Plan 3 is applicable to members employed after January 1, 1994 who have not become covered by Plan 2. Plan 3 members are automatically transferred to Plan 2 at the time they acquire 7 years of service unless they file an irrevocable election to remain in Plan 3.

Employee Contributions

4.7% of compensation (effective 2/19/2000).

City Contributions

4.7% of compensation, less forfeitures from non-vested terminations (effective 2/19/2000).

Vesting of Contributions

Member contributions and investment earnings thereon are 100% vested.

City contributions and investment earnings thereon are 25% vested after 3 years of service, 50% vested after 5 years of service, and 100% vested after 7 years of service.

Distribution of Vested Accounts

Vested accounts are payable upon termination of City employment or death. Available forms of payment are prescribed by the Board.

Disability Retirement

Service and non-service connected disability benefits are the same as those of Plan 2.

Plan 3 members may alternatively elect to receive a refund of their Plan 3 account balance.

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APPENDIX C

ACTUARIAL COST METHOD AND ASSUMPTIONS

Actuarial Cost Method

The actuarial cost method is a procedure for allocating the actuarial present value of pension benefits and expenses to time periods. The method used for the valuation is known as the Entry Age Normal actuarial cost method, and has the following characteristics.

(i) The annual normal costs for each individual active member are sufficient to accumulate the value of the member's pension at time of retirement.

(ii) Each annual normal cost is a constant percentage of the member's year-by-year projected covered compensation.

The Entry Age Normal actuarial cost method allocates the actuarial present value of each member's projected benefits on a level basis over the member's assumed pensionable compensation rates between the entry age of the member and the assumed exit ages.

The portion of the actuarial present value allocated to the valuation year is called the normal cost. The portion of the actuarial present value not provided for by the actuarial present value of future normal costs is called actuarial liability. Deducting actuarial assets from the actuarial liability determines the unfunded actuarial liability or (surplus). The unfunded actuarial liability/(surplus) is financed as a level percent of member payroll over an open 20 year period.

Actuarial Assumptions

Retirement System contribution requirements and actuarial present values are calculated by applying experience assumptions to the benefit provisions and people information of the Retirement System, using the actuarial cost method.

The principal areas of risk which require experience assumptions about future activities of the Retirement System are:

(i) long-term rates of investment return to be generated by the assets of the System

(ii) patterns of pay increases to members

(iii) rates of mortality among members, retirants and beneficiaries

(iv) rates of withdrawal of active members

(v) rates of disability among active members

(vi) the age patterns of actual retirements.

In making a valuation, the monetary effect of each assumption is calculated for as long as a present covered person survives - - a period of time which can be as long as a century.

Actual experience of the Retirement System will not coincide exactly with assumed experience. Each valuation provides a complete recalculation of assumed future experience and takes into account all past differences between assumed and actual experiences. The result is a continual series of adjustments (usually small) to the computed contribution rate.

From time-to-time one or more of the assumptions are modified to reflect experience trends (but not random or temporary year-to-year fluctuations). A complete review of the actuarial assumptions was completed in 2004. The use of updated assumptions was effective with the December 31, 2004 valuation.

Investment Return Rate (net of administrative expenses). This assumption is 7.75% a year, compounded annually and consists of 4.00% long term price inflation and a 3.75% real rate of return over price inflation. This assumption, used to equate the value of payments due at different points in time, was adopted by the Board and was first used for the December 31, 1981 valuation, although the allocation between inflation and real return has changed periodically, most recently in 2004.

Salary Increase Rates. These rates are used to project current pay amounts to those upon which a benefit will be based and were first used for the December 31, 2004 valuation.

Years Of Service	Annual Rate of Salary Increase for Sample Ages			
	Inflation Component	Productivity Component	Merit and Longevity	Total
1	4.00%	0.50%	5.50%	10.00%
2	4.00	0.50	4.50	9.00
3	4.00	0.50	3.50	8.00
4	4.00	0.50	3.50	8.00
5	4.00	0.50	3.00	7.50
6	4.00	0.50	2.64	7.14
7	4.00	0.50	2.28	6.78
8	4.00	0.50	1.92	6.42
9	4.00	0.50	1.56	6.06
10	4.00	0.50	1.20	5.70
11	4.00	0.50	1.10	5.60
12	4.00	0.50	1.00	5.50
13	4.00	0.50	0.90	5.40
14	4.00	0.50	0.80	5.30
15	4.00	0.50	0.70	5.20
16	4.00	0.50	0.56	5.06
17	4.00	0.50	0.42	4.92
18	4.00	0.50	0.28	4.78
19	4.00	0.50	0.14	4.64
20+	4.00	0.50	0.00	4.50

The salary increase assumptions will produce 4.50% annual increases in active member payroll (the inflation and productivity base rate) given a constant active member group size. This is the same payroll growth assumption used to amortize unfunded actuarial liability. The real rate of return over assumed wage growth is 3.25% per year.

Changes actually experienced in average pay and total payroll have been as follows:

	Year Ended					5 Year (Average) Compounded Annual Increase
	12-31-08	12-31-07	12-31-06	12-31-05	12-31-04	
Average pay	2.2%	3.0%	5.2%	1.0%	4.1%	3.1%
Total payroll	3.1%	3.7%	6.3%	2.4%	4.3%	4.0%

Mortality Table. This assumption is used to measure the probabilities of members dying before retirement and the probabilities of each pension payment being made after retirement.

Healthy Retirees and Beneficiaries: RP-2000 Healthy Annuitant Tables
(ages set forward 2 years for males, 0 for females)
Disabled Retirees: RP-2000 Disabled Table
Active Members: RP-2000 Employee Table (ages set forward 2 years for males, 0 for females)

The RP-2000 Tables are used with generational mortality.

Sample Ages(1)	Present Value of $1 Monthly for Life		Future Life Expectancy (Years)	
	Men	Women	Men	Women
50	$136.27	$141.98	30.4	34.6
55	128.67	135.41	25.7	29.7
60	118.41	127.04	21.2	25.1
65	150.86	116.91	16.9	20.7
70	91.20	104.80	13.0	16.7
75	75.12	90.90	9.7	13.0
80	58.98	75.76	6.9	9.8
85	44.42	60.20	4.8	7.1

(1) Ages in 2000

This table was first used for the December 31, 2004 actuarial valuation.

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Rates of Retirement and Deferred Retirement Option Plan (DROP) Elections. These rates are used to measure the probability of eligible members retiring under either the regular retirement provisions or from the Deferred Retirement Option Plan.

Retirement Age	Percent Retiring During Year Plan 1	Plan 2
< 55	0%	0%
55	20	5
56	15	5
57	15	5
58	15	5
59	15	5
60	15	5
61	15	5
62	50	40
63	40	40
64	20	25
65	100	50
66	N/A	15
67	N/A	15
68	N/A	15
69	N/A	15
70	N/A	100

In addition, the following assumptions would apply to members in this category:

Plan 1: 70% of members with 30 or more years of service will elect the DROP with an average DROP period of 48 months. The remaining 30% are assumed to retire immediately.

Plan 2: 70% of members with 33.33 or more years of service and are at least age 62 will elect the DROP with an average DROP period of 36 months.

All members of the retirement system were assumed to retire on or before age 70.

This assumption was first used in the December 31, 2006 actuarial valuation.

Rates of Separation from Active Membership. This assumption measures the probabilities of a member terminating employment. The rates do not apply to members who are eligible to retire.

Sample Ages	Years of Service	Probability of Terminating During Year
Any	0	25.00%
	1	19.00
	2	14.00
	3	11.00
	4	9.00
25	Over 4	7.50
30		6.50
35		5.25
40		4.00
45		3.50
50		2.50
55		1.50
60		1.50

This assumption was first used for the December 31, 2004 valuation.

Administrative Expenses. Assumed to be paid from investment earnings.

Forfeiture of Vested Benefits. The assumption is that a percentage of the actuarial present value of vested termination benefits will be forfeited by a withdrawal of accumulated contributions.

Years of Service	Percent Forfeiting
Under 15	60%
15 – 19	40%
20 – 24	20%
25 or more	0%

This table was first used for the December 31, 2004 actuarial valuation.

Rates of Disability. This assumption measures the probabilities of a member becoming disabled.

Sample Ages	% of Active Members Becoming Disabled During Next Year
25	0.03%
30	0.04
35	0.05
40	0.09
45	0.14
50	0.24
55	0.43
60	0.71

The current rates were first used for the December 31, 1999 valuation.

Disabilities are assumed to be non-duty related.

Active Member Group Size. The number of active members was assumed to remain constant.

Vested Deferred Pensions. Amounts are assumed to increase during the deferral period at 4.5% per year. This assumption was changed with the December 31, 2004 valuation.

Miscellaneous and Technical Assumptions

Marriage Assumption: 70% of participants are assumed to be married for purposes of death benefits. In each case, the male was assumed to be 3 years older than the female.

Pay Increase Timing: Assumed to occur mid-year.

Decrement Timing: Decrements of all types are assumed to occur mid-year.

Eligibility Testing: Eligibility for benefits is determined based upon the age nearest birthday and service nearest whole year at the start of the year in which the decrement is assumed to occur.

Benefit Service: Service calculated to the nearest month as of the decrement date is used to determine the amount of benefit payable.

Other: Disability and turnover decrements do not operate during retirement eligibility.

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APPENDIX C (continued)

Miscellaneous Loading Factors: The calculated normal retirement benefits were increased by 4% to account for the inclusion of unused sick leave in the calculation of Service Credit. This assumption was changed with the December 31, 2004 valuation.

Plan 3 Transfer Assumption: For purposes of the valuation, Plan 3 members are assumed to transfer to Plan 2 if they acquire 7 years of service. An additional reserve is held for the difference between the market and actuarial value of assets. This assumption was changed with the December 31, 2004 valuation.

APPENDIX D

GLOSSARY OF TERMS

Actuarial Liability	The difference between the actuarial present value of system benefits and the actuarial value of future normal costs. Also referred to as "accrued liability" or "actuarial accrued liability".
Actuarial Assumptions	Estimates of future experience with respect to rates of mortality, disability, turnover, retirement, rate or rates of investment income and salary increases. Decrement assumptions (rates of mortality, disability, turnover and retirement) are generally based on past experience, often modified for projected changes in conditions. Economic assumptions (salary increases and investment income) consist of an underlying rate in an inflation-free environment plus a provision for a long-term average rate of inflation.
Accrued Service	Service credited under the system which was rendered before the date of the actuarial valuation.
Actuarial Equivalent	A single amount or series of amounts of equal actuarial value to another single amount or series of amounts, computed on the basis of appropriate assumptions.
Actuarial Cost Method	A mathematical budgeting procedure for allocating the dollar amount of the actuarial present value of retirement system benefit between future normal cost and actuarial accrued liability. Sometimes referred to as the "actuarial funding method."
Experience Gain (Loss)	The difference between actual experience and actuarial assumptions anticipated experience during the period between two actuarial valuation dates.
Actuarial Present Value	The amount of funds currently required to provide a payment or series of payments in the future. It is determined by discounting future payments at predetermined rates of interest and by probabilities of payment.
Amortization	Paying off an interest-discounted amount with periodic payments of interest and principal, as opposed to paying off with lump sum payment.
Normal Cost	The actuarial present value of retirement system benefits allocated to the current year by the actuarial cost method.

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Unfunded Actuarial Liability

The difference between actuarial liability and the valuation assets.

Most retirement systems have unfunded actuarial liability. They arise each time new benefits are added and each time an actuarial loss is realized.

The existence of unfunded actuarial liability is not in itself bad, any more than a mortgage on a house is bad. Unfunded actuarial liability does not represent a debt that is payable today. What is important is the ability to amortize the unfunded actuarial liability and the trend in its amount.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: General Obligation Bond and 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 temporary notes in an amount not to exceed $58,755,000 (Series 231 and 232) and three series of general obligation bonds (Series 797, Series 798 and 798A) in an amount not to exceed $27,350,000 for the purpose of providing interim and permanent financing for capital improvement projects of the City.

Analysis: The proceeds from the sale of the Series 231 and 232 Improvement and Renewal Notes will be used to provide interim financing for City-at-large, improvement district projects and improvements related to the Water Walk and the Douglas and Hillside Tax Increment Financing District. Due to the nature of the improvements for the Water Walk project and the Douglas and Hillside Tax Increment Financing District, the Series 231 Renewal and Improvement Notes are taxable under Federal law. The proceeds from the sale of the Series 797 Bonds will be used to permanently finance Storm Water Utility, City-at-large and public improvement projects. The proceeds from the sale of the Series 798 and 798A Bonds will be used to permanently finance neighborhood improvements located in special improvement districts.

Bids will be accepted electronically via ***PARITY*** Electronic Bid Submission System until 10:00 a.m. CST in the Finance Conference Room. 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.

Financial Considerations: The Series 231 and 232 Temporary Notes will mature August 19, 2010, are callable on and after February 18, 2010, and will be retired using cash, the proceeds of permanent financing bonds and/or renewal notes issued at that time. The Series 797 will mature serially over 15 years and will be callable in 2016 with a 1% call premium, in accordance with the City's debt management policy. The Series 798 Bonds will mature serially over fifteen years and will be paid from special assessments that are levied against benefited property. The Series 798A Bonds will mature serially over twenty years and will be paid from special assessments that are levied against benefited property. The Series 798 Bonds will be callable in 2016 and the Series 798A Bonds will be callable in 2019 with a 1% call premium, in accordance with the City's debt management policy.

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.

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

ORDINANCE NO. 48-374

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 797, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $11,240,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN 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 Governing Body has duly taken various actions, including the adoption, and publication, where necessary, of resolutions, ordinances and other proceedings as required by said laws, to authorize certain capital improvements in the City (the "Improvements" as further described in the herein referenced Bond Resolution), and has provided that the costs thereof shall be paid by the issuance of general obligation bonds of the City and other available funds of the City; and

WHEREAS, the Governing Body has found and determined that the combined total final costs and related expenses of the Improvements, less any available funds of the City as detailed on **Schedule I** attached to the Resolution, leaves a balance for which funding is necessary of $11,240,000, all of which payable by the issuance of general obligation bonds of the City; and

WHEREAS, the Governing Body is authorized by the laws of the State of Kansas, including K.S.A. 10-101 *et seq.*, as amended and supplemented, to issue the City's general obligation bonds to provide the necessary funds for the permanent financing of the costs and expenses of the Improvements and is required, by K.S.A. 10-106, as amended and supplemented, to sell such general obligation bonds at public sale if the principal amount thereof exceeds $2,000,000; and

WHEREAS, the Governing Body, pursuant to Resolution No. 09-194 duly adopted July 7, 2009, advertised for bids at a public sale for an amount not to exceed $11,240,000 of the City's General Obligation Bonds, Series 797, 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 July 14, 2009, adopted Ordinance No. __-_____ relating to 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, 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 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 pay the Improvement Costs, there shall be issued general obligation bonds of the City (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 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. The full faith, credit and resources of the City are hereby irrevocably pledged to secure the prompt payment of the principal of and interest on the Bonds as the same severally become 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. Levy and Collection of Annual Tax. The Governing Body hereby covenants that it shall annually make provision for the payment of the principal of and interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City.

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, 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 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 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 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.

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PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on July 21, 2009.

(Seal) _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

4852-7893-7603.1

ORDINANCE NO. 48-375

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 798, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $8,460,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN 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, pursuant to and under the authority of K.S.A. 12-6a01 *et seq.*, as amended and supplemented, the Governing Body has duly taken various actions, including the adoption, and publication, where necessary, of resolutions, ordinances and other proceedings as required by said laws, to authorize certain capital improvements in the City (the "Improvements" as further described in the herein referenced Bond Resolution), and has provided that the costs thereof shall be paid from special assessments collected in cash and/or by the issuance of general obligation bonds of the City; and

WHEREAS, the Governing Body has found and determined that the combined total final costs and related expenses of the Improvements, less any cash paid by the owners of the real properties against which special assessments therefore were levied and less other available funds of the City as detailed on **Schedule I** attached to the Resolution, leaves a balance for which funding is necessary of $8,460,000, all of which is chargeable to and has been specially assessed against various real properties in the City benefited by the respective Improvements and which special assessments were not paid within the time provided by law; and

WHEREAS, the Governing Body is authorized by the laws of the State of Kansas, including K.S.A. 10-101 *et seq.*, as amended and supplemented, to issue the City's general obligation bonds to provide the necessary funds for the permanent financing of the costs and expenses of the Improvements specially assessed against benefited real property and not paid in cash within the time provided by law; and is required, by K.S.A. 10-106, as amended and supplemented, to sell such general obligation bonds at public sale if the principal amount thereof exceeds $2,000,000; and

WHEREAS, the Governing Body, pursuant to Resolution No. 09-194 duly adopted July 7, 2009, advertised for bids at a public sale for an amount not to exceed $8,460,000 of the City's General Obligation Bonds, Series 798, 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 July 14, 2009, adopted Ordinance No. __-_____ relating to 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, 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 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 pay the Improvement Costs, there shall be issued general obligation bonds of the City (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 from the collection of special assessment taxes which have been levied against real properties in the City which benefited from the Improvements, and if not so paid, then said principal and interest shall be 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. The full faith, credit and resources of the City are hereby irrevocably pledged to secure the prompt payment of the principal of and interest on the Bonds as the same severally become 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. **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, 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 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 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 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.

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PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on July 21, 2009.

(Seal) _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

ORDINANCE NO. 48-376

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 798A, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF NOT TO EXCEED $7,650,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN 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, pursuant to and under the authority of K.S.A. 12-6a01 *et seq.*, as amended and supplemented, the Governing Body has duly taken various actions, including the adoption, and publication, where necessary, of resolutions, ordinances and other proceedings as required by said laws, to authorize certain capital improvements in the City (the "Improvements" as further described in the herein referenced Bond Resolution), and has provided that the costs thereof shall be paid from special assessments collected in cash and/or by the issuance of general obligation bonds of the City; and

WHEREAS, the Governing Body has found and determined that the combined total final costs and related expenses of the Improvements, less any cash paid by the owners of the real properties against which special assessments therefore were levied and less other available funds of the City as detailed on **Schedule I** attached to the Resolution, leaves a balance for which funding is necessary of $7,650,000, all of which is chargeable to and has been specially assessed against various real properties in the City benefited by the respective Improvements and which special assessments were not paid within the time provided by law; and

WHEREAS, the Governing Body is authorized by the laws of the State of Kansas, including K.S.A. 10-101 *et seq.*, as amended and supplemented, to issue the City's general obligation bonds to provide the necessary funds for the permanent financing of the costs and expenses of the Improvements specially assessed against benefited real property and not paid in cash within the time provided by law; and is required, by K.S.A. 10-106, as amended and supplemented, to sell such general obligation bonds at public sale if the principal amount thereof exceeds $2,000,000; and

WHEREAS, the Governing Body, pursuant to Resolution No. 09-194 duly adopted July 7, 2009, advertised for bids at a public sale for an amount not to exceed $7,650,000 of the City's General Obligation Bonds, Series 798A, 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 July 14, 2009, adopted Ordinance No. __-_____ relating to 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, 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 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 pay the Improvement Costs, there shall be issued general obligation bonds of the City (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 from the collection of special assessment taxes which have been levied against real properties in the City which benefited from the Improvements, and if not so paid, then said principal and interest shall be 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. The full faith, credit and resources of the City are hereby irrevocably pledged to secure the prompt payment of the principal of and interest on the Bonds as the same severally become 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. **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, 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 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 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 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.

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PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on July 21, 2009.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

ORDINANCE NO. 48-377

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 231 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF $12,050,000, 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 has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 229 (Taxable Under Federal Law), dated February 19, 2009 ("Original Notes"), a portion of the proceeds of which were expended for interim financing for costs of the Original Improvements; and

WHEREAS, the Original Improvements have not been completed and/or are completed but the issuance of bonds for the permanent financing thereof is prevented, hindered or delayed, and the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, renewal temporary notes should be issued for the purpose of renewing and paying the portion of the principal amount of the Original Notes which was issued for costs of the Original Improvements as aforesaid; 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, the Governing Body, pursuant to Resolution No. 09-194 duly adopted July 7, 2009, advertised for bids at a public sale for $12,050,000 of the City's General Obligation Renewal and Improvement Temporary Notes, Series 231 (Taxable Under Federal Law), for the purpose of renewing interim financing for the Original Improvements and 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 July 14, 2009, adopted Ordinance No. __-_____ relating to 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, 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 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 to renew the principal amount of the Original Notes and for the interim financing of the Improvement Costs all as further described on Schedule I to the Note Resolution, there shall be issued general obligation renewal and 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 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. It is further anticipated that a portion of the Notes will be payable from tax increment revenues generated from certain tax increment districts within the City.

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 to 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 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.

Section 5. **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 6. **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 7. **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 _____, 2009.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

ORDINANCE NO. 48-378

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 232, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $46,705,000, 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 provides further that any municipality may issue renewal temporary notes to pay the costs of redeeming any previously issued temporary notes as they mature when the improvement will not be completed at the maturity date of the notes or when the improvement has been completed but the issuance of such bonds is prevented, hindered or delayed; 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 has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal Temporary Notes, Series 226, dated February 19, 2009, and General Obligation Renewal Temporary Notes, Series 230, dated February 19, 2009 (collectively the "Original Notes"), a portion of the proceeds of which were expended for interim financing for costs of the Original Improvements; and

WHEREAS, the Original Improvements have not been completed and/or are completed but the issuance of bonds for the permanent financing thereof is prevented, hindered or delayed, and the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, renewal temporary notes should be issued for the purpose of renewing and paying the portion of the principal amount of the Original Notes which was issued for costs of the Original Improvements as aforesaid; 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, the Governing Body, pursuant to Resolution No. 09-194 duly adopted July 7, 2009, advertised for bids at a public sale for not to exceed $46,705,000 of the City's General Obligation Renewal and Improvement Temporary Notes, Series 232, for the purpose of renewing interim financing for the Original Improvements and providing new 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 July 14, 2009, adopted Ordinance No. __-____ relating to 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, 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 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 to renew a portion of the principal amount of the Original Notes and for the interim financing of the Improvement Costs all as further described on Schedule I to the Note Resolution, there shall be issued general obligation renewal and 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 Original Improvements and 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 Original Improvements and 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 Original Improvements or 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 Original Improvements or 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 Original Improvements or 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 _____, 2009.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

RESOLUTION NO. 09-224

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 21, 2009

AUTHORIZING THE ISSUANCE OF

$11,240,000

GENERAL OBLIGATION BONDS
SERIES 797

DATED AUGUST 1, 2009

TABLE OF CONTENTS

Title		1
Recitals		1
	ARTICLE I DEFINITIONS	
Section 1.01	Definitions of Words and Terms	1
	ARTICLE II AUTHORIZATION, ISSUANCE AND DELIVERY OF BONDS	
Section 2.01	Authorization of and Security for Bonds	7
Section 2.02	Description and Details of Bonds	7
Section 2.03	Designation of Paying Agent and Bond Registrar	8
Section 2.04	Method and Place of Payment of Principal and Interest on Bonds	9
Section 2.05	Method of Execution and Authentication of Bonds	9
Section 2.06	Payment of Costs of Bonds	10
Section 2.07	Form of Bonds	10
Section 2.08	Registration, Transfer and Exchange of Bonds	10
Section 2.09	Mutilated, Lost, Stolen or Destroyed Bonds	11
Section 2.10	Surrender and Cancellation of Bonds	11
Section 2.11	Execution and Delivery of Bonds	11
Section 2.12	Official Statement	12
	ARTICLE III REDEMPTION OF BONDS	
Section 3.01	Optional Redemption	12
Section 3.02	Sinking Fund Redemption	12

Section 3.03	Selection of Bonds to be Redeemed	12
Section 3.04	Notice of Redemption	13
Section 3.05	Deposit of Moneys for and Payment of Redemption Price	13
Section 3.06	Effect of Call for Redemption	14

ARTICLE IV
FUNDS AND ACCOUNTS

Section 4.01	Creation of Funds and Accounts	14
Section 4.02	Administration of Funds and Accounts	14

ARTICLE V
APPLICATION OF BOND PROCEEDS;
DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

Section 5.01	Application of Bond Proceeds	14
Section 5.02	Disposition of Principal and Interest Account	14
Section 5.03	Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent	15
Section 5.04	Surplus in Principal and Interest Account	15
Section 5.05	Disposition of Improvement Account	15
Section 5.06	Withdrawals from Improvement Account	15
Section 5.07	Surplus in Improvement Account	15
Section 5.08	Substitute Improvements	15

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

Section 6.01	Deposits	16
Section 6.02	Investments	16
Section 6.03	Deposits into and Application of Moneys in Excess Earnings Account	16

ARTICLE VII
PROVISION FOR PAYMENT OF BONDS

Section 7.01	Levy and Collection of Annual Taxes	17
Section 7.02	Disposition of Taxes; Untimely Receipt	17

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.01	Resolution Constitutes Contract; Remedies of Owners	17
Section 8.02	Rights of Owners; Limitations	18
Section 8.03	Remedies Cumulative; Delay or Omission Not Waiver	18

ARTICLE IX
AMENDMENTS

Section 9.01	Amendments	19
Section 9.02	Written Evidence of Amendments	20

ARTICLE X
DEFEASANCE

Section 10.01	Defeasance	20

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01	Tax Covenants	21
Section 11.02	Severability	21
Section 11.03	Further Authority	21
Section 11.04	Governing Law	22
Section 11.05	Effective Date	22
Signatures		23
Exhibit A	Additional Terms of the Bonds	
Schedule I:	The Improvements	

RESOLUTION NO. 09-224

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 797, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF $11,240,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN 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 $11,240,000 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 the Constitution of the State of Kansas (including particularly Article 12, Section 5 thereof), Charter Ordinance No. 156, K.S.A. 10-101 *et seq.*, K.S.A. 12-1736 *et seq.* and K.S.A. 13-1024c, 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 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" 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 Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

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

"Bonds" shall mean the $11,240,000 original principal amount of General Obligation Bonds, Series 797, dated August 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. 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 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 August 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.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article IV** hereof.

"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).

"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 Bonds, 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.

"Improvements" shall mean the capital improvements constructed in the City as described on **Schedule I** hereto or any Substitute Improvements.

"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 June 1, 2010, and ending December 1, 2024, 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 Treasurer of the State of Kansas, Topeka, Kansas, 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, 2010, and ending December 1, 2024, 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.

"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 July 21, 2009, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

"Substitute Improvements" means the substitute or additional improvements authorized pursuant to **Section 5.08** of this Resolution.

"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 Improvement Costs, there shall be issued general obligation bonds of the City (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 the interest thereon 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. Pursuant to the Bond Ordinance, the full faith, credit and resources of the City are 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 2.02 Description and Details of Bonds. The Bonds shall be issued in the total principal amount of $11,240,000 and shall be designated "City of Wichita, Kansas, General Obligation Bonds, Series 797." 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 Treasurer of the State of Kansas, 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 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 **Optional Redemption**. The Bonds maturing December 1, 2010 to December 1, 2016, inclusive, shall mature and become due on their respective maturity dates without the option of prior redemption and payment. At the option of the City, the Bonds maturing December 1, 2017, and thereafter, may be called for redemption and payment prior to the respective stated maturities thereof on and after December 1, 2016. Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid (the date being so set for redemption and payment being referred to as the "Redemption Date"). Bonds called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount), as follows, plus accrued interest to the Redemption Date:

Redemption Dates	Redemption Prices
December 1, 2016, through November 30, 2017	101.00%
December 1, 2017, through November 30, 2018	100.50%
December 1, 2018, and thereafter	100.00%

Section 3.02 **Sinking Fund Redemption**. Any Term Bonds shall also be subject to mandatory redemption and payment as described on **Exhibit A** to this Resolution.

Section 3.03 **Selection of Bonds to be Redeemed**. The Bonds 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 Bonds at the time Outstanding, the Bonds shall be redeemed in such equitable manner as the City shall determine, with Bonds of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Bond shall be treated as though it were a separate Bond in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Bond has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Bond 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 Bond called for redemption, and (ii) for exchange, without charge to the Owner, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any Bond 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 Bond as aforesaid, the $5,000 units of the face value of such Bond 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 3.04 **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 Bonds 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 Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Bond 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 Bonds so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

Section 3.05 **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 Bonds or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Bonds 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 Bond is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Bond or Bonds of the same maturity and in the amount of the unredeemed portion of such Bond as provided by **Section 3.02** above. All Bonds selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

Section 3.06 **Effect of Call for Redemption**. Whenever any Bond, or one or more of the $5,000 units of face value represented by any Bond, has been selected for redemption and payment as provided in this Article, all interest on such Bond, or such one or more of the $5,000 units of face value represented by any such Bond, 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 Bonds, 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 Bonds, Series 797;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Bonds, Series 797, to be created within the City's Debt Service Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Bonds, Series 797.

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 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 Bonds and the portion of the Purchase Price which represents the premium, if any, paid on the Bonds; and

(B) The balance of the proceeds to the Improvement Account.

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 **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 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 Bonds 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 Bonds 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 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 and the interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City.

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 more precisely identify the Improvements, or (iv) 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 (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 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 (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 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.

(The Remainder of this Page was Intentionally Left Blank)

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on July 21, 2009.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

SCHEDULE I

THE IMPROVEMENTS

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. 48-_____ of the City, passed by the Governing Body on July 21, 2009, and authorizing and providing for the issuance of the 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 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, 2010	$ 870,000	%
December 1, 2011	905,000	
December 1, 2012	940,000	
December 1, 2013	975,000	
December 1, 2014	1,015,000	
December 1, 2015	1,055,000	
December 1, 2016	1,100,000	
December 1, 2017	1,145,000	
December 1, 2018	1,190,000	
December 1, 2019	1,235,000	
December 1, 2020	150,000	
December 1, 2021	155,000	
December 1, 2022	160,000	
December 1, 2023	170,000	
December 1, 2024	175,000	

RESOLUTION NO. 09-225

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 21, 2009

AUTHORIZING THE ISSUANCE OF

$8,460,000

GENERAL OBLIGATION BONDS
SERIES 798

DATED AUGUST 1, 2009

TABLE OF CONTENTS

Title		1
Recitals		1
	ARTICLE I DEFINITIONS	
Section 1.01	Definitions of Words and Terms	1
	ARTICLE II AUTHORIZATION, ISSUANCE AND DELIVERY OF BONDS	
Section 2.01	Authorization of and Security for Bonds	7
Section 2.02	Description and Details of Bonds	7
Section 2.03	Designation of Paying Agent and Bond Registrar	8
Section 2.04	Method and Place of Payment of Principal and Interest on Bonds	9
Section 2.05	Method of Execution and Authentication of Bonds	9
Section 2.06	Payment of Costs of Bonds	10
Section 2.07	Form of Bonds	10
Section 2.08	Registration, Transfer and Exchange of Bonds	10
Section 2.09	Mutilated, Lost, Stolen or Destroyed Bonds	11
Section 2.10	Surrender and Cancellation of Bonds	11
Section 2.11	Execution and Delivery of Bonds	11
Section 2.12	Official Statement	12
	ARTICLE III REDEMPTION OF BONDS	
Section 3.01	Optional Redemption	12
Section 3.02	Sinking Fund Redemption	12

Section 3.03	Selection of Bonds to be Redeemed	12
Section 3.04	Notice of Redemption	13
Section 3.05	Deposit of Moneys for and Payment of Redemption Price	13
Section 3.06	Effect of Call for Redemption	14

ARTICLE IV
FUNDS AND ACCOUNTS

Section 4.01	Creation of Funds and Accounts	14
Section 4.02	Administration of Funds and Accounts	14

ARTICLE V
APPLICATION OF BOND PROCEEDS;
DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

Section 5.01	Application of Bond Proceeds	14
Section 5.02	Disposition of Principal and Interest Account	14
Section 5.03	Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent	15
Section 5.04	Surplus in Principal and Interest Account	15
Section 5.05	Disposition of Improvement Account	15
Section 5.06	Withdrawals from Improvement Account	15
Section 5.07	Surplus in Improvement Account	15
Section 5.08	Substitute Improvements	15

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

Section 6.01	Deposits	16
Section 6.02	Investments	16
Section 6.03	Deposits into and Application of Moneys in Excess Earnings Account	16

ARTICLE VII
PROVISION FOR PAYMENT OF BONDS

Section 7.01	Levy and Collection of Annual Taxes	17
Section 7.02	Disposition of Taxes; Untimely Receipt	17

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.01	Resolution Constitutes Contract; Remedies of Owners	18
Section 8.02	Rights of Owners; Limitations	18
Section 8.03	Remedies Cumulative; Delay or Omission Not Waiver	18

ARTICLE IX
AMENDMENTS

Section 9.01	Amendments	19
Section 9.02	Written Evidence of Amendments	20

ARTICLE X
DEFEASANCE

Section 10.01	Defeasance	20

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01	Tax Covenants	21
Section 11.02	Severability	21
Section 11.03	Further Authority	22
Section 11.04	Governing Law	22
Section 11.05	Effective Date	22
Signatures		23
Exhibit A	Additional Terms of the Bonds	
Schedule I:	The Improvements	

RESOLUTION NO. 09-225

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 798, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF $8,460,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN 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 $8,460,000 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.*, as amended and supplemented, and K.S.A. 12-6a01 *et seq.*, as amended and supplemented, under the authority of which statutes the Improvements are authorized and 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" 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 Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

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

"Bonds" shall mean the $8,460,000 original principal amount of General Obligation Bonds, Series 798, dated August 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. 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 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 August 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.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article IV** hereof.

"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).

"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 Bonds, 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.

"Improvements" shall mean the capital improvements constructed in the City as described on **Schedule I** hereto or any Substitute Improvements.

"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 June 1, 2010, and ending December 1, 2024, 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 Treasurer of the State of Kansas, Topeka, Kansas, 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, 2010, and ending December 1, 2024, 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.

"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 July 21, 2009, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

"Substitute Improvements" means the substitute or additional improvements authorized pursuant to **Section 5.08** of this Resolution.

"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 Improvement Costs, there shall be issued general obligation bonds of the City (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 the interest thereon from the collection of special assessment taxes which have been levied against real properties in the City which benefited from the Improvements, and if not so paid, then said principal and interest shall be 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. Pursuant to the Bond Ordinance, the full faith, credit and resources of the City are 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 2.02 Description and Details of Bonds. The Bonds shall be issued in the total principal amount of $8,460,000 and shall be designated "City of Wichita, Kansas, General Obligation Bonds, Series 798." 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 Treasurer of the State of Kansas, 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 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 **Optional Redemption**. The Bonds maturing December 1, 2010 to December 1, 2016, inclusive, shall mature and become due on their respective maturity dates without the option of prior redemption and payment. At the option of the City, the Bonds maturing December 1, 2017, and thereafter, may be called for redemption and payment prior to the respective stated maturities thereof on and after December 1, 2016. Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid (the date being so set for redemption and payment being referred to as the "Redemption Date"). Bonds called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount), as follows, plus accrued interest to the Redemption Date:

Redemption Dates	Redemption Prices
December 1, 2016, through November 30, 2017	101.00%
December 1, 2017, through November 30, 2018	100.50%
December 1, 2018, and thereafter	100.00%

Section 3.02 **Sinking Fund Redemption**. Any Term Bonds shall also be subject to mandatory redemption and payment as described on **Exhibit A** to this Resolution.

Section 3.03 **Selection of Bonds to be Redeemed**. The Bonds 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 Bonds at the time Outstanding, the Bonds shall be redeemed in

such equitable manner as the City shall determine, with Bonds of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Bond shall be treated as though it were a separate Bond in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Bond has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Bond 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 Bond called for redemption, and (ii) for exchange, without charge to the Owner, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any Bond 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 Bond as aforesaid, the $5,000 units of the face value of such Bond 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 3.04 **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 Bonds 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 Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Bond 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 Bonds so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

Section 3.05 **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 Bonds or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Bonds 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 Bond is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Bond or Bonds of the same maturity and in the amount of the unredeemed portion of such Bond as provided by

Section 3.02 above. All Bonds selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

Section 3.06 **Effect of Call for Redemption**. Whenever any Bond, or one or more of the $5,000 units of face value represented by any Bond, has been selected for redemption and payment as provided in this Article, all interest on such Bond, or such one or more of the $5,000 units of face value represented by any such Bond, 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 Bonds, 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 Bonds, Series 798;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Bonds, Series 798, to be created within the City's Debt Service Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Bonds, Series 798.

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 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 Bonds and the portion of the Purchase Price which represents the premium, if any, paid on the Bonds; and

(B) The balance of the proceeds to the Improvement Account.

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 **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 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 Bonds 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 Bonds 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 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 more precisely identify the Improvements, or (iv) 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 (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 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 (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 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.

(The Remainder of this Page was Intentionally Left Blank)

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on July 21, 2009.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

SCHEDULE I

THE IMPROVEMENTS

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. 48-_____ of the City, passed by the Governing Body on July 21, 2009, and authorizing and providing for the issuance of the 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 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, 2010	$455,000	%
December 1, 2011	470,000	
December 1, 2012	480,000	
December 1, 2013	495,000	
December 1, 2014	510,000	
December 1, 2015	525,000	
December 1, 2016	545,000	
December 1, 2017	560,000	
December 1, 2018	575,000	
December 1, 2019	595,000	
December 1, 2020	610,000	
December 1, 2021	630,000	
December 1, 2022	650,000	
December 1, 2023	670,000	
December 1, 2024	690,000	

RESOLUTION NO. 09-226

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 21, 2009

AUTHORIZING THE ISSUANCE OF

$7,650,000

GENERAL OBLIGATION BONDS
SERIES 798A

DATED AUGUST 1, 2009

4812-5351-1683.1

TABLE OF CONTENTS

Title		1
Recitals		1
	ARTICLE I DEFINITIONS	
Section 1.01	Definitions of Words and Terms	1
	ARTICLE II AUTHORIZATION, ISSUANCE AND DELIVERY OF BONDS	
Section 2.01	Authorization of and Security for Bonds	8
Section 2.02	Description and Details of Bonds	8
Section 2.03	Designation of Paying Agent and Bond Registrar	9
Section 2.04	Method and Place of Payment of Principal and Interest on Bonds	9
Section 2.05	Method of Execution and Authentication of Bonds	10
Section 2.06	Payment of Costs of Bonds	11
Section 2.07	Form of Bonds	11
Section 2.08	Registration, Transfer and Exchange of Bonds	11
Section 2.09	Mutilated, Lost, Stolen or Destroyed Bonds	12
Section 2.10	Surrender and Cancellation of Bonds	12
Section 2.11	Execution and Delivery of Bonds	12
Section 2.12	Official Statement	13
	ARTICLE III REDEMPTION OF BONDS	
Section 3.01	Optional Redemption	13
Section 3.02	Sinking Fund Redemption	13

Section 3.03	Selection of Bonds to be Redeemed	13
Section 3.04	Notice of Redemption	14
Section 3.05	Deposit of Moneys for and Payment of Redemption Price	14
Section 3.06	Effect of Call for Redemption	15

ARTICLE IV
FUNDS AND ACCOUNTS

Section 4.01	Creation of Funds and Accounts	15
Section 4.02	Administration of Funds and Accounts	15

ARTICLE V
APPLICATION OF BOND PROCEEDS;
DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

Section 5.01	Application of Bond Proceeds	15
Section 5.02	Disposition of Principal and Interest Account	16
Section 5.03	Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent	16
Section 5.04	Surplus in Principal and Interest Account	16
Section 5.05	Disposition of Improvement Account	16
Section 5.06	Withdrawals from Improvement Account	16
Section 5.07	Surplus in Improvement Account	16
Section 5.08	Substitute Improvements	17

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

Section 6.01	Deposits	17
Section 6.02	Investments	17
Section 6.03	Deposits into and Application of Moneys in Excess Earnings Account	18

ARTICLE VII
PROVISION FOR PAYMENT OF BONDS

Section 7.01	Levy and Collection of Annual Taxes	19
Section 7.02	Disposition of Taxes; Untimely Receipt	19

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.01	Resolution Constitutes Contract; Remedies of Owners	19
Section 8.02	Rights of Owners; Limitations	20
Section 8.03	Remedies Cumulative; Delay or Omission Not Waiver	20

ARTICLE IX
AMENDMENTS

Section 9.01	Amendments	20
Section 9.02	Written Evidence of Amendments	21

ARTICLE X
DEFEASANCE

Section 10.01	Defeasance	22

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01	Tax Covenants	22
Section 11.02	Severability	23
Section 11.03	Further Authority	23
Section 11.04	Governing Law	24
Section 11.05	Effective Date	24
Signatures		25
Exhibit A	Additional Terms of the Bonds	
Schedule I:	The Improvements	

RESOLUTION NO. 09-226

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 798A, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF $7,650,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN 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 $7,650,000 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.*, as amended and supplemented, and K.S.A. 12-6a01 *et seq.*, as amended and supplemented, under the authority of which statutes the Improvements are authorized and 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" mean any issuer of a Municipal Bond Insurance Policy 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 Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

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

"Bonds" shall mean the $7,650,000 original principal amount of General Obligation Bonds, Series 798A, dated August 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. 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 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 August 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.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to Article IV hereof.

"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).

"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 Bonds, 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.

"Improvements" shall mean the capital improvements constructed in the City as described on Schedule I hereto or any Substitute Improvements.

"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 June 1, 2010, and ending December 1, 2029, 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 Treasurer of the State of Kansas, Topeka, Kansas, 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, 2010, and ending December 1, 2029, 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.

"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 July 21, 2009, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

"Substitute Improvements" means the substitute or additional improvements authorized pursuant to Section 5.08 of this Resolution.

"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 Improvement Costs, there shall be issued general obligation bonds of the City (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 the interest thereon from the collection of special assessment taxes which have been levied against real properties in the City which benefited from the Improvements, and if not so paid, then said principal and interest shall be 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. Pursuant to the Bond Ordinance, the full faith, credit and resources of the City are 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 2.02 Description and Details of Bonds. The Bonds shall be issued in the total principal amount of $7,650,000 and shall be designated "City of Wichita, Kansas, General Obligation Bonds, Series 798A." 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 Treasurer of the State of Kansas, 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 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 **Optional Redemption**. The Bonds maturing December 1, 2010, to December 1, 2019, inclusive, shall mature and become due on their respective maturity dates without the option of prior redemption and payment. At the option of the City, the Bonds maturing December 1, 2020, and thereafter, may be called for redemption and payment prior to the respective stated maturities thereof on and after December 1, 2019. Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid (the date being so set for redemption and payment being referred to as the "Redemption Date"). Bonds called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount), as follows, plus accrued interest to the Redemption Date:

Redemption Dates	Redemption Prices
December 1, 2019, through November 30, 2020	101.00%
December 1, 2020, through November 30, 2021	100.50%
December 1, 2021, and thereafter	100.00%

Section 3.02 **Sinking Fund Redemption**. Any Term Bonds shall also be subject to mandatory redemption and payment as described on Exhibit A to this Resolution.

Section 3.03 **Selection of Bonds to be Redeemed**. The Bonds 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 Bonds at the time Outstanding, the Bonds

shall be redeemed in such equitable manner as the City shall determine, with Bonds of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Bond shall be treated as though it were a separate Bond in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Bond has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Bond 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 Bond called for redemption, and (ii) for exchange, without charge to the Owner, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any Bond 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 Bond as aforesaid, the $5,000 units of the face value of such Bond 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 3.04 **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 Bonds 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 Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Bond 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 Bonds so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

Section 3.05 **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 Bonds or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Bonds 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 Bond is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Bond or Bonds of the same maturity and in the amount of the unredeemed portion of such Bond as provided by Section 3.02 above. All Bonds selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

Section 3.06 **Effect of Call for Redemption**. Whenever any Bond, or one or more of the $5,000 units of face value represented by any Bond, has been selected for redemption and payment as provided in this Article, all interest on such Bond, or such one or more of the $5,000 units of face value represented by any such Bond, 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 Bonds, 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 Bonds, Series 798A;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Bonds, Series 798A, to be created within the City's Debt Service Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Bonds, Series 798A.

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 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 Bonds and the portion of the Purchase Price which represents the premium, if any, paid on the Bonds; and

(B) The balance of the proceeds to the Improvement Account.

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 **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 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 Bonds 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 Bonds 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 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 more precisely identify the Improvements, or (iv) 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 (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 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 (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 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 July 21, 2009.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

SCHEDULE I

THE IMPROVEMENTS

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. 48-____ of the City, passed by the Governing Body on July 21, 2009, and authorizing and providing for the issuance of the 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 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 Schedule

Maturity Date	Maturing Principal	Interest Rate	Maturity Date	Maturing Principal	Interest Rate
12/01/10	$255,000	%	12/01/20	$380,000	%
12/01/11	265,000		12/01/21	395,000	
12/01/12	280,000		12/01/22	410,000	
12/01/13	290,000		12/01/23	430,000	
12/01/14	300,000		12/01/24	445,000	
12/01/15	315,000		12/01/25	465,000	
12/01/16	325,000		12/01/26	480,000	
12/01/17	340,000		12/01/27	500,000	
12/01/18	350,000		12/01/28	520,000	
12/01/19	365,000		12/01/29	540,000	

RESOLUTION NO. 09-227

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 21, 2009

AUTHORIZING THE ISSUANCE OF

$12,050,000

GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES
SERIES 231
(TAXABLE UNDER FEDERAL LAW)

DATED AUGUST 20, 2009

TABLE OF CONTENTS

Title		1
Recitals		1
	ARTICLE I DEFINITIONS	
Section 1.01	Definitions of Words and Terms	2
	ARTICLE II AUTHORIZATION, ISSUANCE AND DELIVERY OF NOTES	
Section 2.01	Authorization of and Security for Notes	8
Section 2.02	Description and Details of Notes	8
Section 2.03	Designation of Paying Agent and Note Registrar	8
Section 2.04	Method and Place of Payment of Principal and Interest on Notes	9
Section 2.05	Method of Execution and Authentication of Notes	10
Section 2.06	Payment of Costs of Notes	10
Section 2.07	Form of Notes	10
Section 2.08	Registration, Transfer and Exchange of Notes	11
Section 2.09	Mutilated, Lost, Stolen or Destroyed Notes	11
Section 2.10	Surrender and Cancellation of Notes	12
Section 2.11	Execution and Delivery of Notes	12
Section 2.12	Official Statement	12
	ARTICLE III REDEMPTION OF NOTES	
Section 3.01	Optional Redemption	12
Section 3.02	Selection of Notes to be Redeemed	13

Section 3.03	Notice of Redemption	13
Section 3.04	Deposit of Moneys for and Payment of Redemption Price	13
Section 3.05	Effect of Call for Redemption	14

ARTICLE IV
FUNDS AND ACCOUNTS

Section 4.01	Creation of Funds and Accounts	14
Section 4.02	Administration of Funds and Accounts	14

ARTICLE V
APPLICATION OF NOTE PROCEEDS;
DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

Section 5.01	Application of Note Proceeds	14
Section 5.02	Disposition of Principal and Interest Account	15
Section 5.03	Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent	15
Section 5.04	Surplus in Principal and Interest Account	15
Section 5.05	Disposition of Redemption Fund	15
Section 5.06	Disposition of Improvement Account	15
Section 5.07	Withdrawals from Improvement Account	15
Section 5.08	Surplus in Improvement Account	16
Section 5.09	Substitution of Improvements	16

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

Section 6.01	Deposits	16
Section 6.02	Investments	16

ARTICLE VII
PROVISION FOR PAYMENT OF NOTES

Section 7.01	Levy and Collection of Annual Taxes	17
Section 7.02	Disposition of Taxes; Untimely Receipt	17

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.01	Resolution Constitutes Contract; Remedies of Owners	17
Section 8.02	Rights of Owners; Limitations	18
Section 8.03	Remedies Cumulative; Delay or Omission Not Waiver	18

ARTICLE IX
AMENDMENTS

Section 9.01	Amendments	19
Section 9.02	Written Evidence of Amendments	19

ARTICLE X
DEFEASANCE

Section 10.01	Defeasance	20

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01	Severability	20
Section 11.02	Further Authority	20
Section 11.03	Governing Law	21
Section 11.04	Effective Date	21
Signatures		22
Exhibit A	Additional Terms of the Notes	
Schedule I:	The Original Improvements and the Improvements	

RESOLUTION NO. 09-227

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 231 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF $12,050,000, 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 $12,050,000 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 identified as Original Improvements as listed on **Schedule I** are herein collectively referred to as the "Original Improvements"), and 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 identified as Improvements as listed on **Schedule I** are herein 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 has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 229 (Taxable Under Federal Law), dated February 19, 2009 (the "Original Notes"), a portion of the proceeds of which were expended for interim financing for costs of the Original Improvements; and

WHEREAS, the Original Improvements have not been completed and/or are completed but the issuance of bonds for the permanent financing thereof is prevented, hindered or delayed, and the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, renewal temporary notes should be issued for the purpose of renewing and paying the portion of the principal amount of the Original Notes which was issued for costs of the Original Improvements as aforesaid; 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, K.S.A. 10-101 *et seq.*, K.S.A. 10-123, 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, the Original Notes were issued 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.

"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.

"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 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 and the Original 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 August 20, 2009.

"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.

"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 law.

"Improvements" shall mean the newly commenced capital improvements constructed in the City as described on Schedule I hereto or any Substitute Improvements.

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

"Interest Payment Date" shall be August 19, 2010.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Notes.

"Maturity Date" means August 19, 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 $12,050,000 original principal amount of General Obligation Renewal and Improvement Temporary Notes, Series 231 (Taxable Under Federal Law), dated as of August 20, 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 Notes" means the notes previously issued by the City described in the preamble to this Resolution.

"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.

"Redemption Fund" shall mean the Series 229 Principal and Interest Account previously created within the City's Capital Project Fund for the purpose of receiving and disbursing funds for the payment of the Original Notes.

"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 July 21, 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 5.09** 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 Original Improvements and the Improvements, there shall be issued general obligation renewal and 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 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 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. It is further anticipated that a portion of the Notes will be payable from tax increment generated from certain tax increment districts in the City.

Section 2.02 Description and Details of Notes. The Notes shall be issued in the total principal amount of $12,050,000, and shall be designated "City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 231 (Taxable Under Federal Law)." 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 certificate 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 and for the interim financing of costs in connection with the Improvements and the Original 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 February 18, 2010 (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) Redemption Fund for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 231;

(B) Improvement Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 231; and

(C) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 231, to be created within the City's Capital Project Fund.

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;

(B) To the Redemption Fund, the sum of $10,475,000; and

(C) The balance of the proceeds to the Improvement Account.

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 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 designated for payment of the costs of the Notes, 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 Redemption Fund**. The portion of the proceeds of the Notes deposited into the Redemption Fund as provided by the preceding **Section 5.01** shall be used solely for the purpose of paying a portion of the cost of refunding the Original Notes issued for the Original Improvements.

Section 5.06 **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 5.07 **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 5.08 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 5.09 Substitution of Improvements. The City may elect to substitute or add other improvements paid 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 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. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall 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.

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 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 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 Original Improvements and 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. It is further anticipated that a portion of the Notes will be payable from tax increment revenues generated from a certain tax increment district in the City.

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 the 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.

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 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 11.02 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 11.03 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 11.04 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.

(Remainder of Page Intentionally Left Blank)

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on July 21, 2009.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

SCHEDULE I

THE ORIGINAL IMPROVEMENTS AND THE IMPROVEMENTS

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. 48-_____ of the City, passed by the Governing Body on July 21, 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, if any, to the date of delivery.

Interest Rate. The Notes shall bear interest at the rate of ____% per annum.

RESOLUTION NO. 09-228

OF THE

CITY OF WICHITA, KANSAS

AS ADOPTED JULY 21, 2009

AUTHORIZING THE ISSUANCE OF

$46,705,000

GENERAL OBLIGATION RENEWAL AND IMPROVEMENT
TEMPORARY NOTES
SERIES 232

DATED AUGUST 20, 2009

TABLE OF CONTENTS

Title		1
Recitals		1
	ARTICLE I DEFINITIONS	
Section 1.01	Definitions of Words and Terms	2
	ARTICLE II AUTHORIZATION, ISSUANCE AND DELIVERY OF NOTES	
Section 2.01	Authorization of and Security for Notes	8
Section 2.02	Description and Details of Notes	8
Section 2.03	Designation of Paying Agent and Note Registrar	9
Section 2.04	Method and Place of Payment of Principal and Interest on Notes	9
Section 2.05	Method of Execution and Authentication of Notes	10
Section 2.06	Payment of Costs of Notes	10
Section 2.07	Form of Notes	11
Section 2.08	Registration, Transfer and Exchange of Notes	11
Section 2.09	Mutilated, Lost, Stolen or Destroyed Notes	12
Section 2.10	Surrender and Cancellation of Notes	12
Section 2.11	Execution and Delivery of Notes	12
Section 2.12	Official Statement	12
	ARTICLE III REDEMPTION OF NOTES	
Section 3.01	Optional Redemption	13
Section 3.02	Selection of Notes to be Redeemed	13

Section 3.03	Notice of Redemption	13
Section 3.04	Deposit of Moneys for and Payment of Redemption Price	14
Section 3.05	Effect of Call for Redemption	14

ARTICLE IV
FUNDS AND ACCOUNTS

Section 4.01	Creation of Funds and Accounts	14
Section 4.02	Administration of Funds and Accounts	14

ARTICLE V
APPLICATION OF NOTE PROCEEDS;
DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

Section 5.01	Application of Note Proceeds	15
Section 5.02	Disposition of Principal and Interest Account	15
Section 5.03	Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent	15
Section 5.04	Surplus in Principal and Interest Account	15
Section 5.05	Disposition of Redemption Fund	16
Section 5.06	Disposition of Improvement Account	16
Section 5.07	Withdrawals from Improvement Account	16
Section 5.08	Surplus in Improvement Account	16
Section 5.09	Substitute of Improvements	16

ARTICLE VI
DEPOSITS AND INVESTMENT OF MONEYS

Section 6.01	Deposits	16
Section 6.02	Investments	17
Section 6.03	Deposits Into and Application of Moneys in Excess Earnings Account	17

ARTICLE VII
PROVISION FOR PAYMENT OF NOTES

Section 7.01	Levy and Collection of Annual Taxes	18
Section 7.02	Disposition of Taxes; Untimely Receipt	18

ARTICLE VIII
DEFAULT AND REMEDIES

Section 8.01	Resolution Constitutes Contract; Remedies of Owners	18
Section 8.02	Rights of Owners; Limitations	19
Section 8.03	Remedies Cumulative; Delay or Omission Not Waiver	19

ARTICLE IX
AMENDMENTS

Section 9.01	Amendments	20
Section 9.02	Written Evidence of Amendments	21

ARTICLE X
DEFEASANCE

Section 10.01	Defeasance	21

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 11.01	Tax Covenants	21
Section 11.02	Severability	22
Section 11.03	Further Authority	22
Section 11.04	Governing Law	23
Section 11.05	Effective Date	23
Signatures		24
Exhibit A	Additional Terms of the Notes	
Schedule I	The Original Improvements and the Improvements	

RESOLUTION NO. 09-228

A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 232, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT OF $46,705,000, 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 $46,705,000 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 identified as Original Improvements as listed on **Schedule I** are herein collectively referred to as the "Original Improvements"), and 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 identified as Improvements as listed on **Schedule I** are herein 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 has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal Temporary Notes, Series 226, dated February 19, 2009 and General Obligation Renewal Temporary Notes, Series 230, dated February 19, 2009 (collectively the "Original Notes"), a portion of the proceeds of which were expended for interim financing for costs of the Original Improvements; and

WHEREAS, the Original Improvements have not been completed and/or are completed but the issuance of bonds for the permanent financing thereof is prevented, hindered or delayed, and the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, renewal temporary notes should be issued for the purpose of renewing and paying a portion of the principal amount of the Original Notes which was issued for costs of the Original Improvements as aforesaid; 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. 12-1770 *et seq.*, K.S.A. 12-685 *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, the Original Notes were issued 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 and the Original 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 August 20, 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 Original 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.

"Improvements" shall mean the newly commenced capital improvements constructed in the City as described on Schedule I hereto or any Substitute Improvements.

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

"Interest Payment Date" shall be August 19, 2010.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Notes.

"Maturity Date" means August 19, 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 $46,705,000 original principal amount of General Obligation Renewal and Improvement Temporary Notes, Series 232, dated August 20, 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 Notes" means the notes previously issued by the City described in the preamble to 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.

"Redemption Fund" shall mean the Series 226 and Series 230 Principal and Interest Account previously created within the City's Capital Project Fund for the purpose of receiving and disbursing funds for the payment of the Original Notes.

"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 July 21, 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 5.06** 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 Original Improvements and the Improvements, there shall be issued general obligation renewal 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 Original 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 $46,705,000, and shall be designated "City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 232." 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 certificate 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 and for the interim financing of portions of the Improvements and the Original 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 February 18, 2010 (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) Redemption Fund for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 232;

(B) Improvement Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 232;

(C) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 232, to be created within the City's Capital Project Fund; and

(D) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 232.

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 Redemption Fund, the sum of $26,935,600; and

(C) The balance of the proceeds to the Improvement Account.

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 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 designated for payment of the costs of the Notes, 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 Redemption Fund.** The portion of the proceeds of the Notes deposited into the Redemption Fund as provided by the preceding **Section 5.01** shall be used solely for the purpose of paying a portion of the cost of refunding the Original Notes issued for the Original Improvements.

Section 5.06 **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 5.07 **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 5.08 **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 5.09 **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 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 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 Original Improvements and 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 July 21, 2009.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

SCHEDULE I

THE ORIGINAL IMPROVEMENTS AND THE IMPROVEMENTS

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. 48-_____ of the City, passed by the Governing Body on July 21, 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 #_____

City of Wichita
City Council Meeting
July 21, 2009

Agenda Report #_____

TO: Mayor and City Council

SUBJECT: 2010 Annual Operating Budget and 2009 Budget Revisions

INITIATED BY: Department of Finance Kelly Carpenter

AGENDA: New Business

Recommendations: Set public hearing, authorize notice, and place the ordinances on first reading.

Background: The City Council has received the City Manager's Proposed 2009/2010 Budget (including tax increment financing districts). The Council is receiving public comment at its weekly Council meetings.

Analysis: The proposed 2010 annual operating budget is $498,113,704 including all Tax Increment Financing (TIF) Funds and the Self-Supporting Municipal Improvement District (SSMID) Fund. Interfund transactions and appropriated reserves increase this amount to $624,941,844. The inclusion of expendable trust funds, as required by law, is an additional $74,997,778 for a total of $699,939,622. The estimated mill levy for this budget would be 32.056 mills, no change from the levy for the current 2009 Adopted Budget.

The General Fund property tax levy is $74,438,140 (including a delinquency allowance) at an estimated 23,556 mills. The levy for the Debt Service Fund is $26,860,430 (including a delinquency allowance) and is estimated at 8.500 mills.

There are a total of seven TIF Funds, two environmental TIFs (Gilbert & Mosley and North Industrial Corridor) and five economic TIFs (East Bank, Old Town, 21st & Grove, Old Town Cinema, and Northeast Redevelopment). The combined resources of the seven TIF Funds are $7,250,581, of which $6,195,931 is derived from property tax increments.

The SSMID Fund is included in the proposed budget assuming an assessed valuation of $100,959,566, a 3.5% decrease from the 2009 valuation. Assuming a mill levy rate of 5.953 mills (identical to the levy for the current 2009 Adopted Budget) and a delinquency factor of 6%, $564,950 in property tax revenue net of delinquency will be collected for 2010. Factoring the projected carryover balance ($16,666), revenue from prior year delinquencies ($15,000) and motor vehicle tax revenue ($26,194) results in a total of $622,810 in projected expenditures.

The dollar amounts, after they are set in the published notice of hearings on the proposed budget, cannot be exceeded, although the City Council may determine subsequently to reduce the mill rate. Formal hearing and adoption of the budget is scheduled for August 11th. If subsequent actions result in an increase to the budget, a process of republication, hearings and certification will be required.

The budget also requires several technical adjustments from information presented in the Proposed Budget book. The adjustments have been included in the summary totals discussed above, and are necessary to implement the budget has proposed. A transfer of $1 million from the Pension Reserve Sub-Fund to the Pension funds was inadvertently omitted from total fund expenditures. Correcting this will increase Self Insurance Fund expenditures (of which the Pension Reserve Sub-Fund is a component) by $1 million, to a total of $48,288,779 in 2010. In addition, budgeted expenditures for two TIF sub-funds were recorded correctly on detail pages, but inadvertently aggregated incorrectly on fund summaries. These adjustments (also included above) decreased 2009 Revised expenditures by $123,000 and increased 2010 expenditures by $114,000. Finally, to comply with State budget certification law for the

2010 Budget, the Landfill Post Closure Fund reserve is increased by $100,000 and the Debt Service Fund temporary note repayment line item is increased by $1,000,000.

In addition to action on the 2010 Budget, it is requested that action be taken to amend the 2009 Adopted Budget – as contained in the proposed budget submitted to the City Council:

1. The **Debt Service Fund** increase of $550,140 is due to an increase in pay-as-you-go financing for capital improvement projects, which will reduce future borrowing costs.
2. The **State Office Building Fund** increase of $129,472 reflects the terms of the City's lease agreement with the State of Kansas, and the need to refund to the State amounts previously collected in excess expenditures.
3. The **IT/IS Fund** increase of $446,302 reflects the inclusion of all printing costs through this fund. Privatization of the Print Shop function earlier this year has reduced City costs. However, to standardize vendor payments, all printing expenditures are now billed by the vendor to IT, then internally through IT to City departments. This requires additional expenditure authority in the IT/IS Fund.
4. The **Old Town Cinema TIF Fund** is increased by $75,540. Additional revenues are available in the fund, and the increased expenditures authority in 2009 will allow additional transfers from this fund to the Debt Service Fund, to reduce TIF associated debt.
5. The **Northeast Redevelopment TIF Fund** is increased from $0 to $64,000. Since this TIF is relatively new, this fund had not been certified previously.
6. A new **Homelessness Assistance Fund** is created and must be certified for 2009. This fund aggregates the equal City and County contributions for homelessness assistance into one fund, so that expenditures can be appropriately tracked and divided between the City and County.

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

Goal Impact: The adoption of the annual budget provides the funding sources for services provided in each of the five goal areas.

Legal Considerations: As required by law, the proposed budget will be published with appropriated balances. State statutes require formal public hearings prior to approval of the annual operating budget and for budget amendments of published funds. The 2009 Budget must be adopted by the City Council on August 11, and will be filed with the County Clerk by the statutory date of August 25.

Recommendation: It is recommended that the City Council set the public hearing on the proposed 2010 Budget (including the Tax Increment Financing Districts and the Self-Supporting Municipal Improvement District downtown) and the revised 2009 Budget for August 11, 2009; authorize publication of the formal public hearing notice, including technical adjustments as needed; approve first reading of the general budget, TIF district, and SSMID ordinances; and set a maximum amount of taxes levied ($101,298,570) based on an anticipated mill levy of 32.056 mills (no change from the current mill levy) and an estimated assessed valuation of $3,160 billion.

Attachments:

Notice of budget hearing – Proposed budget 2010 Expenditures
Notice of budget hearing – Amending the 2009 Budget

Notice of budget hearing – Proposed budget 2010 Tax Increment Financing Funds (TIF)
Notice of budget hearing – Amending the 2009 Tax Increment Financing Funds (TIF)
Notice of budget hearing – Proposed budget 2010 Expenditures - SSMID
Ordinance – fixing general tax levy – City of Wichita
Ordinance – East Bank Redevelopment TIF
Ordinance – Old Town Redevelopment TIF
Ordinance – 21st and Grove Redevelopment TIF
Ordinance – Northeast Redevelopment TIF
Ordinance – Old Town Cinema Redevelopment TIF
Ordinance – Gilbert and Mosley Site Redevelopment TIF
Ordinance – North Industrial Corridor Redevelopment TIF
Ordinance – Fixing General Tax Levy - Downtown Wichita Self Supported Municipal Improvement District

NOTICE OF BUDGET HEARING

The governing body of the City of Wichita, Kansas will meet on the 11th day of August, 2009 at 9:00 A.M., in the City Council Chambers, City Hall, 455 N. Main, Wichita, Kansas for the purpose of hearing objections and answering questions of taxpayers related to the proposed 2010 budget and proposed tax levy, and for considering amendments relating to the 2009 adopted operating budget. Detailed budget information is available at the City of Wichita Department of Finance, 12th Floor, and will be available at this hearing

BUDGET SUMMARY

The "Proposed Budget 2010 Expenditures" and the "Amount of 2009 Ad Valorem Tax" establish the maximum limits of the 2010 budget. The "Est(imated) Tax Rate*" is subject to change depending on final assessed valuation.

	2008		2009		Proposed Budget 2010		
Fund	Prior Year Actual Expenditures	Actual Tax Rate*	Current Year Estimate of Expenditure	Actual Tax Rate*	Expenditures	Amount of 2009 Ad Valorem Tax	Est Tax Rate*
General Fund	198,269,703	21.936	202,201,147	23.034	222,702,466	74,438,140	23.556
Debt Service	98,697,288	10.017	88,127,691	9.022	86,151,210	26,860,430	8.500
Subtotal tax-supported funds	**296,966,991**	**31.953**	**290,328,838**	**32.056**	**308,853,676**	**101,298,570**	**32.056**
Tourism and Convention	6,082,450		6,760,883		8,000,538		
Downtown Trolley System	410		0		0		
Special Alcohol Programs	1,818,068		1,967,637		2,426,397		
Special Parks and Recreation	1,850,000		1,900,000		2,070,000		
Ice Rink Management	0		0		315,000		
Landfill	2,269,570		2,399,989		2,282,179		
Landfill Post Closure	2,174,625		3,451,011		21,007,367		
Central Inspection	6,338,684		5,553,113		6,061,391		
Economic Development	2,987,345		3,695,536		3,955,038		
Downtown Parking	0		0		340,000		
Sales Tax Construction Pledge	25,793,410		25,177,665		31,693,190		
Property Management	1,877,064		0		0		
Homelessness Asst	0		382,736		382,736		
State Office Building	660,115		762,422		543,664		
Main & Murdock	0		33,555		0		
TIF Districts**	8,188,748		9,960,756		15,792,833		
SSMID**	610,214		637,487		622,810		
City/County Operations	3,649,848		3,882,270		3,837,820		
Art Museum Board	1,458,460		15,000		0		
Permanent Resrve	0		1,250,000		1,750,000		
Cemeteries	24,419		53,630		53,630		
Subtotal special revenue funds	**65,783,430**		**67,883,690**		**101,134,594**		
Airport Fund**	17,235,125		17,651,350		18,031,470		
Golf Fund**	4,249,107		5,065,862		5,616,110		
Transit Fund**	5,667,945		5,988,869		6,288,353		
Sewer Utility	35,361,900		36,834,038		41,245,752		
Water Utility	46,950,136		49,688,190		58,562,877		
Storm Water Utility	6,148,639		6,803,652		16,060,336		
Subtotal enterprise funds	**115,612,852**		**122,031,961**		**145,804,898**		
Information Technology	9,476,142		10,196,469		10,809,726		
Equipment Motor Pool	12,103,528		11,931,621		10,050,171		
Stationery Stores	808,135		998,985		0		
Self-Insurance	34,553,415		43,367,157		48,288,779		
Subtotal internal service funds	**56,941,220**		**66,494,232**		**69,148,675**		
TOTAL OPERATING FUNDS	**535,304,493**		**546,738,721**		**624,941,844**		
Less: Interfund transactions	106,710,990		113,194,105		115,188,759		
NET TOTAL	**428,593,503**		**433,544,616**		**509,753,085**	**101,298,570**	**32.056**
Expendable Trust Funds	60,194,108		73,487,060		74,997,778		
Total Tax Levied	95,692,490		100,840,350				
Assessed Valuation					3,160,050,252		

	Outstanding Indebtedness, January 1		
	2007	**2008**	**2009**
GO Bonds	418,305,139	448,456,736	432,681,282
Revenue Bonds	314,282,881	299,896,435	314,496,638
No-Fund Warrants	0	0	0
Lease Purchase Principal	0	0	0
Total	**732,588,020**	**748,353,171**	**747,177,920**

* Tax Rates are expressed in mills.
** These funds are shown for information purposes only and are either certified separately or are not required to be certified.

NOTICE OF BUDGET HEARING
AMENDING THE 2009 BUDGET

The governing body of the ***City of Wichita*** will meet on the 11th day of August, 2009 at 9:00 a.m., in the City Council Room, City Hall, 455 N. Main, Wichita, Kansas for the purpose of hearing objections and answering questions of taxpayers relating to the proposed 2010 budget, the proposed tax levy, and for considering amendments relating to the 2009 adopted operating budget.

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

	Adopted Budget 2009			**Proposed Amendment 2009 Budget**
Fund	Actual Tax Rate	Amount of Ad Valorem Tax	Expenditures	Expenditures
Homelessness Assistance			0	382,736
State Office Building Complex			632,950	762,422
Debt Service	9.022	28,379,970	87,577,551	88,127,691
Data Processing Center			9,750,167	10,196,469

Clerk

NOTICE OF BUDGET HEARING

The governing body of the City of Wichita, Kansas will meet on the 11th day of August, 2009 at 9:00 A.M., in the City Council Chambers, City Hall, 455 N. Main, Wichita, Kansas for the purpose of hearing objections and answering questions of taxpayers related to the proposed 2010 budget for Tax Increment Financing (TIF) Funds and the proposed tax increment. Detailed budget information is available at the City of Wichita Department of Finance, 12th Floor, and will be available at this hearing.

TAX INCREMENT FINANCING (TIF) DISTRICTS BUDGET SUMMARY

The "Proposed Budget 2010 Expenditures" and the "Amount of 2010 Tax Increment" establish the maximum limits of the 2010 budget.

	2008	2009	Proposed Budget 2010	
Tax Increment Financing Fund	Prior Year Actual Expenditures	Current Year Estimate of Expenditure	2010 Expenditures	Amount of 2010 Tax Increment*
Gilbert and Mosley	2,897,319	4,762,872	5,667,314	2,670,040
North Industrial Corridor	710,076	2,192,012	7,065,296	1,165,300
Total Environmental TIFs	**3,607,395**	**6,954,884**	**12,732,610**	**3,835,340**
East Bank	1,693,297	1,431,000	1,424,000	1,123,783
Old Town	2,314,460	833,427	965,223	697,147
21st & Grove	203,596	154,000	158,000	128,726
Old Town Cinema	370,000	557,000	478,000	377,019
Northeast Redevelopment	0	64,000	35,000	33,916
Total Economic Development TIFs	**4,581,353**	**3,039,427**	**3,060,223**	**2,360,591**
TOTAL ALL TIFs	**8,188,748**	**9,994,311**	**15,792,833**	**6,195,931**

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

Clerk

NOTICE OF BUDGET HEARING
AMENDING THE 2008 TIF BUDGETs

The governing body of the ***City of Wichita*** will meet on the 11th day of August, 2009 at 9:00 a.m., in the City Council Room, City Hall, 455 N. Main, Wichita, Kansas for the purpose of hearing objections and answering questions of taxpayers relating to the proposed 2010 budget, the proposed tax levy, and for considering amendments relating to the 2009 adopted operating budget.

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

	2009 Adopted Budget		**Proposed Amendment 2009 Budget**
Fund	Amount of 2009 Tax Increment	Expenditures	Expenditures
Old Town Cinema	633,450	365,000	557,000
Northeast Redevelopment	0	0	64,000

Clerk

State of Kansas
City/County
2009

NOTICE OF BUDGET HEARING

The governing body of the City of Wichita, Kansas will meet on the 11th day of August, 2009 at 9:00 A.M., in the City Council Chambers, City Hall, 455 N. Main, Wichita, Kansas for the purpose of hearing objections and answering questions of taxpayers related to the proposed 2010 budget and proposed tax levy, and for considering amendments relating to the 2009 adopted operating budget. Detailed budget information is available at the City of Wichita Department of Finance, 12th Floor, and will be available at this hearing.

BUDGET SUMMARY

The "Proposed Budget 2010 Expenditures" and the "Amount of 2009Ad Valorem Tax" establish the maximum limits of the 2010 budget. The "Est(imated) Tax Rate*" is subject to change depending on final assessed valuation.

	2008		2009		Proposed Budget 2010		
Fund	Prior Year Actual Expenditures	Actual Tax Rate*	Current Year Estimate of Expenditure	Actual Tax Rate*	Expenditures	Amount of 2008 Ad Valorem Tax	Est Tax Rate*
SSMID	610,214	5.9950	637,487	5.953	622,810	601,011	5.953
TOTAL OPERATING FUNDS	**610,214**		**637,487**		**622,810**		
Less: Interfund transactions	0		0		0		
NET TOTAL	**610,214**		**637,487**		**622,810**	**601,011**	**5.593**
Expendable Trust Funds	0		0		0		
Total Tax Levied	622,200		622,817				
Assessed Valuation	103,784,884		104,631,527		100,959,566		

	Outstanding Indebtedness, January 1		
	2006	2007	2008
GO Bonds	0	0	0
Revenue Bonds	0	0	0
No-Fund Warrants	0	0	0
Lease Purchase Principal	0	0	0
Total	**0**	**0**	**0**

* Tax Rates are expressed in mills.

Clerk

(Published in The Wichita Eagle on August __, 2009) 037002

ORDINANCE NO. 48-388

AN ORDINANCE MAKING AND FIXING GENERAL TAX LEVY FOR THE CITY OF WICHITA, KANSAS, FOR THE YEAR BEGINNING JANUARY 1, 2010, AND ENDING DECEMBER 31, 2010, AND RELATING THERETO, AND CONCURRENTLY APPROVING CERTAIN AMENDMENTS TO THE 2009 ADOPTED BUDGET.

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

SECTION 1. The City of Wichita, Kansas has adopted a budget requiring $101,298,570 in general taxes to be levied for the funds as specified below.

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

SECTION 2. That in accordance with Section 1 hereof, there be and hereby is levied by the City of Wichita, Kansas, upon all the taxable property in the City of Wichita, Kansas, according to the assessed valuation thereof, the following amount for the use of the City of Wichita, Kansas, for the year 2010, which begins January 1, 2010, and ends December 31, 2010, for the following purposes, to wit:

CALCULATION OF TAX DOLLARS TO BE LEVIED

	City of Wichita	**Mill Levy**
Assessed Valuation	$3,160,050,252	
Taxes to be Levied:		
General Fund	74,438,140	23.556
Debt Service Fund	26,860,430	8.500
Total:	**101,298,570**	**32.056**

SECTION 3. It is hereby attested that in order to maintain the public services essential for the citizens of this city, it will be necessary to utilize property tax revenue in an amount exceeding the revenues expended in the budget year 2009. The estimated amount of increased property tax revenue is $148,024.

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

SECTION 5. That the amendments to the 2009 Adopted Budget of the City of Wichita, Kansas, as proposed for consideration and noticed for public hearing concurrently with the proposed 2010 Budget, be, and the same (together with any modifications thereto as may have been made following the public hearing) hereby are, approved and adopted.

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

PASSED by the governing body of the City of Wichita, Kansas, this 11 day of August, 2009

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney
and Director of Law

(Published in The Wichita Eagle on August 14, 2009 037002

ORDINANCE NO. 48-389

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE GILBERT AND MOSLEY SITE REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2010, AND ENDING DECEMBER 31, 2010.

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

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

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

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

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

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

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby sets the increment to be collected from ad valorem taxes produced from property located within the Gilbert and Mosley Site Redevelopment District at $2,670,040 for the year beginning January 1, 2010, and ending December 31, 2010.

SECTION 3. The purpose of setting this increment is to pay the direct costs of investigation and remediation of the contaminated condition that exists in the Gilbert and Mosley Site Redevelopment District that are anticipated to be incurred between January 1, 2010, and December 31, 2010, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to the investigation and remediation of contamination. The increment set herein does not exceed twenty percent (20%) of the amount of taxes that were produced in 1991, which was the year the Gilbert and Mosley Site Redevelopment District was first established.

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

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

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of August 2009.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney
Director of Law

BUDGET SUMMARY

The expenditures, revenues and the amount of 2010 tax to be levied (published below) establish the maximum limits of the 2010 budget for the Groundwater Contamination Project of the Gilbert and Mosley Site Redevelopment District.

Gilbert and Mosley Site Redevelopment District Revenues:	**2010 Proposed Budget**	**Amount To Be Levied**
Contributions - potentially responsible parties	100,000	
Interest earnings	110,000	
KDHE reimbursements	120,000	
Motor Vehicle Tax	958	
Cost to be funded by a levy from the Gilbert and Mosley Site Redevelopment District*	2,670,040	**$ 2,670,040**
Total Revenues	**$ 3,000,998**	
Expenditures:		
Personal services	0	
Contractuals	1,185,842	
Commodities	44,160	
Capital outlay	0	
Debt service / temporary notes	1,360,208	
Transfers	172,104	
Environmental remediation projects	2,905,000	
Total Expenditures	**$ 5,667,314**	

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

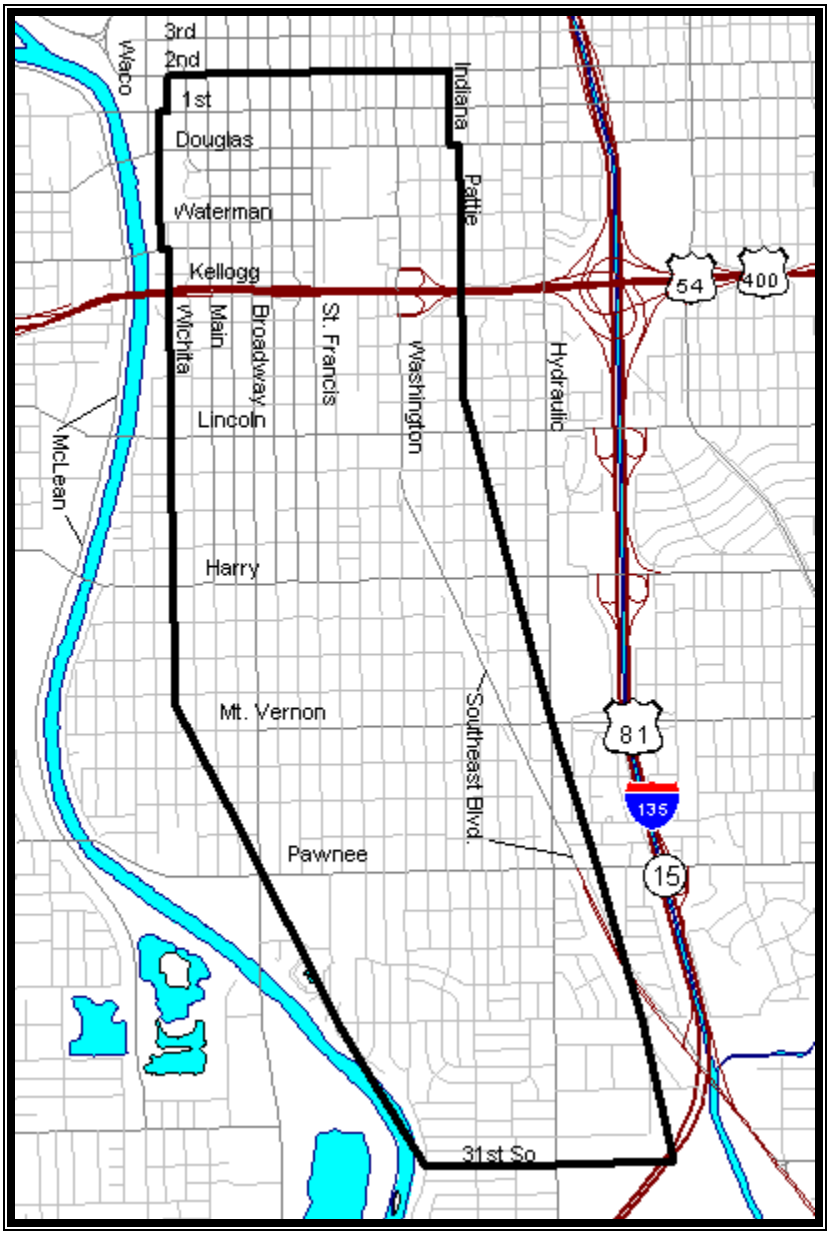
K.S.A. 12-1771a(d) provides that the real property taxes produced by the environmental increment from a redevelopment district shall be allocated and paid by the County Treasurer to the Treasurer of the City and deposited in a special separate fund of the City to pay the direct cost of investigation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

_____

Karen Sublett, City Clerk

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

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



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

(Published in The Wichita Eagle on August 14, 2009 037002

ORDINANCE NO. 48-390

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE NORTH INDUSTRIAL CORRIDOR REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2010, AND ENDING DECEMBER 31, 2010.

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

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

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

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

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget requiring $1,165,300.00 of increment funds in ad valorem taxes from the North Industrial Corridor Redevelopment District (the boundaries of the District are described in "Exhibit A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby sets the increment to be collected from ad valorem taxes produced from property located within the North Industrial Corridor Redevelopment District at $1,165,300.00 for the year beginning January 1, 2010, and ending December 31, 2010.

SECTION 3. The purpose of setting this increment is to pay the direct costs of investigation and remediation of the contaminated condition that exists in the North Industrial Corridor Redevelopment District that are anticipated to be incurred between January 1, 2010, and December 31, 2010, including costs of remediation and investigation, and feasibility studies, operation and maintenance expenses and other expenses relating directly to the investigation and remediation of contamination. The increment set herein does not exceed twenty percent (20%) of the amount of taxes that were produced in 1996, which is the year in which the North Industrial Corridor Redevelopment District was first established.

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

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

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of August 2009.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney
Director of Law

BUDGET SUMMARY

The expenditures, revenues and the amount of 2010 tax to be levied (published below) establish the maximum limits of the 2010 budget for the Groundwater Contamination Project of the North Industrial Corridor Redevelopment District.

North Industrial Corridor Redevelopment District		**Amount To**
Revenues:	**2010 Proposed Budget**	**Be Levied**
Motor Vehicle Taxes	900	
Interest earnings	100,000	
Cost to be funded by a levy from the North Industrial Corridor Redevelopment District*	1,165,300	**$ 1,165,300**
Total Revenues	**$1,266,200**	
Expenditures:		
Personal services	0	
Contractuals	1,529,192	
Commodities	4,000	
Capital outlay	20,000	
Other	172,104	
Environmental remediation projects	5,340,000	
Total Expenditures	**$7,065,296**	

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

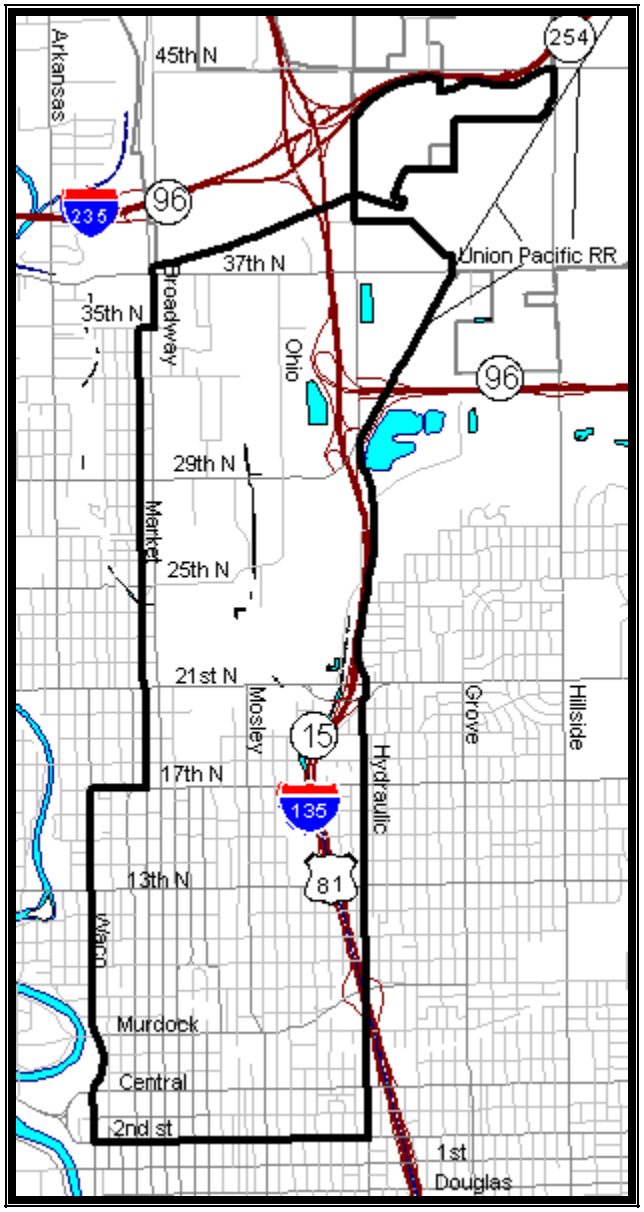
K.S.A. 12-1771a(d) provides that the real property taxes produced by the environmental increment from a redevelopment district shall be allocated and paid by the County Treasurer to the Treasurer of the City and deposited in a special separate fund of the City to pay the direct cost of investigation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

_____

Karen Sublett, City Clerk

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

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



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

(Published in The Wichita Eagle on August 14, 2009) 037002

ORDINANCE NO. 48-391

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE EAST BANK REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2010, AND ENDING DECEMBER 31, 2010.

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

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

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

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

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

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

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $1,123,783 of increment funds in ad valorem taxes from the East Bank Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the East Bank Redevelopment District at $1,123,783 for the year beginning January 1, 2010, and ending December 31, 2010.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2010, and December 31, 2010, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of

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

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

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

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of August 2009.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney
Director of Law

EXHIBIT "A"

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

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

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

(Published in The Wichita Eagle on August 14, 2009) 037002

ORDINANCE NO. 48-392

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE NORTHEAST REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2010, AND ENDING DECEMBER 31, 2010.

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

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

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

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

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

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $33,916 of increment funds in ad valorem taxes from the Northeast Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Northeast Redevelopment District at $33,916 for the year beginning January 1, 2010, and ending December 31, 2010.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2010, and December 31, 2010, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of

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

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

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

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of August, 2009.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney
Director of Law

EXHIBIT "A"

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

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

THE NORHTEAST REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #X)

(Published in The Wichita Eagle on August 14, 2009) 037002

ORDINANCE NO. 48-393

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE OLD TOWN CINEMA REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2010, AND ENDING DECEMBER 31, 2010.

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

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

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

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

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

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $377,019 of increment funds in ad valorem taxes from the Old Town Cinema Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Old Town Cinema Redevelopment District at $377,019 for the year beginning January 1, 2010, and ending December 31, 2010.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2010 and December 31, 2010 including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure

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

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

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

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of August, 2009.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney
Director of Law

EXHIBIT "A"

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

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

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

(Published in The Wichita Eagle on August 14, 2009)

ORDINANCE NO. 48-394

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE OLD TOWN REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2010, AND ENDING DECEMBER 31, 2010.

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

WHEREAS, the City has by ordinance adopted a redevelopment plan for the Old Town Redevelopment District, the District being created in 1993; and,

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

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

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $697,147 of increment funds in ad valorem taxes from the Old Town Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the Old Town Redevelopment District at $697,147 for the year beginning January 1, 2010, and ending December 31, 2010.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2010, and December 31, 2010, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the Redevelopment District. The increment set herein is estimated based on assessment of the value of properties as reported by the Sedgwick County Appraiser's Office.

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

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

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of August, 2009.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney
Director of Law

EXHIBIT "A"

DESCRIPTION OF THE OLD TOWN REDEVELOPMENT DISTRICT (TIF DISTRICT #4)

Within the City of Wichita, Sedgwick County, Kansas, beginning at the intersection of 2nd Street North and Washington Avenue, thence south along the center line of Washington Avenue to the intersection of Washington Avenue and Douglas Avenue, thence west along the center line of Douglas Avenue to the intersection of Douglas Avenue and the Atchison, Topeka and Santa Fe Railway System, thence north along the center line of the Atchison, Topeka, and Santa Fe Railway System to the intersection of the Atchison, Topeka, and Santa Fe Railway System and 2nd Street North, thence east along the center line of 2nd Street North to the intersection of 2nd North and Washington Avenue, being the point of beginning.

THE OLD TOWN REDEVELOPMENT DISTRICT (TAX INCREMENT FINANCING DISTRICT #4)

(Published in The Wichita Eagle on August 14, 2009) 037002

ORDINANCE NO. 09-395

AN ORDINANCE MAKING AND FIXING GENERAL TAX LEVY FOR THE DOWNTOWN WICHITA SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT FOR THE YEAR BEGINNING JANUARY 1, 2010, AND ENDING DECEMBER 31, 2010.

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

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

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

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

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

SECTION 1. The governing body of the Downtown Wichita Self-Supported Municipal Improvement District ("District") has adopted a budget requiring $601,011 in general taxes to be levied for the fund of the District for the year 2010, which begins January 1, 2010, and ends December 31, 2010. The boundaries of the District are as follows:

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

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

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

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

SECTION 3. That in accordance with Section 2 hereof, there be and hereby is levied upon all the taxable property in the District, according to the assessed valuation thereof, the following amount for the use of the District, for the year 2010, which begins January 1, 2010, and ends December 31, 2010, to wit:

CALCULATION OF TAX DOLLARS TO BE LEVIED

	District	Mill Levy
Assessed Valuation	$100,959,566	
Taxes to be Levied:	$601,011	5.953

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

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

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of August, 2009.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney
Director of Law

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

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

THE DOWNTOWN SELF-SUPPORTING MUNICIPAL IMPROVEMENT DISTRICT (SSMID)

(Published in The Wichita Eagle on August 14, 2009) 037002

ORDINANCE NO. 48-396

AN ORDINANCE MAKING AND FILING AN INCREMENT IN AD VALOREM TAXES FOR THE 21ST AND GROVE REDEVELOPMENT DISTRICT, CITY OF WICHITA, KANSAS, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2010, AND ENDING DECEMBER 31, 2010.

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

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

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

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

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

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

SECTION 1. The City of Wichita, Kansas, has adopted a budget estimating $128,726 of increment funds in ad valorem taxes from the 21st and Grove Redevelopment District (the current boundaries of the District are described in Exhibit "A" attached hereto).

SECTION 2. In accordance with Section 1 hereof, the City of Wichita, Kansas, hereby estimates the increment to be collected from ad valorem taxes produced from property located within the 21st and Grove Redevelopment District at $128,726 for the year beginning January 1, 2010, and ending December 31, 2010.

SECTION 3. The purpose of setting this increment is to pay the direct costs of infrastructure improvements within the Redevelopment District as defined in K.S.A. 12-1770a, such costs being integral to the increased development and property valuation within the District, incurred between January 1, 2010, and December 31, 2010, including principal and interest due on special obligation bonds or full faith and credit tax increment bonds issued to finance in whole or in part operation and maintenance expenses and other expenses relating directly to infrastructure improvements within the

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

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

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

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of August, 2009.

_____
Carl Brewer, Mayor

ATTEST: (SEAL)

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney
Director of Law

EXHIBIT "A"

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

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

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

Agenda Item No. III-9.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council Members

SUBJECT: Authorization to submit a Letter of Inquiry grant funding request to the Wichita Community Foundation (District III)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: New Business

Recommendation: Authorize submission of a Letter of Inquiry for a community venture grant.

Background: The Wichita Community Foundation (WCF) annually awards community venture grants for supporting projects with a purpose that emphasize partnerships and sustainability, and that reduce the financial burden on government. In past years, grant amounts have ranged from $25,000 to $350,000. Total community venture grant funding available for the July 1, 2009, to June 30, 2010, funding cycle is approximately $500,000. The WCF began receiving Letter of Inquiry applications for community venture grants effective July 1, 2009, with first reading (consideration of grant awards) by the WCF Grants Committee anticipated in mid-August 2009. Grant awards could be made at that time.

In late 2008, the City and County jointly contracted the services of Braintree Solutions Consulting to undertake a feasibility assessment to help determine whether a community resource center should be established in southeast Wichita and, if so, to recommend services that might be offered at such a facility. This process included an extensive community involvement process comprised of interviews, community surveys, and focus groups; including potential community resource center service providers and the general public. Completed April 30, 2009, the *Southeast Wichita Community Resource Center Planning and Assessment Process Report* indicates that a community resource center is both needed and justified in southeast Wichita. The following eight components emerged as highest priority in terms of potential services needed at a southeast Wichita community resource center:

1. Exercise and recreational facilities;
2. After-school programs for children and youth;
3. Classroom space / educational classes;
4. Elderly activities and recreation center;
5. Computer center / cluster;
6. Clinical health services;
7. Community police outreach post; and,
8. Library

The report completed by Braintree also contains an evaluation of potential sites and recommends a preferred location for the establishment of a community resource center. However, no property has been acquired or designated by the City or County for this possible facility, nor has any commitment been made by the City, County or any other entity to fund the construction, operation and maintenance of a community resource center in southeast Wichita.

Analysis: Grant funding is requested for a conceptual design and programmatic plan that will help to accurately determine programmatic, capital, operational, and maintenance costs associated with the possible development of a southeast Wichita community resource center facility. It will lay the foundation for informed decision-making on multi-jurisdictional agency participation; facility ownership and governance issues; fund-raising; final designs; construction costs; maintenance costs; and, long-term operation of the community resource center. Based upon

responses to a recent Request for Proposals, staff estimates that a conceptual design and programmatic plan could be developed at a cost not exceeding $29,000.

Since no City or County funds are currently set aside to fund the design plan, staff is recommending that a Letter of Inquiry be submitted to the WCF requesting grant funding support to develop the conceptual design and programmatic plan. Staff feels that this request would be a good candidate for WCF approval based upon the following considerations that may be important to the WCF:

1. This community resource center concept represents a unique, precedent-setting approach to addressing the delivery of a broad range of community services in Wichita. There are opportunities for new partnerships and multi-agency collaborations in the delivery of these community services that could result in cost-savings, long-term operational efficiencies and enhanced community services to area residents.
2. There is inherent community diversity within southeast Wichita, characterized by a stable and generational community.
3. The community resource center concept has the potential to integrate an existing service project currently funded by the Wichita Community Foundation (Healthy Options for Planeview).
4. The need for a southeast Wichita community resource center is validated by the *Southeast Wichita Community Resource Center Planning and Assessment Process Report,* April 30, 2009

If the WCF awards a community venture grant to the City for this project, the City will need to establish a joint project oversight committee (including County and key service provider entities), and designate joint project coordinators from both the County and City.

Financial Considerations: The Letter of Inquiry to the Wichita Community Foundation requests community venture grant funding in the amount of $29,000. This amount is deemed sufficient to hire a consultant to complete a conceptual design and programmatic plan for the community resource center. If the WCF awards a lesser amount than requested, then an action by the City Council may be needed to consider the authorization of any additional funding necessary.

Goal Impact: Authorizing the submittal of this Letter of Inquiry to the Wichita Community Foundation would impact Wichita's Efficient Infrastructure and Quality of Life Goals by planning and designing for possible enhanced delivery of various community services; and would impact Wichita's CORE Area and Neighborhood Goal by potentially increasing neighborhood vibrancy, sense of community and neighborhood satisfaction.

Legal Considerations: In accordance with City Administrative Regulation requirements, the submission of a Letter of Inquiry by the City of Wichita to the Wichita Community Foundation requesting community venture grant funding requires the approval of City Council.

Recommendations/Actions: It is recommended that the City Council authorize submission of a Letter of Inquiry to the Wichita Community Foundation requesting a community venture grant in the amount of $29,000 to hire a consultant to develop a conceptual design and programmatic plan for a possible future Southeast Wichita Community Resource Center.

MAYOR'S LETTERHEAD

July 22, 2009

Carol A. Nazar
Program Officer
Wichita Community Foundation
200 W. Douglas, Suite 250
Wichita, Kansas 67202

Dear Mrs. Nazar,

RE: Letter of Inquiry - Community Venture Grant Funding Request

On behalf of the Wichita City Council, I am submitting this letter requesting the Wichita Community Foundation Board's consideration of community venture grant funding in the amount of $29,000 to hire a consultant to develop a conceptual design and programmatic plan for a possible future Southeast Wichita Community Resource Center. This plan will help to accurately determine programmatic, capital, operational, and maintenance costs associated with the possible development of a southeast Wichita community resource center facility. It will lay the foundation for informed decision-making on multi-jurisdictional agency participation; facility ownership and governance issues; fund-raising; final designs; construction costs; maintenance costs; and, long-term operation of the community resource center.

In late 2008, the City of Wichita and Sedgwick County jointly contracted the services of Braintree Solutions Consulting to undertake a feasibility assessment. The purpose of this assessment was to help determine whether a community resource center should be established in southeast Wichita and, if so, to recommend services that might be offered at such a facility. This process included an extensive community involvement process comprised of interviews, community surveys, and focus groups; including potential community resource center service providers and the general public. Completed April 30, 2009, the *Southeast Wichita Community Resource Center Planning and Assessment Process Report* indicates that a community resource center is both needed and justified in southeast Wichita. The following eight components emerged as highest priority in terms of potential services needed at a southeast Wichita community resource center:

1. Exercise and recreational facilities;
2. After-school programs for children and youth;
3. Classroom space / educational classes;
4. Elderly activities and recreation center;
5. Computer center / cluster;
6. Clinical health services;
7. Community police outreach post; and
8. Library

The report completed by Braintree also contains an evaluation of potential sites and recommends a preferred location for the establishment of a community resource center.

The City does not have the funds for this project. No property has been acquired or designated by the City or County for this possible facility, nor has any commitment been made by the City, County or any other entity to fund the construction, operation and maintenance of a community resource center in southeast Wichita. However, as Mayor of the City of Wichita, I believe that future financial conditions will improve, and allow us to eventually move forward with this project.

I submit that this community venture grant funding request would be a good long term investment for the Wichita Community Foundation and the citizens of southeast Wichita based upon the following considerations:

1. This community resource center concept represents a unique, precedent-setting approach to addressing the delivery of a broad range of community services in Wichita. There are opportunities for new partnerships and multi-agency collaborations in the delivery of these community services that could result in cost-savings, long-term operational efficiencies and enhanced community services to area residents;
2. There is inherent community diversity within southeast Wichita, characterized by a stable and generational community;
3. The community resource center concept has the potential to integrate an existing community service project currently funded by the Wichita Community Foundation (Healthy Options for Planeview); and,
4. The need for a southeast Wichita community resource center is validated by the *Southeast Wichita Community Resource Center Planning and Assessment Process Report,* April 30, 2009 (available for viewing at http://www.wichita.gov/CityOffices/Planning/).

If the Grants Committee awards a community venture grant to the City for this project, the City will establish a joint project oversight committee (including Sedgwick County and key service provider entities) and designate joint project coordinators from both the County and City.

I look forward to a positive consideration of this community venture grant funding request, and would be happy to answer any questions that you or the Grants Committee may have as you review this request. You can also contact Dave Barber, Advanced Plans Manager with the Wichita-Sedgwick County Metropolitan Area Planning Department (268-4490) for further information related to this project.

Sincerely,

Carl Brewer
Mayor

Agenda Item No.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council Members

SUBJECT: Increase Water Base Charge by a $2 Water Supply Surcharge - Ordinance

INITIATED BY: Water Utilities

AGENDA: New Business

Recommendation: Approve the Ordinance to increase the water base charge by a $2 Water Supply Surcharge for all inside City water accounts, with an increase of $3.20 for outside City accounts.

Background: Water Utilities has begun Phase II of the $500M Aquifer Storage and Recovery Project. This very vital and important project is in place to ensure the City has sufficient water reserves through the year 2050. Sufficient water will attract businesses and industry, and retain and encourage job growth. To continue this project, and other important capital projects, Water Utilities is required to maintain a debt service coverage ratio of 1.2. Due to prior reallocation of cost of service recovery in the block rate structure, lower than normal revenues and large capital expenditures, the debt service coverage ratio (DSCR) has been steadily declining. This decline has resulted in Water Utilities receiving a negative outlook on its current bond rating. If the DSCR does not show a rebound, Water Utilities will likely have its current bond rating lowered which would lead to higher borrowing rates. If the DSCR falls below 1.2, the Utility cannot borrow additional money for necessary capital improvements, including the ASR Project.

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

Analysis: To finance City capital projects, Water utilities pays expenses associated with its capital projects with revenues derived from the collection of rates and charges. The Utility then reimburses its cash through the issuance of debt. Capital expenses are significantly higher now than in the past due to several large projects including the Aquifer Storage and Recovery Project (ASR) and the Mid-Continent Sewage Treatment Plant. The addition of a $2 water supply surcharge to the water base charge will provide a guaranteed revenue stream to help finance the Utilities' future Water Supply Plan. Water Utilities has approximately 140,000 water accounts. The addition of a $2 water supply surcharge to the water base charges ($3.20 for outside City accounts) would generate at a minimum $280,000 per month in additional revenue.

Staff will present, for further consideration, an across-the-board rate increase for both the water and sewer utility when City Council considers the 2010 budget. Originally, an 8 percent across-the-board increase in both water and sewer rates would have been necessary to meet the DSCR of 1.2 in 2010. By increasing the water base charge by a $2 water supply surcharge effective August 1, 2009, the across-the-board rate increases for 2010 may be lessened to 5 percent. Further, this allows for more accelerated growth in the DSCR than strictly an across-the-board rate increase. In an effort to further reduce expenditures, Staff has evaluated and proposed other departmental operations for reductions in operating costs.

Financial Considerations: Water Utilities is a true enterprise. All revenue for operation, maintenance and capital improvements of the system is derived from the sale of services. Wichita's revenue bond

covenants require a debt service coverage ratio of 1.2, or higher, in order to borrow additional money. The proposed $2 water supply surcharge will produce approximately $3.36 million in additional revenue annually.

Goal Impact: Increasing the water base charge by the $2 water supply surcharge ($3.20 for outside City Accounts) helps provide reliable and secure infrastructure.

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

Recommendation/Action: It is recommended the City Council: 1) declare a public emergency exists requiring final adoption and passage on the day of introduction July 21, 2009, to increase the water monthly base charge by the $2 water supply surcharge ($3.20 for outside City accounts); and 2) authorize the necessary signatures.

Attachments: Ordinance 17.12.090
Delineated Ordinance 17.12.090

DELINEATED
183004

ORDINANCE NO._____

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

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

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

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

I. MINIMUM WATER SERVICE CHARGES

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

A. METERED WATER SERVICES

INSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** ~~7~~9.27
3/4 inch	~~7~~9.32

1 inch	~~7~~9.52
1 1/2 inch	~~7~~9.79
2 inch	~~8~~10.50
3 inch	~~13~~15.87
4 inch	~~15~~17.86
6 inch	~~20~~22.49
8 inch	~~25~~27.78
10 inch	~~29~~31.10
12 inch	~~36~~38.38

OUTSIDE CITY & WHOLESALE METERED WATER SERVICES

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** ~~11.63~~14.83
3/4 inch	~~11.71~~14.91
1 inch	~~12.03~~15.23
1 1/2 inch	~~12.46~~15.66
2 inch	~~13.60~~16.80
3 inch	~~22.19~~25.39
4 inch	~~25.38~~28.58
6 inch	~~32.78~~35.98
8 inch	~~41.25~~44.45
10 inch	~~46.56~~49.76
12 inch	~~58.21~~61.41
16 inch	~~158.18~~161.38

B. FLAT RATE/UNMETERED MONTHLY CHARGES

	2009 & Beyond
	$ 14.74

C. FIRE PROTECTION MONTHLY CHARGES

INSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** 2.91~~.91~~
3/4 inch	2.94~~.94~~
1 inch	~~1~~3.05
1 1/2 inch	~~1~~3.25
2 inch	~~1~~3.74

3 inch	~~5~~7.29
4 inch	~~6~~8.62
6 inch	~~9~~11.70
8 inch	~~13~~15.21
10 inch	~~15~~17.40
12 inch	~~20~~22.25

OUTSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009& Beyond
5/8 inch	**$** 4.66~~1.45~~
3/4 inch	4.70~~1.50~~
1 inch	4.88~~1.68~~
1 1/2 inch	5.20~~2.01~~
2 inch	5.98~~2.79~~
3 inch	11.66~~8.47~~
4 inch	13.79~~10.59~~
6 inch	18.72~~15.53~~
8 inch	24.34~~21.14~~
10 inch	27.84~~24.65~~
12 inch	35.60~~32.41~~

II. WATER VOLUME CHARGES

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

A. AVERAGE WINTER CONSUMPTION

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

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

B. RETAIL VOLUME CHARGES

INSIDE CITY

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

OUTSIDE CITY

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

C. RETAIL VOLUME CONSERVATION CONTRACT RATES

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

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

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

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

INSIDE CITY CONSERVATION CONTRACT RATE

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

OUTSIDE CITY CONSERVATION CONTRACT RATE

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

D. WHOLESALE VOLUME RATES

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

E. UNIFORM WHOLESALE VOLUME RATES

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

F. NON POTABLE VOLUME RATES

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

III. ASSOCIATION OF LAWN SERVICES

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

are associated with primary service accounts.

IV. LATE CHARGES

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

V. MISCELLANEOUS CHARGES

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

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

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

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

Other charges and billing for special services, such as but not limited to account origination fees, damages and/or vandalism to Utility infrastructure and appurtenances, etc., shall

be determined by the Director of Utilities and subject to review and change at any time.

VI. GOVERNMENT MILITARY FACILITIES LOCATED OUTSIDE THE CITY

Government military facilities located outside the City of Wichita shall be charged inside city rates for water service.

SECTION 2. The original of Section 17.12.090, as amended by Ordinance No. 48-324, is hereby repealed.

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

ADOPTED at Wichita, Kansas, this ___ day of _____, 2009.

_____
Carl Brewer, Mayor
City of Wichita

ATTEST:

_____
Karen Sublett,
City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf,
Director of Law

OCA 183004

ORDINANCE NO._____

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

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A. METERED WATER SERVICES

INSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** 9.27
3/4 inch	9.32
1 inch	9.52

1 1/2 inch	9.79
2 inch	10.50
3 inch	15.87
4 inch	17.86
6 inch	22.49
8 inch	27.78
10 inch	31.10
12 inch	38.38

OUTSIDE CITY & WHOLESALE METERED WATER SERVICES

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** 14.83
3/4 inch	14.91
1 inch	15.23
1 1/2 inch	15.66
2 inch	16.80
3 inch	25.39
4 inch	28.58
6 inch	35.98
8 inch	44.45
10 inch	49.76
12 inch	61.41
16 inch	161.38

B. FLAT RATE/UNMETERED MONTHLY CHARGES

	2009 & Beyond
	$ 14.74

C. FIRE PROTECTION MONTHLY CHARGES

INSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009 & Beyond
5/8 inch	**$** 2.91
3/4 inch	2.94
1 inch	3.05
1 1/2 inch	3.25
2 inch	3.74
3 inch	7.29

4 inch	8.62
6 inch	11.70
8 inch	15.21
10 inch	17.40
12 inch	22.25

OUTSIDE CITY

MINIMUM MONTHLY

WATER METER SIZES	2009& Beyond
5/8 inch	**$** 4.66
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INSIDE CITY

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OUTSIDE CITY

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

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OUTSIDE CITY CONSERVATION CONTRACT RATE

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IV. LATE CHARGES

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be determined by the Director of Utilities and subject to review and change at any time.

VI. GOVERNMENT MILITARY FACILITIES LOCATED OUTSIDE THE CITY

Government military facilities located outside the City of Wichita shall be charged inside city rates for water service.

SECTION 2. The original of Section 17.12.090, as amended by Ordinance No. 48-324, is hereby repealed.

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

ADOPTED at Wichita, Kansas, this ___ day of _____, 2009.

_____
Carl Brewer, Mayor
City of Wichita

ATTEST:

_____
Karen Sublett,
City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf,
Director of Law

Agenda Item No. IV-1.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: CUP2008-52– DP-18 Amendment #3 to allow a nightclub 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)

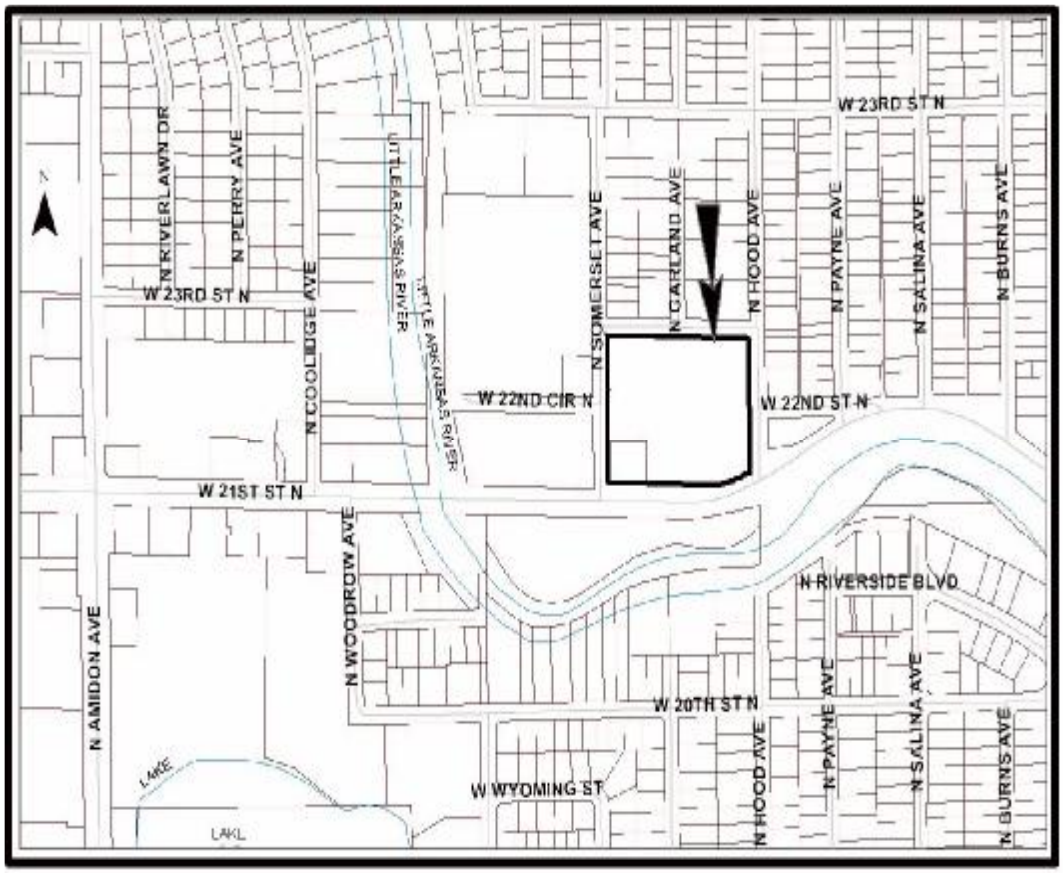
INITIATED BY: Metropolitan Area Planning Department

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 nightclub within an existing restaurant located at 1580 W. 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 as a permitted use for this site. Also, the site is located within 60 feet of a church and multi-family residential zoning; these factors require the applicant to request a CUP amendment for a nightclub.

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, 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; measured property line to property line. 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 located 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 nightclub located within this same shopping center generated law enforcement problems several years ago. In 2004, a different tenant within this shopping center 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. The previous club and other request also had higher occupancies than the current request. This current request is at a different location within the shopping center. When measured from the building proposed to house the nightclub, 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 located between this site and all single-family residences. The proposed nightclub building is located over 320 feet from the nearest apartment building, and 178 feet from the church building to the west. However, as indicated above, the application area, measured property line to property line, is located within 60 feet of the apartment and church properties located 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. (DAB VI will hear this item again on July 6, 2009. That hearing will seek additional public comment on the request.) The MAPC heard this request on January 8, 2009. At the MAPC hearing, the manager of the adjacent apartment complex located 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 staff recommended conditions. (Option 1 under the Recommendation/Actions section).

A neighborhood meeting was held on March 3, 2009. At that meeting, the applicant agreed to additional staff-proposed conditions, among which: eliminated the request for a "drinking establishment," require the

applicant to abide by all license and permit requirements, require additional review provisions, and have a revocation clause if the applicant failed to meet the CUP amendment conditions. A copy of the follow-up memorandum from that meeting, dated March 4, 2009, is attached. (Option 2 in the Recommendation/Action section below would incorporate recommendations discussed at the neighborhood meeting into the MAPC's recommended action.)

City Council first heard this request on February 10, 2009, and the Council deferred the case to the March 10, 2009, hearing. On March 10, 2009, the action of the City Council was to defer this request until after such time that the new entertainment ordinance is passed, and at that time send it back through the District Advisory Board and MAPC process. The applicant has since requested that the Council make a decision on this item without waiting for the above stated conditions to be met. On June 23, 2009, the Council voted to hear the request at the July 7, 2009, hearing. (The recommendation of the second, July 6, DAB VI meeting will be provided during the Council's July 7 meeting.) At the July 7, 2009, Council meeting, the Council voted to defer the item to July 14, 2009. At the July 14, 2009, Council meeting, the Council voted to defer the item to July 21, 2009.

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. Twenty-three 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.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality and Affordable Living.

Legal Considerations: No ordinance is required.

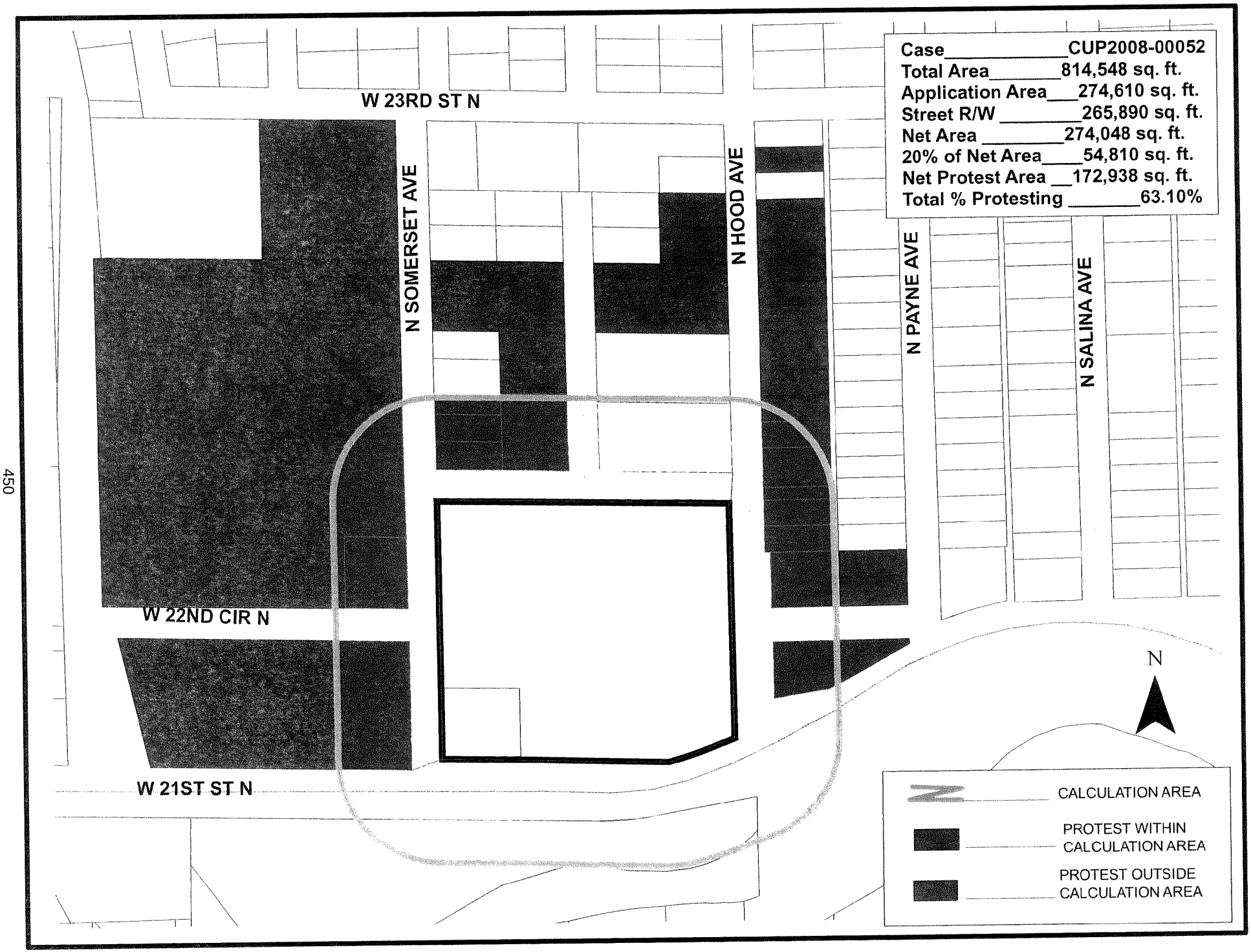
Recommendation/Actions:

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. Adopt the findings of the MAPC and approve the CUP Amendment subject to staff recommended conditions plus the additional conditions agreed to by the applicant as outlined in the memorandum of March 4, 2009 (requires a ¾ supermajority vote by the governing body to override the valid protest)

3. 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

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.

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 praticing that life style. As a religious community we do not support that kind of business. We do support 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	1849 N Payne Ave	316-941-9370
Daniel Benson	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

Henry H. Blase

HHB/bb

cc: John Schlegel, Director of Planning

Agenda Item No. V-1.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: ZON2009-00018 – City zone change from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") and MF-18 Multi-family Residential with a PO Protective Overlay; generally located south of 53rd Street North, west of Meridian Avenue. (District VI)

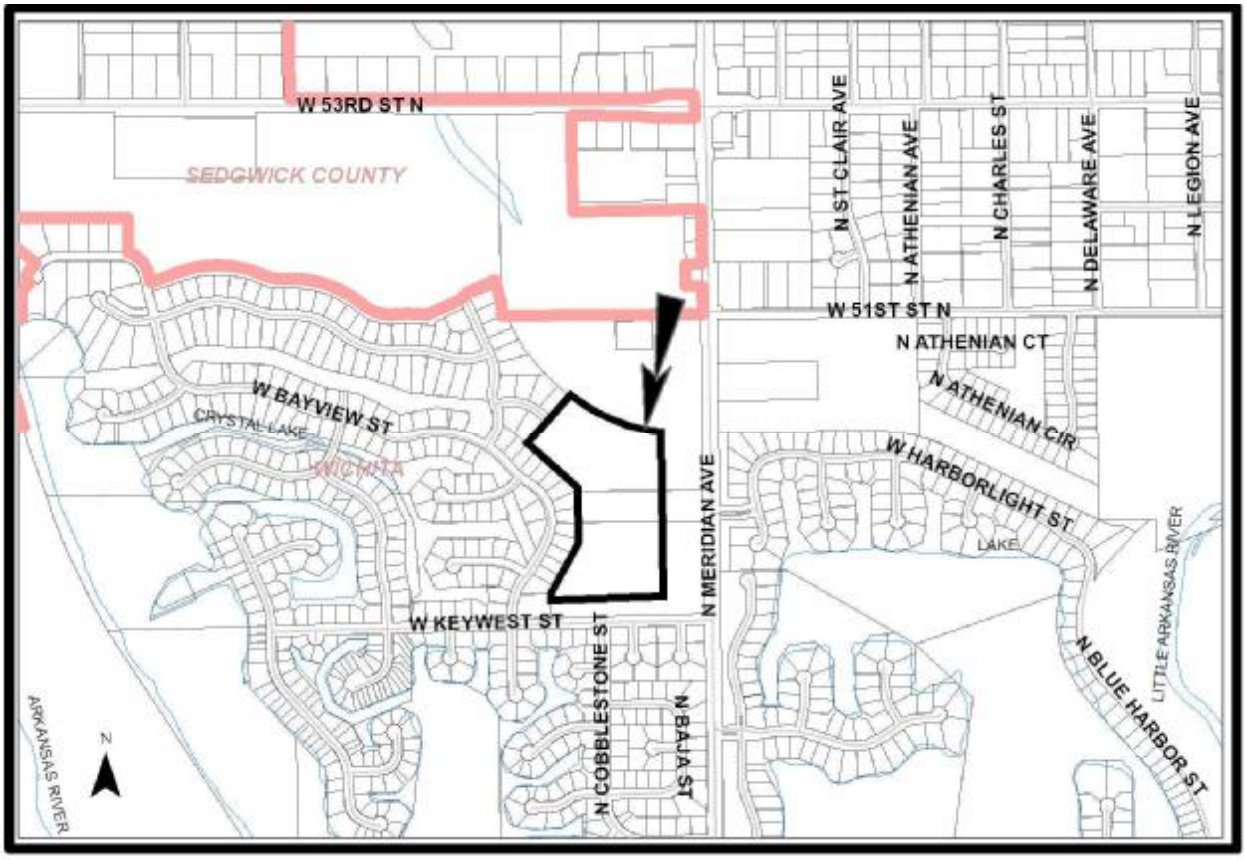
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

DAB VI Recommendation: Approve, subject to staff recommendations, vote (6-0).

MAPC Recommendation: Approve, subject to staff recommendations, vote (12-0).

MAPD Staff Recommendation: Approve.



Background: The applicant proposes to rezone approximately 17.1 acres located one-quarter mile south of the intersection of 53rd Street North and Meridian Avenue. The applicants are proposing to rezone two areas within the 17.1 acres by rezoning 13.36 acres of MF-18 Multi-family Residential ("MF-18") and 3.72 acres of GO General Office ("GO"), both subject to a Protective Overlay. See the attached map at the end of the report for a depiction of the location of each zoning request within the overall site. The application area is currently zoned SF-5 Single-family Residential ("SF-5"). The application area is sandwiched in between land: approved for LC Limited Commercial ("LC") zoning, subject to DP-311, on the north; approved for NR Neighborhood Retail ("NR") zoning, subject to DP-311, on the east; and SF-5 zoned land located to the south and west.

The applicants designed this particular "island" zoning pattern so that a strip of SF-5 zoning, approximately 170 to 200 feet deep, remains along the west and south sides of the proposed application area. These two strips of land are currently undeveloped and buffer the subject site from existing residences located south of Keywest Street and west of Sandkey Street.

The application area is currently unplatted and approval of the rezone will be contingent on the platting of the property. Even though access will be addressed through the platting process, the applicants have indicated access will be off of Meridian, through the approved and recently platted CUP DP-311 located to the north and east. The applicants do not plan to have access off of Keywest or Sandkey. Any development on the subject property will be required to meet the provisions of: the Protective Overlay recommended below, access management regulations, compatibility setbacks dealing with building, height, noise and dumpsters and landscaping and screening. The application area will be subject to the requirements of the Sign Code for the City of Wichita for the MF-18 and GO zoning districts.

Property west and south of the subject site is zoned SF-5 and is either undeveloped or developed with single family residences. Property to the north and east of the subject site is currently zoned SF-5, but has been approved for LC Limited Commercial ("LC") zoning and NR Neighborhood Retail ("NR") and is currently undeveloped. A drainage ditch runs from the northwest to the southeast on the northern tract. Land located directly to the west of the application area is in the same ownership as the subject site and is currently undeveloped SF-5 zoned land. Land further to the west, across Sandkey, is also zoned SF-5 and is developed with single-family residences. The property located directly to the south is in the same ownership as the subject site and is currently undeveloped SF-5 zoned land. Land located further to the south, across Keywest, is also zoned SF-5 and is developed with single-family residences.

The area proposed to be rezoned is ¾ of a mile from both the Little Arkansas and the Big Arkansas Rivers. This area is in a transition from farm activity to more urban uses. The subject site is located in flood hazard zone "X." Flood zone X is the flood insurance rate zone that corresponds to areas outside the 100-year floodplains, areas of 100-year sheet flow flooding where average depths are less than 1 foot, areas of 100-year stream flooding where the contributing drainage area is less than 1 square mile or areas protected from the 100-year flood by levees. No Base Flood Elevations or depths are shown within this zone.

The applicants and their agent organized a neighborhood meeting on June 10, 2009. During that meeting, some of the questions that were asked included:

- The functionality of the assisted living facility; is it a nursing home or assisted living?
- The pricing of the multi-family units?
- Type of screening between the single-family and proposed multi-family property?
- Future access to 53rd Street?
- There was also talk about the general retail and overall growth due to traffic generated by the new Wal-Mart.
- Type of buildings that might be built along Meridian in the NR parcels (non-related).
- Someone asked about the offsite LC zoning south of the Bachman's office. The citizen wanted a Panera Bread (non-related)

Analysis: This case was originally heard at the District VI Advisory Board meeting held on June 17, 2009. At that meeting, the DAB voted 6-0 to approve the request. There were no comments from the public and the board members had just a couple questions, including:

- Does the applicant have any problems with the provisions stated in the staff report?
- What is the highest density allowed in the MF-18?
- The staff report doesn't mention the height of the screening fence.
- Will an age restriction be required for living in the twin/patio homes?
- Will the homes have sufficient storage?

At the MAPC meeting held June 18, 2009, the MAPC voted (12-0) to recommend approval of the request for GO and MF-18 zoning subject to staff recommendations, platting within one year and Protective Overlay #234 with the recommended provisions stated below. There were no citizens who spoke on the case.

Protective Overlay Provisions for the GO General Office ("GO") parcel

1.) Architectural Controls:

All office buildings within the parcel shall share a uniform architectural character, color, and same predominate exterior building material. The building(s) walls shall not utilize metal as a predominant exterior facade material. If developed in conjunction with the adjoining MF-18 parcel, the buildings shall share a uniform architectural character, color, and same predominate exterior building material.

2.) Landscaping for this parcel shall be required as follows:

A. Landscaped street yards, buffers, and parking lot landscaping/screening, shall utilize a shared palette of landscape materials and shall be in accordance with the City of Wichita Landscape Ordinance.

B. A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating the type, location, and specifications of all plant material.

3.) Lighting:

A. The parcel shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles and lamps and etc.).

B. All lighting shall be shielded to direct light disbursement in a downward direction and directed away from residential areas.

C. Light poles including above ground base shall be limited to 20 feet tall, except 15 feet tall when within 100 feet of single family residential zoning.

D. Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted.

4.) Screening:

A. Rooftop mechanical equipment shall be screened from ground level view with screening materials matching the building roof or wall materials.

B. Trash receptacles, loading docks, and loading areas shall be appropriately and individually screened with materials matching or similar to the building(s) facade hiding them from ground view.

C. Unless otherwise noted Screening shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Section IV and Section III-C.2.b.

5.) Setbacks:

Setbacks will be as specified in Article III, Section III-C2.b(2) of the Wichita-Sedgwick County Unified Zoning Code, unless contiguous parcels are developed under the same ownership, including parcels to the east, then setbacks between those parcels will not be required.

6.) Building Height:

Shall be as per SF-5 Single-family Zoning District.

7.) Use Restrictions:

No correctional placement residences, no asphalt or concrete plant limited.

Protective Overlay Provisions for MF-18 Multi-family Residential ("MF-18") parcel

1.) Architectural Controls:

Assisted Living buildings within the parcel shall share a uniform architectural character, color, and same predominate exterior building material. The building(s) walls shall not utilize metal as a predominant exterior facade material.

2.) Landscaping for this parcel shall be required as follows:

A. Landscaped street yards, buffers, and parking lot landscaping/screening, shall utilize a shared palette of landscape materials and shall be in accordance with the City of Wichita Landscape Ordinance.

B. A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating the type, location, and specifications of all plant material.

3.) Lighting:

A. The parcel shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles and lamps and etc.).

B. All lighting shall be shielded to direct light disbursement in a downward direction and directed away from residential areas.

C. Light poles including above ground base shall be limited to 20 feet tall, except 15 feet tall when within 100 feet of single family residential zoning.

D. Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted.

4.) Screening:

A. Rooftop mechanical equipment shall be screened from ground level view with screening materials matching the building roof or wall materials; and as per Wichita-Sedgwick County Unified Zoning Code.

B. Trash receptacles, loading docks, and loading areas shall be appropriately and individually screened with materials matching or similar to the building(s) facade hiding them from ground view.

C. Unless otherwise noted Screening shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Section IV and Section III-C.2.b.

5.) Setbacks:

Setbacks will be as specified in Article III, Section III-C2.b(2) of the Wichita-Sedgwick County Unified Zoning Code, unless contiguous parcels are developed under the same ownership, including parcels to the east, then setbacks between those parcels will not be required.

6.) Building Height:

Shall be as per SF-5 Single-family Zoning District.

7.) Use Restrictions:

No asphalt or concrete plant limited.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality

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

Recommendation/Actions:

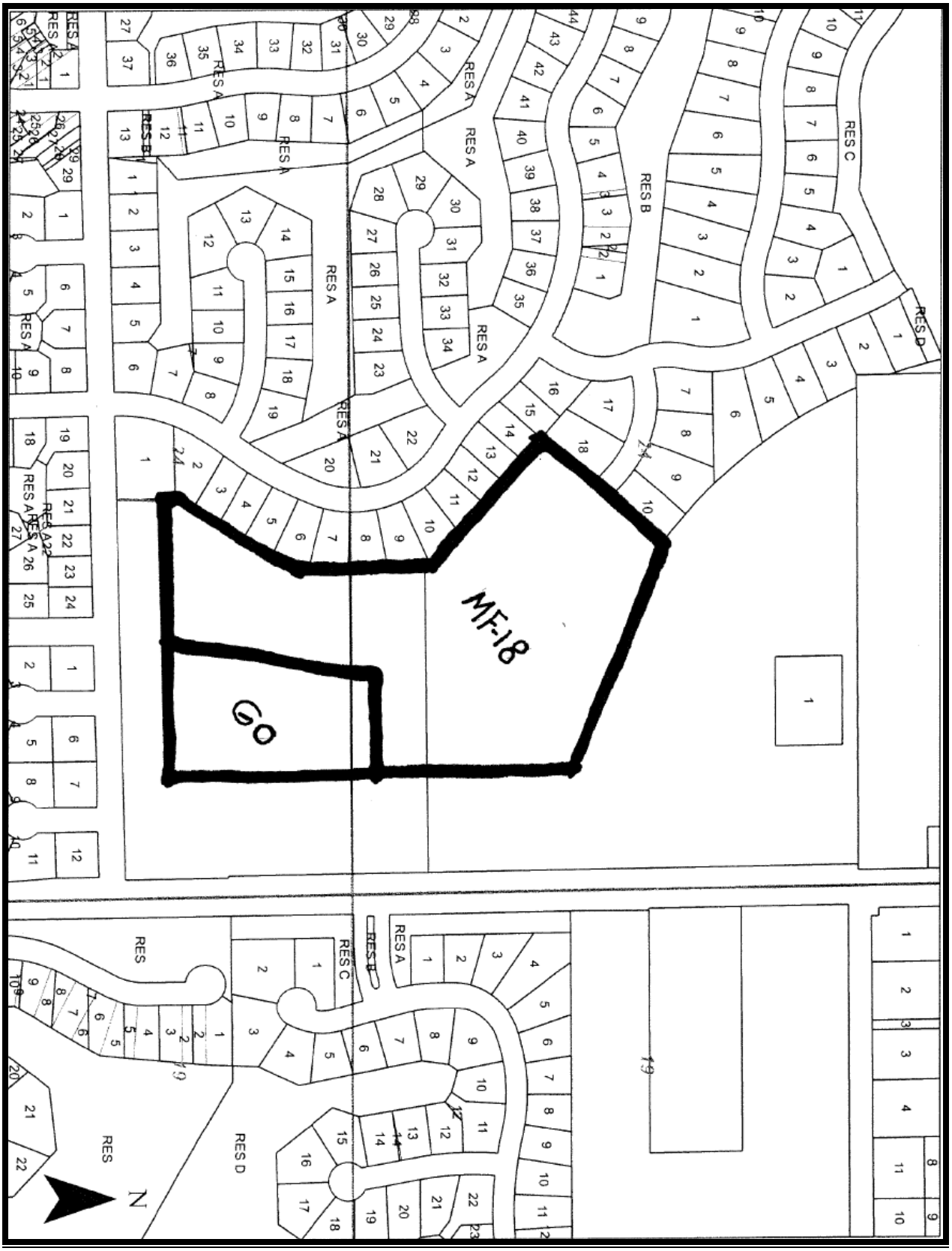
1. Adopt the findings of the MAPC, approve the zone change subject to platting within one year and the provisions of Protective Overlay #234, and withhold publication of ordinance until the plat has been recorded; or

2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Attachment(s):

- Zone Map
- DAB VI Memo
- MAPC Minutes
- Ordinance


RES C
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INTEROFFICE MEMORANDUM

TO: MAPC Members

FROM: Terri Dozal, Neighborhood Assistant, District VI

SUBJECT: **ZON2009-00018** City zone change from SF-5 Single-family Residential to GO General Office and MF-18 Multi-family Residential with a PO Protective Overlay. South of 53rd Street North, west of Meridian Avenue, between 51st Street North and Keywest Street.

DATE: June 18, 2009

On Wednesday, June 17, 2009 the District VI Advisory Board (DAB) considered a City zone change from SF-5 Single-family Residential to GO General Office and MF-18 Multi-family Residential with a PO Protective Overlay located South of 53rd Street North, west of Meridian Avenue, between 51st Street North and Keywest Street.

The members were provided the MAPD staff report for review prior to the meeting. *Derrick Slocum*, Planner presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked the following questions/comments:

- Does the applicant have any problems with the provisions stated in the staff report?
- What is the highest density allowed in the MF-18?
- The staff report doesn't mention the height of the screening fence.
- Will an age restriction be required for living in the twin/patio homes?
- Will the homes have sufficient storage?

Member Schreck (Moorings homeowner) thanked the applicants for holding a neighborhood meeting prior to the DAB meeting to hear concerns of the residents. The neighborhood residents were very pleased with the development designs and are accepting to the request.

******Action:** The DAB VI members made a motion to recommend to City Council Approval (**6-0**) of the zone change request based on staff recommendations.

Please review this information when **ZON2009-00018** is considered.

mtd

EXCERPT OF THE JUNE 18, 2009 MAPC HEARING

Case No.: ZON2009-18 – CBB Northlakes, LLC (Attn: Kurt and Brad Bachman) Owner(s)); MKEC Engineering, c/o Brian Lindebak (agent) Request City zone change from SF-5 Single-family Residential to GO General Office and MF-18 Multi-family Residential with a PO Protective Overlay on property described as:

An unplatted tract of land lying in the East Half Quarter, Section 24, Township 26 South, Range 1 West, of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas; said tract being more particularly described as follows:
BEGINNING at a point on the east line of Lot 1, Block 1, The Moorings Tenth Addition, an addition to Wichita, Sedgwick County, Kansas, lying 110.00 feet north of the Southeast corner thereof; thence along said east line on a platted bearing of N01°36'24"W, 45.00 feet; thence along the easterly line of said Block 1, for the next four coursed, N29°18'36"E, 360.06 feet; thence N00°46'02"W, 352.85 feet; thence N48°33'38"W, 428.14 feet; thence N41°26'22"E, 415.48 feet to the south line of a Drainage Dedication recorded Doc.#/FLM-PG: 28868254, being a point on a non-tangent curve to the left; thence along the said curve and said Drainage Dedication, 630.03 feet, said curve having a central angle of 28°35'23", a radius of 1262.63 feet, and a long chord distance of 623.52 feet, bearing S67°32'47"E; thence S00°46'02"E, 1048.50 feet to a point 110.00 feet north of the north right-of-way line of Keywest Street; thence parallel with and 110.00 feet north of said north right-of-way, S88°23'36"W, 714.87 feet to the POINT OF BEGINNING; generally located south of 53rd Street North, west of Meridian Avenue, between 51st Street North and Keywest Street.

BACKGROUND: The applicant proposes to rezone approximately 17.10 acres located approximately one-quarter mile south of the intersection of 53rd Street North and North Meridian Avenue. The applicants are proposing to rezone two areas within the 17.10 acres by rezoning 13.36 acres MF-18 Multi-family Residential ("MF-18") and 3.72 acres GO General Office ("GO"), both subject a Protective Overlay. See the attached map at the end of the report for a depiction of the location of each zoning request within the overall site. The application area is currently zoned SF-5 Single-family Residential ("SF-5"). The application area is sandwiched in between land: approved for LC Limited Commercial ("LC") zoning, subject to DP-311, on the north; approved for NR Neighborhood Retail ("NR") zoning, subject to DP-311, on the east and SF-5 zoned land located to the south and west.

The applicants designed this particular "island" zoning pattern so that a strip of SF-5 zoning, approximately 170 to 200 feet deep, remains along the west and south sides of the proposed application area. These two strips of land are currently undeveloped and buffer the subject site from existing residences located south of Keywest Street, and west of Sandkey Street.

The application area is currently unplatted and approval of the rezone will be contingent on the platting of the property. Even though access will be addressed through the platting process, the applicants have indicated access will be off of Meridian, through the approved, but not platted, CUP DP-311 located to the north and east. The applicants do not plan to have access off of Keywest or Sandkey. Any development on the subject property will be required to meet the provisions of: the Protective Overlay recommended below; access management regulations; compatibility setbacks dealing with building, height, noise and dumpsters and landscaping and screening. The application area will be subject to the requirements of the Sign Code for the City of Wichita for the MF-18 and GO zone districts.

Property west and south of the subject site is zoned SF-5, and is either undeveloped or developed with single family residences. Property to the north and east of the subject site is currently zoned SF-5 but has been approved for LC Limited Commercial ("LC") zoning and NR Neighborhood Retail ("NR"), and is

currently undeveloped. A drainage ditch runs from the northwest to the southeast on the northern tract. Land located directly to the west of the application area is in the same ownership as the subject site, and is currently undeveloped SF-5 zoned land. Land further to the west, across Sandkey, is also zoned SF-5 and is developed with single-family residences. The property located directly to the south is in the same ownership as the subject site, and is currently undeveloped SF-5 zoned land. Land located further to the south, across Keywest, is also zoned SF-5, and is developed with single-family residences.

The area proposed to be rezoned is ¾ of a mile from both the Little Arkansas and the Big Arkansas Rivers. This area is a transition from farm activity to more urban uses. The subject site is located in flood hazard zone "X." Flood zone X is the flood insurance rate zone that corresponds to areas outside the 100-year floodplains, areas of 100-year sheet flow flooding where average depths are less than 1 foot, areas of 100-year stream flooding where the contributing drainage area is less than 1 square mile, or areas protected from the 100-year flood by levees. No Base Flood Elevations or depths are shown within this zone.

The applicants and their agent organized a neighborhood meeting on June 10, 2009. During the meeting, some of the questions that were asked included:

- The functionality of the assisted living facility; is it a nursing home or assisted living?
- The pricing of the multi-family units?
- Type of screening between the single-family and proposed multi-family property?
- Future access to 53rd Street?
- There was also talk about the general retail and overall growth due to traffic generated by the new Wal-Mart.
- Type of buildings that might be built along Meridian in the NR parcels (non-related).
- Someone asked about the offsite LC zoning south of their Bachman's office they want Panera Bread (non-related)

CASE HISTORY: The entire application area is currently unplatted and undeveloped. On January 11, 1983, the southern portion of the application was approved for a CUP, The Moorings Community Unit Plan (CUP DP-78). On May 13, 2008, the Moorings Plaza II (CUP DP-311), bordering the east and north side of the subject site, was approved by the City Council. DP-311 was approved for LC and NR zoning, subject to platting. To-date the DP-311 site has not been platted so the site remains zoned SF-5. On June 26, 1990, the southern one-half of the subject site was also approved to permit sand and gravel extraction through the Board of Zoning Appeals. At this time, the subject site is vacant with no signs of extraction or any other developments.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5" Single-family Residential, approved for LC	Vacant Land
EAST:	"SF-5" Single-family Residential, approved for NR	Vacant Land
SOUTH:	"SF-5" Single-family Residential	Single-family residences
WEST:	"SF-5" Single-family Residential	Single-family residences

PUBLIC SERVICES: North Meridian Avenue is classified as a four-lane, paved principal arterial street. 53rd Street North, west of Meridian, is a paved two-lane collector street, while 53rd Street North east of Meridian, is a paved four-lane minor arterial. Keywest Street is a paved two-lane collector street. The half-street right-of-way for southbound Meridian east of the subject site is 55-feet. Traffic counts, according to the AADT Traffic Count Map revised in May 2007, counted traffic on north Meridian, at the intersection with 53rd Street North at 17,273 ADT's (Average Daily Trips). Traffic counts along 53rd Street North, at the intersection with north Meridian Avenue are 9,897 ADT's. The mid-mile traffic count for north Meridian Avenue, between 53rd Street North and I-235 is 11,551 ADT's, while the count at the intersection of Meridian and I-235 is 22,659 ADT's. Municipal services are available to the site.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide Map" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan*, as amended May 2005, identifies this area as appropriate for "urban residential." The Urban Residential category encompasses all development densities found in the municipality. This category of use encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may be found in this category. The proposed zoning conforms to the future Land Use Guide Map recommendations.

RECOMMENDATION: Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year, and subject to the following provisions of a Protective Overlay:

Protective Overlay Provisions for the GO parcel

2.) Architectural Controls:

All office buildings within the parcel shall share a uniform architectural character, color, and same predominate exterior building material. The building(s) walls shall not utilize metal as a predominant exterior facade material. If developed in conjunction with the adjoining MF-18 parcel, the buildings shall share a uniform architectural character, color, and same predominate exterior building material.

2.) Landscaping for this parcel shall be required as follows:

A. Landscaped street yards, buffers, and parking lot landscaping/screening, shall utilize a shared palette of landscape materials and shall be in accordance with the City of Wichita Landscape Ordinance.

B. A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating the type, location, and specifications of all plant material.

3.) Lighting:

A. The parcel shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles and lamps and etc.).

B. All lighting shall be shielded to direct light disbursement in a downward direction and directed away from residential areas.

C. Light poles including above ground base shall be limited to 20 feet tall, except 15 feet tall when within 100 feet of single family residential zoning.

D. Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted.

4.) Screening:

A. Rooftop mechanical equipment shall be screened from ground level view with screening materials matching the building roof or wall materials.

B. Trash receptacles, loading docks, and loading areas shall be appropriately and individually screened with materials matching or similar to the building(s) facade hiding them from ground view.

C. Unless otherwise noted Screening shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Section IV and Section III-C.2.b.

5.) Setbacks:

Setbacks will be as specified in Article III, Section III-C2.b(2) of the Wichita-Sedgwick County Unified Zoning Code, unless contiguous parcels are developed under the same ownership, including parcels to the east, then setbacks between those parcels will not be required.

6.) Building Height:

Shall be as per SF-5 Single-family Zoning District

7.) Use Restrictions:

No correctional placement residences, no asphalt or concrete plant limited.

Protective Overlay Provisions for MF-18 parcel

1.) Architectural Controls:

Assisted Living buildings within the parcel shall share a uniform architectural character, color, and same predominate exterior building material. The building(s) walls shall not utilize metal as a predominant exterior facade material.

2.) Landscaping for this parcel shall be required as follows:

A. Landscaped street yards, buffers, and parking lot landscaping/screening, shall utilize a shared palette of landscape materials and shall be in accordance with the City of Wichita Landscape Ordinance.

B. A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating the type, location, and specifications of all plant material.

3.) Lighting:

A. The parcel shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles and lamps and etc.).

B. All lighting shall be shielded to direct light disbursement in a downward direction and directed away from residential areas.

C. Light poles including above ground base shall be limited to 20 feet tall, except 15 feet tall when within 100 feet of single family residential zoning.

D. Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted.

4.) Screening:

A. Rooftop mechanical equipment shall be screened from ground level view with screening materials matching the building roof or wall materials; and as per Wichita-Sedgwick County Unified Zoning Code.

B. Trash receptacles, loading docks, and loading areas shall be appropriately and individually screened with materials matching or similar to the building(s) facade hiding them from ground view.

C. Unless otherwise noted Screening shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Section IV and Section III-C.2.b.

5.) Setbacks:

Setbacks will be as specified in Article III, Section III-C2.b(2) of the Wichita-Sedgwick County Unified Zoning Code, unless contiguous parcels are developed under the same ownership, including parcels to the east, then setbacks between those parcels will not be required.

6.) Building Height:

Shall be as per SF-5 Single-family Zoning District

7.) Use Restrictions:

No asphalt or concrete plant limited.

This recommendation is based on the following findings:

1. <u>The zoning, uses and character of the neighborhood</u>: Property west and south of the subject site is zoned SF-5, and is either undeveloped or developed with single family residences. Property to the north and east of the subject site is currently zoned SF-5 but has been approved for LC Limited Commercial ("LC") zoning and NR Neighborhood Retail ("NR"), and is currently undeveloped. A drainage ditch runs from the northwest to the southeast on the northern tract. Land located directly to the west of the application area is in the same ownership as the subject site, and is currently undeveloped SF-5 zoned land. Land further to the west, across Sandkey, is also zoned SF-5 and is developed with single-family residences. The property located directly to the south is in the same ownership as the subject site, and is currently undeveloped SF-5 zoned land. Land located further to the south, across Keywest, is also zoned SF-5, and is developed with single-family residences.

2. <u>The suitability of the subject property for the uses to which it has been restricted</u>: The site is currently zoned SF-5, which accommodates moderate-density, single-family residential development and complementary land uses. The site could be developed as presently zoned,

however, commercial and nonresidential zoning (CUP DP-311, approved May 2008) have been approved along the eastern and northern boundaries of the subject site, potentially making the site more appropriate for higher intensity uses. This zone request does provide a desired hierarchal zoning from an arterial road. From Meridian west, the zoning is: NR Neighborhood Retail ("NR"), the proposed GO zoning, the proposed MF-18 zoning and SF-5 zoning (more intense to least intense zoning).

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Office zoning and development could have a negative effect on the single-family residential uses south and west of the application area; however, the Protective Overlay, access, road improvements and code requirements for compatibility setbacks, screening, landscaping, and signage limitations should mitigate that impact. Approval of MF-18 zoning (up to 18 dwelling units per acre) would double or triple the density at which the site could be developed, depending on the type of development. However, single-family residences generate more traffic per unit than multi-family residences and the applicants do not propose to have access off of either Keywest or Sandkey, which greatly reduces any possible traffic impacts on the existing developments to the south and west. The minimum standards of the Unified Zoning Code and the proposed Protective Overlay should mitigate any other potential negative effects on the surrounding residential neighbors.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide Map," as amended May 2005, of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "urban residential." The Urban Residential category encompasses all development densities found in the municipality. This category of use encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may be found in this category. The proposed zoning does conform to the future Land Use Guide Map.

5. Impact of the proposed development on community facilities: The development will add traffic to the arterial streets and increase potential demand for improvements to the arterial streets with possible acceleration and deceleration lanes in the future. Other municipal services are available or can be extended through platting.

6. Opposition or support of neighborhood residents: There have been inquiries about this application, some opposed to the request and some just wanting additional information.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

SHERMAN moved, **FOSTER** seconded the motion, and it carried (12-0).

ORDINANCE NO. 48-384

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

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

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2009-00018

Zone change request from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") and MF-18 Multi-family Residential ("MF-18") subject to Protective Overlay #234 on properties described as:

Legal Description of MF-18 Multi-family Residential Rezoned Site:
An unplatted tract of land lying in the East Half Quarter, Section 24, Township 26 South, Range 1 West, of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas; said tract being more particularly described as follows:
BEGINNING at a point on the east line of Lot 1, Block 1, The Moorings Tenth Addition, an addition to Wichita, Sedgwick County, Kansas, lying 110.00 feet north of the Southeast corner thereof; thence along said east line on a platted bearing of N01°36'24"W, 45.00 feet; thence along the easterly line of said Block 1, for the next four coursed, N29°18'36"E, 360.06 feet; thence N00°46'02"W, 352.85 feet; thence N48°33'38"W, 428.14 feet; thence N41°26'22"E, 415.48 feet to the south line of a Drainage Dedication recorded Doc.#/FLM-PG: 28868254, being a point on a non-tangent curve to the left; thence along the said curve and said Drainage Dedication, 630.03 feet, said curve having a central angle of 28°35'23", a radius of 1262.63 feet, and a long chord distance of 623.52 feet, bearing S67°32'47"E; thence S00°46'02"E, 1048.50 feet to a point 110.00 feet north of the north right-of-way line of Keywest Street; thence parallel with and 110.00 feet north of said north right-of-way, S88°23'36"W, 714.87 feet to the POINT OF BEGINNING; COMMENCING at a point on the east line of Lot 1, Block 1, The Moorings Tenth Addition, an addition to Wichita, Sedgwick County, Kansas, lying 110.00 feet north of the Southeast corner thereof; thence N88°23'36"E, 364.83 feet, to the POINT OF BEGINNING; thence N09°41'44"E, 550.68 feet to a point lying 650 feet north of the north right of way line of Keywest Street; thence parallel with said north line, N88°23'36"E, 250.03 feet; thence S00°46'02"E, 540.06 feet to a point lying 110 feet north of said north line; thence S88°23'36"W, 350.04 feet, to the point of POINT OF BEGINNING. Said tract CONTAINS: 582,051 square feet or 13.36 acres of land, more or less.

Legal Description of GO General Office Rezoned Site:
An un-platted tract of land lying in the East Half Quarter, Section 24, Township 26 South, Range 1 West, of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas; said tract being more particularly described as follows:
COMMENCING at a point on the east line of Lot 1, Block 1, The Moorings Tenth Addition, an addition to Wichita, Sedgwick County, Kansas, lying 110.00 feet north of the Southeast corner thereof; thence N88°23'36"E, 364.83 feet, to the POINT OF BEGINNING; thence N09°41'44"E, 550.68 feet to a point lying 650 feet north of the north right of way line of Keywest Street; thence parallel with said north line,

N88°23'36"E, 250.03 feet; thence S00°46'02"E, 540.06 feet to a point lying 110 feet north of said north line; thence S88°23'36"W, 350.04 feet, to the point of POINT OF BEGINNING. Said tract CONTAINS: 162,018 square feet or 3.72 acres of land, more or less; generally located south of 53rd Street North, west of Meridian Avenue, between 51st Street North and Keywest.

SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #234

Protective Overlay Provisions for the GO General Office ("GO") parcel

1.) Architectural Controls:

All office buildings within the parcel shall share a uniform architectural character, color, and same predominate exterior building material. The building(s) walls shall not utilize metal as a predominant exterior facade material. If developed in conjunction with the adjoining MF-18 parcel, the buildings shall share a uniform architectural character, color, and same predominate exterior building material.

2.) Landscaping for this parcel shall be required as follows:

A. Landscaped street yards, buffers, and parking lot landscaping/screening, shall utilize a shared palette of landscape materials and shall be in accordance with the City of Wichita Landscape Ordinance.

B. A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating the type, location, and specifications of all plant material.

3.) Lighting:

A. The parcel shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles and lamps and etc.).

B. All lighting shall be shielded to direct light disbursement in a downward direction and directed away from residential areas.

C. Light poles including above ground base shall be limited to 20 feet tall, except 15 feet tall when within 100 feet of single family residential zoning.

D. Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted.

4.) Screening:

A. Rooftop mechanical equipment shall be screened from ground level view with screening materials matching the building roof or wall materials.

B. Trash receptacles, loading docks, and loading areas shall be appropriately and individually screened with materials matching or similar to the building(s) facade hiding them from ground view.

C. Unless otherwise noted Screening shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Section IV and Section III-C.2.b.

5.) Setbacks:

Setbacks will be as specified in Article III, Section III-C2.b(2) of the Wichita-Sedgwick County Unified Zoning Code, unless contiguous parcels are developed under the same ownership, including parcels to the east, then setbacks between those parcels will not be required.

6.) Building Height:

Shall be as per SF-5 Single-family Zoning District

7.) Use Restrictions:

No correctional placement residences, no asphalt or concrete plant limited.

Protective Overlay Provisions for MF-18 Multi-family Residential ("MF-18") parcel

1.) Architectural Controls:

Assisted Living buildings within the parcel shall share a uniform architectural character, color, and same predominate exterior building material. The building(s) walls shall not utilize metal as a predominant exterior facade material.

2.) Landscaping for this parcel shall be required as follows:

A. Landscaped street yards, buffers, and parking lot landscaping/screening, shall utilize a shared palette of landscape materials and shall be in accordance with the City of Wichita Landscape Ordinance.
B. A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating the type, location, and specifications of all plant material.

3.) Lighting:
A. The parcel shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles and lamps and etc.).
B. All lighting shall be shielded to direct light disbursement in a downward direction and directed away from residential areas.
C. Light poles including above ground base shall be limited to 20 feet tall, except 15 feet tall when within 100 feet of single family residential zoning.
D. Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted.

4.) Screening:
A. Rooftop mechanical equipment shall be screened from ground level view with screening materials matching the building roof or wall materials; and as per Wichita-Sedgwick County Unified Zoning Code.
B. Trash receptacles, loading docks, and loading areas shall be appropriately and individually screened with materials matching or similar to the building(s) facade hiding them from ground view.
C. Unless otherwise noted Screening shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Section IV and Section III-C.2.b.

5.) Setbacks:
Setbacks will be as specified in Article III, Section III-C2.b(2) of the Wichita-Sedgwick County Unified Zoning Code, unless contiguous parcels are developed under the same ownership, including parcels to the east, then setbacks between those parcels will not be required.

6.) Building Height:
Shall be as per SF-5 Single-family Zoning District

7.) Use Restrictions:
No asphalt or concrete plant limited.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 200__.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

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

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2009-00018

Zone change request from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") and MF-18 Multi-family Residential ("MF-18") subject to Protective Overlay #234 on properties described as:

Legal Description of MF-18 Multi-family Residential Rezoned Site:
An unplatted tract of land lying in the East Half Quarter, Section 24, Township 26 South, Range 1 West, of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas; said tract being more particularly described as follows:
BEGINNING at a point on the east line of Lot 1, Block 1, The Moorings Tenth Addition, an addition to Wichita, Sedgwick County, Kansas, lying 110.00 feet north of the Southeast corner thereof; thence along said east line on a platted bearing of N01°36'24"W, 45.00 feet; thence along the easterly line of said Block 1, for the next four coursed, N29°18'36"E, 360.06 feet; thence N00°46'02"W, 352.85 feet; thence N48°33'38"W, 428.14 feet; thence N41°26'22"E, 415.48 feet to the south line of a Drainage Dedication recorded Doc.#/FLM-PG: 28868254, being a point on a non-tangent curve to the left; thence along the said curve and said Drainage Dedication, 630.03 feet, said curve having a central angle of 28°35'23", a radius of 1262.63 feet, and a long chord distance of 623.52 feet, bearing S67°32'47"E; thence S00°46'02"E, 1048.50 feet to a point 110.00 feet north of the north right-of-way line of Keywest Street; thence parallel with and 110.00 feet north of said north right-of-way, S88°23'36"W, 714.87 feet to the POINT OF BEGINNING; COMMENCING at a point on the east line of Lot 1, Block 1, The Moorings Tenth Addition, an addition to Wichita, Sedgwick County, Kansas, lying 110.00 feet north of the Southeast corner thereof; thence N88°23'36"E, 364.83 feet, to the POINT OF BEGINNING; thence N09°41'44"E, 550.68 feet to a point lying 650 feet north of the north right of way line of Keywest Street; thence parallel with said north line, N88°23'36"E, 250.03 feet; thence S00°46'02"E, 540.06 feet to a point lying 110 feet north of said north line; thence S88°23'36"W, 350.04 feet, to the point of POINT OF BEGINNING. Said tract CONTAINS: 582,051 square feet or 13.36 acres of land, more or less.

Legal Description of GO General Office Rezoned Site:
An un-platted tract of land lying in the East Half Quarter, Section 24, Township 26 South, Range 1 West, of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas; said tract being more particularly described as follows:

COMMENCING at a point on the east line of Lot 1, Block 1, The Moorings Tenth Addition, an addition to Wichita, Sedgwick County, Kansas, lying 110.00 feet north of the Southeast corner thereof; thence N88°23'36"E, 364.83 feet, to the POINT OF BEGINNING; thence N09°41'44"E, 550.68 feet to a point lying 650 feet north of the north right of way line of Keywest Street; thence parallel with said north line, N88°23'36"E, 250.03 feet; thence S00°46'02"E, 540.06 feet to a point lying 110 feet north of said north line; thence S88°23'36"W, 350.04 feet, to the point of POINT OF BEGINNING. Said tract CONTAINS: 162,018 square feet or 3.72 acres of land, more or less; generally located south of 53rd Street North, west of Meridian Avenue, between 51st Street North and Keywest.

SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #234

Protective Overlay Provisions for the GO General Office ("GO") parcel

1.) Architectural Controls:

All office buildings within the parcel shall share a uniform architectural character, color, and same predominate exterior building material. The building(s) walls shall not utilize metal as a predominant exterior facade material. If developed in conjunction with the adjoining MF-18 parcel, the buildings shall share a uniform architectural character, color, and same predominate exterior building material.

2.) Landscaping for this parcel shall be required as follows:

A. Landscaped street yards, buffers, and parking lot landscaping/screening, shall utilize a shared palette of landscape materials and shall be in accordance with the City of Wichita Landscape Ordinance.

B. A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating the type, location, and specifications of all plant material.

3.) Lighting:

A. The parcel shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles and lamps and etc.).

B. All lighting shall be shielded to direct light disbursement in a downward direction and directed away from residential areas.

C. Light poles including above ground base shall be limited to 20 feet tall, except 15 feet tall when within 100 feet of single family residential zoning.

D. Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted.

4.) Screening:

A. Rooftop mechanical equipment shall be screened from ground level view with screening materials matching the building roof or wall materials.

B. Trash receptacles, loading docks, and loading areas shall be appropriately and individually screened with materials matching or similar to the building(s) facade hiding them from ground view.

C. Unless otherwise noted Screening shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Section IV and Section III-C.2.b.

5.) Setbacks:

Setbacks will be as specified in Article III, Section III-C2.b(2) of the Wichita-Sedgwick County Unified Zoning Code, unless contiguous parcels are developed under the same ownership, including parcels to the east, then setbacks between those parcels will not be required.

6.) Building Height:

Shall be as per SF-5 Single-family Zoning District

7.) Use Restrictions:

No correctional placement residences, no asphalt or concrete plant limited.

Protective Overlay Provisions for MF-18 Multi-family Residential ("MF-18") parcel

1.) Architectural Controls:

Assisted Living buildings within the parcel shall share a uniform architectural character, color, and same predominate exterior building material. The building(s) walls shall not utilize metal as a predominant exterior facade material.

2.) Landscaping for this parcel shall be required as follows:

A. Landscaped street yards, buffers, and parking lot landscaping/screening, shall utilize a shared palette of landscape materials and shall be in accordance with the City of Wichita Landscape Ordinance.

B. A landscape plan shall be prepared by a Kansas Landscape Architect for the above referenced landscaping, indicating the type, location, and specifications of all plant material.

3.) Lighting:

A. The parcel shall share similar or consistent parking lot lighting elements (i.e. fixtures, poles and lamps and etc.).

B. All lighting shall be shielded to direct light disbursement in a downward direction and directed away from residential areas.

C. Light poles including above ground base shall be limited to 20 feet tall, except 15 feet tall when within 100 feet of single family residential zoning.

D. Extensive use of back lit canopies and neon or fluorescent tube lighting on buildings is not permitted.

4.) Screening:

A. Rooftop mechanical equipment shall be screened from ground level view with screening materials matching the building roof or wall materials; and as per Wichita-Sedgwick County Unified Zoning Code.

B. Trash receptacles, loading docks, and loading areas shall be appropriately and individually screened with materials matching or similar to the building(s) facade hiding them from ground view.

C. Unless otherwise noted Screening shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Section IV and Section III-C.2.b.

5.) Setbacks:

Setbacks will be as specified in Article III, Section III-C2.b(2) of the Wichita-Sedgwick County Unified Zoning Code, unless contiguous parcels are developed under the same ownership, including parcels to the east, then setbacks between those parcels will not be required.

6.) Building Height:

Shall be as per SF-5 Single-family Zoning District

7.) Use Restrictions:

No asphalt or concrete plant limited.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 200__.

ATTEST:

_____
Karen Sublett, City Clerk

_____
Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

Agenda Item No. V-2.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

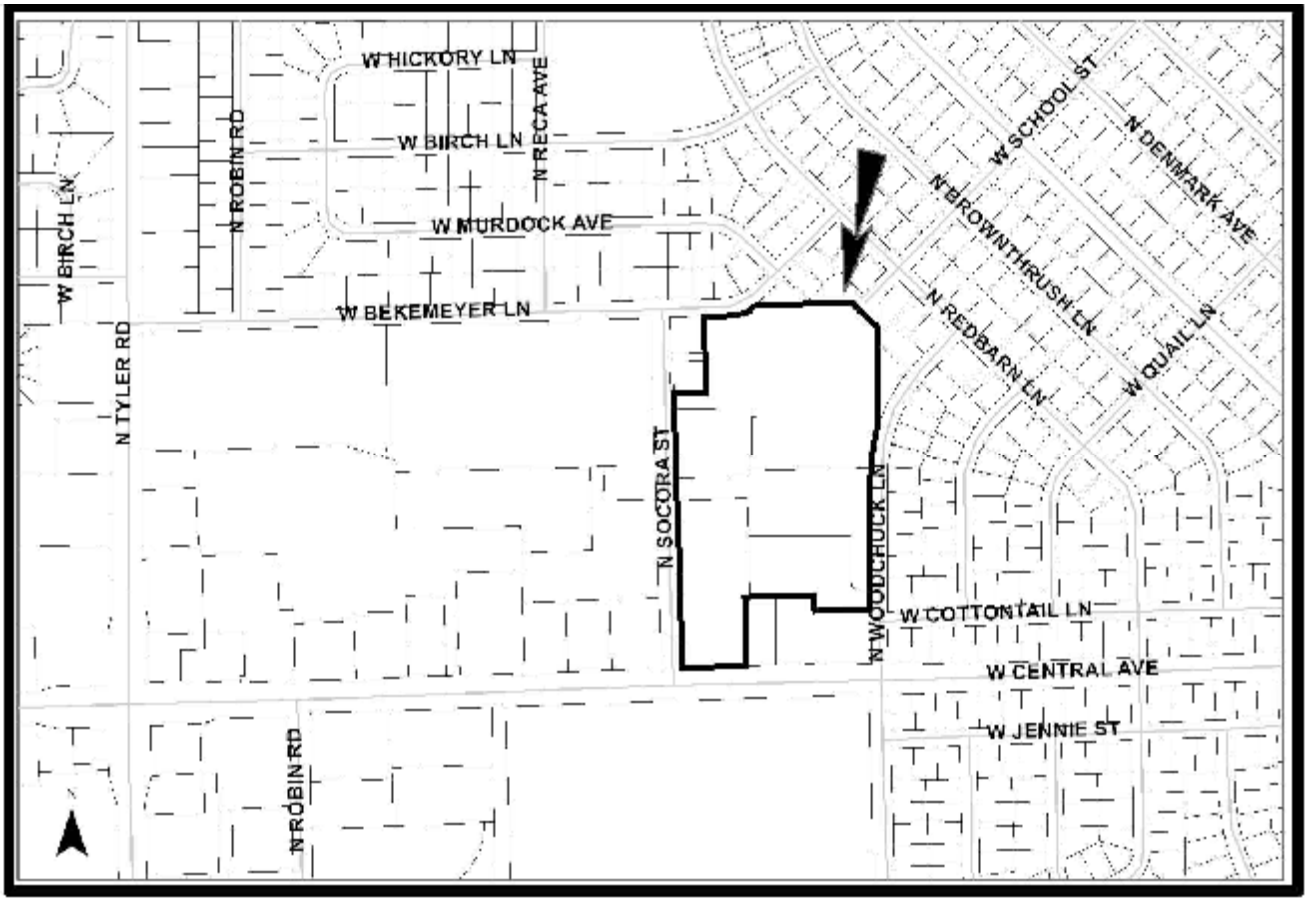
SUBJECT: CUP2009-00013 & ZON2009-00019 – City zone change from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") and amendment to DP-11 to add three lots to the CUP Community Unit Plan and rezone the lots to GO General Office; generally located north of Central Avenue, east of Socora (854 N. Socora). (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: Approve, subject to staff recommendations, vote (12-0).

MAPD Staff Recommendation: Approve.



Background: The applicant is requesting an amendment to the Tyler Acres Community Unit Plan to expand the boundaries of the CUP and Parcel 7. The proposed new portion of Parcel 7, which includes Lots 3, 4 and 5 of the Tyler Acres 6th Addition, is proposed for a zone change from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") to permit all uses currently permitted in Parcel 7. Genesis Health Clubs Management LLC plans to expand their existing health club facility to include a new indoor tennis facility. This new facility is proposed to be constructed as an extension to the existing Genesis structure on Parcel 7, which allows this particular use as a "Personal Improvement Service." The applicants are proposing to expand the CUP by increasing the size of Parcel 7 with the addition of the three lots because the proposed tennis facility, as currently designed, will cross over onto those three lots, which are owned by Genesis.

The existing provisions of CUP DP-11 (landscaping and screening, lighting, signage, access, setbacks, etc.) will not be affected by the action of this proposed amendment. Also, the existing screening wall that runs through Lots 3, 4 and 5 will not be affected by this amendment or the proposed construction of the indoor tennis facility and will remain in place. The CUP and Parcel 7 will both increase by approximately 42,000 square feet and the proposed zone change to GO will match the existing zoning of the applicant's current location. Specifically for Parcel 7, the existing provision state:

Parcel 7 (Existing):

Net Area: 701,465 sq. ft. or 16.10 acres
Max. Land Coverage shall not exceed 23% of the net land area or 160,000 sq. ft.
Max. Gross Floor Area: 180,000 sq. ft.
Floor Area Ratio: 26%
Maximum building heights as per zoning ordinance except that portion north of line as shown on the plan which shall not exceed 35 feet in height.
Number of Buildings: 10
Building Setbacks:

Central	75 feet
Socora	35 feet
Northerly Line	30 feet
School Circle	30 feet
East Line	30 feet
Woodchuck	35 feet
Southerly line	30 feet

Parking ratio as per zoning ordinance
Access Points:

2 to Central
1 to Woodchuck (see General Provision #9)
Complete access control to School Circle

Proposed Uses:
General offices, personal improvement service, professional offices, medical facilities, laboratories, optician, and other similar uses, hotel and motel as permitted in "BB" zoning district under city ordinance; no residential use is permitted except a retirement center associated with a nursing home.

For this proposed amendment, the proposed provisions for Parcel 7 would state:

Parcel 7 (Amended):

Net Area: *743,568* sq. ft. or *17.07* acres
Max. Land Coverage shall not exceed 23% of the net land area or *171,021* sq. ft.
Max. Gross Floor Area: *193,328* sq. ft.
Floor Area Ratio: 26%

Maximum building heights as per zoning ordinance except that portion north of line as shown on the plan which shall not exceed 35 feet in height.
Number of Buildings: 10
Building Setbacks: *See Drawing*
Parking ratio as per *Unified Zoning Code*
Access Points:
2 to Central
1 to Woodchuck (see General Provision #9)
Complete access control to School Circle
Proposed Uses:
General offices, personal improvement service, medical facilities, laboratories, optician, and other similar uses, hotel and motel as permitted in GO zoning district; no residential use is permitted except a retirement center associated with a nursing home.

Currently, there is a 20-foot utility easement that runs along the boundary of Parcel 7 and the three lots in question. The applicant will have to have this easement vacated before any construction is to take place that involves the existing utility easement.

The area is surrounded by many types of uses from residential to commercial to office uses. Property located north of the site is developed with single-family residences on property zoned SF-5. To the east is more residential development also zoned SF-5. Property south of the subject site is developed with a mixture of medical offices and dental offices all zoned GO, and a little further south, fronting Central Avenue, is property developed with retail strip stores zoned LC Limited Commercial ("LC"). The property to the west is developed with a place of worship, day care center, bank, retail and restaurants zoned SF-5, GO and LC, respectively.

Analysis: At the MAPC meeting held June 18, 2009, the MAPC voted (12-0) to recommend approval of the request for the CUP amendment and the rezone of the three lots add to the CUP to GO, subject to staff recommendations. There were no citizens who spoke on the case.

1. Revise the provisions of Parcel 7 to read:
   Net Area: *743,568* sq. ft. or *17.07* acres
   Max. Land Coverage shall not exceed 23% of the net land area or *171,021* sq. ft.
   Max. Gross Floor Area: *193,328* sq. ft.
   Floor Area Ratio: 26%
   Maximum building heights as per zoning ordinance except that portion north of line as shown on the plan which shall not exceed 35 feet in height.
   Number of Buildings: 10
   Building Setbacks: *See Drawing*
   Parking ratio as per *Unified Zoning Code*
   Access Points:
   2 to Central
   1 to Woodchuck (see General Provision #9)
   Complete access control to School Circle
   Proposed Uses:
   General offices, personal improvement service, medical facilities, laboratories, optician, and other similar uses, hotel and motel as permitted in "GO" zoning district, no residential use is permitted except a retirement center associated with a nursing home.

2. Vacate the 20-foot utility easement that runs along the boundary of Parcel 7 and the three lots in question before any construction encroaches the easement.

3. The CUP plan shall be revised to show changes that have been made on the CUP by previous administrative adjustment and amendments. A "cleaned up" version of the CUP will be required when the applicant submits the 4 revised copies of the CUP to the Metropolitan Area Planning Department.

4. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the governing body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.

5. Any major changes in this development plan shall be submitted to the Planning Commission and to the governing body for their consideration.

6. The transfer of title of all or any portion of the land included within the Community unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.

7. The applicant shall submit 4 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.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality

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

Recommendation/Actions:

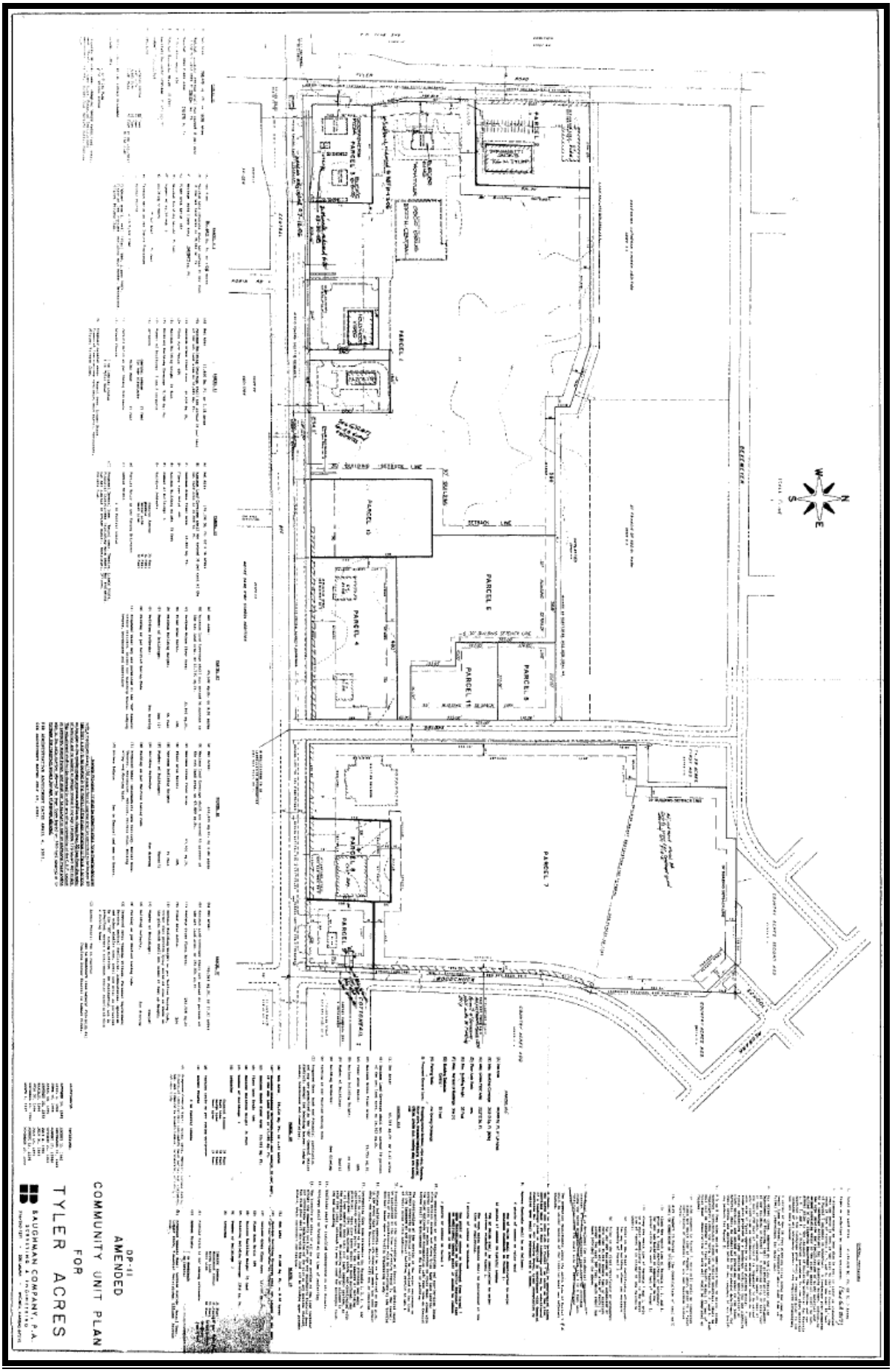
1. Adopt the findings of the MAPC and approve the community unit plan amendment and the zone change to GO General Office ("GO") and place the ordinance on first reading; withhold publication of the ordinance until instructed by planning staff, following the recording of the required vacation; or

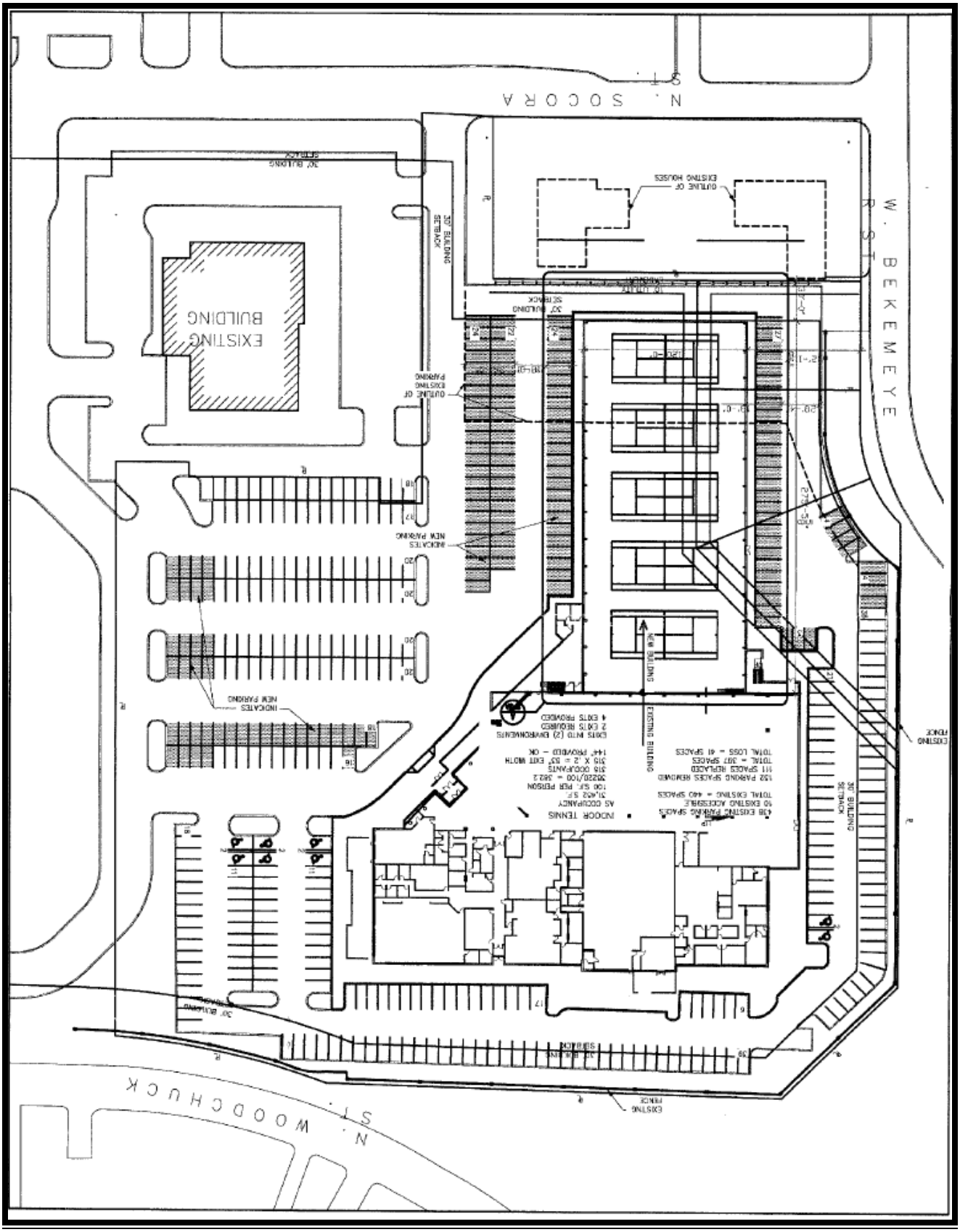
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Attachment(s):

- CUP
- Proposed Site Plan
- MAPC Minutes
- Ordinance


DP-11
AMENDED
COMMUNITY UNIT PLAN
FOR
TYLER ACRES
BAUGHMAN COMPANY, P.A.
PARCEL 1
PARCEL 4
PARCEL 5
PARCEL 6
PARCEL 7
PARCEL 10
PARCEL 11


N. SOCORA ST.
W. BEKEMEYE ST.
N. WOODCHUCK ST.
EXISTING BUILDING
30' BUILDING SETBACK
OUTLINE OF EXISTING HOUSES
OUTLINE OF EXISTING PARKING
INDICATES NEW PARKING
INDOOR TENNIS
NEW BUILDING
EXISTING BUILDING
EXISTING FENCE

Case No.: ZON2009-19 and CUP2009-13 – Genesis Health Clubs Management, LLC (owner/applicant); Ferris Consulting, Greg Ferris (agent); Baughman Company, P.A., Russ Ewy (agent) Request City zone change from SF-5 Single-family Residential to GO General Office and City amendment to DP-11 to add three lots to the CUP Community Unit Plan and rezone the lots to GO General Office on property described as:

Lots 1, 3, 4 and 5, Tyler Acres Sixth Addition, Wichita, Sedgwick County, Kansas; generally located north of Central, east of Socora (854 N. Socora).

BACKGROUND: The applicant is requesting an amendment to the Tyler Acres Community Unit Plan to expand the boundaries of the CUP and of Parcel 7. The proposed new portion of Parcel 7, which includes Lots 3, 4 and 5 of the Tyler Acres 6th Addition, is proposed for a zone change from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") to permit all uses currently permitted in Parcel 7. Genesis Health Clubs Management LLC plans to expand their existing health club facility to include a new indoor tennis facility. This new facility is proposed to be constructed as an extension to the existing Genesis structure on Parcel 7, which allows this particular use as a "Personal Improvement Service." The applicants are proposing to expand the CUP by increasing the size of Parcel 7 with the addition of the three lots because the proposed tennis facility, as currently designed, will cross over onto those three lots, which are owned by Genesis.

The existing provisions of CUP DP-11 (landscaping and screening, lighting, signage, access, setbacks, etc.) will not be affected by the action of this proposed amendment. Also, the existing screening wall that runs through lots 3, 4 and 5 will not be affected by this amendment or the proposed construction of the indoor tennis facility and will remain in place. The CUP and Parcel 7 will both increase by approximately 42,000 square feet and the proposed zone change to GO will match the existing zoning of the applicant's current location. Specifically for Parcel 7, the existing provision state:

Parcel 7 (Existing):

Net Area: 701,465 sq. ft. or 16.10 acres
Max. Land Coverage shall not exceed 23% of the net land area or 160,000 sq. ft.
Max. Gross Floor Area: 180,000 sq. ft.
Floor Area Ratio: 26%
Maximum building heights as per zoning ordinance except that portion north of line as shown on the plan which shall not exceed 35 feet in height.
Number of Buildings: 10
Building Setbacks:

Central	75 feet
Socora	35 feet
Northerly Line	30 feet
School Circle	30 feet
East Line	30 feet
Woodchuck	35 feet
Southerly line	30 feet

Parking ratio as per zoning ordinance
Access Points:

2 to Central
1 to Woodchuck (see General Provision #9)
Complete access control to School Circle

Proposed Uses: General offices, personal improvement service, professional offices, medical facilities, laboratories, optician, and other similar uses, hotel and motel as permitted in "BB" zoning district under city ordinance; no residential use is permitted except a retirement center associated with a nursing home.

For this proposed amendment, the proposed provisions for Parcel 7 would state:

Parcel 7 (Amended):
Net Area: *743,568* sq. ft. or *17.07* acres
Max. Land Coverage shall not exceed 23% of the net land area or *171,021* sq. ft.
Max. Gross Floor Area: *193,328* sq. ft.
Floor Area Ratio: 26%
Maximum building heights as per zoning ordinance except that portion north of line as shown on the plan which shall not exceed 35 feet in height.
Number of Buildings: 10
Building Setbacks: *See Drawing*
Parking ratio as per *Unified Zoning Code*
Access Points:

2 to Central
1 to Woodchuck (see General Provision #9)
Complete access control to School Circle

Proposed Uses: General offices, personal improvement service, medical facilities, laboratories, optician, and other similar uses, hotel and motel as permitted in GO zoning district; no residential use is permitted except a retirement center associated with a nursing home.

Currently there is a 20-foot utility easement that runs along the boundary of Parcel 7 and the three lots in question. The applicant will have to have this easement vacated before any construction is to take place that involves the existing utility easement.

The area is surrounded by many types of uses from residential to commercial to office uses. Property located north of the site is developed with single-family residences on property zoned SF-5. To the east is more residential development also zoned SF-5. Property south of the subject site is developed with a mixture of medical offices and dental offices all zoned GO, and a little further south, fronting Central Avenue, is property developed with retail strip stores zoned LC Limited Commercial ("LC"). The property to the west is developed with a place of worship, day care center, bank, retail and restaurants zoned SF-5, GO and LC, respectively.

CASE HISTORY: The application area is platted as Lots 3, 4 and 5 of the Tyler Acres Sixth Addition (recorded July 5, 1983). The Tyler Acres CUP DP-11 was approved on May 17, 1966. There have been a significant number of adjustments to the CUP, which include the reconfiguration of parcel boundaries, the adjustment of building setback lines, the elimination of residential storage units, the addition of "assisted living" as allowable uses and adjustments to sign spacing.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Residences
SOUTH:	GO	Medical Offices
EAST:	SF-5	Residences
WEST:	GO, SF-5, LC	Vacant/Church/ Bank

PUBLIC SERVICES: This part of Parcel 7 is accessible from Socora Street, which is designated as a residential street and used as a point of access for other uses in the CUP. Municipal water and sewer services are currently provided to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this site as appropriate for local commercial types of use. This category of use encompasses areas that contain concentrations of predominantly commercial, office, and personal service uses that do not have a predominantly regional market draw. The range of uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities.

The commercial locational guidelines of the Comprehensive Plan recommends that commercial uses should be located adjacent to arterial streets; in compact clusters; and to have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential areas.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

8. Revise the provisions of Parcel 7 to read:
   Net Area: *743,568* sq. ft. or *17.07* acres
   Max. Land Coverage shall not exceed 23% of the net land area or *171,021* sq. ft.
   Max. Gross Floor Area: *193,328* sq. ft.
   Floor Area Ratio: 26%
   Maximum building heights as per zoning ordinance except that portion north of line as shown on the plan which shall not exceed 35 feet in height.
   Number of Buildings: 10
   Building Setbacks: *See Drawing*
   Parking ratio as per *Unified Zoning Code*
   Access Points:
   2 to Central
   1 to Woodchuck (see General Provision #9)
   Complete access control to School Circle
   Proposed Uses:
   General offices, personal improvement service, medical facilities, laboratories, optician, and other similar uses, hotel and motel as permitted in "GO" zoning district, no residential use is permitted except a retirement center associated with a nursing home.

9. Vacate the 20-foot utility easement that runs along the boundary of Parcel 7 and the three lots in question before any construction encroaches the easement.

10. The CUP plan shall be revised to show changes that have been made on the CUP by previous administrative adjustment and amendments. A "cleaned up" version of the CUP will be required when the applicant submits the 4 revised copies of the CUP to the Metropolitan Area Planning Department.

11. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the governing body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.

12. Any major changes in this development plan shall be submitted to the Planning Commission and to the governing body for their consideration.

13. The transfer of title of all or any portion of the land included within the Community unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns,

unless amended.

14. The applicant shall submit 4 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: The area is surrounded by many types of uses from residential to commercial to office uses. North of the site is developed with single-family residences on property zoned SF-5. To the east is more residential development also zoned SF-5. Property south of the subject site is developed with a mixture of medical offices and dental offices all zoned GO and a little further south, fronting Central Avenue, is property developed with retail strip stores zoned LC Limited Commercial ("LC"). The property to the west is developed with a place of worship, day care center, bank, retail and restaurants zoned SF-5, GO and LC, respectively.

2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned GO with a CUP overlay. The property is suitable for office type uses, including medical offices, and personal improvement services to which it has been restricted. The addition of an indoor tennis facility as a permitted use (personal improvement service) in Parcel 7 is a common use that can be found in the GO zone districts and in this particular CUP. The proposed addition of three lots and the rezoning of those lots to GO will have little additional impact on the existing CUP.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Much of the property located south of Beckmeyer and east of Socora is currently developed with uses either similar or more intense than the proposed amendment and rezone. The existing masonry wall on Lots 3, 4 and 5 will continue to screen the property. The proposed tennis facility will be at a final build out height of 35 feet, the same height as the existing Genesis building. There should be any detrimental impact on the surrounding area since the use that is proposed is already allowed in this parcel of CUP DP-11. There are not any new uses proposed for Parcel 7 and the CUP requirements will remain in effect.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Land Use Guide of the Comprehensive Plan identifies this site as appropriate for local commercial types of use. This category of use encompasses areas that contain concentrations of predominantly commercial, office, and personal service uses that do not have a predominantly regional market draw. The range of uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. The commercial locational guidelines of the Comprehensive Plan recommends that commercial uses should be located adjacent to arterial streets; in compact clusters; and to have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential areas.

5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

SHERMAN moved, **FOSTER** seconded the motion, and it carried (12-0).

ORDINANCE NO. 48-385

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

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

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2009-00019

Zone change request from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") on properties described as:

> Lots 1, 3, 4 and 5, Tyler Acres Sixth Addition, Wichita, Sedgwick County, Kansas; generally located north of Central, east of Socora (854 N. Socora).

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 200__.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

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

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2009-00019

Zone change request from SF-5 Single-family Residential ("SF-5") to GO General Office ("GO") on properties described as:

Lots 1, 3, 4 and 5, Tyler Acres Sixth Addition, Wichita, Sedgwick County, Kansas; generally located north of Central, east of Socora (854 N. Socora).

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 200__.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council Members

SUBJECT: SUB 2008-51 -- Plat of Fontana 4th Addition located **n**orth of 29th Street North and on the east side of 119th Street West. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (12-0)

Background: This site, consisting of 131 lots on 69.5 acres, is a replat of portions of Fontana and Fontana 2nd Additions.

Analysis: Petitions, 100 percent, and a Certificate of Petitions have been submitted for paving, sewer, water and drainage improvements. A Restrictive Covenant has been submitted: 1) to provide four off-street parking spaces per lot that abuts a 58-foot street; 2) that restricts parking to one side of the street on Fontana; and 3) to provide for the ownership and maintenance of the proposed reserves being platted.

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

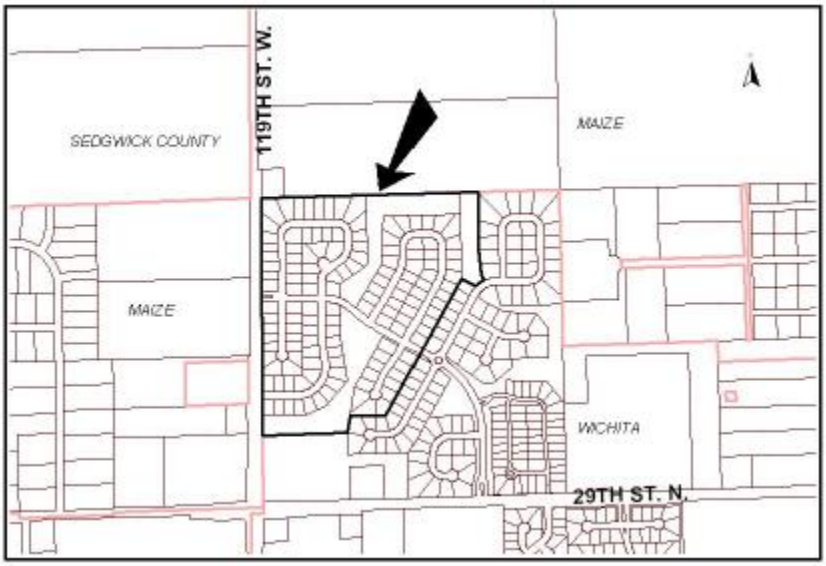
Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Certificate of Petitions and Restrictive Covenant will be recorded with the Register of Deeds.

Recommendations/Actions: Approve the documents and plat, authorize the necessary signatures and adopt the Resolutions.

Attachments: Certificate of Petitions
Restrictive Covenant


119TH ST. W.
SEDGWICK COUNTY
MAIZE
MAIZE
WICHITA
29TH ST. N.

CERTIFICATE

CITY OF WICHITA)
SEDGWICK COUNTY) SS
STATE OF KANSAS)

We, Socora Homes, Inc., owner of Fontana Addition 4th do hereby certify that petitions for the following improvements have been submitted to the City Council of the City of Wichita, Kansas:

1. Paving, Incidental Drainage and Sidewalks (4)
2. Sanitary Sewer (4)
3. Water (4)
4. Storm Water Sewer (2)

As a result of the above mentioned petition for improvements, lots or portions thereof within Fontana 4th Addition may be subject to special assessments assessed thereto for the cost of constructing the above described improvements.

Signed this 26 day of JUNE, 2009.

SOCORA HOMES, INC.

By: _____
David A. Hambrick, Vice President

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

Personally appeared before me a notary public in and for the County and State aforesaid David A. Hambrick, Vice President of Socora Homes, Inc., 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 26th day of June, 2009.

Linda S. Graham
Notary Public

Sub 200851

My Appointment Expires: 2/9/2010

LINDA S. GRAHAM
Notary Public - State of Kansas
My Appt. Expires 2/9/2010

PEC Project No.36-04007-003-3104

RESTRICTIVE COVENANT

This covenant, executed this 26th day of June, 2009.

WITNESSETH: That,

WHEREAS, the undersigned is in the process of platting that certain real property to be known as Fontana 4th, 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 off-street parking; the establishment of an owners' association, providing for the ownership and maintenance of the reserves being platted and the "Parking Strips" along 119th St. West.

NOW, THEREFORE, the undersigned does hereby subject Fontana 4th, 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, and "Parking Strips" along 119th St. West.

2. The reserves located in said addition will be conveyed to the association at such time as the project is sold to or occupied by owners or tenants other than the undersigned.

3. Until said reserves are so conveyed, the ownership and maintenance of the reserves, shall be by the undersigned.

4. The reserves located in said addition will become part of a Master Owner's Association to be developed for the Fontana Addition to Wichita, Sedgwick County, Kansas.

5. There shall be provided for each dwelling unit located on any of the following described lots, a total of not less than four off-street parking places for automobiles, which may include garages and driveways, to-wit:

Lots 1 thru 33, Block 1, Lots 1 thru 14, Block 3; and Lots 16 thru 28, Block 4; Fontana 4th Addition.

6. There shall be no parking on either side of Fontana St. from the east line of Lot 28, Block 4 to 119th St. West

7. In the event that the undersigned or the association, its successors or assigns, shall fail at any time to maintain the drainage systems 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 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.

8. No retaining wall, solid fences, earth berm, or mass planting shall be placed or permitted within the drainage and utility easements adjacent to the reserves being platted. Nor shall any other planting be permitted therein which would materially interfere with the flow of storm water run-off through said easement. Any plantings proposed within this easement shall be reviewed by the City Forester prior to installation. Any change of grade is prohibited.

9. 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.

EXECUTED the day and year first above written.

SOCORA HOMES, INC.

By: _____
David A. Hambrick, Vice President

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

The foregoing instrument was acknowledged before me on this 26th day of June, 2009, by David A. Hambrick, Vice President of Socora Homes, Inc.

_____
Notary Public

Lab 2008-51

My appointment expires: 2/9/2010

LINDA S. GRAHAM
Notary Public - State of Kansas
My Appt. Expires 2/9/2010

PEC Project No.36-04007-003-3104

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-229

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90426 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90426 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Water Distribution System Number 448-90426 (east of 119th St. West, north of 29th St. North).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Ninety-Two Thousand Dollars ($92,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after June 1, 2009, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 34 through 58, Block 1
Lots 1 through 19, Block 2

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

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 34 through 58, Block 1, and Lots 1 through 19, Block 2, FONTANA 4TH ADDITION shall each pay 1/44 of the total cost payable by the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-230

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90427 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90427 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Water Distribution System Number 448-90427 (east of 119th St. West, north of 29th St. North).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Hundred Four Thousand Dollars ($104,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after June 1, 2009, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 1 through 33, Block 1

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

> That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through 33, Block 1, FONTANA 4TH ADDITION shall each pay 1/33 of the total cost payable by the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-231

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90428 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90428 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Water Distribution System Number 448-90428 (east of 119th St. West, north of 29th St. North).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Seventy-Five Thousand Dollars ($75,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after June 1, 2009, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 1 through 26, Block 3
Lots 1 through 15, Block 4

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

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through 26, Block 3, and Lots 1 through 15, Block 4, FONTANA 4TH ADDITION shall each pay 1/41 of the total cost payable by the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-232

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90429 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90429 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Water Distribution System Number 448-90429 (east of 119th St. West, north of 29th St. North).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Twenty-Two Thousand Five Hundred Dollars ($22,500) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after June 1, 2009, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 16 through 28, Block 4

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

> That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 16 through 28, Block 4, FONTANA 4TH ADDITION shall each pay 1/13 of the total cost payable by the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st ay of July, 2009.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK
(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-233

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 16, MAIN 7, NORTHWEST INTERCEPTOR SEWER, (NORTH OF 29TH ST. NORTH, EAST OF 119TH ST. WEST) 468-84584 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF LATERAL 16, MAIN 7, NORTHWEST INTERCEPTOR SEWER, (NORTH OF 29TH ST. NORTH, EAST OF 119TH ST. WEST) 468-84584 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Lateral 16, Main 7, Northwest Interceptor Sewer, (north of 29th St. North, east of 119th St. West) 468-84584.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Hundred Eighty-Two Thousand Dollars ($182,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after June 1, 2009 exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 34 through 50, Block 1
Lots 1 through 19, Block 2

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

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 34 through 50, Block 1, and Lots 1 through 19, Block 2 FONTANA 4TH ADDITION shall each pay 1/36 of the total cost payable by the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO.09-234

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 17, MAIN 7, NORTHWEST INTERCEPTOR SEWER, (NORTH OF 29TH ST. NORTH, EAST OF 119TH ST. WEST) 468-84585 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF LATERAL 17, MAIN 7, NORTHWEST INTERCEPTOR SEWER, (NORTH OF 29TH ST. NORTH, EAST OF 119TH ST. WEST) 468-84585 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Lateral 17, Main 7, Northwest Interceptor Sewer, (north of 29th St. North, east of 119th St. West) 468-84585.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Two Hundred Thirty-Two Thousand Dollars ($232,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after June 1, 2009 exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 1 through 33, Block 1

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

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 through 33, Block 1, FONTANA 4TH ADDITION shall each pay 1/33 of the total cost payable by the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-235

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 18, MAIN 7, NORTHWEST INTERCEPTOR SEWER, (NORTH OF 29TH ST. NORTH, EAST OF 119TH ST. WEST) 468-84586 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF LATERAL 18, MAIN 7, NORTHWEST INTERCEPTOR SEWER, (NORTH OF 29TH ST. NORTH, EAST OF 119TH ST. WEST) 468-84586 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Lateral 18, Main 7, Northwest Interceptor Sewer, (north of 29th St. North, east of 119th St. West) 468-84586.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Hundred Seventy-Five Thousand Dollars ($175,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after June 1, 2009 exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 1 through 26, Block 3
Lots 1 through 15, Block 4

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

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 through 26, Block 3, and Lots 1 through 15, Block 4, FONTANA 4TH ADDITION shall each pay 1/41 of the total cost payable by the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-236

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 19, MAIN 7, NORTHWEST INTERCEPTOR SEWER, (NORTH OF 29TH ST. NORTH, EAST OF 119TH ST. WEST) 468-84587 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF LATERAL 19, MAIN 7, NORTHWEST INTERCEPTOR SEWER, (NORTH OF 29TH ST. NORTH, EAST OF 119TH ST. WEST) 468-84587 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Lateral 19, Main 7, Northwest Interceptor Sewer, (north of 29th St. North, east of 119th St. West) 468-84587.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Thirty-One Thousand Dollars ($31,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after June 1, 2009 exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 16 through 21, Block 4

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

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 16 through 21, Block 4, FONTANA 4TH ADDITION shall each pay 1/6 of the total cost payable by the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-237

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER DRAIN NO. 357 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 468-84588 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER DRAIN NO. 357 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 468-84588 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve Storm Water Drain No. 357 (east of 119th St. West, north of 29th St. North) 468-84588.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Two Hundred Sixteen Thousand, Five Hundred Ninety-Two Dollars ($216,592) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after June 1, 2009, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 34 through 58, Block 1
Lots 1 through 19, Block 2

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

> That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 34 through 50, Block 1, and Lots 1 through 19, Block 2, FONTANA 4TH ADDITION shall each pay 212/10,000 of the total cost payable by the improvement district; and Lots 51 through 58, Block 1, FONTANA 4TH ADDITION shall each pay 296/10,000 of the total cost payable by the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-238

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER DRAIN NO. 358 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 468-84589 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER DRAIN NO. 358 (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 468-84589 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve Storm Water Drain No. 358 (east of 119th St. West, north of 29th St. North) 468-84589.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Hundred Ninety Four Thousand Four Hundred Twenty Dollars ($194,420) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after June 1, 2009, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 1 through 26, Block 3
Lots 1 through 28, Block 4

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

> That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through 26, Block 3, and Lots 1 through 15, Block 4, FONTANA 4TH ADDITION shall each pay 189/10,000 of the total cost payable by the improvement district; Lots 16 through 21, Block 4, FONTANA 4TH ADDITION shall each pay 136/10,000 of the total cost payable by the improvement district; and Lots 22 through 28, Block 4, FONTANA 4TH ADDITION shall each pay 205/10,000 of the total cost payable by the improvement district.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-239

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON FONTANA FROM THE EAST LINE OF LOT 58, BLOCK 1, TO THE EAST LINE OF LOT 33, BLOCK 1; PARK RIDGE FROM FONTANA TO CHAMBERS AND CHAMBERS FROM FONTANA TO PARK RIDGE (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 472-84800 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON FONTANA FROM THE EAST LINE OF LOT 58, BLOCK 1, TO THE EAST LINE OF LOT 33, BLOCK 1; PARK RIDGE FROM FONTANA TO CHAMBERS AND CHAMBERS FROM FONTANA TO PARK RIDGE (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 472-84800 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing pavement on Fontana from the east line of Lot 58, Block 1, to the east line of Lot 33, Block 1; Park Ridge from Fontana to Chambers and Chambers from Fontana to Park Ridge (east of 119th St. West, north of 29th St. North) 472-84800.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to Five Hundred Fifty-Four Thousand Dollars ($554,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro rata of 1 percent per month from and after June 1, 2009.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

<u>FONTANA 4TH ADDITION</u>
Lots 34 through 58, Block 1
Lots 1 through 19, Block 2

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

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 34 through

58, Block 1 and Lots 1 through 19, Block 2 FONTANA 4TH ADDITION shall each pay 1/44 of the total cost of the improvement district.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

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CARL BREWER, MAYOR

ATTEST:

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KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-240

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON PINE GROVE CIRCLE FROM FONTANA NORTH TO AND INCLUDING THE CUL-DE-SAC; JUDITH FROM FONTANA TO WESTLAKES CIRCLE AND FONTANA FROM THE EAST LINE OF LOT 33, BLOCK 1, TO 119TH STREET WEST (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 472-84801 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON PINE GROVE CIRCLE FROM FONTANA NORTH TO AND INCLUDING THE CUL-DE-SAC; JUDITH FROM FONTANA TO WESTLAKES CIRCLE AND FONTANA FROM THE EAST LINE OF LOT 33, BLOCK 1, TO 119TH STREET WEST (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 472-84801 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing pavement on Pine Grove Circle from Fontana north to and including the cul-de-sac; Judith from Fontana to Westlakes Circle and Fontana from the east line of Lot 33, Block 1, to 119th Street West (east of 119th St. West, north of 29th St. North) 472-84801.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to Six Hundred Three Thousand Dollars ($603,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro rata of 1 percent per month from and after June 1, 2009.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 1 through 33, Block 1

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

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through

33, Block 1 FONTANA 4TH ADDITION shall each pay 1/33 of the total cost of the improvement district.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-241

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON PINE GROVE CIRCLE FROM FONTANA SOUTH TO AND INCLUDING THE CUL-DE-SAC, JUDITH FROM FONTANA TO 119TH STREET WEST, AND CHAMBERS CIRCLE FROM FONTANA TO AND INCLUDING THE CUL-DE-SAC, ALL IN FONTANA 4TH ADDITION (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 472-84802 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON PINE GROVE CIRCLE FROM FONTANA SOUTH TO AND INCLUDING THE CUL-DE-SAC, JUDITH FROM FONTANA TO 119TH STREET WEST, AND CHAMBERS CIRCLE FROM FONTANA TO AND INCLUDING THE CUL-DE-SAC, ALL IN FONTANA 4TH ADDITION (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 472-84802 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing pavement on Pine Grove circle from Fontana south to and including the cul-de-sac, Judith from Fontana to 119th Street West, and chambers circle from Fontana to and including the cul-de-sac, all in Fontana 4th Addition (east of 119th St. West, north of 29th St. North) 472-84802.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to Five Hundred Thirty-One Thousand Dollars ($531,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro rata of 1 percent per month from and after June 1, 2009.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 1 through 26, Block 3
Lots 1 through 15, Block 4

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

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through 26, Block 3 and Lots 1 through 15, Block 4, FONTANA 4TH ADDITION shall each pay 1/41 of the total cost of the improvement district.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-242

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON CHAMBERS CIRCLE FROM FONTANA TO AND INCLUDING THE CUL-DE-SAC (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 472-84803 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON CHAMBERS CIRCLE FROM FONTANA TO AND INCLUDING THE CUL-DE-SAC (EAST OF 119TH ST. WEST, NORTH OF 29TH ST. NORTH) 472-84803 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to authorize constructing pavement on Chambers Circle from Fontana to and including the cul-de-sac (east of 119th St. West, north of 29th St. North) 472-84803.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to One Hundred Forty-Five Thousand Dollars ($145,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro rata of 1 percent per month from and after June 1, 2009.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

FONTANA 4TH ADDITION
Lots 16 through 28, Block 4

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

> That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 16 through 28, Block 4 FONTANA 4TH ADDITION shall each pay 1/13 of the total cost of the improvement district.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract,

lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

Agenda Item No. V-4.

City of Wichita
City Council Meeting
July 21, 2009

To: Mayor and City Council

Subject: VAC2009-00018 - Request to vacate platted utility-drainage easements; generally located midway between 127th Street and 143rd Street East and north of Pawnee Avenue. (District II)

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve (unanimously).

Background: The applicant is requesting consideration for the vacation of the platted 20-foot drainage and utility easements located evenly on both sides of the common, interior, side yard lot lines of Lots 42 and 43, Block 3, and Lots 2 and 3, Block 5, in the Sierra Hills 2nd Addition. The applicant proposes to relocate the described easements, along the common interior side yard lot lines of larger lots, located south of the subject lots. There are no utilities, manholes, sewer or water lines located in the described platted easements. The Sierra Hills 2nd Addition was recorded with the Register of Deeds on June 10, 2008.

Analysis: The MAPC voted (12-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

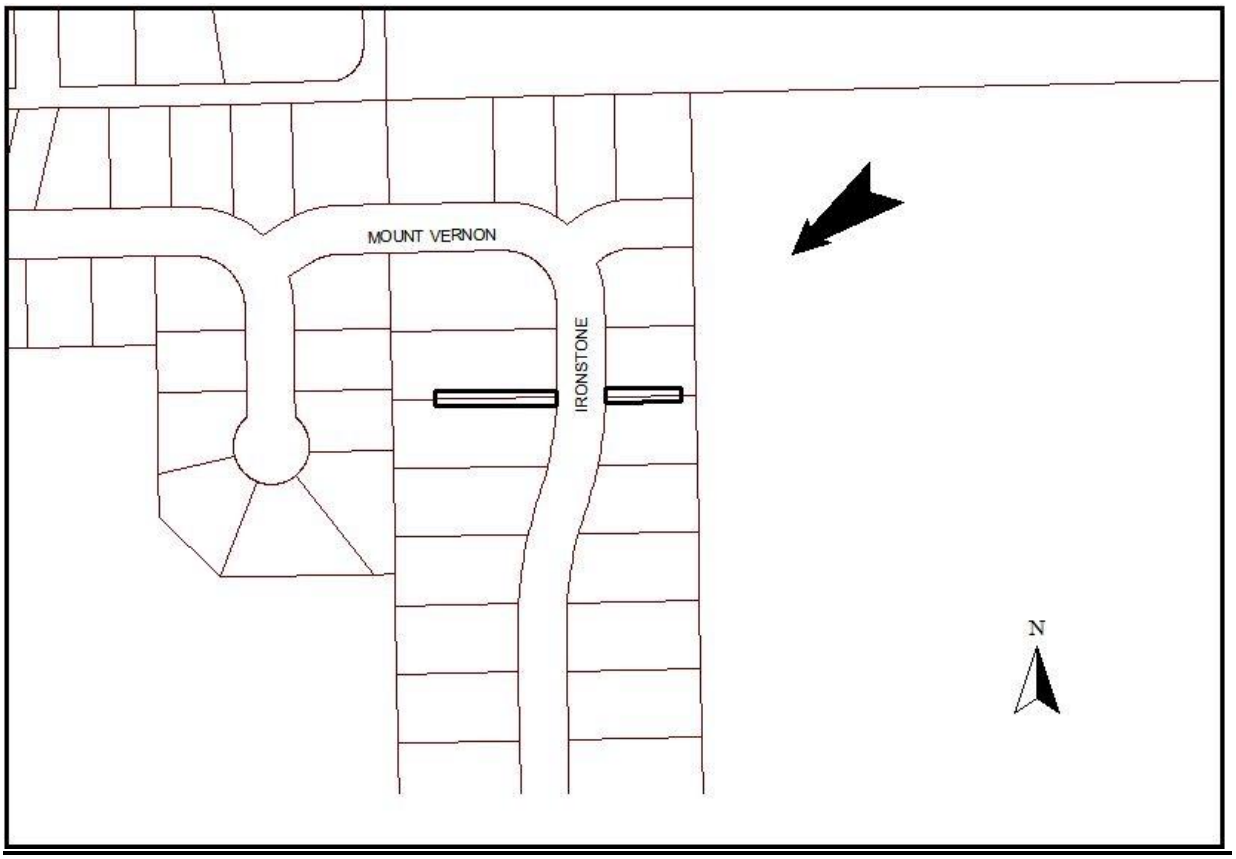
Financial Considerations: None.

Goal Impact: Ensure efficient infrastructure.

Legal Considerations: A certified copy of the Vacation Order and a dedication of utility and drainage easements, by separate instrument, will be recorded with the Register of Deeds.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

Attachments: Dedication of utility and drainage easements.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Agenda Item No. V-5.

City of Wichita
City Council Meeting
July 21, 2009

To: Mayor and City Council

Subject: VAC2009-00019 - Request to vacate a platted easement; generally located east of Tyler Road and north of Central Avenue. (District V)

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve (unanimously).

Background: The applicant proposes to vacate the platted 20-foot utility easement, evenly located along the common lot lines of Lots 1, 3, 4 and 5 in Tyler Acres 6th Addition. There are no utilities, manholes, sewer or water lines in the described utility easement. There is a sewer line that runs (south to north) along the west portion of the described easement; retain the west 10 feet of the described 20-foot wide utility easement. The Tyler Acres 6th Addition was recorded with the Register on Deeds July 5, 1983.

Analysis: The MAPC voted (12-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

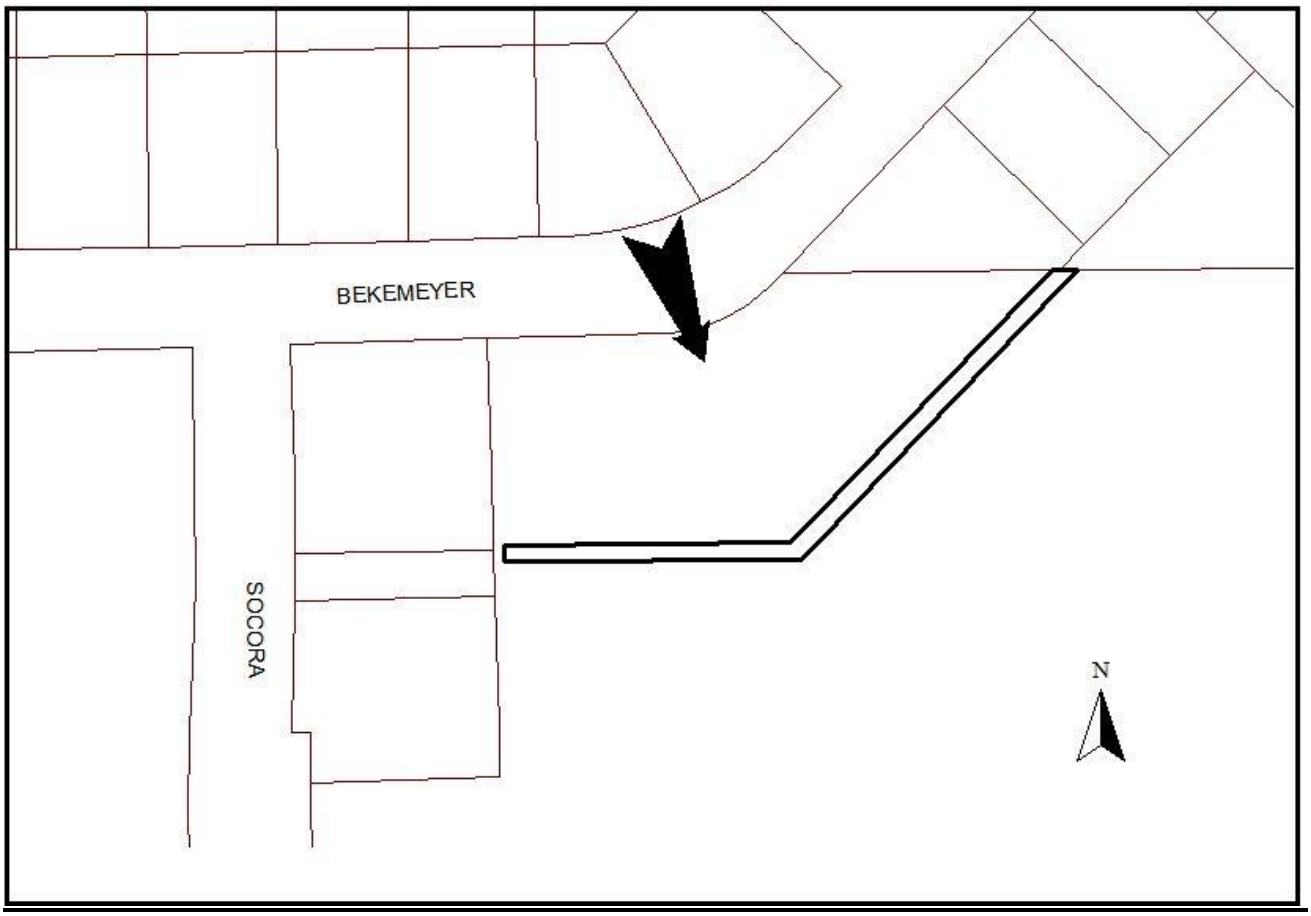
Financial Considerations: None.

Goal Impact: Ensure efficient infrastructure.

Legal Considerations: A certified copy of the Vacation Order will be recorded with the Register of Deeds.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

Attachments: None.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THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL JULY 21, 2009

a. 17th Street North, Hillside to Grove (87N-0349-01/472-84766/706996/208461) See Special Provisions. (District I) - $5,070,000.00

b. Zoo Park Circle from the south line of the plat, north to and including the cul-de-sac to serve Cox Machine 3rd Addition (north of 21st Street North, east of Hoover) (472-84820/766239/490257) Traffic to be maintained using flagpersons & barricades. (District V) - $615,000.00

c. Water Distribution System, Phase 1 to serve Sierra Hills 2nd Addition (north of Pawnee, west of 143rd Street East) (448-90389/735427/470100) Traffic to be maintained using flagpersons & barricades. (District II) - $50,000.00

Agenda Item No. XII-4a.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Baehr Street Improvement, between Central and Newell (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendations: Adopt the resolution.

Background: On August 21, 2007, the City Council approved a project to pave Baehr Street, between Central and Newell. The authorizing resolution contained an error in the description of the improvement district and a petition reference. A resolution has been prepared to correct the errors. A lot that should not have been included in the improvement district has been deleted.

Analysis: The project paved a street in an existing neighborhood.

Financial Considerations: The approved project budget of $191,200 is unaffected. The assessment estimates that were provided to affected property owners at the time of the public hearing for the project were based on the correct improvement district.

Goal Impact: This project addressed the Efficient Infrastructure goal by paving a street in a developed residential area.

Legal Considerations: State Statutes provide the City Council authority to correct the errors by resolution.

Recommendation/Actions: It is recommended that the City Council adopt the resolution and authorize the necessary signatures.

Attachments: Resolution.

132019

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-246

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON BAEHR FROM THE SOUTH LINE OF CENTRAL TO THE SOUTH LINE OF NEWELL 472-84575 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON BAEHR FROM THE SOUTH LINE OF CENTRAL TO THE SOUTH LINE OF NEWELL 472-84575 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 07-478 adopted on August 21, 2007 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Baehr from the south line of Central to the south line of Newell 472-84575.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to One Hundred Ninety-One Thousand Two Hundred Dollars ($191,200) exclusive of the cost of interest on borrowed money, with 76.9 percent payable by the improvement district and 23.1 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 July 1, 2007 exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

ORCHARD PARK ADDITION
Lots 13 through 24 Inclusive, Block 1
Lots 3 through 12 Inclusive, Block 2

D.J. FISHER ADDITION
Lot 1

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a 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.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 21st day of July, 2009.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

JULY 21, 2009
Statements of Cost:

WATER

a. Improving Water Distribution System to serve Harvest Ridge Addition (south of 31st Street South, west of Maize Road). Total Cost - $94,379.93 (plus idle fund interest - $2,320.07, plus temporary note interest - $0). Financing to be issued at this time - $96,700.00. (735389/448-89851/470-062).

b. Improving Water Distribution System to serve Stonebridge 2nd Addition (north of 13th Street North, west of 159th Street East). Total Cost - $96,450.53 (plus idle fund interest - $2,749.47, plus temporary note interest - $0). Financing to be issued at this time - $99,200.00. (735395/448-90293/470-068).

c. Constructing a 20" Water Line on Hoover from 23rd Street North to 25th Street North (east of Hoover, north of 21st Street North). Total Cost - $205,780.34 (plus idle fund interest - $3,519.66, plus temporary note interest - $0). Financing to be issued at this time - $209,300.00. (735378/448-90308/470-051).

d. Improving Water Distribution System to serve Loveall Addition (along West Street from 47th Street South). Total Cost - $55,786.06 (plus idle fund interest - $289.94, plus temporary note interest - $924.00). Financing to be issued at this time - $57,000.00. (735377/448-90309/470-050).

e. Improving Water Distribution System to serve Edge Water Addition Phase 1 (south of 45th Street North, west of Hoover). Total Cost - $716,423.66 (plus idle fund interest - $16,076.34, plus temporary note interest - $0). Financing to be issued at this time - $732,500.00. (735392/448-90311/470-065).

f. Improving Water Distribution System to serve Edge Water Addition Phase 2 (south of 45th Street North, west of Hoover). Total Cost - $188,649.58 (plus idle fund interest - $4,050.42, plus temporary note interest - $0). Financing to be issued at this time - $192,700.00. (735393/448-90312/470-066).

g. Improving Water Distribution System to serve Edge Water Addition (north of K-96, west of Hoover). Total Cost - $180,220.73 (plus idle fund interest - $483.48, plus temporary note interest - $2,995.79). Financing to be issued at this time - $183,700.00. (735391/448-90313/470-064).

h. Improving Water Distribution System to serve Crystal Gardens Addition (north of 13th Street North, east of 135th Street West). Total Cost - $73,018.21 (plus idle fund interest - $1,381.79, plus temporary note interest - $0). Financing to be issued at this time - $74,400.00. (735423/448-90330/470-096).

i. Improving Water Distribution System to serve Webb Business Park Addition (north of 37th Street North, west of Webb). Total Cost - $62,140.37 (plus idle fund interest - $1,659.63, plus temporary note interest - $0). Financing to be issued at this time - $63,800.00. (735410/448-90333/470-083).

j. Improving Water Distribution System to serve Cedar View Village Addition (east of Greenwich, south of Kellogg). Total Cost - $45,647.90 (plus idle fund interest - $852.10, plus temporary note interest - $0). Financing to be issued at this time - $46,500.00. (735418/448-90348/470-091).

k. Improving Water Distribution System to serve Moorings 10th Addition (south of 53rd Street North, west of Meridian). Total Cost - $163,704.80 (plus idle fund interest - $3,395.20, plus temporary note interest - $0). Financing to be issued at this time - $167,100.00. (735411/448-90356/470-084).

l. Improving a Water Supply Line to serve Cambria Addition (east of 143rd Street East, north of Pawnee). Total Cost - $261,878.94 (plus idle fund interest - $6,021.06, plus temporary note interest - $0). Financing to be issued at this time - $267,900.00. (735404/448-90360/470-077).

m. Improving Water Distribution System to serve Cambria Addition (east of 143rd Street East, north of Pawnee). Total Cost - $94,848.20 (plus idle fund interest - $2,051.80, plus temporary note interest - $0). Financing to be issued at this time - $96,900.00. (735405/448-90361/470-078).

n. Improving Water Distribution System to serve part of Airport Industrial Addition (east of Ridge, south of Kellogg). Total Cost - $37,518.33 (plus idle fund interest - $681.67, plus temporary note interest - $0). Financing to be issued at this time - $38,200.00. (735412/448-90362/470-085).

o. Improving Water Distribution System to serve Woods North Addition (south of 29th Street North, west of 127th Street East). Total Cost - $163,157.42 (plus idle fund interest - $3,342.58, plus temporary note interest - $0). Financing to be issued at this time - $166,500.00. (735408/448-90363/470-081).

p. Improving Water Distribution System to serve Brentwood South 3rd Addition (north of Pawnee, east of Webb). Total Cost - $33,862.72 (plus idle fund interest - $937.28, plus temporary note interest - $0). Financing to be issued at this time - $34,800.00. (735407/448-90368/470-080).

q. Improving Water Distribution System to serve Sierra Hills Addition (north of Pawnee, east of 127th Street East). Total Cost - $31,795.98 (plus idle fund interest - $904.02, plus temporary note interest - $0). Financing to be issued at this time - $32,700.00. (735415/448-90371/470-088).

r. Improving Water Distribution System to serve Prairie Pond Plaza 2nd Addition (north of Kellogg, east of 143rd Street East). Total Cost - $72,070.65 (plus idle fund interest - $1,329.35, plus temporary note interest - $0). Financing to be issued at this time - $73,400.00. (735416/448-90372/470-089).

s. Improving Water Distribution System to serve High Point West Addition (east of 151st Street West, south of Maple). Total Cost - $52,357.63 (plus idle fund interest - $842.37, plus temporary note interest - $0). Financing to be issued at this time - $53,200.00. (735422/448-90377/470-095).

t. Improving Water Distribution System to serve Wheatridge Addition (north of Kellogg, west of 119th Street West). Total Cost - $67,960.37 (plus idle fund interest - $1,239.63, plus temporary note interest - $0). Financing to be issued at this time - $69,200.00. (735428/448-90392/470-101).

u. Improving Water Distribution System for 68th Street South, Minnesota, and Cider to serve Dave Waters Addition and Hale Addition to Sedgwick County, and unplatted tracts (east of Hydraulic, south of 63rd Street South). Total Cost - $96,093.81 (plus idle fund interest - $1,506.19, plus temporary note interest - $0). Financing to be issued at this time - $97,600.00. (735424/448-90397/470-097).

v. Improving Water Distribution System to serve Village at Greenwich Addition (north of 21st Street North, east of Greenwich). Total Cost - $20,466.89 (plus idle fund interest - $333.11, plus temporary note interest - $0). Financing to be issued at this time - $20,800.00. (735432/448-90405/470-105).

SEWER

w. Constructing Lateral 3, Main 5, Cowskin Interceptor Sewer to serve Harvest Ridge Addition (north of MacArthur, west of Maize). Total Cost - $189,700.52 (plus idle fund interest - $1,990.74, plus temporary note interest - $3,308.74). Sewer Main Benefit Fee - $0. Financing to be issued at this time - $195,000.00. (744258/468-83661/480-947).

x. Constructing Main 7, Cowskin Interceptor Sewer to serve St. Peter the Apostle Catholic Church Addition and St. Peter the Apostle Catholic Church 2nd Addition (north of MacArthur, west of Maize). Total Cost - $175,667.19 (plus idle fund interest - $1,546.95, plus temporary note interest - $2,385.86). Sewer Main Benefit Fee - $30,000.00. Financing to be issued at this time - $209,600.00. (744225/468-84025/480-913).

y. Constructing Lateral 7, Main 4, Northwest Interceptor Sewer to serve Blackstone Addition (north of 13th Street North, west of 135th Street West). Total Cost - $577,845.91 (plus idle fund interest - $7,907.46, plus temporary note interest - $12,146.63). Sewer Main Benefit Fee - $68,000.00. Financing to be issued at this time - $665,900.00. (744232/468-84170/480-920).

z. Constructing Lateral 11, Main 4, Northwest Interceptor Sewer to serve Silverton Addition (north of 13th Street North, west of 135th Street West). Total Cost - $164,470.44 (plus idle fund interest - $2,296.66, plus temporary note interest - $1,794.90). Sewer Main Benefit Fee - $21,538.00. Financing to be issued at this time - $190,100.00. (744278/468-84244/480-967).

aa. Constructing Lateral 12, Main 4, Northwest Interceptor Sewer to serve Silverton Addition (north of 13th Street North, west of 135th Street West). Total Cost - $199,333.70 (plus idle fund interest - $2,296.30, plus temporary note interest - $2,174.00). Sewer Main Benefit Fee - $22,496.00. Financing to be issued at this time - $226,300.00. (744279/468-84245/480-968).

bb. Constructing Lateral 43, Main 21, Sanitary Sewer No. 22 to serve Mesa Verde Addition (south of 37th Street North, east of Meridian). Total Cost - $117,840.01 (plus idle fund interest - $1,265.40, plus temporary note interest - $1,787.60). Sewer Main Benefit Fee - $12,207.00. Financing to be issued at this time - $133,100.00. (744259/468-84284/480-948).

cc. Constructing Lateral 1, Main 7, Cowskin Interceptor Sewer to serve Schulte Country Storage Addition (north of MacArthur, west of Maize). Total Cost - $26,215.08 (plus idle fund interest - $884.92, plus temporary note interest - $0). Sewer Main Benefit Fee - $3,000.00. Financing to be issued at this time - $30,100.00. (744223/468-84309/480-911).

dd. Constructing Lateral 2, Main 7, Cowskin Interceptor Sewer to serve Schulte Addition (north of MacArthur, west of Maize). Total Cost - $115,988.20 (plus idle fund interest - $2,051.84, plus temporary note interest - $459.96). Sewer Main Benefit Fee - $16,800.00. Financing to be issued at this time - $135,300.00. (744224/468-84310/480-912).

ee. Constructing Lateral 1, Main 24, Southwest Interceptor Sewer to serve Edge Water Addition (north of K-96, west of Hoover). Total Cost - $1,066,576.24 (plus idle fund interest - $12,520.24, plus temporary note interest - $14,403.52). Sewer Main Benefit Fee - $0. Financing to be issued at this time - $1,093,500.00. (744260/468-84365/480-949).

ff. Relocation of Main D, Sanitary Sewer No. 1 from 9th Street North to 10th Street North, between Mead and Mosley (north of Central, east of Broadway). Total Cost - $80,452.44 (plus idle fund interest - $1,647.56, plus temporary note interest - $0). Sewer Main Benefit Fee - $0. Financing to be issued at this time - $82,100.00. (744241/468-84380/480-929).

gg. Constructing Lateral 170, Sanitary Sewer No. 22 to serve Metal-Fab Addition (north of Pawnee, west of Meridian). Total Cost - $21,399.67 (plus idle fund interest - $573.33, plus temporary note interest - $0). Sewer Main Benefit Fee - $3,327.00. Financing to be issued at this time - $25,300.00. (744263/468-84405/480-952).

hh. Constructing Lateral 10, Main 5, Northwest Interceptor Sewer to serve Crystal Gardens Addition (north of 13th Street North, east of 135th Street West). Total Cost - $197,483.62 (plus idle fund interest - $1,671.18, plus temporary note interest - $2,118.20). Sewer Main Benefit Fee - $28,827.00. Financing to be issued at this time - $230,100.00. (744287/468-84424/480-976).

ii. Constructing Lateral 408, Four Mile Creek Sewer to serve Cedar View Village Addition (east of Greenwich, south of Kellogg). Total Cost - $110,374.84 (plus idle fund interest - $1,021.16, plus temporary note interest - $1,204.00). Sewer Main Benefit Fee - $0. Financing to be issued at this time - $112,600.00. (744281/468-84462/480-970).

jj. Constructing Lateral 14, Main 15, Sanitary Sewer No. 23 to serve Moorings 10th Addition (south of 53rd Street North, west of Meridian). Total Cost - $509,825.49 (plus idle fund interest - $5,206.57, plus temporary note interest - $5,817.94). Sewer Main Benefit Fee - $125,650.00. Financing to be issued at this time - $646,500.00. (744276/468-84467/480-965).

kk. Constructing Lateral 1, Main 21, Four Mile Creek Sewer to serve Cambria Addition (north of Pawnee, east of 143rd Street East). Total Cost - $283,187.72 (plus idle fund interest - $3,244.90, plus temporary note interest - $3,227.39). Sewer Main Benefit Fee - $102,240.00. Financing to be issued at this time - $391,900.00. (744271/468-84480/480-960).

ll. Constructing Lateral 1, Main 26, Four Mile Creek Sewer to serve Woods North Addition (south of 29th Street North, west of 127th Street East). Total Cost - $352,167.12 (plus idle fund interest - $4,045.57, plus temporary note interest - $4,713.31). Sewer Main Benefit Fee - $44,274.00. Financing to be issued at this time - $405,400.00. (744274/468-84485/480-963).

mm. Constructing Lateral 409, Four Mile Creek Sewer to serve Brentwood South 3rd Addition (north of Pawnee, east of Webb). Total Cost - $69,417.87 (plus idle fund interest - $1,124.03, plus temporary note interest - $758.10). Sewer Main Benefit Fee - $0. Financing to be issued at this time - $71,300.00. (744273/468-84492/480-962).

nn. Constructing Lateral 412, Four Mile Creek Sewer to serve Sierra Hills Addition (north of Pawnee, east of 127th Street East). Total Cost - $64,746.98 (plus idle fund interest - $850.62, plus temporary note interest - $702.40). Sewer Main Benefit Fee - $0. Financing to be issued at this time - $66,300.00. (744280/468-84499/480-969).

oo. Constructing Lateral 58, Cowskin Interceptor Sewer to serve High Point West Addition (east of 151st Street West, south of Maple). Total Cost - $88,548.37 (plus idle fund interest - $1,551.63, plus temporary note interest - $0). Sewer Main Benefit Fee - $0. Financing to be issued at this time - $90,100.00. (744286/468-84500/480-975).

pp. Constructing Lateral 413, Four Mile Creek Sewer to serve Gateway Center 2nd Addition (south of 13th Street North, east of Greenwich). Total Cost - $19,222.20 (plus idle fund interest - $88.30, plus temporary note interest - $189.50). Sewer Main Benefit Fee - $0. Financing to be issued at this time - $19,500.00. (744288/468-84512/480-977).

qq. Constructing Lateral 52, Main 7, Sanitary Sewer No. 23 to serve Mediterranean Plaza Commercial 2nd Addition (east of Rock, north of 29th Street North). Total Cost - $27,298.02 (plus idle fund interest - $501.98, plus temporary note interest - $0). Sewer Main Benefit Fee - $0. Financing to be issued at this time - $27,800.00. (744290/468-84529/480-979).

rr. Constructing Lateral 167, War Industries Sewer to serve Village at Greenwich Addition (north of 21st Street North, east of Greenwich). Total Cost - $44,235.49 (plus idle fund interest - $764.51, plus temporary note interest - $0). Sewer Main Benefit Fee - $0. Financing to be issued at this time - $45,000.00. (744296/468-84545/480-985).

STORM WATER SEWER AND STORM WATER DRAIN

ss. Constructing Storm Water Drain No. 625 to serve Mesa Verde Addition (south of 37th Street North, east of Meridian). Total Cost - $42,066.95 (plus idle fund interest - $475.95, plus temporary note interest - $457.10). Financing to be issued at this time - $43,000.00. (751475/468-84286/485-366).

tt. Constructing Storm Water Sewer No. 628 to serve Krug South Addition (south of 21st Street North, west of 143rd Street East). Total Cost - $466,059.85 (plus idle fund interest - $6,995.29, plus temporary note interest - $12,844.86). Financing to be issued at this time - $485,900.00. (751441/468-84325/485-332).

uu. Constructing Storm Water Drain No. 320 to serve Krug South Addition (south of 21st Street North, west of 143rd Street East). Total Cost - $389,174.20 (plus idle fund interest - $6,732.58, plus temporary note interest - $9,393.22). Financing to be issued at this time - $405,300.00. (751440/468-84327/485-331).

vv. Constructing Storm Water Drain No. 334 to serve Waterfront Residential and Greenwich Office Park Additions (north of 13th Street North, west of Greenwich). Total Cost - $250,576.77 (plus idle fund interest - $1,946.25, plus temporary note interest - $3,976.98). Financing to be issued at this time - $256,500.00. (751460/468-84409/485-351).

ww. Constructing Storm Water Drain No. 335 to serve Waterfront Residential and Greenwich Office Park Additions (north of 13th Street North, west of Greenwich). Total Cost - $103,409.51 (plus idle fund interest - $822.87, plus temporary note interest - $1,767.62). Financing to be issued at this time - $106,000.00. (751461/468-84410/485-352).

xx. Constructing Storm Water Drain No. 337 to serve Webb Business Park Addition (north of 37th Street North, west of Webb). Total Cost - $293,870.30 (plus idle fund interest - $3,718.90, plus temporary note interest - $3,210.80). Financing to be issued at this time - $300,800.00. (751469/468-84431/485-360).

yy. Constructing Storm Water Drain No. 344 to serve Moorings 10th Addition (south of 53rd Street North, west of Meridian). Total Cost - $135,917.10 (plus idle fund interest - $2,482.90, plus temporary note interest - $0). Financing to be issued at this time - $138,400.00. (751470/468-84468/485-361).

zz. Constructing Storm Water Sewer No. 641 to serve Moorings 10th Addition (south of 53rd Street North, west of Meridian). Total Cost - $209,523.05 (plus idle fund interest - $3,976.95, plus temporary note interest - $0). Financing to be issued at this time - $213,500.00. (751471/468-84469/485-362).

aaa. Constructing Storm Water Drain No. 345 to serve Cambria Addition (north of Pawnee, east of 143rd Street East). Total Cost - $532,556.03 (plus idle fund interest - $4,615.57, plus temporary note interest - $6,028.40). Financing to be issued at this time - $543,200.00. (751466/468-84481/485-357).

bbb. Constructing Storm Water Drain No. 346 to serve Woods North Addition (south of 29th Street North, west of 127th Street East). Total Cost - $712,793.17 (plus idle fund interest - $8,558.53, plus temporary note interest - $7,748.30). Financing to be issued at this time - $729,100.00. (751467/468-84487/485-358).

ccc. Constructing Storm Water Sewer No. 643 to serve Foliage Center Addition (north of 13th Street North, west of Webb). Total Cost - $123,650.44 (plus idle fund interest - $2,149.56, plus temporary note interest - $0). Financing to be issued at this time - $125,800.00. (751472/468-84498/485-363).

ddd. Constructing Storm Water Drain No. 350 to serve Oak Creek 2nd Addition (south of 21st Street North, west of Greenwich). Total Cost - $70,440.82 (plus idle fund interest - $1,459.18, plus temporary note interest - $0). Financing to be issued at this time - $71,900.00. (751479/468-84534/485-370).

eee. Constructing Storm Water Drain No. 645 to serve Gateway Center 2nd Addition (south of 13th Street North, east of Greenwich). Total Cost - $38,451.28 (plus idle fund interest - $848.72, plus temporary note interest - $0). Financing to be issued at this time - $39,300.00. (751478/468-84536/485-369).

fff. Constructing Storm Water Sewer No. 646 to serve Village at Greenwich Addition (north of 21st Street North, east of Greenwich). Total Cost - $18,601.44 (plus idle fund interest - $298.56, plus temporary note interest - $0). Financing to be issued at this time - $18,900.00. (751481/468-84546/485-372).

Agenda Item No. XII-6a.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Community Events - Fred Douglas Lodge #99 BBQ Cook-off (District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events Procedure, the event promoter Chauncy Kemp, Fred Douglas Lodge #99 is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Fred Douglas Lodge #99 BBQ Cook-off July 24, 2009 8:00 a.m. through July 25, 2009 8:00 p.m.

- 12th Street North, Spruce to Madison not including intersections.

Client will arrange to remove blockades as necessary to allow emergency vehicle access during entire designated time period. Blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life.

Legal Consideration: None.

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department. (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

Agenda Item No. XII-7a.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council Members

SUBJECT: Supplemental Agreement No. 2 – Merrick & Company Digital Elevation using LiDAR Technology

INITIATED BY: Department of Public Works

AGENDA: Consent

- -

Recommendation: Approve the supplemental agreement.

Background: The City of Wichita and Sedgwick County entered into an agreement with Merrick & Company for $883,263.75 to provide digital elevation data using Light Detection And Ranging (LiDAR) technology on February 5, 2008. The project will assist in the certification of the Flood Control Levees and define our drainage network and major watershed boundaries. On August 12, 2008 City Council approved Supplemental Agreement No. 1, which increased the budget to $920,000 and authorized the collection of additional LiDAR data for United States Geological Society.

Analysis: This proposed Supplemental Agreement No. 2 between the City and Merrick & Company will allow for additional watershed delineations for the County with average basin size between 700-1,300 acres. These watersheds will be added digitally into the City's GIS watershed layer which has been previously created for the City in support of this project.

Financial Considerations: This project is included in the 2007-2016 Adopted CIP, with $1,500,000 programmed in 2008. The current authorized budget is $920,000. This supplemental agreement will increase the budget authority by $30,000, for a total of $950,000. Total cost is within the original planned agreements. Funding for the project is split – City funds $480,855 and the County funds $469,115.

A supplemental agreement for the additional watershed delineations for the County and payment to Merrick & Company will be a not to exceed the lump sum amount of $21,705.

Goal Impact: The information received will help in providing a safe and secure community by providing information to improve our existing flood maps, help design future improvement projects, and evaluate current drainage systems.

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

Recommendations/Actions: It is recommended the City Council approve the increase to the project budget, supplemental agreement, Resolution and CIP sheet and authorize the necessary signatures.

Attachments: Supplemental Agreement, Resolution and CIP sheet.

660807

First Published in the Wichita Eagle on July 24, 2009

RESOLUTION NO. 09-245

A RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE FOR DIGITAL AERIAL IMAGERY AND ELEVATION DATA, COUNTY WIDE (468-84489)

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 acquire digital aerial imagery and elevation data for the entire County.

SECTION 2. The cost of said digital mapping activity for the above-described improvements is estimated to be $950,000 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. This is an increase of $30,000 to the project and revision to the Resolution 08-042 published February 8, 2008 and Resolution 08-418 published August 15, 2008.

SECTION 3. That the advisability of said improvements is established as authorized by K.S.A. 13-1024c and 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, July 21, 2009.

_____

CARL BREWER, MAYOR

ATTEST:

_____

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED:

_____

GARY REBENSTORF, DIRECTOR OF LAW

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE:

To Initiate Project	
To Revise Project	X

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

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location
Public Works	Eng	6/16/2009	Digital Aerial Imagery and Digital Elevation Mapping (Countywide)

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
468-84489		2008	

9. Estimated Start Date	10. Estimated Completion Date	11. Project Revised
July 20, 2009	January 1, 2010	

12. Project Cost Estimate

ITEM	GO	SA	OTHER *	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Culverts				
Drainage, desgin & const.	$491,732		$458,268	$950,000
Sanitary Sewer				
Sidewalk				
Water				
Railroad				
Totals	$491,732		$458,268	$950,000
Total CIP Amount Budgeted	$1,500,000			$1,500,000
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

Other funding is Sedgwick County

GO Bonds are to be repaid by the City's Storm Water Utility.

USGS will reimburse project $167,500 ($94,477 to City and $73,023 to County)

13. Recommendation: approve the project

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

SUPPLEMENTAL AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MERRICK & COMPANY

for

DIGITAL ELEVATION DATA USING LiDAR TECHNOLOGY

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;

Digital Elevation Data Using LiDAR Technology
(Project No. 468 84489)

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

I. SCOPE OF SERVICES

The ENGINEER shall continue to furnish professional services as required for the Digital elevation Data Using LiDAR Technology 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. PAYMENT PROVISIONS

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

468 84489/660807 $21,705

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

MERRICK & COMPANY
DOUG JACOBY, DIRECTOR OF PROJECTS

(Name & Title)

ATTEST:

Exhibit "A"

SCOPE OF SERVICES

Creating Hydrologic Unit Code at the 14-digit Level (HUC-14)

The City of Wichita, KS (City) is contracting with Merrick & Company (Merrick) of Aurora, CO for the creation of Hydrologic Unit Codes, or watersheds, at the 14-digit level (HUC-14). To perform this important task, Merrick would utilize the LiDAR (Light Detection and Ranging) data that was produced as a part of the City's 2008 Digital Elevation Data Using LiDAR Technology (Project No. 468 84489). LiDAR provides a very dense and accurate model of the earth's surface through the collection of millions of elevation points per square mile of land using remote sensing technology. The LiDAR data will provide a very accurate base layer to create the HUC-14 watersheds.

The HUC-14 watersheds will range generally in size from 640 acres to 3,000 acres; stream drainage area dependent. The intent of the HUC-14 watersheds is to create a mid-size watershed layer that has a larger area than the catchment layer (average size of 5 acres) and a smaller area then the HUC-12 watersheds (3,000 – 40,000 acres). Both of these layers (i.e., catchment and HUC-12) were produced as part of Project No. 468 84489, which also included color digital imagery.

The extent of the project area will be the same 1,037 square mile boundary established for Project No. 468 84489 (see **Figure 1** for reference).

The deliverables will reference the Kansas State Plane Coordinate System, South Zone; horizontal datum of North American Datum of 1983 (NAD 83); vertical datum of North American Vertical Datum of 1988 (NAVD 88); and, units in U.S. Survey Foot. The following specifications are for the HUC-14 watersheds:

Scope of Work

1. Merrick will create Huc-14 watersheds by processing the City's 2008 LiDAR data using the ESRI ArcHydro Extension.
    a. HUC-14 watersheds will generally be in the size of 640-3,000 acres
    b. Outlet points for each HUC-14 watershed will be hand placed based on the hydro geodatabase (GDB) that Merrick previously created for the City in support of the abovementioned project.
2. The HUC-14 watershed linework will match vertically with the catchments and HUC-12 linework that exists in the aforementioned Hydro GDB.
3. HUC-14 watersheds and outlet points will be added as feature classes to the existing Hydro GDB.
4. The HUC-14 watersheds will have attributes classes for:
    a. HUC-14 code – unique identifier for each HUC-14 watershed, similar to a street address that will use the same coding process as the HUC-12 watersheds; thereby matching the National Watershed Boundary Dataset specifications. It will have 2-digits added to the existing HUC-12 codes.
    b. Name field – this will be left blank for the City to populate over time
    c. Acres – calculated for each HUC-14 watershed
5. Outlet points location will be determined based on the best location to meet the size criteria and to create hydrologically correct watersheds.
6. Outlet points will have the following attributes
    a. X Coordinates – populated from the coordinate system
    b. Y Coordinates - populated from the coordinate system
    c. Elevation – derived from the LiDAR elevation

7. It will take approximately four (4) weeks to complete the work from the time Merrick receives a Notice to Proceed (NTP) from Wichita.

Deliverables

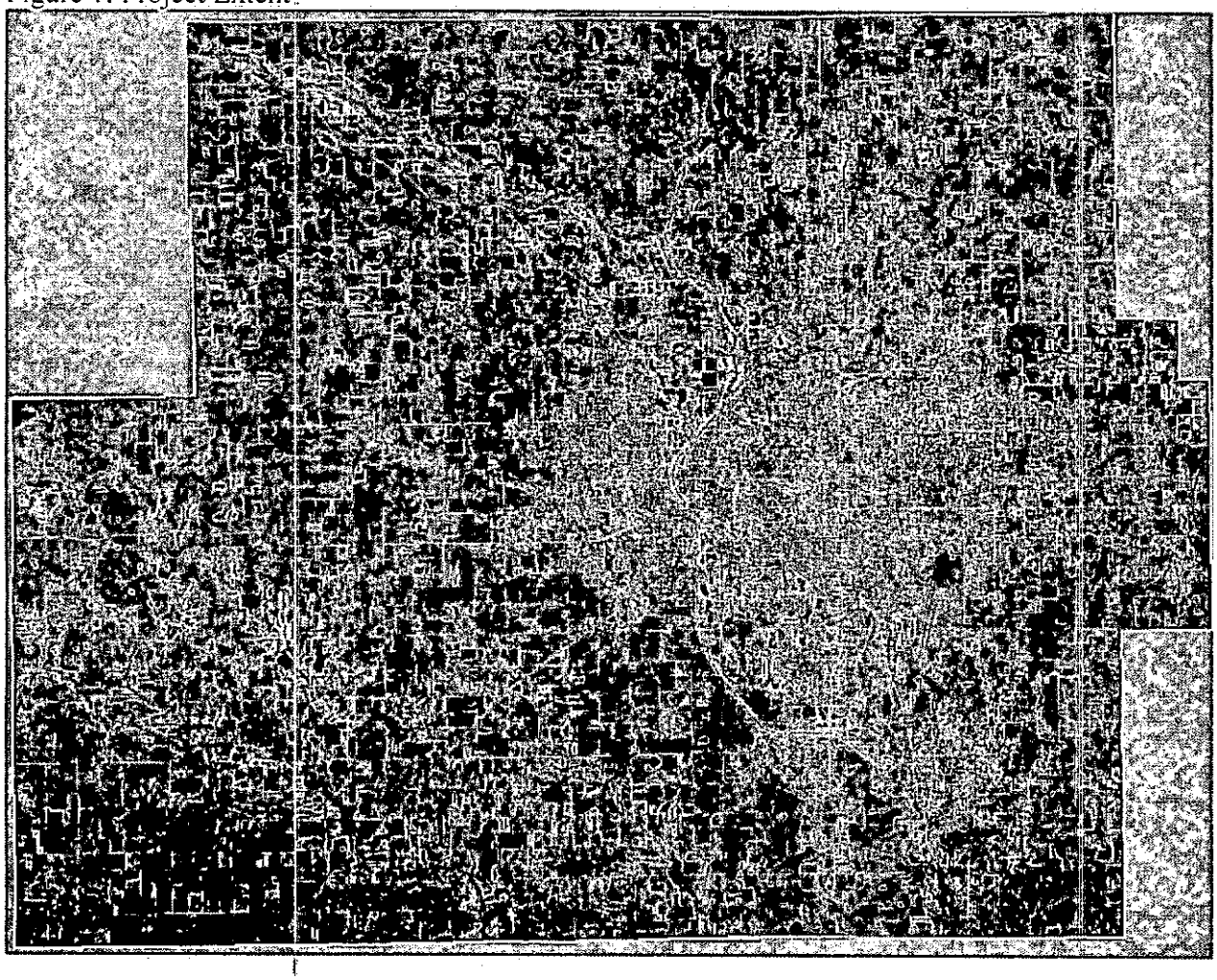
Merrick will provide the following deliverables to the City for this project, and the City will maintain sole ownership of such.

1. Updated project-wide hydro GDB in ESRI format
    a. HUC-14 features as a polygon feature class with attributes listed above
    b. Outlet points as a point feature class with the attributes listed above
    c. FGDC compliant metadata as part of the GDB

Proposed Cost

Merrick will perform these tasks for the City for a Lump Sum Fee of **$21,705**.

Figure 1: Project Extent



City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Right-of-Way Agreement (Cain's Coffee Company) (District I)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the agreement.

Background: In response to a consent order issued by the Kansas Department of Health & Environment, Cain's Coffee Company is requesting permission to maintain lateral piping, a trailer and fence in the City's right-of-way south of 427 S. Washington. The piping is connected to two soil vapor extraction wells used to remediate and maintain hydraulic control of a groundwater contaminant plume. The extraction wells are located on adjacent private property. The PVC discharge pipe runs 150 feet south from the wells to the remediation trailer at the south end of the right-of-way. The piping is 3 feet below surface grade. The trailer and fence occupy 312.5 square feet of right-of-way. See the attached system layout.

In addition to the piping, trailer and fence, there are two air sparge wells and two monitoring wells in the right-of-way. The wells have been permitted by the City Engineer's Office.

Analysis: A right-of-way agreement has been developed to allow for the use of a specific route for the piping and placement of the trailer and fence. The City engineer's office has reviewed and approved the plans for the portion of the remediation system that is in the public right-of-way.

Financial Considerations: The proposed right-of-way agreement provides for compensation to the City for use of the right-of-way of $2.50 per foot per year for the life of the project which is estimated at five years. The annual compensation for the use of right-of-way is $1,156.25 per year.

Goal Impact: This project addresses the Safe & Secure Community goal through the improved environmental health and community safety by the remediation of groundwater that was polluted by past industrial practices.

Legal Considerations: The right-of-way agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize necessary signatures.

Agreements: Map and agreement.

RIGHT-OF-WAY AGREEMENT
(Union Pacific Railroad)

THIS AGREEMENT, entered into this ____ day of _____, 2008, by and between Union Pacific Railroad ("Company") and the CITY OF WICHITA, KANSAS, a municipal corporation, (“City”).

WITNESSETH:

WHEREAS, The City of Wichita is the owner of certain public Right-of-Way; and

WHEREAS, Company desires to use said public Right-of-Way of the City of Wichita for the purpose of construction, maintenance, and operation of a portion of a remedial treatment system (“System”); and

WHEREAS, the parties desire to enter into an Agreement that allows Company to use the Right-of-Way for its legal purposes, while maintaining the City of Wichita’s right to manage and control the Right-of-Way and receive adequate compensation and reimbursement of the costs and expenses of allowing such use; and

WHEREAS, the City of Wichita finds such use to be in the public interest and is willing to enter into an agreement to allow use of the public Right-of-Way for such purpose;

WHEREAS, the City’s standards included in this Agreement are designed to:

A. Adequately compensate the City for occupancy of the Right-of-Way for use in providing private remediation services;

B. Fully protect the public and the City from any harm caused by private commercial use of Right-of-Way, including, but not limited to, reducing the risk of loss of service and the risk of personal or property injury from errant excavation;

C. Protect the regulatory authority of the City in a manner consistent with federal and state law, and;

WHEREAS, Company desires to use the Right-of-Way and requests an expeditious procedure for such use and knowingly waives any challenges it may have to the procedures for the grant of use of the Right-of-Way; provided, that neither party waives any rights it may now or in the future have at law or equity for actions in breach of this Agreement or enforcement of its provisions. The City agrees to allow such use of the Right-of-Way through the expeditious procedures of this Agreement.

NOW THEREFORE, in consideration of the conditions set forth below, Company and the City agree as follows:

SECTION 1. DEFINITIONS

Defined Terms. For purposes of this Agreement, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

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

B. "Company" means Union Pacific Railroad and, where appropriate in the context of the Agreement, its contractors and subcontractors performing work related to the construction, maintenance, and operation of the System.

C. "Facilities" means any portion of the System located in, along, over, upon, under, or through the Right-of-Way.

D. "Fee" means the compensation paid to the City by Company for the use of the Right-of-Way pursuant to this Agreement.

E. "Groundwater Remediation System" or "System" means the remedial treatment system including conduit to be installed, operated, inspected and maintained by Company along the Right-of Way that is the subject of this Agreement.

F. "Linear Foot" – means the length in feet of the Right-of-Way along which is located the subsurface pipe or conduit Facilities of the Groundwater Remediation System.

G. "Public Project" - shall mean any project planned or undertaken by the City or any other governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, including without limitation streets, alleys, sidewalks, sewer system, water system, drainage system, Right-of-Way improvement, or any other purpose of a public nature.

H. "Public Project for Private Development" - shall mean a Public Project, or that portion thereof, arising solely from a request or requirement of a third party primarily for the benefit and use of a third party.

I. "Right-of-Way" - shall mean only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below, or above the present and future streets, alleys, avenues, roads, highways, or boulevards dedicated or acquired as rights-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities, or private easements in platted subdivisions or tracts. The term does not

include property owned or held by the City but not typically considered right-of-way, including, but not limited to, City parks and reserves and City buildings.

SECTION 2. AUTHORITY TO USE RIGHT-OF-WAY

2.1 **Agreements and Franchises Non-Exclusive**. This Agreement shall be nonexclusive. The City specifically reserves the right to grant, at any time, agreements, franchises, or other rights to use the Right-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable Federal and State law.

2.2 **Grant**. This Agreement shall convey the right, privilege and authority to construct, operate, and maintain Facilities in, through and along the City's Right-of-Way, as shown in Attachment A, for the purposes, and pursuant to the terms and conditions, herein set forth. As a condition of any such grant, Company is required to obtain, and is responsible for, any necessary permit, agreement, approval, or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Kansas Department of Transportation (KDOT), or the Kansas Department of Health and Environment ("KDHE"), subject to Company’s right to challenge in good faith such requirements as established by the KDOT, KDHE or other City ordinance.

2.3 **Nature of Grant**. The grant under this Agreement shall not convey title, equitable or legal, in the Right-of-Way, and gives only the right to occupy Right-of-Way, for the purposes and for the period stated in this Agreement. The Agreement gives no right of access or use to facilities of a third party.

2.4 **Term**. This Agreement shall be effective upon the date of execution by both parties for a term to be the lesser of twenty (20) years or for a duration determined by the requirements of the KDOT, KDHE, the United States Environmental Protection Agency ("EPA"), or other governmental entity. This Agreement shall be renewable at the option of Company and subject to Section 2.5 upon written request for additional terms of up to twenty (20) years each; the same to extend until such time as all remediation and other response actions being performed and to be performed by Company at the Site are satisfactorily completed.

2.5 **Amendment.** Upon written request of either the City or Company, the Agreement may be reviewed at any time after the effective date and either the City or Company may propose amendments to any provision of the Agreement by giving thirty (30) days written notice to the other of the amendment(s) desired. The City and Company shall negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s).

Upon written request of either the City or Company, the Agreement shall be reopened and renegotiated at any time upon any change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of either the City or Company, including but not limited to the scope of the grant to the Agreement or the compensation to be received by the City.

2.6 **Use of Right-of-Way; Police Powers; Company's Use Subordinate**. Facilities shall be placed with adequate clearance from existing public or private utilities in the Right-of-Way so as not to impact or be impacted by such public or private utilities or

improvements. Company shall construct and maintain its Facilities in accordance with all applicable federal, state and local laws, including all KDOT and KDHE approved work plans for the Site, and all other City codes and ordinances in effect as of the date of this Agreement or hereinafter adopted to the extent not in contravention of state or federal law. The Agreement does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. In entering this Agreement, the City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Facilities on any particular segment of the Right-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Company. The use of the Right-of-Way authorized by this Agreement shall in all matters be subordinate to the City's use and rights therein. Company shall coordinate the placement of its Facilities in a manner that minimizes adverse impact on public and private improvements, as reasonably determined by the City Engineer.

2.7 **No Interference**. Company shall construct and maintain its Facilities so as not to interfere with other users of the Right-of-Way. All construction and maintenance by Company or its subcontractors shall be performed in accordance with industry standards.

2.8 **Exclusion of Certain Locations/Facilities**. Prior to its installation of any Facilities in the Right-of-Way, and after it provides the City with its proposed plans for the Facilities, the City may in its reasonable discretion designate certain locations or facilities in the Right-of-Way to be excluded from use by Company for its Facilities, including, but not limited to any facility or location that in the reasonable judgment of the City Engineer is incompatible with the proposed Facilities, or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other facilities that have been designated or planned for other use, or are not otherwise available for use by Company due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City. The City shall provide a written explanation for any denial for a particular location and shall work with Company to identify other suitable routes.

2.9 **Location, Type and Design of Facilities Subject to Approval**.

A. The design, location, and nature of all Facilities shall be subject to the reasonable review and approval of the City Engineer. This is a means to properly manage and control all Right-of-Way usage in the City, and to protect the public health, safety, and welfare. The review and approval is to ensure efficient coordination relating to Right-of-Way use relating to public and private utilities and to evaluate the configuration and size of Facilities that may be located in the Right-of-Way or other public or private property.

B. Except as provided herein, all Facilities constructed by Company shall be placed underground unless otherwise agreed to by the City.

   1. Where there are obstructions in the Right-of-Way which make the cost of underground construction unreasonable, or for other engineering, cost or feasibility reasons, Company may request waiver of this requirement, in which event the City will not unreasonably withhold its consent.

2. Above-ground pedestals, vaults, or other above-ground Facilities, may be installed only if approved by the City where alternative underground facilities are not feasible, are inconsistent with prudent engineering or other scientific practices or standards, or where underground requirements are otherwise waived pursuant to this Section, and shall generally be located behind any sidewalk where feasible.

C. Except as may otherwise be provided by other applicable ordinances of the City, where reasonable and appropriate and where adequate public Right-of-Way exists, Company shall place above-ground Facilities underground in conjunction with City capital improvement projects, and/or at specific locations requested by the City, provided that such placement is practical, efficient, and economically feasible. The City must be informed of, and will evaluate the size of facilities, the appearance of facilities, and whether or not any facility or structure will be unsafe or hazardous, or have an appearance that will be aesthetically adverse to property owners, or may cause a traffic safety problem; and, on the basis of its review, the City Engineer may work with Company to resolve any adverse impact, to the satisfaction of the City Engineer.

2.10 **Right-of-Way Management Code**. The City reserves its rights to adopt a Right-of-Way management and construction standards ordinance of general applicability pursuant to its public health, safety and welfare authority which shall apply to this Agreement except where inconsistent with a material term of the Agreement.

2.11 **Underground Facility Locating Service**. Company shall cooperate with and participate fully in providing reputable underground facility locating services to insure that damage and/or interference with other underground facilities occupants is minimized. This shall include, but not be limited to, participation with the Kansas One Call.

2.12 **Permit Requirements**. While this Agreement establishes the general rules and scope of authority for Company to construct and maintain its System within the Right-of-Way, Company is still required to obtain individual permitting approval from the City Engineer prior to engaging in actual construction of its specific Facilities within the Right-of-Way. At least fifteen (15) days before the beginning of any installation, removal or relocation of its Facilities, Company shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within fifteen (15) days of receipt of such plans, either approve the plans or inform Company of the reasons for disapproval. Company shall designate a responsible contact person with whom representatives of the City Engineer can communicate with on all matters relating to facilities installation and maintenance. Prior to any excavation within the Right-of-Way, Company shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of the City ROW Management Code, and any ordinances or regulations that may be adopted by the City regarding excavation work.

2.13 **As Built Drawings**. Company shall keep and maintain accurate records and as-built drawings, in both paper and electronic format, of all Facilities constructed, reconstructed, or relocated in the Right-of-Way after the date hereof. Such Facilities shall be horizontally and vertically located at least every 100 feet and at any other alignment change. All points of Facilities shall be horizontally located from street centerline, or section or quarter section lines or corners. Vertical locations on all points of Facilities shall consist of elevations in either City datum or United States Geological Survey datum.

Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and horizontal and vertical location of its Facilities located within Right-of-Way when requested by the City or its authorized agents for a Public Project. Such location and identification shall be at the sole expense of Company without expense to the City, its employees, agents, or authorized contractors

2.14 **Agent**. Company shall designate and maintain an agent, familiar with the Facilities, who is responsible for timely satisfaction of the information needs of the City and other users of the Right-of-Way.

2.15 **Responsibility for Costs**. Company shall be responsible for its own costs incurred removing or relocation its facilities when required by the City, due to City requirements relating to maintenance and use of the Right-of-Way for City purposes.

SECTION 3. FEES AND COMPENSATION

3.1 **Right-of-Way Fee**. Company shall pay to the City as compensation for the use of the Right-of-Way pursuant to this Agreement, an annual fee calculated by the City as follows: Two Dollars and fifty cents ($2.50) per linear foot of the Right-of-Way occupied by Company's Facilities adjacent to properties not owned by Company at the execution of this Agreement. Once construction is substantially completed, this annual payment shall remain constant during the term of this Agreement, and shall not vary, regardless of any changes in ownership of the properties burdened by this grant or minor changes in the configuration of the Facilities.

3.2 **Timing of Payment of Fees**. Unless otherwise agreed by the parties, Fees under this Section shall be due and payable for each calendar year or part thereof in a lump sum on or before November 1 of that calendar year.

3.3 **Interest on Late Payments and Under Payments**. If the Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

SECTION 4. TRANSFER OF OWNERSHIP

4.1 Company shall not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation, or otherwise, this Agreement or any of the rights or privileges granted by such Agreement, without the prior written consent of the City. Such consent shall not be unreasonably withheld, delayed or denied. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership.

4.2 Any assignment or transfer shall not require consent of the City when the Agreement is assigned, sold or transferred between wholly-owned subsidiaries of a parent corporation, provided that Company provides advance written notice to the City. In all such instances, the assignee or new owner shall be responsible for all Agreement requirements and obligations.

SECTION 5. GENERAL CONDITIONS

5.1 **Compliance With Laws**. The City and Company shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.

5.2 **Advertising, Signs or Extraneous Markings**. Company shall not place, or cause to be placed, any sort of signs, advertisements or other extraneous markings, whether relating to Company or any other person or entity on the public Right-of-Way, except such necessary minimal markings as approved by the City as are reasonably necessary to identify the Facilities for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

5.3 **Forfeiture of Permit and Privilege**. In case of failure on the part of Company, its successors and assigns, to comply with any of the material provisions of this Agreement, or if Company, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the material terms of this Agreement, Company, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights under the Agreement shall cease, terminate and become null and void; provided, however, that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit the rights granted under this Agreement, it shall first serve a written notice upon Company, setting forth in detail the neglect, material breach, or failure complained of, and Company shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Agreement. If at the end of such thirty (30) day period, the City determines that the conditions have not been complied with, the City shall take action, by an affirmative vote of the City Council present at the meeting and voting, to terminate the Agreement; setting out the grounds upon which said Agreement is to be canceled or terminated. Company may, upon thirty (30) days' notice to City, appeal to District Court.

5.4 **Removal of Facilities**. Upon expiration of this Agreement, whether by lapse of time, by agreement between Company and the City, or by forfeiture thereof, Company shall remove, at its sole cost, from public property any and all of its Facilities that are the subject of this Agreement including but not limited to the driveway approach to the treatment building within a reasonable time after such expiration, and it shall be the duty of Company promptly upon such removal to restore the Right-of-Way from which the Facilities are removed to as good condition as the same were before the removal was effected and as required by the City. Notwithstanding the foregoing, upon request of Company, the City may allow underground Facilities to be left in place when it is not practical or desirable to require removal.

5.5 **Relocation of Facilities**.

A. Company shall, within a reasonable time, relocate or adjust any Facilities located in Right-of-Way if reasonably necessary and requested by the City for a Public Project. Such relocation or adjustment for a particular Public Project shall be performed by Company without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City pertaining to such; provided, that if Company demonstrates to the satisfaction of the City that the Facility was originally established in a private

easement that thereafter became part of the Right-of-Way, the relocation or adjustment shall be without expense to Company.

B. Company shall not be responsible for the expenses of relocation to accommodate any new Public Project for Private Development. The expenses attributable to such a project shall be the responsibility of the third party upon the request and appropriate documentation of Company. Before such expenses may be billed to the third party, Company shall be required to coordinate with the third party and the City on the design and construction to ensure that the work required is necessary and done in a cost effective manner. Upon the request of Company or the third party, the allocation of expenses attributable to project shall be made in the reasonable determination of the City. Eligible third parties may request to have the City specially assess those expenses billed by Company under this section. The City will use its best efforts, but is not required, to continue to provide a location in the Right-of-Way for Facilities as part of a Public Project, provided that Company has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project.

C. Company shall be given not less than thirty (30) days written notice from the permit holder detailing the time and location of the moving operations, and not less than forty-eight (48) hours advance notice from the permit holder advising of the actual operation. The City shall not be liable for any such expense or notice requirement for the moving of houses or structures by the City or its contractors.

SECTION 6. CONFIDENTIAL INFORMATION

By entering into this Agreement, Company acknowledges and agrees that this Agreement, and certain information required to be filed with the City pursuant to this Agreement, are subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. When requested by Company, the City will apply such confidentially procedures as are available under the Act.

SECTION 7. LIABILITY AND INDEMNIFICATION

7.1 It shall be the responsibility of Company to take adequate measures to protect and defend its Facilities in the Right-of-Way from harm or damage. If Company fails to accurately or timely locate Facilities when requested, it has no claim for cost or damages against the City and its authorized contractors unless such party is responsible for the harm or damage by its negligence or intentional conduct. Company shall be responsible to the City and its agents, representatives and authorized contractors for all damages including, but not limited to, delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind arising out of the failure of Company to perform any of its obligations under this Agreement except to the extent the damaged party is responsible for the harm or damage by its negligence or intentional conduct. Provided, however, the City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Company's System.

7.1.1 Company shall hold harmless and save and defend the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims,

damages, expense, liability, and costs including attorney fees, to the extent occasioned in any manner by the failure of Company to perform any of its obligations under this Agreement, except to the extent the City, its officers, employees, agents, and authorized contractors are responsible for the harm or damage as a result of its negligence or intentional conduct. In the event a claim shall be made or an action shall be instituted against the City growing out of any such failure by Company to perform its obligations under this Agreement then, upon notice by the City to Company, Company shall assume liability for the defense of such actions at the cost of Company, subject to the option of the City to appear and defend, at its own cost, any such case.

SECTION 8. INSURANCE

8.1 During the term of this Agreement, unless specified otherwise, Company shall obtain and maintain at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas, naming the City as Certificate Holder, not less than the following insurance:

A. Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employer's liability limit of not less than Five Hundred Thousand Dollars ($500,000) per accident.

B. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability, naming the City as Certificate Holder.

8.2 Company shall, as material condition of this Agreement, prior of the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance, satisfactory in form and content, reflecting full compliance with the requirements set forth in paragraphs 8.1.A "Workers' Compensation" and "Employer's Liability" and 8.1.B "Commercial General Liability." The certificate will also provide a thirty (30) calendar days advance written notice in the event of cancellation or material change.

8.3 Nothing contained in this Agreement shall limit Company's liability to the City to the limits of insurance certified or carried.

SECTION 9. INVALIDITY AND REMEDIES

9.1 The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.

9.2 The right and remedies of the Parties under this Agreement shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any provision thereof shall not constitute a waiver of any other breach. The laws of the State of Kansas shall govern this Agreement and any rights granted hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above.

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

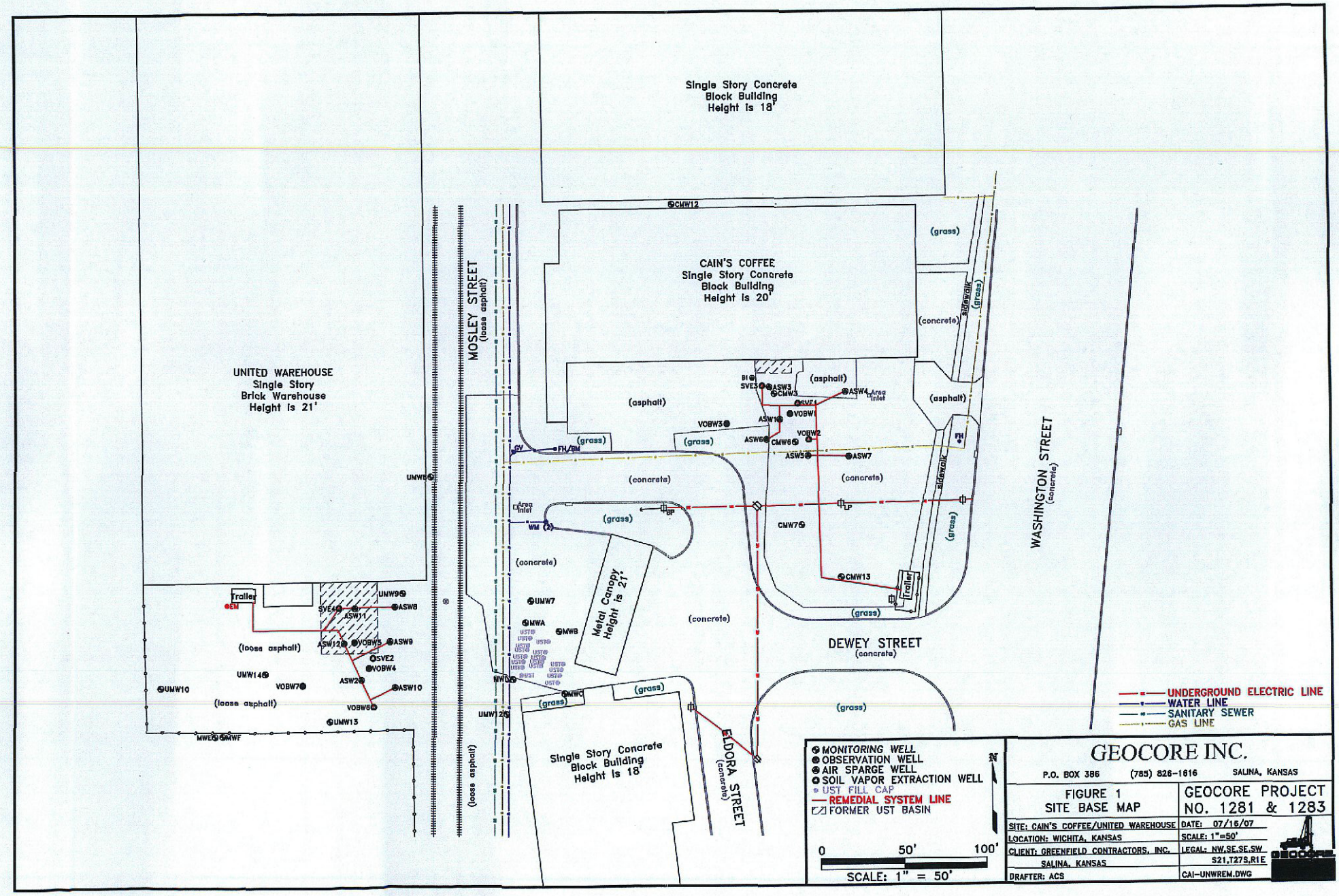
Approved as to Form:

_____
Gary E. Rebenstorf, City Attorney

Union Pacific Railroad

By: _____

Title: _____


Single Story Concrete
Block Building
Height is 18'
CAIN'S COFFEE
Single Story Concrete
Block Building
Height is 20'
UNITED WAREHOUSE
Single Story
Brick Warehouse
Height is 21'
MOSLEY STREET
(loose asphalt)
WASHINGTON STREET
(concrete)
DEWEY STREET
(concrete)
ELDORA STREET
(concrete)
Metal Canopy
Height is 21'
Single Story Concrete
Block Building
Height is 18'
(grass)
(concrete)
(asphalt)
(loose asphalt)
sidewalk
Trailer
UNDERGROUND ELECTRIC LINE
WATER LINE
SANITARY SEWER
GAS LINE
MONITORING WELL
OBSERVATION WELL
AIR SPARGE WELL
SOIL VAPOR EXTRACTION WELL
UST FILL CAP
REMEDIAL SYSTEM LINE
FORMER UST BASIN
0
50'
100'
SCALE: 1" = 50'
GEOCORE INC.
P.O. BOX 386
(785) 826-1616
SALINA, KANSAS
FIGURE 1
SITE BASE MAP
GEOCORE PROJECT
NO. 1281 & 1283
SITE: CAIN'S COFFEE/UNITED WAREHOUSE
LOCATION: WICHITA, KANSAS
CLIENT: GREENFIELD CONTRACTORS, INC.
SALINA, KANSAS
DRAFTER: ACS
DATE: 07/16/07
SCALE: 1"=50'
LEGAL: NW,SE,SE,SW
S21,T27S,R1E
CAI-UNWREM.DWG

GREENFIELD®

CONTRACTORS, INC.

ENVIRONMENTAL PROFESSIONALS

Post Office Box 677
Salina, Kansas 67402-0677
Phone (785) 822-0900
Fax (785) 826-9508

AGREEMENT

THIS SERVICES AGREEMENT, Made and entered into **March 20, 2006,** by and between GreenField Contractors, Inc., its heirs, assigns, and successors; of Salina, Kansas (hereinafter "GreenField Contractors, Inc."), and **Jay Farris &/or Cain's Coffee Company, 427 S. Washington, Wichita, KS 67202** (hereinafter "the client").

WITNESSETH:

WHEREAS, GreenField Contractors, Inc. is engaged in the business of performing general construction, environmental services, and\or consulting, and Client desires to employ GreenField Contractors, Inc. to perform such services on the real estate described and referred to on the attached Exhibit "A" which is by reference made a part hereof and incorporated herein (hereinafter "the Property"); and

WHEREAS, GreenField Contractors, Inc. and the Client desire to enter into this Agreement (hereinafter "Agreement") to set forth the terms and conditions of such employment:

NOW , THEREFORE, in consideration of the above and foregoing, and the mutual covenants hereinafter set forth, GreenField Contractors, Inc. and the Client hereby agree as follows:

1. DEFINITIONS: GreenField Contractors, Inc. and the Client hereby agree that the following definitions will apply for purposes of this Agreement:

(a) GreenField Contractors, Inc. means GreenField Contractors, Inc. of Salina, Kansas, its officers, employees and agents.

(b) Client means **Jay Farris &/or Cain's Coffee Company, 427 S. Washington, Wichita, KS 67202** their agents, representatives, officers, and employees.

(c) "Owners Representative" shall mean the representative of the owner as defined in the KDHE's Bid Project Proposal attached hereto and made a part hereof.

2. SERVICES: The Client hereby agrees to employ GreenField Contractors, Inc. to

perform certain services. The specific nature and scope of the services to be rendered by GreenField Contractors, Inc., may include, but not be limited to construction, drilling, laboratory testing, consulting, and\or equipment installation and are set out on the attached Exhibit "A" which is by reference made a part hereof and incorporated herein.

3. COMPENSATION: In consideration of the services set out in Paragraph 2 and Exhibit "A", the Client hereby agrees to pay to GreenField Contractors, Inc. for said services an amount of **$110,780.50 (one hundred ten thousand seven hundred eighty and 50/100's dollars)**. Amounts due GreenField Contractors, Inc. by Client are due and payable by the Client upon completion of said services by GreenField Contractors, Inc. Balances due GreenField Contractors, Inc. but unpaid thirty days from the date of the invoice(s) shall accrue interest at the maximum legal rate permissible or eighteen (18%) percent per annum. Legal fees incurred by GreenField Contractors, Inc. to collect past due balances shall be reimbursed by Client to GreenField Contractors, Inc.

This contract specifically excludes and does not pertain to any future and yet to be specified additional environmental services including, but not limited to: construction, monitoring, and\or laboratory testing laying outside the scope of the work detailed in Exhibit "A" at the property that may be required in the future beyond the termination timetable set forth in the KDHE's Request for Proposal bid attached hereto and made a part hereof. Future additional environmental services may include, but not be limited to: construction, monitoring, and\or laboratory testing work, if so mandated by the KDHE and laying outside the scope of this agreement, then they will be addressed under a separate and future contract between Client and GreenField Contractors, Inc. and subject to any pricing, terms, and conditions imposed by the Kansas Department of Health & Environment. Contract terms and conditions between client and GreenField Contractors, Inc. for those environmental services shall essentially conform to the format of this contract but will be written separately and apart from this agreement.

4.) DISCLAIMERS AND LIMITATION: GreenField Contractors, Inc. and the Client hereby agree that this Agreement is subject to the following disclaimers and limitations:

(a.) GreenField Contractors, Inc. disclaims any and all liability for errors or omissions resulting from: (1) the receipt of false or inaccurate information; (2) facts which could not have reasonably been discovered through the exercise of due care or diligence: or (3) acts of any third party not under the control of GreenField Contractors, Inc., including independent testing facilities engaged by GreenField Contractors, Inc.

(b.) GreenField Contractors, Inc. makes no representations or warranties regarding the accuracy or reliability of the services performed herein to any party or person, except for the Client. Client agrees not to disclose the information derived from these services to any third party except as may be required by law.

(c.) Materials, supplies, and\or equipment stored or installed on the clients site will NOT be insured by GreenField Contractors, Inc. against loss. It is mutually

agreed that said materials, supplies, and\or equipment and\or equipment delivered to Clients site shall be insured against loss by the Owner and\or the KDHE. Further, GreenField Contractors, Inc. will not provide Builders Risk insurance and the risk for loss during the construction phase and thereafter shall be borne by the Owner and\or KDHE.

5.) TERMINATION OR MODIFICATIONS: GreenField Contractors, Inc. and the Client hereby agree that the rights and duties arising under this Agreement may be modified or terminated only by a written agreement executed by both parties hereto. Not withstanding the foregoing, GreenField Contractors, Inc. may assign this contract in whole or part to others, and this contract will terminate and expire one year from the date executed by GreenField Contractors, Inc.

6.) GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, officers, agents, successors, and assigns.

7.) KDHE FORM 101: The provisions found in the Attachment G, Form # 0\0 101, 7\92, which is attached hereto and executed by the parties to this agreement are hereby incorporated in this contract and made a part hereof as specifications and plans.

8.) AUTHORITY TO ACT IN CONTRACTOR'S and CLIENT'S BEHALF: I\We, the undersigned **Jay Farris &/or Cain's Coffee Company, 427 S. Washington, Wichita, KS 67202** do irrevocably hereby appoint GreenField Contractors, Inc. Services, Inc. of P.O. Box 677, Salina, Kansas the County of Saline, the State of Kansas, to be our true and lawful attorney in fact, and also to be my\our "Owners Representative" Agent as defined in the KDHE's Bid Project Proposal as for **Jay Farris &/or Cain's Coffee Company, 427 S. Washington, Wichita, KS 67202** in my name, place and stead, and for my use and benefit, to represent **Jay Farris &/or Cain's Coffee Company, 427 S. Washington, Wichita, KS 67202** on all matters relating to KDHE project # U6-026-00663 including but not limited to the billing, collection, endorsement of checks for payment from the KDHE, and distribution of those aforementioned funds and to ask, demand, collect, and receive all sums of money, debts, or other obligations of any kind whatsoever which are now or shall hereafter become due, owing, or payable, or otherwise belongs to **Jay Farris &/or Cain's Coffee Company, 427 S. Washington, Wichita, KS 67202** and to settle and compromise any such debts or obligations that may be due and to endorse in our name on any check or note payable to me or my order given in payment of any such debt or obligations and to take such other steps in connection with any such debt or obligation that GreenField Contractors, Inc. may deem necessary and proper and in our name to execute and deliver any receipts, releases, or discharges of any such debt or obligation with the same effect as if such receipts, releases, or discharges were executed by **Jay Farris &/or Cain's Coffee Company, 427 S. Washington, Wichita, KS 67202** further gives and grants unto the attorney in fact full power and authority to do everything necessary and proper to be done in the exercise of any of the foregoing powers as fully as **Jay Farris &/or Cain's Coffee Company, 427 S. Washington, Wichita, KS 67202**, might or could do if personally present, with full power of

substitution and revocation, hereby ratifying and confirming all that the attorney shall lawfully do or cause to be done by virtue hereof and client further irrevocably appoints GreenField Contractors, Inc. as Owners Representative Agent as defined in the KDHE's aforementioned Bid Proposal.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day first above written.

GreenField Contractors, Inc.

By:_____

Jay Farris
&/or Cain's Coffee Company
427 S. Washington
Wichita, KS 67202

By:_____

Date March 20, 2006

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 06/04/2009

PRODUCER Stefany Kaniper Ins Agency
1716 Highland Ave
Salina, KS 67401

P F

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Greenfield Contractors, Inc.
2775 Arnold, Suite D
Salina, KS 67401

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Everest Indemnity Co	
INSURER B: Truck Insurance Exchange	
INSURER C: Travelers Insurance	
INSURER D: Evanston Insurance Company	
INSURER E	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	✓	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ✓ OCCUR ✓ Pollution Liability ✓ Professional Liability GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC	4000005362 071	10/01/2008	10/01/2009	EACH OCCURRENCE	$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurence)	$ 50,000
						MED EXP (Any one person)	$ 5,000
						PERSONAL & ADV INJURY	$ 1,000,000
						GENERAL AGGREGATE	$ 2,000,000
						PRODUCTS - COMP/OP AGG	$ 2,000,000
B	☐	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ✓ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS	602768725	07/24/2008	07/24/2009	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
						BODILY INJURY (Per person)	$
						BODILY INJURY (Per accident)	$
						PROPERTY DAMAGE (Per accident)	$
	☐	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT	$
						OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
	☐	EXCESS / UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE				EACH OCCURRENCE	$
						AGGREGATE	$
							$
		☐ DEDUCTIBLE					$
		☐ RETENTION $					$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N ☐ (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	6KUB-090C01-5-07	10/01/2008	10/01/2009	☐ WC STATUTORY LIMITS ☐ OTHER	
						E.L. EACH ACCIDENT	$ 500,000
						E.L. DISEASE - EA EMPLOYEE	$ 500,000
						E.L. DISEASE - POLICY LIMIT	$ 500,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Ground Water and Soil Remediation Contractor

Additional Insured: Cain's Coffee

Approved as to form: Gary Ellebarstad / [illegible]

CERTIFICATE HOLDER

City of Wichita

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE Michelle Lawson

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Agenda Item No. XII-7c.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Northfork Calfskin Creek Flood Hazard Assessment (Districts IV & V)

INITIATED BY: Department of Public Works

AGENDA: Consent

- -

Recommendation: Approve the supplemental agreement

Background: The City of Wichita entered the Federal Flood Insurance Program in 1998. Flood Insurance was made available to the citizens of our community provided that the City begin regulating development near floodplains based on maps developed by the Federal Emergency Management Agency (FEMA). During the Halloween 1998 flooding event, many homes received damage in the Rainbow Lakes and Breezy Point area due to the City's Federal Flood Maps not accurately identifying the flood risks for the area of the Northfork Calfskin Creek. Since this major flood event, FEMA and the United States Army Corp of Engineers (USACE) have attempted to re-map the flooding risks for these creeks using outdated topography and bridge section information. In December 2006, the City entered into an agreement with HNTB Corporation to study the diversion and provide the basis for the future FEMA flood map revision.

Analysis: This supplemental agreement authorizes HNTB to update their study and submit the final report using the new LiDAR data to map developments that have occurred since 2006.

Financial Considerations: In December 2006, the project budget was established at $600,000. The original contract amount for HNTB is for $578,609, leaving a balance available of $9,337. This supplemental agreement cost is $7,459 and can be covered by the previously authorized budget authority.

Goal Impact: This project addresses the Ensure Efficient Infrastructure goal by identifying the flooding risks for existing and future neighborhoods.

Legal Considerations: The supplemental agreement has been approved as to legal form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the supplemental agreement and authorize the necessary signatures.

Attachments: Supplemental agreement.

SUPPLEMENTAL AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

HNTB CORPORATION

for

NORTHFORK CALFSKIN CREEK FLOOD HAZARD ASSESSMENT

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 HNTB CORPORATION, party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

NORTHFORK CALFSKIN CREEK FLLOD HAZARD ASSESSMENT
(Project No. 468 84269)

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

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for the continuation and completion of a detailed Flood Hazard Assessment to identify the 100-year floodplain and floodways in the Northfork Calfskin Creek area including the overflow from Dry Creek of the Cowskin Creek 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. PAYMENT PROVISIONS

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

468 84562/660805 $7,439

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

HNTB CORPORATION

VP

(Name & Title)

ATTEST:

Exhibit "A"

City of Wichita, Calfskin Creek / Dry Creek Flood Boundary modeling. Estimated Budget - Proposed Man-hours - Suplemental Modeling and Mapping near 21st & 135th

Task	Proj. Mgr.	Sr. Engr.	Engr.	Tech.	Clerical	Total
1.0 Project Administration, Reconnaissance, and Coordination 1.1 Project Administration	1	4				5
1.2 Progress Meetings - 1 at City; 1 Conference Call	1	1				2
Subtotal	2	5	0	0	0	7
2.0 Mapping 2.1 Investigate Mapping Changes		2				2
2.2 Delineate Required Contour Replacement		1	1			2
2.3 Revise Contour Data		2	8			10
2.4 Extract Cross Section Data - HEC-GeoRAS		2	6			8
2.5 Revise FP & FW Boundaries	1	2	8			11
Subtotal	1	9	23	0	0	33
3.0 Hydraulic Modeling (21 mi; 300 x-sects; 50 structs) **3.1 Revise HEC-RAS Cross sections**		1	2			3
3.2 Revise Floodway		2	8			10
Subtotal	0	3	10	0	0	13
4.0 FEMA Submittal 4.1 Prepare Mapping & Models for FEMA		1	1			2
4.2 Prepare CD for FEMA			1			1
4.3 Communications with FEMA	1	2				3
Subtotal	1	3	2	0	0	6
5.0 Quality Control 5.1 QA	1					1
5.2 QC		1				1
Subtotal	1	1	0	0	0	2
Total	5	21	35	-	-	61

Assumptions:
1. This estimate assumes that FEMA will accept these changes being submitted with the final comments from the previous submittal
2. This estimate assumes that FEMA will approve these changes to the mapping.
3. This does not include any work resulting from a change in the status of the current submittal.

Last updated: March 31, 2009 1 of 2

City of Wichita, Calfskin Creek / Dry Creek Flood Boundary modeling.

Labor Rates; Estimated Expenses and Fee

Direct Labor

Labor Category	Hours	Hourly Rate	Labor	
Project Manager	5	180.00$	900$	
Senior Engineer	21	135.00$	2,835$	
Engineer	35	105.00$	3,675$	
Technician	0	105.00$	-$	
Clerical	0	60.00$	-$	
Total HNTB Labor:	61	7,410$	$	7,410

Direct Expenses

Printing	quantity	rate		
8.5" x 11" B&W Copies	10	0.06$	0.60$	
11" x 17" B&W Copies	5	0.10$	0.50$	
8.5" x 11" Color Copies	10	1.50$	15.00$	
11" x 17" Color Copies	5	2.50$	12.50$	
Total Direct Expenses:			$	29
Total Estimated Fee			**$**	**7,439**

Last updated: March 31, 2009

Exhibit "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, Vietnam Era Veteran or Special Disabled Veteran and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Exempted from these requirements are: (State of Kansas)

1. Any contractor, subcontractor, vendor or supplier who has already complied with the provisions set forth in sections pertaining to the State of Kansas by reason of holding a contract with the Federal government, or a contract involving Federal funds.

2. Contracts entered into by a contractor, subcontractor, vendor or supplier who employs fewer than four (4) employees during the term of this contract.

3. Contracts with the City of Wichita with a cumulative total of five thousand dollars ($5,000) or less during the fiscal year of the City.

D. Provisions of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall observe the provisions of the Code of the City of Wichita against discrimination (Section 2.12.900, et seq. of the Code of the City of Wichita, Kansas) and shall not discriminate against any employee or applicant for employment in the performance of work under the present contract, purchase order or agreement because of race, religion, color, sex, "disability, Vietnam Era Veteran or Special Disabled Veteran and age except where age is a bona fide occupational qualification", national origin, ancestry or marital status. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Rights and Services Board of the City of Wichita, Kansas, "Civil Rights and Services" in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, con tractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, Vietnam Era Veteran or Special Disabled Veteran and age except where age is a bona fide occupational qualification", national origin, ancestry or marital status. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase that is deemed acceptable by the "Wichita Civil Rights and Services Board";

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the rules, regulations and the orders issued by the Board pursuant thereto, and will permit access to books, records and procedures concerning employment relations by the "Civil Rights and Services Board" of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the Board in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be initiated against such vendor, supplier, contractor or subcontractor;

4. If the vendor, supplier, contractor or subcontractor is found guilty of a violation of any provision of the Code of the City of Wichita pertaining to and regulating Non-Discrimination -- Equal Employment Opportunity under a decision or order of the "Civil Rights and Services Board" of the City of Wichita, Kansas, which has become final, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement, and it may be canceled, terminated or suspended in whole or in part by the City of Wichita, and such other sanctions and remedies may be imposed as provided by law;

5. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 4 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

E. Exempted from these requirements are: (City of Wichita)

1. Any contractor or subcontractor, vendor or supplier of the City of Wichita, or any of its agencies, who wishes to enter into a contract, purchase order or agreement which is covered by the provisions of Section 2.12.908 of the Code of the City of Wichita, Kansas, shall prior to entering into

such contract, purchase order or agreement, submit to the "Civil Rights and Services Board" of the City of Wichita, Kansas, a preliminary report on forms provided by the Board concerning Non-Discrimination -- Equal Employment/Affirmative Action for review and evaluation. Upon review of the preliminary form submitted:

a. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

b. The provisions of Section 2.12.908 shall not apply to vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

c. Those contractors, subcontractors, vendors or suppliers not exempted herein whose preliminary report reveals deficiencies shall be required to submit goals and timetables for correction of such deficiencies in accordance with instructions included with the preliminary report for review, evaluation and acceptance prior to a contract, purchase order or agreement award.

F. Failure of any contractor, subcontractor, vendor or supplier to report to the "Kansas Human Rights Commission" as required by K.S.A. 1976 Supp. 44-1031, as amended, or to the "Civil Rights and Services Board" of the City of Wichita as required by 2.12.908, of the Code of the City of Wichita, Kansas; or being found guilty of a violation of the City's Ordinances, State Statutes, or Federal Statutes, or regulations pertaining to unlawful discrimination, which finding, decision or order has become final, shall be deemed a breech of this contract and said contract may be canceled, terminated or suspended in whole or in part by the City or its contracting agency.

Agenda Item No. XII-8a.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Supplemental Agreement for Design Services for Waterline along 135th Street West, 21st to 29th (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the supplemental agreement.

Background: On May 4, 2004, the City entered into an agreement with TranSystem Corporation for designing a 24" water line along 135th Street West from 21st to 29th. The fee was $9,400. On April 19, 2005, the City Council approved Supplemental No. 1 to design a 21" main sanitary sewer along 135th in conjunction with the water project. The fee was $18,000, bringing the contract total to $27,400.

Analysis: The original scope for this project was to design the proposed waterline within existing 135th Street right-of-way. A revised alignment became necessary due to issues with the new YMCA site and the location of Sedgwick County Rural Electric facilities within the existing right-of-way. An easement was acquired west of the existing right-of-way, providing a better water main location for future expansion of 135th Street. The combined cost for the easement and the proposed supplemental design contract is less than the estimated cost to relocate the electric facilities out of the county right-of-way. This relocation cost would have been the responsibility of the project. Supplemental Agreement No. 2 with TranSystems has been prepared to authorize the additional design services.

Financial Considerations: Payment to TranSystem for this supplemental agreement will be made on a lump sum basis of $13,500 and will be paid by Revenue Bonds for a contract total of $40,900.

Goal Impact: This Agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction sanitary sewer and water improvements.

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 agree-ment and authorize the necessary signatures.

Attachments: Supplemental agreement.

SUPPLEMENTAL AGREEMENT NO. 2

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED MAY 5, 2004

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

TRANSYSTEMS CORPORATION

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated May 5, 2004) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to **24" WATER LINE IN 135TH STREET WEST FROM 21ST TO 29TH** (Project No. 448 89941).

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:

- Provide additional topographic survey on private property for approximately 4100' along the west side of 135th Street West.
- Design new horizontal and vertical alignment for 24" water line along 135th Street West.
- No easement descriptions are included in this supplemental agreement.
- Add quantities to the Engineer's Probable Construction Cost and Quantity sheets.

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

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:

448 89941 **$13,500.00**

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

TRANSYSTEMS CORPORATION

_____
(Name and Title)

BRETT A. LETKOWSKI, PE
SENIOR VICE PRESIDENT

ATTEST:

_____
JEFFREY R. LACKEY, P.E.

EXHIBIT "C"

TranSystems
245 North Waco
Suite 420
Wichita, KS 67202
Tel 316 303 0154
Fax 316 303 0156
www.transystems.com

March 13, 2009

Mr. Gary Janzen, P.E.
City Design Engineer
City of Wichita, 7th Floor
455 N. Main
Wichita, KS 67202

Re: 135th Street Water Line Supplemental Agreement (448-89941)

Dear Mr. Janzen:

As discussed with Mr. Steve King, we are submitting our costs associated with the additional items of work for the 135th Street Water Line improvements. Below is a breakdown of tasks, staffing assignments and costs associated with these changes:

- Provide additional topographic survey on private property for approximately 4100' along the west side of 135th Street West.
- Design new horizontal and vertical alignment for 24" water line along 135th Street West.
- No easement descriptions are included in this supplemental agreement.
- Add quantities to the Engineer's Probable Construction Cost and Quantity sheets.

	Eng III	Eng II	Eng I	Survey Crew	Tech. III	Hours	Dollars
135th Street Water Line Re-Alignment							
Topographic Survey				40		40	$ 6,000.00
Horizontal Design		8	4		8	20	$ 1,888.00
Vertical Design		6	4		8	18	$ 1,672.00
Title Sheet/General Notes/Standard Sheets			2		6	8	$ 676.00
Quantities			4			4	$ 368.00
ULCC Plan Submittal			4		4	8	$ 696.00
ULCC Meeting (1)	2					2	$ 250.00
QA/QC	2					2	$ 250.00
Plan Submittal			4			4	$ 368.00
Preliminary Cost Estimates					4	4	$ 328.00
Quantities			4			4	$ 368.00
					Subtotal	**114**	**$ 12,864.00**
Reproduction Expenses							$ 636.00
					Subtotal	**0**	**$ 636.00**
						Total =	**$ 13,500.00**

The additional work provided in this supplemental brings TranSystems total design fee for this project to $40,900.

Please review these documents and direct any comments to myself at your convenience.

Sincerely,

TranSystems Corporation

By: Jeffrey R. Lackey, P.E.
Project Manager

Cc: Mr. Steve King

Agenda Item No. XII-8b.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Supplemental Agreement for Design Services for Meridian from 47th to 31st Street South (District IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the supplemental agreement.

Background: On December 13, 2005, the City entered into an agreement with Baughman Company, P.A. for designing Meridian between 47th Street South and 31st Street South. The fee was $377,000.

Analysis: Baughman has been asked to provide additional design services that were not included in the original scope of services. The expanded scope includes: additional waterline relocations; fee to Southern Star Pipeline for work to expose their facilities in private easement underlying the current road right-of-way; added rehabilitation work for the existing box culvert north of I-235; and right-of-way staking for property acquisitions outside that required in the original scope. A supplemental agreement with Baughman has been prepared to authorize the additional design services.

Financial Considerations: Payment to Baughman for this supplemental agreement will be made on a lump sum basis of $10,250 and will be paid by General Obligation Bonds. Funding is available within the approved project budget.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through a major traffic corridor.

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 agree-ment and authorize the necessary signatures.

Attachments: Supplemental agreement.

SUPPLEMENTAL AGREEMENT

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED DECEMBER 13, 2005

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

BAUGHMAN COMPANY, P.A.

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated December 13, 2005) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements for **MERIDIAN, 47TH TO 31ST STREET SOUTH (472 84302).**

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:

- Water line work to relocate the existing 8” water line on the west side of Meridian adjacent to the Wendy’s Restaurant.
- Vacuum excavation probes needed on the Southern Star Pipeline for redesign/relocation of the storm water system.
- Subcontract with Professional Engineering Consultants (PEC) for the rehabilitation of the box culvert crossing north of the Interstate.
- Additional right-of-way staking at the request of Property Management for property and easement acquisition purposes.

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

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:

472 84302 $10,250.00

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.

CITY OF WICHITA

_____
Carl Brewer Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY

_____
N. Brent Wooten, President

ATTEST:

_____

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Change Order: 37th Street North Improvement, between Maize and Tyler (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the change order.

Background: On April 21, 2009, the City Council approved a construction contract with APAC-Kansas, Inc. to improve 37th Street North, between Maize and Tyler. The work includes 5' wide sidewalks along the north and south sides of 37th Street North. It is proposed that 6' sidewalk be constructed along the north side for better pedestrian accessibility and 8' sidewalk along the south side because it is adjacent to a school campus and will connect to the school's bike path along Maize Road.

Analysis: A change order has been prepared for the additional work. Funding is available within the project budget.

Financial Considerations: The total cost of the additional work is $45,779 with 50% paid by City General Obligation bonds and 50% by the Water Utility. The original contract amount is $2,262,565. This change order represents 2.02% of the original contract amount.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic capacity and safety along a major transportation corridor.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

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

Attachments: Change order.

PUBLIC WORKS-ENGINEERING

June 12, 2009

CHANGE ORDER

To: APAC-Kansas, Inc., Shears Division
Change Order No.: 1
Purchase Order No.: 930385
CHARGE TO OCA No.: 706977

Project: 37th St. North, Maize to Tyler
Project No.: 472-84693
OCA No.: 706977 / 766235
PPN: 208443/490253

Please perform the following extra work at a cost not to exceed $45,778.68

City requests contractor to install a 6' wide sidewalk on the north side of 37th St. North from Maize to Tyler in lieu of 5' wide sidewalk for better pedestrian accessibility. The sidewalk on the south side of 37th St. N. will be construct 8' wide, rather than 5', due to the newly constructed Maize School campus and to connect the existing bike path along the east side of Maize Rd. to the future bike path that will be constructed on the west side of Tyler. Existing unit bid prices will be used.

OVERRUN

Sidewalk Construction, 4" (AE)	19,480.29 sf	@	2.35	=	$45,778.68

CIP Budget Amount: $4,710,000.00 (706977)

Consultant: MKEC
Total Exp. & Encum. To Date: $2,304,129.94 (706988)
CO Amount: $45,778.68
Unencum. Bal. After CO: $2,360,091.38 (706988)

Original Contract Amt.: $2,262,565.22

Current CO Amt.: $45,778.68
Amt. of Previous CO's: $0.00
Total of All CO's: $45,778.68
% of Orig. Contract / 25% Max.: 2.02%
Adjusted Contract Amt.: $2,308,343.90

Recommended By:

Greg Baalman, P.E. Date
Construction Engineer

Approved:

Jim Armour, P.E. Date
City Engineer

Approved:

Contractor Date

Approved:

Chris Carrier, P.E. Date
Director of Public Works

Approved as to Form:

Gary Rebenstorf Date
Director of Law

By Order of the City Council:

Carl Brewer Date
Mayor

Attest:_____
City Clerk

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Change Order: Douglas Street Drainage Outfall Phase 2 (Districts I & VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the change order.

Background: On April 8, 2008, the City Council approved a construction contract with W.B. Carter Construction Company for a storm water drain to improve drainage in Old Town and the area immediately east of Old Town. After the project was let, a 30" storm water sewer and 24" water line were redesigned to avoid conflict with a Westar electrical duct bank. Other utility conflicts required substantial field modification in the area of 3rd and Rock Island. Numerous water line adjustments were needed to replace connections to old water service lines.

Analysis: A change order has been prepared for the cost of the additional work. Funding is available within the project budget.

Financial Considerations: The total cost of the additional work is $19,956 with $12,968 paid by the Storm Water Utility and $6,988 paid by the Water Utility. The original contract amount is $1,931,000. This change order represents 1% of the original contract amount. Westar will reimburse the City $4,050 for eliminating the need to relocate their duct bank.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving drainage in Old Town.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

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

Attachment: Change order.

June 11, 2009

PUBLIC WORKS-ENGINEERING

CHANGE ORDER

To: WB Carter Construction Co., Inc.

Project: Douglas Ave. Drainage Outfall – Ph 2, Wabash WM Repl.; 3rd St SS Repl.; 3rd St N WM Extension

Change Order No.: 2
Purchase Order No.: 800407
CHARGE TO OCA No.: 660798 - $12,968.00
636197- $ 6,520.00
636198- $ 468.00

Project No.: 468-84060a
OCA No.: 660798/636197/636198/620475
PPN: 864501/778587/778588/667593

Please perform the following extra work at a cost not to exceed $19,956.00

Provide modifications to underground utilities per attachment. Revise project completion date to June 30, 2009 due to additional work and weather delays.

CIP Budget Amount: $7,840,000.00 (660798) $570,000.00 (636197); $135,000.00 (636198) Consultant: Baughman **Total Exp. & Encum. To Date: $7,289,337.54 (660798)** **$515,710.75 (636197); $131,190.06 (636198)** **CO Amount: $19,956.00** **Unencum. Bal. After CO: $550,662.46 (660798);** **$47,769.25 (636197); $3,341.94 (636198)**	Original Contract Amt.: $1,931,000.00 Current CO Amt.: $19,956.00 **Amt. of Previous CO's: $218,903.80** **Total of All CO's: $238,859.80** **% of Orig. Contract / 25% Max.: 12.37%** **Adjusted Contract Amt.: $2,169,859.80**

Recommended By:

_____ _____
Greg Baalman, P.E. Date
Construction Engineer

Approved:

_____ _____
Jim Armour, P.E. Date
City Engineer

Approved:

_____ _____
Contractor Date

Approved:

_____ _____
Chris Carrier, P.E. Date
Director of Public Works

Approved as to Form:

_____ _____
Gary Rebenstorf Date
Director of Law

By Order of the City Council:

_____ _____
Carl Brewer Date
Mayor

Attest:_____

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Change Order: Washington at Waterman Intersection Improvement (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the change order.

Background: On February 3, 2009, the City Council approved a construction contract with Cornejo & Sons, Inc. to reconstruct the intersection of Washington and Waterman. The project includes the installation of new street lights. An additional street light is needed west of the intersection to improve pedestrian safety. Also, an additional 7.26 lineal feet of 48" water line is needed to connect to an existing water line.

Analysis: A change order has been prepared for the cost of the additional work. Funding is available within the project budget.

Financial Considerations: The total cost of the additional work is $16,843 with $12,017 paid by Sedgwick County and $4,826 by the Water Utility. The original contract amount is $2,601,133. This change order represents less than 0.1% of the original contract amount.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving a street in the Intrust Bank Arena area.

Legal Considerations: The Law Department has approved the change order as to legal form.

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

Attachment: Change order.

PUBLIC WORKS-ENGINEERING

May 12, 2009

CHANGE ORDER

To: Cornejo & Sons, Inc.

Change Order No.: 2
Purchase Order No.: 930134
CHARGE TO OCA No.: 706997=$12,017.00
633806=$ 4,826.14

Project: Washington, Lewis to English; SE Waterline Phase C; SS Modifications
Project No.: 472-84657
OCA No.: 706997/751422/633806/633807/20532
PPN: 208462/485313/758004/759005/668650

Please perform the following extra work at a cost not to exceed $16,843.14

Traffic Engineering requests adding a street light fixture just west of the Washington and Waterman intersection to improve lighting at that corner. Provide one street light fixture, conduit and wire on the south side of Waterman in a location as directed by the Engineer. An additional 7.26 lineal feet of 48" water line pipe is required to make up the difference in pipe lengths between the previous Waterman (McLean to Washington) and current Washington (Waterman to Lewis) Southeast Transmission Line Projects.

ADD ITEMS:					
Lump Sum Bid Items (706997)	Quantity		Unit Price		
Street Light, Conduit w/Wire	1 LS	@	$12,017.00	=	$12,017.00
ADD ITEMS:					
Lump Sum bid Items (633806)					
48" WL Connection (7.26lf)	1LS	@	$ 4,826.14	=	$4,826.14
					$16,843.14

CIP Budget Amt: $1,611,742 (706997); $7,325,000 (751422); $1,115,000 (633806); $364,000 (633807); $75,000 (620532) $37,872,124.80 (792422)
Original Contract Amt.: $2,601,132.93
Consultant: PEC
Current CO Amt.: $16,843.14
Total Exp. & Encum. To Date: $1,416,876.48 (706997) $932,409.58 (633806)
Amt. of Previous CO's: $7,801.08
CO Amount: $16,843.14
Total of All CO's: $24,644.22
Unencum. Bal. After CO: $182,848.52 (706997) $212,764.28 (633806)
% of Orig. Contract / 25% Max.: 0.95%
Adjusted Contract Amt.: $2,625,777.15

Recommended By:

Greg Baalman, P.E. Date
Construction Engineer

Approved:

Jim Armour, P.E. Date
City Engineer

Approved:

Contractor Date

Approved:

Chris Carrier, P.E. Date
Director of Public Works

Approved as to Form:

Gary Rebenstorf Date
Director of Law

By Order of the City Council:

Carl Brewer Date
Mayor

Attest: _____
City Clerk

Agenda Item No. XII-9d.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Change Order: Central Corridor Railroad Improvement (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

- -

Recommendation: Approve the change order.

Background: On March 8, 2005, the City Council approved a construction contract with Dondlinger & Sons, Inc. to construct Central Corridor Railroad Improvements. The BNSF Railway Company has required that security gates and fencing be installed at each end of the project to prevent vehicular and pedestrian access to the elevated railroad. In addition, at the time of plan development, the standard BNSF design specifications did not provide for sealing cracks in the bridge walkways which could lead to concrete spalling and trip hazards. The BNSF standard procedure now requires sealing.

Analysis: A change order has been prepared to for the cost of the additional work. Funding is available within the project budget.

Financial Considerations: The total cost of the additional work is $76,020, with the total paid by available project funds. The original contract amount is $57,444,085. This change order plus previous change orders represents 0.13% of the original contract amount.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving east-west traffic flow and safety through the core area.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by city council policy.

Recommendations/Actions: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change order.

CITY OF WICHITA

PUBLIC WORKS-ENGINEERING

June 18, 2009

CHANGE ORDER

To: Dondlinger & Sons Construction Company, Inc.
Change Order No.: 12
Purchase Order No.: 500601
CHARGE TO OCA No.: 715235

Project: Central Corridor Railroad Grade Separation
Project No.: 87N-0160-01/472-84071
OCA No.: 715235/620431/636143
PPN: 242235/665551/775537

Please perform the following extra work at a cost not to exceed $76,020.00

Install security gates and fencing to prevent vehicular and pedestrian access to the elevated railroad as required by the BNSF Railway Co. Seal cracks in bridge walkways to improve safety and correct an issue in the standard BNSF design not discovered until after construction. Excessive cracking and flexing of the walkways may lead to concrete spalling and trip hazards. This is the standard repair now being employed by BNSF. The city's contractor was able to perform this work at lower cost than the BNSF. this is a savings to the City because the contract with BNSF requires the city to reimburse their expenditures.

ADD: New Line No. 0324, Access Road Security Gates, RFP #43	1.000 LS @$6,250.00=	6,250.00
ADD: New Line No. 0325, Security Fence, 9th to Murdock, RFP #71	1.000 LS @ 29,389.00=	29,389.00
ADD: New Line No. 0326, Seal Bridge Walkway Cracks, RFP #66	1.000 LS @ $40,381.11=	40,381.00
	Total Change Order No. 12:	**$76,020.00**

CIP Budget Amount: $61,250,000.00 (715235), $235,000.00 (620431), $275,000.00 (636143)
Consultant: HNTB & TranSystens
Total Exp. & Encum. To Date: $59,026,765.78 (715235)
CO Amount: $76,020.00
Unencum. Bal. After CO: $2,147,214.22 (715235)

Original Contract Amt.: $57,444,084.60

Current CO Amt.: $76,020.00
Amt. of Previous CO's: $1,785,189.07
Total of All CO's: $1,861,209.07
% of Orig. Contract / 25% Max.: 3.2%
Adjusted Contract Amt.: $59,305,293.67

Recommended By:

Michael G. Jacobs, P.E. Date
Construction Engineer

Approved:

Jim Armour, P.E. Date
City Engineer

Approved:

Contractor Date

Approved:

Chris Carrier, P.E. Date
Director of Public Works

Approved as to Form:

Gary Rebenstorf Date
Director of Law

By Order of the City Council:

Carl Brewer Date
Mayor

Approved:

Attest:_____
City Clerk

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Intelligent Transportation Systems – Traffic Signal Controllers (All Districts)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the payment.

Background: On January 15, 2002, the City Council approved an agreement with Sedgwick County and the Kansas Department of Transportation (KDOT) to jointly fund a five-year program for regional Intelligent Transportation Systems (ITS) projects. One of the projects is to upgrade the existing traffic signal system. The first phase of the project included the purchase of 150 traffic controller units, which are currently being installed. It is proposed that an additional 300 units be acquired using the existing purchase order with Gades Sales Company with no increase in per unit cost. The existing PO800182 was bid on FB800035 and was awarded to Gades Sales Company in February, 2008.

Analysis: The existing traffic signal system (originally installed in the late 1980's) consists of Model 170S traffic signal controllers. These controllers are no longer being supplied nor supported by traffic signal vendors/suppliers. The traffic signal industry is migrating toward the Model 2070 traffic signal controllers.

Financial Considerations: The cost to purchase 300 controller units and conflict monitors is $771,600 with $154,320 paid by General Obligation bonds and $617,280 paid by 2003 federal earmark funding. The cost is included in the Capital Improvement Program and is part of the ITS project approved by the City Council on September 19, 2006.

Goal Impact: This project addresses the Efficient Infrastructure goal by upgrading the City's traffic signal system

Legal Considerations: None.

Recommendations/Actions: It is recommended that the City Council approve the purchase of traffic signal controllers from Gades Sales Company in the amount of $771,600.

Attachments: None.

Agenda Item No. XII-13.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: HOME Program CHDO Funding; Wichita Indochinese Center (District I)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve the funding allocations and the funding agreements, and authorize the necessary signatures.

Background: On July 10, 2007, the City Council approved a HOME Program funding agreement in the amount of $36,500 for Wichita Indochinese Center (WIC), a City-designated Community Housing Development Organization (CHDO), in order to partially finance the construction of one single-family home in the Northeast Local Investment Area.

Analysis: WIC could not go forward with the project, as previously approved, but is now in position to begin work. However, it has become necessary to establish a new funding agreement, as the previous funding agreement has expired. Further, due to requirements imposed as part of the environmental review required under the HOME Program regulations, it is also necessary to increase the funding for the project. Therefore, staff is requesting approval of a new funding agreement for the project, in an amount not to exceed $50,000. Staff is also requesting approval of CHDO operational support funding in the amount of $8,540 for WIC, available from the 2007 program year, in connection with this housing development project. The home to be constructed with HOME funding under the subject agreement will be sold to an income-eligible, owner-occupant family receiving down payment and closing costs assistance through the City's HOMEownership 80 Program.

Financial Consideration: The total cost of the WIC project is estimated to be $116,800. HOME funding may be utilized to cover the costs of construction, site improvements, developer fees and other eligible project soft costs. WIC will leverage HOME funds with private sector construction loans. The increased funding proposed for the project is available in the form of unallocated entitlement funds available due to the repayment of HOME Program-related loans.

Goal Impact: The project will contribute to the goal of Economic Vitality and Affordable Living.

Legal Consideration: The funding agreements have been approved as to form by the City Law Department. The CHDO project funding is provided as part of the City's mandatory 15% set-aside for eligible CHDO's, from the 2007 program year.

Recommendation/Actions: It is recommended that the City Council approve the funding allocations and the funding agreements, and authorize the necessary signatures.

Attachment: Funding agreements.

GRANT AGREEMENT
Between

THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT
A
PARTICIPATING JURISDICTION
And

Wichita Indochinese Center, Inc.,

A Community Housing Development Organization

HOME Investment Partnerships
Program

2007 CHDO Set-Aside Funding

Housing and Community Services Department
City of Wichita
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3700
Fax (316) 462-3719

No._____

AGREEMENT

THIS CONTRACT, dated to be effective July 21, 2009, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Wichita Indochinese Center, Inc. (WIC, a Community Housing Development Organization, hereinafter referred to as the “Developer”).

WITNESSETH THAT:

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 (CHDO Funding); 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;

WHEREAS, the Developer shall be the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of this agreement;

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

SECTION 1. SCOPE OF SERVICES. The Developer must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than $10,000 shall require a written contract amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 2. TIME OF PERFORMANCE. The services of the Developer are to begin as soon as possible, on the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract. The construction phase of this contract shall be complete by December 31, 2010, with all expenses incurred on or before that date. This contract shall otherwise remain in force through the period of affordability, which will end on a date up to 15 years following the date of completion of the final unit, as defined in 24 CFR 92.2, depending on the amount of HOME funds invested in each unit of construction. Deed restrictions filed in connection with each unit will specify the applicable affordability period for the unit.

SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Developer shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Developer shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Developer, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Developer shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Developer or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Developer or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or Developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Developer receiving funds pursuant to this contract.

B. The Developer further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Developer will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Developer has fifteen or more employees, the Developer is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Developer's office.

SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

B. Assurance of Compliance.

1. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to

the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3. The Developer agrees to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Developer agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Developer will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Developer which involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event the Developer sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Developer shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or redeveloper to assume the same obligations as the Developer for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or redeveloper shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS. Except with respect to the rehabilitation or construction of residential property containing less than twelve units, the Developer and all contractors and subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874, and 40 U.S.C. 276c) as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto, and the Fair Labor Standards Act of 1938, As Amended (29 U.S.C. 201, et seq.). **The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of more than 11 units, and is exempt from Davis-Bacon Act wage requirements.**

The Developer shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,
contracting or subcontracting, promotion, demotion,
transfer, layoff, termination, rates of pay or other
forms of compensation, and selection for training
including apprenticeship.

The Developer shall incorporate the foregoing requirements of this paragraph in all of its contracts, except those exempt by law, and will require all of its contractors to incorporate such requirements in all subcontracts.

SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Developer and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is $2,500 or more, including, but not limited, to the following:

a) The Developer will not discriminate against any employee or applicant for employment because of disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Developer agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their disability in all employment practices, including, but not limited to, the following:

Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

c) The Developer agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Developer's compliance with The Rehabilitation Act. Such notices shall state the Developer's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Developer shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract, shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

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 $50,000.00 as referenced in Exhibit B. Contract payments above $50,000.00 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.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Developer, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 30, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Developer agrees to re-pay any HOME funds advanced under this agreement. The Developer further agrees to transfer ownership of any properties that are the subject of incomplete projects that have been funded under this agreement to the City, or as directed by the City, in order to facilitate project completion, as required under the HOME regulation.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Developer mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than $10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of $100,000, the Developer agrees to comply with all applicable standards, orders, or

regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), As Amended.

SECTION 16. FEDERAL ENVIRONMENTAL REVIEW AND APPROVAL PROVISIONS.

A. In accordance with 24 C.F.R. Part 58.22, the developer agrees to refrain from undertaking any physical activities or choice limiting actions until the City has approved the project's environmental review. Choice limiting activities include acquisition of real property, leasing, repair, rehabilitation, demolition, conversion, or new construction. This limitation applies to all parties in the development process, including public or private nonprofit or for-profit entities, or any of their contractors.

B. This agreement does not constitute an unconditional commitment of funds or site approval. The commitment of funds to the project may occur only upon satisfactory completion of the project's environmental review in accordance with 24 CFR Part 58 and related environmental authorities. Provision of funding is further conditioned on the City's determination to proceed with, modify, or cancel the project based on the results of the environmental review.

C. The Developer agrees to abide by the special conditions, mitigation measures or requirements identified in the City's environmental approval and shall ensure that project contracts and other relevant documents will include such special conditions, mitigation measures or requirements.

D. Until the City has approved the environmental review for the project, neither the Developer nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance to the project or activity.

E. The Developer agrees to provide the City with all available environmental information about the project and any information which the City may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the City's opinion is needed to fulfill its obligations under HUD environmental requirements.

F. The Developer agrees to advise the City of any proposed change in the scope of the project or any change in environmental conditions, including substantial changes in the nature, magnitude, extent or location of the project; the addition of new activities not anticipated in the original scope of the project; the selection of an alternative not in the original application or environmental review; or new circumstances or environmental

conditions which may affect the project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity.

SECTION 17. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (3.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (3.) as amended, and Section 504 of the Rehabilitation Act of 1973.

The Section 504 implementing regulations (24 CFR Part 8) apply to this project. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant's disability so requires. Should a prospective buyer request a modification to make a unit accessible, the owner/developer must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Developer shall be permitted to depart from the standard in order to have the buyer/occupant's needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 18. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Developer, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all right, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Developer pursuant to this contract.

SECTION 19. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Developer shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

(a) Developer is required to relate financial data to performance data and develop unit cost information whenever practical.

(b) Developer's financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the developer

shall not be required to establish an accrual accounting system. The Developer may develop such accrual data for reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. The Developer shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the developer from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Developer. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the City guarantees or insures the repayment of money borrowed by the Developer, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.

(d) The City may require adequate fidelity bond coverage where the Developer lacks sufficient coverage to protect the City's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

SECTION 20. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 21. LEAD-BASED PAINT POISONING PREVENTION. Should HOME funding be utilized for rehabilitation of existing structures, the Developer will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Community Development Act of 1992. Compliance will include all activities required by these regulations. The Developer also agrees to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Developer will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The project will comply with section 92.355 of the HOME rule. The Developer will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Developer will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the regulations found at 24 CFR part 35.

SECTION 22. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Developer. If the contract is terminated by the City as provided herein, the Developer will be paid an amount which bears the same ratio to the total compensations the services actually performed bear to the total services of the Developer covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Developer shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Developer during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. If this contract is terminated due to the fault of the Developer, Section 13 herein relative to termination shall apply.

SECTION 23. REFUND OF INCOME. All income earned by the project as a result of entitlement funds (program income) shall be accounted for and refunded to the City as it is received, unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 24. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Developer agrees to transfer ownership of any real property purchased with HOME funds under this agreement or any prior written agreement, to the City, upon written notification. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 25. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 26. AFFORDABILITY. Housing assisted with HOME funds must meet the affordability requirements specified at 92.254 of the HOME Regulation (24 C.F.R. Part 92). HOME funds must be re-paid to the City if the housing does not meet the affordability requirements for the specified time period. The City will file a mortgage on each property upon purchase for redevelopment, and will hold said mortgage until such time as the property is re-sold to an owner-occupant homebuyer receiving a down payment and closing costs assistance loan through the City's HOMEownership 80 Program. The City will hold the long-term deed restriction placed on the property following the sale of the home as described within this paragraph.

SECTION 27. DISBURSEMENT OF HOME FUNDS. The Developer may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing and Community Services Department, payments to the Developer will be provided on a reimbursement basis, up to two times per month. The amount of each request will be limited to the amount needed. Developer must provide detailed records to substantiate the amount of HOME funds requested under this agreement, and must retain records, such as invoices, to substantiate said amounts.

SECTION 28. PROPERTY AND HOUSING STANDARDS. Housing that is constructed or rehabilitated with HOME funds must meet all applicable codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. Newly

constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials (24 CFR 92.251), and be certified to be Energy Star compliant. (Developer to provide certification.)

SECTION 29. RELIGIOUS ORGANIZATIONS. Religious organizations may not require a beneficiary to participate in inherently religious activities, such as worship, religious instruction, or proselytizing.

Faith-based organizations may retain independence from Federal, state, and local governments to carry out their missions, including the definition, practice, and expression of its religious beliefs, provided that HOME funds do not financially support inherently religious activities. The organization's Board of Directors may not be selected based on religious practice. Religious references in the organization's mission statement and other governing documents are acceptable. 24 CFR 92.257(c).

Religious organizations must serve all eligible program beneficiaries without regard to religion, and may not restrict HOME-assisted housing to people of a particular religion or religious denomination. The eligibility of an applicant cannot be reliant on the applicant's participation in religious activities or programs supported by the organization, even if funded with other non-Federal sources.

SECTION 30. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

Wichita Indochinese Center, Inc.

_____
Signature

_____
Title of WIC Officer

_____
Date

CITY OF WICHITA, KANSAS
at the Direction of the City Council

_____
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 A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit B

PERFORMANCE CRITERIA
AND
CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and Wichita Indochinese Center, Inc., hereinafter referred to as the "City" and "Developer" (or WIC) respectively, that execution of this contract obligates the Developer to the following performance requirements.

The Developer, a Community Housing Development Organization (CHDO), is receiving this grant funding as CHDO Set-Aside Funding, under HOME regulations, as specified in 24 CFR 92.300.

In return for the $50,000 remuneration stated herein, the Developer agrees to undertake an affordable housing program, which will result in the construction of a single-family home to be located at 1920 N. Lorraine. Said home to be re-sold to an eligible owner-occupant homebuyer. Construction must commence by no later than December 31, 2009.

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.

I. Project Requirements

A. Project must conform to regulations under 24 CFR Part 92. The HOME Investment Partnerships Program regulation. Specific references can be found as follows:

24 CFR 92.250, Maximum Per Unit Subsidy: The amount of HOME funds invested per unit may not exceed the per-unit dollar limits established under section 221 (d)(3)(ii)of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the City of Wichita.

24 CFR 92.251, Property Standards: Housing constructed with HOME funds must meet all applicable local codes, ordinances and zoning ordinances at the time of project completion, and must comply with the current version of the CABO Model Energy Code. Housing must be inspected upon completion and throughout construction to verify compliance.

24 CFR 92.254(a)(2)(iii), Maximum Property Value: Housing created or acquired and rehabilitated with HOME funds must be modest in nature and affordable to a low-income buyer. The maximum purchase price or value cannot exceed 95 percent of median purchase price for the area, as determined by HUD.

24 CFR 92.352

B. Prior to executing any contracts for sale of the assisted properties the Developer must confirm that the City has certified that the applicant household meets the HOME Program income requirements and that the household's eligibility has been verified through a review of source documentation in accordance with 24 CFR 92.203.

II. Program Content

A. The use of HOME funds provided under this contract will be limited to the subsidy of actual costs involved in the acquisition of property, construction of homes, purchase and re-habilitation of existing homes, demolition, and the developer fees earned in connection with completion of each unit.

Funding under this agreement will be provided in the form of 0% loans to complete projects as approved on a case-by-case basis by the Department of Housing and Community Services.

Developer shall obtain construction loans in order to leverage HOME funds construction investment, in an amount equivalent to 50% or more of the appraised value of the home to be constructed.

III. Administration

The WIC President/Executive Director will supervise operations and administration on a day-to-day basis. The WIC 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 WIC for this project will be $50,000.00, in the form of a forgivable development subsidy loan, to be used as set forth in the sections entitled Budget and Method of Payment.

B. Budget: The City shall pay the Developer as hereinafter set out; the maximum of $50,000.00 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 the completed project. The developer fee will be pre-determined at the onset of the construction of the home, and will be paid upon the closing of the sale of the home. Proceeds from the sale of the home, 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 homes/projects, and extended grant authority as a result of repayments generated by the sale of completed homes. 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, Demolition, Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)	$50,000.00
TOTAL	$50,000.00

C. Method of Payment: The Developer agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME.

1. The City and WIC also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $10,000, other than those within the scope of this agreement must be approved by the City Council.

2. WIC will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this agreement will be retained in the Developer's files for five (5) years after the final audit of expenditures made under this contract and throughout the applicable period of affordability.

3. Construction costs to be reimbursed based on direct costs and percentage completion, as determined by the City, of each project. Fully documented

draw requests will be processed on Friday of the week submitted. Payment will be available for receipt by the Developer within three weeks of the Friday on which the draw request was received.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.

2. **The Developer will provide, for the year ending June 30 of each year, beginning June 30, 2010, an annual report of the HOME funded portion of the program**. It shall indicate yearly expenditures, cumulative expenditures since program inception and balance remaining. Yearly expenditures will be identified by category of expenditure (acquisition, rehabilitation, developers fee, accounting & legal, architects). The report shall also indicate, by race and sex, the number of households/persons served during the year with HOME funds. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority-and women-owned businesses. The City reserves the right to change the due dates and contents of reports to be submitted under this clause.

   The financial reports will be provided until such time as there are no expenditures. The owner shall continue to provide a report that indicates, by race and sex, the number of households/persons served during the year with HOME funds, when applicable. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority- and women-owned businesses. Said report shall be due to the City of Wichita **July 10** of each applicable year.

3. Additionally, a narrative or other description of progress may be provided.

4. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports.

IV. Conditions Precedent to Construction

The following items (matters) must be provided (completed) prior to beginning construction on the project and related improvements:

A. The Developer agrees to execute a document placing deed restrictions and covenants against properties on which projects are constructed, in order to comply with 24 CFR 92.254. Said restrictions and covenants will be in force until such time as the property/home is re-sold, as specified in this agreement.

B. Provide a detailed overall project/unit budget, including but not limited to a Sources and Uses of Funds Statement.

C. Provide Certificates regarding Debarment and Suspension, and/or lists of contractors/subcontractors to be utilized and other file documentation as requested by the City in order to comply with HOME regulations.

D. Submit final construction plans, specifications and a budget for each home to be constructed for approval by the Housing and Community Services Department, City of Wichita. (Not in connection with plan review or obtaining applicable permits.) Individual home construction may not begin until a Notice to Proceed has been issued by the Housing and Community Services Department.

E. Provide evidence that ownership interest in the property vests in WIC, Inc.. (Copy of Deed, and/or Title Insurance Binder/Policy)

F. The Developer will notify the City of any properties it contracts to purchase, or intends to develop with funding provided under this agreement, in order for the City to complete the environmental reviews required under **24 CFR 92.352**, as specified in Section 16 of this contract, prior to closing of the purchase. Developer agrees to comply with all requirements imposed on a particular project/site as a result of the environmental review process.

G. The Developer will obtain any and all permits required by the City prior to undertaking construction.

H. The Developer will obtain construction loans from private sector financial institutions, in an amount equivalent to a minimum of 50% of the appraised value of the home to be developed/constructed on each project site.

I. The Developer will obtain the approval of the City of Wichita Housing and Community Services Department for any changes to the previously submitted project plan. This includes changes in costs, as well as changes in the project scope or plans.

J. The Developer shall obtain Builder's Risk Insurance for the home to be constructed, in an amount sufficient to repay the amount of the face amount of the first mortgage construction loan, plus anticipated interest expense, and the total anticipated HOME funds investment in the project. The Developer is also responsible for workers compensation insurance and general liability insurance.

K. The Developer shall not undertake construction, reconstruction or rehabilitation on a site contaminated by hazardous materials without undertaking a Phase I

environmental assessment of the site in a form, scope and substance satisfactory to the City. The Developer shall consult with Wichita/Sedgwick County Department of Environmental Health regarding the necessity and scope of the environmental assessment. The Developer shall remediate or cause to be remediated all contaminants and hazardous materials as required or recommended by the Wichita/Sedgwick County Department of Environmental Health. Such remediation shall be accomplished in accordance with the requirements of applicable environmental laws of the Kansas Department of Health and Environment, the federal Environmental Protection Agency and the U.S. Department of Housing and Urban Development. During the process of redevelopment and/or construction, should the Developer discover any soil staining or odors emanating from soil at the project site, the Developer must cease work immediately, and notify the City.

L. The Developer shall submit any subdivision plats, street designs, variance requests, lot split requests, or any other documentation regarding zoning adjustments required to carry out construction of a home or a group of homes to the Housing and Community Services department for review and approval, prior to submission to the Wichita/Sedgwick County Metropolitan Area Planning Department, or the Wichita/Sedgwick County Metropolitan Area Planning Commission.

V. Other Program Requirements

A. The Developer agrees to adopt affirmative marketing procedures and requirements and prepare a written Affirmative Marketing Plan for this project. The Affirmative Marketing Plan must be available for public inspection in the Developer's office. The plan must contain specific steps and actions that the Developer will take to provide information and otherwise attract eligible persons for all racial, ethnic, and gender groups in the housing market area to the available housing. Specific activities that must be included in the Developer's Affirmative Marketing Plan include:

1. Display of the Equal Housing Opportunity logo, slogan or statement in all advertising material related to this project.

2. Display of the HUD Equal Housing Opportunity logo, slogan or statement at the construction site, from the start of construction, and properly maintained throughout the construction and rental period.

3. No later than 90 days prior to engaging in marketing activities, the Developer should notify the City of Wichita Housing and Community Services Department, either in writing or by telephone of the dates on which the Developer plans to: (1) begin initial marketing activities; (2) accept purchase contracts; and (3) start initial sales.

4. The Developer must begin marketing activities 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

5. The Developer must market/advertise the housing opportunity utilizing publications, such as community newspapers, in an effort to attract income-qualified homebuyers.

B. The City and agents designated by the City shall, at all reasonable times during the development of the project and construction or rehabilitation, have the right of entry and free access to the project and all parts thereof, and the right to inspect all work done, labor performed and materials furnished in or about the project and all records relative to all payments made in connection with the project.

The Developer shall have the responsibility of maintaining the property until such time as the development project is complete and the newly constructed home has been sold to a HOME-eligible buyer.

C. Site Improvements: The City may require a Developer to undertake site improvements upon completion of construction. Site improvements include, but are not limited to, seeding or sodding of front yards, and 4' chain-link fencing. Said site improvements must be undertaken when seasonally appropriate. The City reserves the right to make an exception on a case-by-case basis.

D. Warranty: The Developer must provide a one-year construction warranty for all homes constructed or rehabilitated under this contract.

E. Developer is required to obtain insurance coverage for all perils, including vandalism, in an amount equivalent to the amount of the first mortgage construction loan balance plus interest, and the total HOME funds investment, in the event that a home constructed under this agreement has not sold, as of the day of completion, and the Builder's Risk Insurance Policy will no longer provide adequate coverage.

F. Developer is responsible for retaining all records in connection with projects undertaken with HOME funding provided under this contract, including but not limited to, real estate purchase contracts, invoices, property development documentation, infrastructure development, and other records as further specified in this agreement.

G. Developer shall apply for City incentives, as available, for projects undertaken with funding provided under this agreement, including property tax rebates and permit fee waivers.

VI. Program Evaluation

The City shall evaluate this project based on the objectives stated in this Exhibit. Failure by the Developer to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Developer on a pro rata basis with level of service. The Developer's records are subject to review by the City to ensure the accuracy and validity of information reported in progress reports.

VII. Project Close-Out

The Developer shall provide all records and reports as deemed necessary by the City, in order to satisfy federal requirements related to final reporting and project close-out, in accordance with established HUD procedures.

Exhibit C

BUDGET

Contractual Expenses: (Acquisition, Demolition, Rehabilitation or Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)	
	$50,000.00
TOTAL	$50,000.00

GRANT AGREEMENT
Between

THE CITY OF WICHITA
HOUSING SERVICES DEPARTMENT
A
PARTICIPATING JURISDICTION
And
Wichita Indochinese Center, Inc.
(The Agency)
A
COMMUNITY HOUSING DEVELOPMENT ORGANIZATION

Operating Support Funding
2007-2008

HOME Investment Partnerships
Program

Housing and Community Services Department
City of Wichita
332 N. Riverview
Wichita, KS 67203
Phone (316) 268-4688
Fax (316) 268-4219

No._____

AGREEMENT

THIS CONTRACT, dated to be effective the 21st day of July, 2009, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Wichita Indochinese Center, Inc. (hereinafter referred to as the "Agency").

WITNESSETH THAT:

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 Agency 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 92.208; and

WHEREAS, the City deems the activities to be provided by the Agency as consistent with, and supportive of the HOME Investment Partnership Program, and the Agency requires the financial assistance of the City to initiate its activities; and

WHEREAS, the cooperation of the City and the Agency is essential for the successful implementation of an Affordable Housing Program;

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

SECTION 1. SCOPE OF SERVICES. The Agency must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than $10,000 shall require a written contract amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 2. TIME OF PERFORMANCE. The services of the Agency are to begin July 21, 2009 and end no later than August 30, 2010, and shall be undertaken to accomplish the purposes of this contract.

SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Agency shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Agency shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Agency, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Agency shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Agency or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Agency or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Agency or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or Agency of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or

activity" is defined as any function conducted by an identifiable administrative unit of the Agency receiving funds pursuant to this contract.

B. The Agency further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Agency will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Agency has fifteen or more employees, the Agency is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Agency's office.

SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

B. Assurance of Compliance.

1. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135 and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.

3. The Agency agrees to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both

employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Agency agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Agency will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Agency that involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event the Agency sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Agency shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or Agency to assume the same obligations as the Agency for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or Agency shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS. Except with respect to the rehabilitation of residential property containing less than twelve units, the Agency and all contractors

and subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto. **The Agency shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of any building and is exempt from Davis-Bacon Act wage requirements.**

The Agency shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,
contracting or subcontracting, promotion, demotion,
transfer, layoff, termination, rates of pay or other
forms of compensation, and selection for training,
including apprenticeship.

The Agency shall incorporate the foregoing requirements of this paragraph in all of its contracts, except those exempt by law, and will require all of its contractors to incorporate such requirements in all subcontracts.

SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Agency and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is $2,500 or more, including, but not limited, to the following:

a) The Agency will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Agency agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices, including, but not limited to, the following:

Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

c) The Agency agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Agency's compliance with The Rehabilitation Act. Such notices shall state the Agency's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Agency shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

SECTION 12. PAYMENTS.

A. Compensation and Method of Payment. Compensation and method of payment to the Agency, 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 Agency will not exceed $8,540 as referenced in Exhibit B.

C. Restriction on Disbursements. No Entitlement Funds shall be disbursed to the Agency 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.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Agency, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 26, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Agency agrees to re-pay any HOME funds advanced under this agreement.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Agency mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than $10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of $100,000, the Agency agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), as amended.

SECTION 16. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (7.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (7.) as amended.

The Section 504 implementing regulations (24 CFR Part 8) apply to this project. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant’s disability so requires. Should a prospective buyer request a modification to make a unit accessible, the owner/Agency must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Agency shall be permitted to depart from the standard in order to have the buyer/occupant’s needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 17. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Agency, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all right, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Agency pursuant to this contract.

SECTION 18. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Agency shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

(a) Agency is required to relate financial data to performance data and develop unit cost information whenever practical.

(b) Agency's financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the Agency shall not be required to establish an accrual accounting system. The Agency may develop such accrual data for reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. The Agency shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the Agency from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Agency. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the City guarantees or insures the repayment of money borrowed by the Agency, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.

(d) The City may require adequate fidelity bond coverage where the Agency lacks sufficient coverage to protect the City's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

SECTION 19. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 20. LEAD-BASED PAINT POISONING PREVENTION. The Agency will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Development Act of 1992. Compliance will include all activities required by these regulations. The Agency also agrees to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Agency will comply with the Lead-Based paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The Project will comply with section 92.355 of the HOME rule. The Agency will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Agency will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (P.L. 102-550), and the regulations found at 24 CFR part 35.

SECTION 21. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Agency. If the contract is terminated by the City as provided herein, the Agency will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Agency covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Agency shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Agency during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract.

If this contract is terminated due to the fault of the Agency, Section 13 herein relative to termination shall apply.

SECTION 22. REFUND OF INCOME. All income earned by a project as a result of entitlement funds shall be accounted for and refunded to the City quarterly or used to offset project cost unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 23. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Agency agrees to transfer ownership of any real property purchased with HOME funds under this agreement, to the City. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 24. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 25. DISBURSEMENT OF HOME FUNDS. The Agency may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing Services Department, payments to the

Agency will be provided on a reimbursement basis. The amount of each request will be limited to the amount needed.

SECTION 26. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

Wichita Indochinese Center, Inc.
(the Agency)

_____
Signature

_____
Title of Officer

_____
Date

CITY OF WICHITA, at the Direction of the City Council

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

REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit B

PERFORMANCE CRITERIA
AND
CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and the Agency, hereinafter referred to as the "City" and "Agency," respectively, that execution of this contract obligates the Agency to the following performance requirements.

HOME operating funds in the amount of $8,540 shall be used for the operating expenses of the Agency. Eligible costs are outlined in 24 CFR Part 92, dated September 16, 1996 as amended, as specifically outlined at 24 CFR 92.208.

I. Administration

The Agency's Executive Director will supervise operations and administration on a day-to-day basis. The Agency's Board of Directors is ultimately responsible for program administration.

A. Funding

It is mutually agreed by and between the City and the Agency that the total HOME funds available to the Agency will be $8,540, to provide operational support for HOME-related, single-family housing development activities. Specific use of the funding to be set forth in the sections entitled, Budget and Method of Payment. Funding provided under this contract incorporates the funding application issued in connection with the funding, and the Agency's response, unless superceded by this contract. Equipment purchased with funding provided under this contract must be returned to the City of Wichita for disposition.

B. Budget

The City shall pay the Agency as hereinafter set out; the maximum of $8,540.00 for the program described in this contract. Said funding shall be used as follows:

Professional Services; Salaries Support	$8,540.00
TOTAL	$8,540.00

C. Method of Payment

The Agency agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME. The Agency agrees that all payments under this contract will be on a reimbursement basis. The Agency shall submit a request for reimbursement on a

monthly basis, by no later than the 30th of each month. Upon review of the reimbursement request by the Housing Services Department, the City will proceed to make payment directly to the Agency for all eligible and adequately documented expenses.

1. The City and Agency also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Adjustments between existing budget categories can be made administratively. However, changes greater than $10,000 must be approved by the City Council.

2. The Agency will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditures made under this agreement will be retained in the Agency's files for five (5) years after the final audit of expenditures made under this contract and throughout the applicable period of affordability. Documentation of eligible costs will include, but is not limited to: vendor invoices, purchase orders, receipts and payroll records. The City shall retain all such documentation for audit purposes.

3. A maximum of 1/12 of the budgeted amount for salaries will be paid out per month for salaries expenses.

4. The Agency may request a cash advance in the amount of no more than 1/12 of the total amount of the contract. Cash advances will be deducted from the total amount of funding provided under this contract.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.

2. **The Agency will provide, for the year ending June 30 of each year, beginning June 30, 2009, and for each year this contract is in effect, an annual report of the HOME funded portion of the program**. The report will consist of a narrative or other description of activities undertaken during the year. Said report shall be due on **July 10** of each year during the contract term.

3. The **Agency** will maintain records documenting receipts of program income and expenditures of the same. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports, for a period of 5 years, following the expiration of this contract.

II. Program Evaluation

The City shall evaluate this project based on the objectives stated in Section I.B. of this Exhibit. Failure by the Agency to provide the level of service stated herein may result in a

determination by the City to modify the level of payment to the Agency on a pro rata basis with level of service. The Agency records are subject to review by the City to ensure the accuracy and validity of information reported in monthly progress reports.

Exhibit C

BUDGET

Professional Services; Salaries Support	$8,540.00
TOTAL	$8,540.00

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council Members

SUBJECT: False Alarm Reduction Contract Amendment

INITIATED BY: Wichita Police Department

AGENDA: Consent

Recommendation: Approve the contract amendment.

Background: On December 16, 2008, the City Council approved a contract (BP800138) between the City of Wichita and AOT Public Safety for False Alarm Registration & Management Services. The terms of the contract included a provision that AOT would contract with a third party collection agency to collect past-due fee and service charges; and return all insufficient fund checks (NSF) to the City of Wichita Alarm Administrator for forwarding to the City check collection contractor.

Analysis: The Controller's Office has requested that the City of Wichita's contracted service providers handle all collection efforts on past due invoices and NSF checks. The City has existing contracts with service providers for the collection of outstanding accounts receivable balances and the collection of returned checks for utilization by all City departments. The amendment to the alarm contract provides for the collection of accounts receivable and returned checks to be conducted by the City's established providers, rather than requiring AOT to pursue a third-party contract for these services.

Financial Considerations: The proposed amendment will have no financial impact on the terms of the contract.

Goal Impact: The Controller's Office recommends this amendment to improve efficiency, tracking and monitoring of the collection of outstanding accounts receivable balances and returned checks. The impact to the Department's Safe and Secure initiative should be negligible.

Legal Considerations: The amended contract is approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the contract amendment between the City of Wichita and AOT Public Safety Corporation.

Attachments: Contract Amendment for BP800138.

CONTRACT AMENDMENT
for
FALSE ALARM REGISTRATION & MANAGEMENT SERVICES

Blanket Purchase Order Number BP800138

THIS CONTRACT AMENDMENT is entered into this 21st day of July, 2009 by and between the **CITY OF WICHITA, KANSAS**, A Municipal Corporation, hereinafter called "**CITY**", and **AOT PUBLIC SAFETY CORPORATION,** 103 Paul Mellon Court, Waldorf, Maryland, hereinafter called "**CONTRACTOR**".

WITNESSETH THAT:

WHEREAS, on the 16th of December 2008, the above-named parties entered into a contract for False Alarm Registration & Management Services for the **City of Wichita** as per the Formal Proposal – FP800083 and specifications dated October 17, 2008; and

WHEREAS, the specifications for Formal Proposal – FP800083 specified the terms of the contract were to be the CITY directed the contractor to engage in third party collection services with a third party collection agency to collect past-due fee and service charges; and pursuant to Appendix C, section 2.04 contractor is to return NSF checks to the City of Wichita Alarm Administrator for forwarding to the City check collection contractor; and

NOW, THEREFORE, the above named parties hereby agree, covenant and contract with each other that the terms of the original contract dated the 16th day of December 2008, are hereby reaffirmed and re-executed for and on behalf of these parties except for the following amendment, modification and change.

Remove from Scope of Services, the following statement;
-Contractor agrees to prepare and negotiate a collection agreement with a City-approved third-party collection agent. Contractor will submit collection data to a third party collection agency, post payments back into the ATB system and monitor the collection agreement. Contractor will include a confidentiality statement regarding CITY data.

Remove from Appendix C, section 2.04 the following item;
Contractor is to return NSF checks to the City of Wichita Alarm Administrator for forwarding to the City check collection contractor; and

Replace both items with the following statement;
-The City of Wichita will handle all collection efforts on past due invoices and NSF

checks. The City will notify the Contractor of any and all payments received on past due invoices. Contractor will post payment, minus any settlements to the invoice. The City will notify the Contractor of any NSF checks received. Contractor will remove payment from the ATB system and add additional service fees. The City will notify the Contractor of any and all payments received on NSF checks and service fees. The Contractor will post the payment in their system.

No Arbitration. The **CONTRACTOR** and the **CITY** shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

Representative's Authority to Contract. By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.

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

ATTEST:

Janis Edwards
Deputy City Clerk

THE CITY OF WICHITA

Melinda A. Walker
Purchasing Manager

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

AOT PUBLIC SAFETY CORPORATION

Authorized Corporate Representative

Print Signature Name

Exhibit A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such

provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Agenda Item No. XII-18.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Homelessness Prevention and Rapid Re-Housing Program Data Collection and Evaluation Contract (All Districts)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve a sole source contract with the United Way of the Plains (UWP), to administer the data collection and evaluation component of the Homelessness Prevention and Rapid Re-Housing Program (HPRP).

Background: On March 19, 2009, the U.S. Department of Housing and Urban Development (HUD) issued a Notice for the Homelessness Prevention and Rapid Re-Housing Program (HPRP). Under that notice Wichita is eligible for $1,168,490 in funds which were made available through the American Recovery and Reinvestment Act of 2009. The allocation was based on HUD's Emergency Shelter Grant allocation formula. As required, the City has submitted an implementation plan to HUD which includes homelessness prevention, rapid re-housing, data collection/evaluation and administration activities.

Analysis: In the HUD Notice, grantees are advised that data collection and evaluation is required for operating the program. It further states that "data collection and evaluation includes costs associated with operating HUD-approved homeless management information systems for purposes of collecting unduplicated counts of homeless persons and analyzing patterns of use of HPRP funds." Most local communities have a Homeless Management Information System (HMIS) because it is required for the Continuum of Care funding for the homeless. In Wichita, the UWP operates the HUD-approved HMIS.

Because the UWP operates the HUD-required system, a sole-source contract is proposed for the UWP to operate the data collection and evaluation of the HPRP. Under this contract the UWP will receive data from providers of homelessness prevention and rapid re-housing services, ensure that all data is properly entered into the system, and prepare required quarterly reports. Because this is a new program and actual costs are unknown, the contract includes a not to exceed amount of $116,849, which is 10% of the City's allocation. Expenditures will be monitored by the City and UWP and funds not needed for data collection and evaluation will be transferred to the prevention or re-housing categories.

Legal Considerations: The City Attorney's office has reviewed and approved the contract as to form.

Goal Impact: The HPRP data collection and evaluation will contribute to the Quality of Life goal.

Financial Considerations: The City has no financial obligation related to this contract.

Recommendations/Actions: It is recommended that the City Council approve a sole source contract with the United Way of the Plains (UWP), to administer the data collection and evaluation component of the Homelessness Prevention and Rapid Re-housing Program (HPRP).

Attachments: Contract document.

CONTRACT AGREEMENT

between

THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT

and

UNITED WAY OF THE PLAINS

For

Data Collection and Evaluation

for the

Homelessness Prevention and Rapid Re-Housing Program

August 1, 2009 – October 31, 2012

Housing and Community Services Department
Community Investments Division
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3722
Fax (316) 462-3719

No.

PART A
AGREEMENT

THIS CONTRACT (hereinafter the "Agreement") entered into this 1st day of August, 2009 by and between the City of Wichita, Kansas (hereinafter the "City") and United Way of the Plains (hereinafter the "Non-profit Non-profit subgrantee"), located at 245 N. Water, Wichita, KS 67202.

WITNESSETH THAT:

WHEREAS, the City of Wichita has entered into a funding Agreement with the United States of America for the Department of Housing and Urban Development (hereinafter referred to as HUD) for the execution of projects and activities under Title XII of Division A of the American Recovery and Reinvestment Act of 2009, and

WHEREAS, the City has entered into a contract with the United States of America for the implementation of a program of local assistance for the City of Wichita for implementation of the Homelessness and Rapid Re-Housing Program; and

WHEREAS, the cooperation of the City and the Non-profit subgrantee is essential for the successful implementation of Homelessness Prevention and Rapid Re-Housing Program (HPRP);

WHEREAS, the department of Housing and Community Services is authorized to act on behalf of the City in implementing this Agreement; and

WHEREAS, on May 12, 2009 the Wichita City Council approved the substantial amendment to the Consolidated Plan to implement the HPRP; and

NOW, THEREFORE, the parties hereto do mutually agree that this Agreement is entered into predicated upon the following terms and/or conditions, all and every one of which the parties hereto agree to observe and perform:

1. SCOPE OF SERVICES

1. Scope of Services: The United Way of the Plains will collect and evaluate data from providers of homelessness prevention and rapid re-housing services, enter or ensure that all data is entered into the Homeless Management Information System (HMIS), prepare required quarterly reports, and submit reports to the City of Wichita by the 5th calendar day of the month following the end of the quarter. The required data elements that will be collected in the HMIS for HPRP are included in the 2009 revised HMIS Data and Technical Standards.

2. Revision of Scope: The City may revise the approved objectives, accomplishments, and budget items in PARTS B AND C when necessary. The Non-profit subgrantee may request a budget revision at any time. However, prior to any purchases under the new budget, the City must approve the revision in writing. Approval may be in the form of a letter, a fax, or an email.

2. COMMENCEMENT AND COMPLETION

1. Time of Performance: The services of the Non-profit subgrantee are to commence as soon as practicable on the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract through a period of 39 months ending no later than October 31, 2012, unless an extension has been approved by the City by that date OR unless the Agreement is terminated earlier in accordance with other provisions herein.

3. COMPENSATION AND USE OF FUNDS

Regulation for Use of Funds: The use of funds received pursuant to this Agreement shall be in accordance with the requirements of the American Recovery and Reinvestment Act of 2009, other regulations governing the use of contract funds, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. ***It is the Non-profit subgrantee's responsibility to read, understand, and comply with these regulations and to timely provide any information necessary to enable the City to comply with its own reporting obligation .***

1. Uniform Grant Administrative Requirements and Cost Principles: During the administration of this contract, the Non-profit subgrantee shall comply with, and adhere to:
   a. Office of Management and Budget (OMB) Circular No. A-110, Uniform Administrative Requirements of Grants and Other Agreements with Institution of Higher Education, Hospitals and Other Nonprofit Organizations; and
   b. OMB Circular No. A-122, Cost Principles for Nonprofit Organizations; and
   c. 24 CFR 85.44

2. Total Payments: Total amount of funds provided by the City to the Non-profit subgrantee under this Agreement shall not exceed $116,849. At the sole discretion of the City, any funds deemed to be in excess of the need to comply with the scope of services, will be de-obligated from this Agreement and made available for other eligible program costs, as determined appropriate by the City.

3. Reimbursement Requests: This is a cost-reimbursement Agreement. Disbursement of funds under this Agreement may be requested only for necessary, reasonable, and allowable costs described in PART B, and for which the Non-profit subgrantee has made payment during the period of performance set forth in Section 2.1 above. The City agrees to reimburse the Non-profit subgrantee for such costs, and payment shall be made upon receipt of a request for reimbursement from the Non-profit subgrantee specifying the services performed or expenses incurred. The Non-profit subgrantee must use the reimbursement request form provided by the City (Part D). All requests for reimbursement must be accompanied by documentation of payment for eligible expenses (i.e.,

invoices, receipts, bills from vendors, copies of checks, time sheets, etc.) and other supporting documentation such as reports submitted.

4. Double Reimbursement: The Non-profit subgrantee shall not claim reimbursement from the City under this Agreement for any portion of its obligations that has been paid by another source of revenue.

5. Restriction on Disbursements: No entitlement funds shall be disbursed to a Non-profit subgrantee or contractor except pursuant to a written contract, which incorporates by reference the general conditions of this Agreement. Disbursements may be suspended or terminated under this Agreement upon refusal to accept any additional conditions that may be imposed by the City at any time or if the entitlement funds to the City of Wichita under the Federal Act(s) are suspended or terminated.

6. Withholding Payments: All payments to the Non-profit subgrantee are subject to the Non-profit subgrantee's compliance with this Agreement. A breach of the Agreement is grounds for non-payment until such corrective measures are made which will resolve Agreement non-compliance.

7. Closeout Reimbursement: Closeout billings are to be submitted 10 working days after termination of the contract, or as further defined by HUD. If not submitted, the unexpended funds shall revert to the City of Wichita.

8. Program Income: This Agreement will not generate Program Income.

9. Refund of Income: This Agreement will not generate Earned Income.

4. USE AND DISPOSITION OF PROPERTY

1. Property Disposition: It is expected that the Non-profit subgrantee will make purchases of property or services related to the implementation of this Agreement. Such purchases will remain the property of the Non-profit subgrantee until such time as they are no longer needed. At such time, the Non-profit subgrantee will inquire of the City as to the appropriate disposition of such property.

2. Disposition of Real Property: It is not anticipated that this Agreement will require the purchase of real property.

5. ASSIGNMENTS

1. Assignability: Neither the City nor the Non-profit subgrantee shall assign, sublet, or transfer their interest in this Agreement without the prior written consent of the other.

2. Subcontracting/Third Party Contracts: The very nature of certain project activities requires subcontracting. Third parties may be procured for a variety of services, including but not limited to demolition, construction, and renovation; legal services; and engineering services. The Non-profit subgrantee agrees to furnish the City with a copy of each third party contract that it executes in the performance of the work to be undertaken within the scope of this Agreement. Furthermore, the Non-profit subgrantee must incorporate in any and all such contracts provisions which will obligate each of its subcontractors or partners to comply with all federal laws and regulations applicable to this program. Any third party contract that is not in accordance with the outlined budget in this Agreement shall be subject to the advance, written approval of the City. Furthermore, the City shall not be obligated or liable hereunder to any party other than the Non-profit subgrantee.

The Non-profit subgrantee agrees to incorporate or cause to be incorporated in all third party contracts or subcontracts funded under the HPRP, provisions requiring all applicable Federal, State, and local laws, rules, and regulations to be adhered to in accordance with all parts of this Agreement, and the Non-profit subgrantee agrees to require and monitor compliance by all contractors, subcontractors, and other third parties.

6. AUDITS AND INSPECTIONS

Audits and Inspections: The Non-profit subgrantee must establish an adequate accounting system on a current basis in accordance with generally accepted accounting principles and standards and in accordance with any specific requirements of the Controller of the City of Wichita. Non-profit subgrantee personnel will make available to City staff and any other auditor authorized by the City, all accounting records needed to conduct an evaluation of the accounting system and accounting records. If any portion of the funds approved by this contract is subcontracted to other organizations for the delivery of objectives and criteria, the Non-profit subgrantee will ensure that the fiscal and performance records of the subcontractor will be available for inspection by Comptroller Office personnel or duly authorized auditors, by including appropriate clauses in all of its subcontracts.

The Non-profit subgrantee shall comply as applicable with the provisions of OMB Circular No. A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations. A single or program-specific audit is required if $500,000 or more in Federal awards are expended during the fiscal year.

A Non-profit subgrantee receiving less than $500,000 in Federal funding shall not be required by the City to undergo an annual independent audit of its expenditures under this Agreement. Furthermore, no expenditures with respect to any such audit undertaken by the Non-profit subgrantee of its own initiative shall be chargeable to the funds under this Agreement. All audit reports are due on or before one year after the close of the program year. Before the due date, the Non-profit subgrantee should submit to the City (a) an audit report or (b) a letter giving the reason for non-compliance with the due date and requesting an extension of time with a specific date the report will be submitted. In event of the latter, the City will respond in writing to the Non-profit subgrantee to approve or disapprove the request.

7. NON-PROFIT SUBGRANTEE RESPONSIBILITIES

1. Compliance with Laws: All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments. Further, the Non-profit subgrantee agrees to perform services pursuant to the provisions of this contract and Federal and City regulations, rules and policies and special assurances included therein.

2. Non-Municipal Personnel and Services: All services required herein will be performed by the Non-profit subgrantee under the direction of its Board of Directors or other governing body. Any services outside the budget line items or the Scope of Services, which the Non-profit subgrantee deems necessary to assign to a subcontractor, must first have written approval from the City unless otherwise specified in PART B.

8. DOCUMENTATION AND RECORD KEEPING

1. Establishment and Maintenance of Records: The Non-profit subgrantee shall establish and maintain records as prescribed by HUD and/or the City, with respect to all matters covered by this contract.

2. Record Requirements: The Non-profit subgrantee shall maintain all records required by the American Recovery and Reinvestment Act of 2009. The City will advise of specific record format details as they become available.

3. Retention: The Non-profit subgrantee shall retain all records of all project expenses, activities, correspondence, records pertinent to any and all expenditures incurred under this Agreement, and any other information as requested by the City or by HUD in accordance with the American Recovery and Reinvestment Act of 2009.

4. Documentation of Costs: All costs shall be supported by properly executed documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

5. Inventory Management: The Non-profit subgrantee must submit an annual statement identifying the status of all equipment and non-real property items purchased under this Agreement by the termination date or by a mutually agreed upon alternate date. The status report should inventory all equipment and non-real properties purchased under this Agreement and state the condition of the equipment and its location.

9. PROGRAM EVALUATION

1. Performance Measures: During the Grant Agreement period, the Non-profit subgrantee agrees to work diligently towards the objectives and projected accomplishments outlined in PART B, and to assist the City in demonstrating compliance with expectations of the HPRP data collection and evaluation guidelines. If it is determined that any of expectations cannot be achieved within the identified timeframe, a request for an extension must be submitted to the City for consideration. However, in no instance may data collection reflect expenditures incurred after September 30, 2012. Such a request must identify the reasons for the extension and must be accompanied by a proposed project timeline that can reasonably be accomplished. Failure to meet the objectives in PART B will represent grounds for imposition of sanctions as found in Section 11.2.

2. Reporting: The Non-profit subgrantee shall be required to submit quarterly performance reports as specified in PART B no later than the 5th calendar day of the month following the end of the quarter (unless otherwise specified), as well as other information and data required by the City to respond to current HUD regulations Performance and financial reports must be received before the City can process reimbursements. As stated in Section 11.2, sanctions will be imposed upon the Non-profit subgrantee for failure to satisfy report due dates.

3. Client Data: The Non-profit subgrantee agrees to maintain client data according to the Homeless Management Information System requirements and the specific requirements of the HPRP as specified in the Program Notice and any subsequent notices.

4. Performance Reports: The Non-profit subgrantee agrees to submit program activity and progress reports to the City on a quarterly, or more frequent basis if requested, and other reports as may be required or requested by the City or HUD. Performance Reports will include, as applicable, at a minimum:

a. The City's Performance Report form provided as PART D;

b. A description of any anticipated problems or obstacles, and a plan for how those future obstacles will be addressed;
c. A description of how objectives specified for achievement by that date have been met, OR a description of obstacles that have prevented those objectives from being met, how those obstacles are being addressed, and a new anticipated date of completion for those objectives;
d. Other supportive information or documentation, as applicable; and
e. Any other reports or documentation as requested by the City or HUD.

6. Final Performance Reports: Final performance/project reports will include the above-listed components and any other pertinent material requested by the City or HUD. This final report will be due no later than October 31, 2012 or the date of final reimbursement, whichever is later.

10. PROGRAM MONITORING

1. General: City staff will evaluate progress based on the objectives, criteria, work schedule and budget in PART B, to determine if it is consistent with the initial purpose of the project. All data necessary to review and monitor program progress as determined by the City will be made available to City personnel. This includes, but is not limited to, performance records and interviews with Non-profit subgrantee staff as required by the City.

2. Financial Monitoring: City staff shall monitor, review, and evaluate the financial procedures of the Non-profit subgrantee through documents submitted to the City and/or on-site monitoring. The Non-profit subgrantee shall provide and make available to the City such reports and records that will be necessary for a proper financial evaluation. The City will provide notice to the Non-profit subgrantee prior to on-site monitoring visits.

3. Other Funding: If the attached Budget Detail, PART C, shows that funding for this program is to be provided from other sources, the receipt and expenditure of such funds must be adhered to as specified and is subject to review. All accounting records necessary to complete a review of other funding sources must be made available. Any change in the attached budget that affects funding from sources other than the City must have prior written authorization from the City.

4. Programmatic Monitoring: City staff shall monitor, review, and evaluate the Non-profit subgrantee's adherence to the expectations in this Agreement. Fiscal reports will be reviewed and evaluated in terms of the total budget and accomplishments in relationship to expenditures. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, data, and information as may be necessary.

   The Non-profit subgrantee shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

5. Projects Involving Construction or Renovation: This Agreement will not involve construction or renovation.

6. Monitoring Letters and Reports: Written reports of the City's monitoring findings will be provided to the Non-profit subgrantee within 30 days of an official monitoring visit. Such reports will note outstanding performance as well as findings or concerns and recommendations for improvement.

7. Non-profit subgrantee Response: The Non-profit subgrantee shall have 30 days from the receipt of a financial or programmatic monitoring visit letter to address any findings or concerns.

11. TERMINATION, SANCTIONS AND CLOSEOUTS

1. Termination: In the event that the Non-profit subgrantee fails to comply with any term of this Agreement, the City may suspend or terminate this Agreement, in whole or in part, or take other remedial action or may terminate this Agreement in accordance with applicable federal regulations.

   Furthermore, funding to be made available by the City under this Agreement has been approved by the U.S. Congress and grant allocations made by HUD.

   In the event of termination of this Agreement by the City due to Non-profit subgrantee noncompliance as set forth above, the Non-profit subgrantee shall refund to the City all unexpended monies provided under the Agreement. At the City's discretion, the Non-profit subgrantee may also be required to refund all funds awarded during the period of this Agreement that have already been spent by the Non-profit subgrantee and reimbursed by the City.

   Should the City desire to terminate this Agreement for noncompliance, it shall first give written notice of the reason for proposed termination. The notice shall set forth the following:
   a. Reasonable description of the default/reason for termination;
   b. Demand for a cure; and
   c. Statement of reasonable time within which a cure must be affected. Such reasonable time will be presumed to be not less than five, nor more than fifteen, business days. Such times shall be measured from the actual receipt of said notice.

2. Imposition of Sanctions: The City reserves the right to impose sanctions on the Non-profit subgrantee for the violation of any of the terms of this Agreement, failure to comply with any terms in this Agreement, or failure to undertake the project in a timely manner. If the City elects to impose sanctions they may include, but are not necessarily limited to, suspension of grant operations until corrective measures are implemented, withholding any and all project funds, termination of the Agreement, requiring the Non-profit subgrantee to return funds already received, or barring the Non-profit subgrantee from future funding.

3. Closeout: The Non-profit subgrantee's obligation to the City shall not end until all closeout requirements are completed. Activities during the close-out period shall include, but are not limited to, submitting a final reimbursement request and final activity/progress report to the City, disposing of program assets (including the return of all equipment, program income balances, and receivable accounts to the City), and determining the custodianship of records. Grant closeout is not considered final until the City is fully satisfied that project objectives have been met, at which point the City will issue a close-out/grant finalization letter to the Non-profit subgrantee.

12. LAWS, REGULATIONS AND SPECIAL CONDITIONS

The information in this section is included for the convenience of the Non-profit subgrantee and to inform the Non-profit subgrantee of the specific statutory and regulatory requirements to which the acceptance of funds makes them subject. ***For the actual regulatory or statutory requirements, the Non-profit subgrantee should consult the actual laws, regulations, and documents referenced in this Article.*** In addition to the other requirements set forth herein, the Non-profit subgrantee shall likewise comply with the applicable provisions of Section VII of the "Notice", entitled Other Federal Requirements. All of the referenced regulations are available online, and upon request, the City may provide these materials to the Non-profit subgrantee.

1. Section 3 - Employment Opportunities for Area Residents: The Non-profit subgrantee and any authorized subcontractor shall be subject to all applicable provisions of the Housing and Community Development Act of 1974 (42 U.S.C. 5301), as amended, including but not limited to Executive Order 11246 and Section 3 of the Housing and Community Development Act of 1974, "Employment Opportunities for Business and Lower Income Persons in connection with Assisted Projects" (HUD 24 CFR 135). These require that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area, and contracts for work in connection with the project be awarded to businesses that are located in, or owned in substantial part by, persons residing in the area of the project. In all solicitations for bids, the contractor must, before signing the Contract, provide a preliminary statement of the work force needs and plans for possible training and employment of lower income persons. When a Non-profit subgrantee utilizes the bidding procedure to obtain bids, the invitation or solicitation for bids shall advise prospective contractors of the requirements of Section 3 and the clause (Attachment A) shall be inserted as a component part of any contract or subcontract.

2. Environmental Review: Under 24 CFR 50.19(c)(1), activities funded under the HPRP Notice are categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). Moreover, consistent with the provisions for administrative and management expenses, tenant-based rental assistance, and supportive services in 24 CFR 50.19(b)(3), (11), and (12), the eligible activities to be assisted under the HPRP Notice are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and are not subject to environmental review under the related laws and authorities.

3. Section 504 - Persons with Disabilities: The Non-profit subgrantee, in the implementation of projects funded by this Agreement and in all of its other operations, will comply with all requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) (and the implementing regulations at 24 CFR 8), the Americans with Disabilities Act of 1990 (PL 101-336), and all state and local laws requiring physical and program accessibility to people with disabilities, and agrees to defend, hold harmless, and indemnify the City from and against any and all liability for any noncompliance on the part of the Non-profit subgrantee.

4. Discrimination Prohibited: No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable

administrative unit of the Non-profit subgrantee receiving funds pursuant to this contract.

The Non-profit subgrantee further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements" as provided in Attachment A.

5. Nepotism: No person shall be employed or contracted with if a member of his or her immediate family is on the Board of Directors of the Non-profit subgrantee or is employed in an administrative capacity by the Non-profit subgrantee. For the purposes of this section, “immediate family” includes: wife, husband, daughter, son, mother, father, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, aunt, uncle, niece, nephew, stepparent and stepchild; “administrative capacity” includes those who have selection, hiring, supervisory or operational responsibility for the program.

6. Conflict of Interest: The Non-profit subgrantee hereby severally warrants that it will establish and adopt safeguards to prohibit members, officers, and employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Further, In accordance with 24 CFR 570.611, no member, officer, or employee of the Non-profit subgrantee who exercises any functions or responsibility with respect to the program during his or her tenure, or for one year thereafter, shall have any financial interest or benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, either for themselves or those with whom they have family or business ties, for work to be performed in connection with the program assisted under this Agreement.

7. Political Activity Prohibited:
   a. None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for partisan political activity.
   b. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

8. Lobbying Prohibited: None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas. The Non-profit subgrantee shall assure compliance with the regulations at 24 CFR Part 87 by submitting, and requiring all applicable subcontractors to submit, a certification of compliance with this provision.

   The Non-profit subgrantee certifies to the best of its knowledge and belief that:

   a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Non-profit subgrantee to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the Federal contract, grant, loan, or cooperative agreement, the Non-profit subgrantee will complete and submit Standard Form LLL., "Disclosure Form to Report Lobbying," in accordance with its instruction.

9. Drug-Free Workplace: The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, et seq.) and HUD's implementing regulations at 24 CFR part 21 apply to HPRP.

10. Religious Organizations: The HPRP notice allows religious organizations to participate in projects funded with Federal resources, and prohibits discrimination against an organization on the basis of the organization's religious character or affiliation.

13. MISCELLANEOUS CLAUSES AND NOTICES

1. Findings Confidential: Except as provided by law, all reports, information, data, and documentation prepared or assessed by the City or the Non-profit subgrantee under this Agreement are confidential. The Non-profit subgrantee agrees that the reports shall not be made available to any individual or organization without the prior written approval of the City.

2. Dissemination of Information: The Non-profit subgrantee, at such times and in such forms as HUD and/or the City may require, shall furnish to HUD and/or the City, such statements, records, reports, data and information as HUD and/or the City may request pertaining to matters covered by this contract. All reports, information, data and other related materials, prepared or assembled by the Non-profit subgrantee under this contract, are confidential and shall not be made available to anyone other than an appropriate agency of the United States government without the prior written approval of the City or as set forth in K.S.A. 45-201 et. seq.

3. Identification of Documents and Projects: All projects, reports, maps, news releases and/or other documents undertaken as part of this contract, other than documents exclusively for internal use with City staff, shall contain the following posted information at the project site or the front cover or title page of any reports or documents, or in the case of maps, in an appropriate block: "City of Wichita", then name of the Non-profit subgrantee, and, in the case of written material, the month and year of preparation and the following information regarding Federal assistance: "The (preparation/funding) of this project, report, map, document, etc., was financed (in whole or in part) through a grant from the U.S. Department of Housing and Urban Development and the City of Wichita.

4. Training Required: It shall be the responsibility of the Non-profit subgrantee to participate in all appropriate training conducted by the department of Housing and Community Services or approved by the City of Wichita. The City shall provide timely notice of all training.

5. Copyrights: If this contract results in a book or other material that may be copyrighted, the author is free to copyright the work, subject to HUD regulations. HUD and the City reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material that can be copyrighted.

6. Patents: Any discovery or invention arising out of or developed in the course of work aided by this contract shall promptly and fully be reported to HUD and the City for determination by HUD and

the City as to whether patent protection on such invention or patent discovery shall be sought and how the rights in the invention or discovery, including rights under the patent issued thereon, shall be disposed of and administered, in order to protect the public interest. All such determinations are subject to HUD regulations.

7. Anti-Trust Litigation: For good cause, and as consideration for executing this contract, the Non-profit subgrantee, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Non-profit subgrantee pursuant to this contract.

14. APPENDICES

All attachments referenced in this Agreement, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Attachment A – Section 3 Clause
Attachment B – Revised Non-Discrimination and Equal Employment Opportunity Statement for Contracts or Agreements
Part A – Agreement
Part B – Performance Criteria/Objectives
Part C – Budget Detail
Part D – Performance Reports
Part E – Request for Reimbursement/Cost Control Statement

16. AUTHORIZATION TO ENTER INTO CONTRACT

The undersigned person signing as an officer on behalf of the Non-profit subgrantee, a party to this Agreement, hereby severally warrants and represents that said person has authority to enter into this Agreement on behalf of said Non-profit subgrantee and to bind the Non-profit subgrantee to this Agreement, and further that said Non-profit subgrantee has authority to enter into this Agreement and that there are no restrictions or prohibitions contained in any article of incorporation or bylaw against entering into this Agreement.

NON-PROFIT SUBGRANTEE

Patrick Hanrahan, President United Way of the Plains	Date

CITY OF WICHITA

Carl Brewer, Mayor	Date

ATTEST:

Karen Sublett, City Clerk	Date

APPROVED AS TO FORM:

Gary E. Rebenstorf, City Attorney City of Wichita	Date

SECTION 3 CLAUSE

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

H. Section 3 Goals. The City of Wichita in accordance with 24 CFR Part 135, has establish goals for CDBG assisted projects. All Section 3 covered contracts shall include the Section 3 clause as shown above. Consistent with existing Federal, State and local laws and regulations, the City of Wichita has set the following goals to comply with the Section 3 requirements:

- Committing to employ Section 3 residents at a rate of 30% of the aggregate of new hires for housing and community development assisted projects
- Committing to contract a minimum of 10% of the total dollar amount of all other Section 3 covered contracts, such as community development infrastructure improvements or professional services.

Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of CDBG funds for the following activities:

- Housing construction
- Housing rehabilitation
- Other public construction

REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, Non-profit subgrantee, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, Non-profit subgrantee, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor, Non-profit subgrantee or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor, Non-profit subgrantee or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor, Non-profit subgrantee or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor, Non-profit

subgrantee or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor, Non-profit subgrantee or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor, Non-profit subgrantee or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Nondiscrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor, Non-profit subgrantee or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor, Non-profit subgrantee or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier;

5. If the contractor/Non-profit subgrantee fails to comply with the manner in which the contractor/Non-profit subgrantee reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, Non-profit subgrantees, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors, Non-profit subgrantees or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Part B
PERFORMANCE CRITERIA AND OBJECTIVES

PROGRAM NAME: HOMELESSNESS PREVENTION AND RAPID RE-HOUSING PROGRAM DATA COLLECTION AND EVALUATION

NON-PROFIT SUBGRANTEE INFORMATION

NAME:	United Way of the Plains
CONTACT PERSON(S):	Beth Oaks
ADDRESS:	245 N. Water
PHONE:	(316) 267-1321
FAX:	(316) 267-0937
EMAIL:	boaks@unitedwayplains.org
CONTRACT PERIOD:	August 1, 2009 – October 31, 2012
FUNDING SOURCE(S):	Homelessness Prevention and Rapid Re-Housing Program

HUD OUTCOME PERFORMANCE MEASUREMENTS

Program Description: The United Way of the Plains will receive data from providers of homelessness prevention and rapid Re-Housing services, enter all data into the Homeless Management Information System (HMIS), prepare required quarterly reports, and submit reports to the City of Wichita by the 5th calendar day of the month following the end of the quarter.

Program Content: The Non-profit subgrantee shall provide such information as is required for reporting on activity associated with the Homelessness Prevention and Rapid-Re-Housing Program.

Goal: The Non-profit subgrantee will provide timely and accurate reports.

Objectives:
1. To provide information for HUD to assess the impact of the Homelessness Prevention and Rapid Re-Housing Program in Wichita.
2. To provide information for the public to assess the impact of the Homelessness Prevention and Rapid Re-Housing Program in Wichita.
3. To provide data that will assist local and federal officials in analyzing patterns of use of Homelessness Prevention and Rapid Re-Housing Program funds.

Outcome Measurements:

- 100% of reports will be submitted timely

Program Administration: The Non-profit subgrantee contact person will supervise operations and administration on a day-to-day basis.

Procurement Methods: The Non-profit subgrantee shall use its own procurement practices which comply with applicable state and local laws, rules and regulations so long as those practices do not unduly limit bidding competition. Additionally, procurement made with federal grant funds shall adhere to the standards set forth in 24 CFR part 84 which implements OMB Circular A-110.

1. Maintaining a code or standard of conduct governing the performance of the Non-profit subgrantee's officers, employees or agents engaged in awarding and administering contracts supported with Federal funds.

2. Advertising of procurement transactions as appropriate without regard to a dollar value in a manner allowing maximum free and open competition. No sole source procurement (obtaining only one bid) is permitted without prior approval for all purchases except small purchase procedures defined in A-110.

3. Invitations for bids shall be based on specifications developed by the Non-profit subgrantee. Said specifications shall be detailed to the extent necessary to solicit comparable bids without unduly limiting competitive bidding.

4. Bids will be awarded on the basis of the lowest and best bid, price and other factors considered.

5. The Non-profit subgrantee agrees to purchase services, goods and materials on an "as needed basis" and at the "lowest price obtainable".

6. The Non-profit subgrantee will maintain procurement files outlining procurement efforts for each bid, including names and addresses of bidders solicited, information pertaining to advertising, and solicitation of Small and Emerging Business Enterprise participation. Information will be maintained of bid tabulations, justification of bid award, letters of notification to bidders regarding bid award, and any other pertinent information.

Funding: It is mutually agreed by and between the City and the Non-profit subgrantee that for reimbursement of eligible and necessary expenses up to $116,849, the Non-profit subgrantee will provide data collection and evaluation services for the Homelessness Prevention and Rapid Re-Housing Program. Said funds will be used as set forth in the sections entitled Budget and Method of Payment. Any costs in excess of $116,849 are the responsibility of the Non-profit subgrantee.

Budget: The City shall pay the Non-profit subgrantee as hereinafter set out the maximum of $116,849 for the program described in this contract. Funding under this agreement shall be originally budgeted as detailed in PART C. Adjustments to budget line items and categories may be made with agreement by both parties to this Agreement.

Method of Payment: The Non-profit subgrantee agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HUD's requirements for the Homelessness Prevention and Rapid Re-Housing Program.

1. The City and the Non-profit subgrantee also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $10,000, other than those within the scope of this agreement must be approved by the City Council.

2. The Non-profit subgrantee will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this Agreement will be retained in the Non-profit subgrantee's files for three years after the final audit of expenditures made under this contract, or until such time as HUD subsequently determines.

Part C
BUDGET DETAIL

FUND	**DEPT./DIVISION**	**PROJECT NAME**	**OCA**
Homelessness Prevention and Rapid Re-Housing Program	Housing & Community Services	United Way of the Plains: Data Collection and Evaluation	

Account Classification			**Budget**
CONTRACTUAL SERVICES			
	2395	Non-profit subgrantee – Travel	
	2396	Non-profit subgrantee – Conferences	
	2595	Non-profit subgrantee – Professional Fees	
	2599	Professional Services	$28,500
	2703	Maintenance – Equipment	
	2795	Non-profit subgrantee – Equipment Rent	
	2895	Non-profit subgrantee – Building Maintenance	
	2902	Advertising	
	2917	Printing and Photocopying	
	2996	Non-profit subgrantee – Other Contractuals (Customizations)	12,000
TOTAL CONTRACTUAL SERVICES			**$40,500**
COMMODITIES			
03	3109	Non-profit subgrantee – Software	$12,641
	3195	Non-profit subgrantee – Office Supplies	$6,000
	3995	Non-profit subgrantee – Miscellaneous Commodities	
TOTAL COMMODITIES			**$18,641**
CAPITAL OUTLAY			**$24,500**
TOTAL CAPITAL OUTLAY			**0**
GRAND TOTAL			**$83,641**

Part D
REIMBURSEMENT REQUEST FORM
Appropriate documentation must be attached.

Date: _____

Agency	United Way of the Plains, 245 N. Water, Wichita, KS 67202		
Project Title	HPRP Data Collection and Evaluation	OCA	_____
Period	August 1, 2009 – October 31, 2012		
Vendor Code	806614/001		
Phone	267-1321-Office; 267-0937-Fax		

Account Classification			Budget	Request
CONTRACTUAL SERVICES				
	2395	Non-profit subgrantee – Travel		
	2396	Non-profit subgrantee – Conferences		
	2595	Non-profit subgrantee – Professional Fees		
	2599	Professional Services	$28,500	
	2703	Maintenance – Equipment		
	2795	Non-profit subgrantee – Equipment Rent		
	2895	Non-profit subgrantee – Building Maintenance		
	2902	Advertising		
	2917	Printing and Photocopying		
	2996	Non-profit subgrantee – Other Contractuals (Customizations)	12,000	
TOTAL CONTRACTUAL SERVICES			**$40,500**	
COMMODITIES				
03	3109	Non-profit subgrantee – Software	$12,641	
	3195	Non-profit subgrantee – Office Supplies	$6,000	
	3995	Non-profit subgrantee – Miscellaneous Commodities		
TOTAL COMMODITIES			**$18,641**	
CAPITAL OUTLAY			**$24,500**	
TOTAL CAPITAL OUTLAY			**0**	
GRAND TOTAL			**$83,641**	

Authorized Signature _____

Part E

PERFORMANCE DATA

Date _____

Quarterly Report Period:

Number of HMIS entries made:

Number of unduplicated clients served in the quarter:

£ All required data submitted to the City.

Agenda Item No. XII-19.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: HOMEownership 80 Program; Maximum Purchase Price (Districts I, III, IV, V, VI)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve the increase in the maximum price for homes purchased through the HOMEownership 80 Program, to an amount not to exceed $95,550.

Background: The City of Wichita's HOMEownership 80 Program was established in 1992 in order to assist low-to-moderate income families with the purchase of a home. Zero-interest, deferred payment loans are provided for the down payment and closing costs associated with the purchase. The program is funded from the City's annual HOME Investment Partnerships Program grant, as a component of the Consolidated Plan, and is currently available in the City's Redevelopment Incentives Area and Local Investment Areas. The current maximum purchase price, $85,700 was approved by the City Council on October 19, 2004, and applies to existing homes, as well as newly constructed homes.

The City's designated Community Housing Development Organizations (CHDOs) continue to be active in the development and construction/rehabilitation of homes within the City's Local Investment Areas and the Redevelopment Incentives Area. The HOMEownership 80 Program assists families in the purchase of homes constructed or rehabilitated by CHDOs, as well as homes constructed or rehabilitated by private developers or other non-profit developers accessing development subsidy financing provided through the City's HOME Program.

Analysis: According to data recorded by the Wichita Area Association of Realtors' Multi-List System, and provided through the Wichita State University Center for Real Estate, the average price for existing homes sold in the Wichita area over the last 12 months was $121,584. Further, Sedgwick County home prices appreciated 3.1 percent during each of the past five years, according to the Center. Also, County records reflect that appraised values have increased for homes constructed with financing provided through the City's HOME Program. Based on this information, and the increasing cost of construction, a price adjustment for the HOMEownership 80 Program is being recommended.

Housing and Community Services proposes an increase in the maximum HOMEownership 80 purchase price limit to $95,550, which represents an increase of approximately 11%. This amount represents approximately 85% of the value of a newly constructed three-bedroom, two-bathroom home, with a basement and a two-car garage, as determined by a professional real estate appraiser utilizing the cost approach. Staff does not anticipate that the proposed increase will eliminate potential buyers, but it will bring the program more in line with the local real estate environment, and will provide for homeownership opportunities at all levels of the low-to-moderate income range. It may also attract persons at the higher end of the eligibility scale which will serve to further the concept of mixed income housing.

It is also proposed that a provision be included for new home purchases, to allow a homebuyer to purchase additional bedroom and/or bathroom finish, at builder cost, over and above the proposed purchase price limit, provided the homebuyer is willing and able to finance or pay for the additional construction cost.

Financial Consideration: An increase in the maximum purchase price of a home purchased through the HOMEownership 80 Program will provide for additional recovery of funding upon the sale of homes developed by CHDOs and other developers utilizing HOME Program subsidy financing. The additional recovery will provide for the development of additional homes to be constructed under the various funding agreements.

Goal Impact: The HOMEownership 80 Program contributes to the goal of Economic Vitality and Affordable Living.

Legal Consideration: The proposed maximum purchase price is compliant with current HOME program regulatory requirements.

Recommendation/Actions: It is recommended that the City Council approve the increase of the maximum purchase price limit for the HOMEownership 80 Program, to an amount not to exceed $95,550.

Attachment: None.

Agenda Item No. XII-20.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: HOME Program; Housing Development Loan Program Funding (District VI)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve the recommended funding allocations and the funding agreement, and authorize the necessary signatures.

Background: During the 2008-2009 Consolidated Plan funding process, a total of $205,031 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: The Housing and Community Services Department has received an HDLP application from Community Housing Services, Inc. (CHS), in the amount of $49,275, for development of a new home, located at 230 W. 34th. The project involves acquisition and demolition of a blighted structure and construction of a new home on the site. The completed home will be sold to an income-eligible owner-occupant homebuyer receiving down payment and closing costs assistance through the City's HOMEownership 80 Program.

The home to be constructed will require HOME program subsidy. HOME funds are usually provided 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 $50,000, depending on acquisition 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 application meets the criteria of the HDLP, and that the proposed project will assist the City in achieving its neighborhood revitalization and consolidated plan goals. Therefore, staff recommends funding the CHS application, in the amount of $49,275, in order to subsidize construction of the home.

As part of this action, Housing and Community Services is also requesting an additional allocation of $12,000.00 for HOME Program Administration. HOME regulations permit the retention of 10% of program income receipts for HOME administration expenses. The additional funding for HOME

Program Administration is available from loan repayments previously allocated for eligible HOME projects, and is needed to ensure proper staff administration of the HOME program.

Financial Consideration: The total project cost is estimated to be $128,040. HOME funding for the proposed HDLP project will be provided in the form of a zero-interest, forgivable participation construction loan. Typically, local banks provide construction loans equivalent to 75% of the appraised value of a home to be constructed under the HDLP. CHS plans to provide the participation construction financing for the project through its lending operation.

Goal Impact: The project to be funded under the subject HOME funding agreement will contribute to the goal of Economic Vitality and Affordable Living.

Legal Consideration: Funding provided under the HDLP must be approved by the City Council. The funding agreement 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.

Recommendation/Actions: It is recommended that the City Council approve the recommended funding allocations and the funding agreement, and authorize the necessary signatures.

Attachment: Funding agreement.

GRANT AGREEMENT
Between

THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT
A
PARTICIPATING JURISDICTION
And

Community Housing Services, Inc.,

A Community Housing Development Organization

HOME Investment Partnerships
Program

2008 Housing Development Loan Program

Housing and Community Services Department
City of Wichita
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3700
Fax (316) 462-3719

No._____

AGREEMENT

THIS CONTRACT, dated to be effective July 21, 2009, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Community Housing Services, Inc. (CHS, a non-profit Community Housing Development Organization, hereinafter referred to as the "Developer").

WITNESSETH THAT:

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 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;

WHEREAS, the Developer shall be the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of this agreement;

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

SECTION 1. SCOPE OF SERVICES. The Developer must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than $10,000 shall require a written contract amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 2. TIME OF PERFORMANCE. The services of the Developer are to begin as soon as possible, on the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract. The construction phase of this contract shall be complete by June 30, 2011, with all expenses incurred on or before that date. This contract shall otherwise remain in force through the period of affordability, which will end on a date up to 15 years following the date of completion of the final unit, as defined in 24 CFR 92.2, depending on the amount of HOME funds invested in each unit of construction. Deed restrictions filed in connection with each unit will specify the applicable affordability period for the unit.

SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Developer shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Developer shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Developer, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Developer shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Developer or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Developer or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or Developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Developer receiving funds pursuant to this contract.

B. The Developer further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Developer will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Developer has fifteen or more employees, the Developer is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Developer's office.

SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

B. Assurance of Compliance.

1. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to

the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3. The Developer agrees to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Developer agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Developer will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Developer which involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event the Developer sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Developer shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or redeveloper to assume the same obligations as the Developer for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or redeveloper shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS. Except with respect to the rehabilitation or construction of residential property containing less than twelve units, the Developer and all contractors and subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874, and 40 U.S.C. 276c) as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto, and the Fair Labor Standards Act of 1938, As Amended (29 U.S.C. 201, et seq.). **The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of more than 11 units, and is exempt from Davis-Bacon Act wage requirements.**

The Developer shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,
contracting or subcontracting, promotion, demotion,
transfer, layoff, termination, rates of pay or other
forms of compensation, and selection for training
including apprenticeship.

The Developer shall incorporate the foregoing requirements of this paragraph in all of its contracts, except those exempt by law, and will require all of its contractors to incorporate such requirements in all subcontracts.

SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Developer and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is $2,500 or more, including, but not limited, to the following:

a) The Developer will not discriminate against any employee or applicant for employment because of disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Developer agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their disability in all employment practices, including, but not limited to, the following:

Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

c) The Developer agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Developer's compliance with The Rehabilitation Act. Such notices shall state the Developer's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Developer shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract, shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

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 $50,000.00 as referenced in Exhibit B. Contract payments above $50,000.00 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.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Developer, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 30, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Developer agrees to re-pay any HOME funds advanced under this agreement. The Developer further agrees to transfer ownership of any properties that are the subject of incomplete projects that have been funded under this agreement to the City, or as directed by the City, in order to facilitate project completion, as required under the HOME regulation.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Developer mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than $10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of $100,000, the Developer agrees to comply with all applicable standards, orders, or

regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), As Amended.

SECTION 16. FEDERAL ENVIRONMENTAL REVIEW AND APPROVAL PROVISIONS.

A. In accordance with 24 C.F.R. Part 58.22, the developer agrees to refrain from undertaking any physical activities or choice limiting actions until the City has approved the project's environmental review. Choice limiting activities include acquisition of real property, leasing, repair, rehabilitation, demolition, conversion, or new construction. This limitation applies to all parties in the development process, including public or private nonprofit or for-profit entities, or any of their contractors.

B. This agreement does not constitute an unconditional commitment of funds or site approval. The commitment of funds to the project may occur only upon satisfactory completion of the project's environmental review in accordance with 24 CFR Part 58 and related environmental authorities. Provision of funding is further conditioned on the City's determination to proceed with, modify, or cancel the project based on the results of the environmental review.

C. The Developer agrees to abide by the special conditions, mitigation measures or requirements identified in the City's environmental approval and shall ensure that project contracts and other relevant documents will include such special conditions, mitigation measures or requirements.

D. Until the City has approved the environmental review for the project, neither the Developer nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance to the project or activity.

E. The Developer agrees to provide the City with all available environmental information about the project and any information which the City may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the City's opinion is needed to fulfill its obligations under HUD environmental requirements.

F. The Developer agrees to advise the City of any proposed change in the scope of the project or any change in environmental conditions, including substantial changes in the nature, magnitude, extent or location of the project; the addition of new activities not anticipated in the original scope of the project; the selection of an alternative not in the original application or environmental review; or new circumstances or environmental

conditions which may affect the project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity.

SECTION 17. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (3.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (3.) as amended, and Section 504 of the Rehabilitation Act of 1973.

The Section 504 implementing regulations (24 CFR Part 8) apply to this project. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant's disability so requires. Should a prospective buyer request a modification to make a unit accessible, the owner/developer must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Developer shall be permitted to depart from the standard in order to have the buyer/occupant's needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 18. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Developer, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all right, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Developer pursuant to this contract.

SECTION 19. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Developer shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

(a) Developer is required to relate financial data to performance data and develop unit cost information whenever practical.

(b) Developer's financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the developer shall not be required to establish an accrual accounting system. The Developer may develop such accrual data for reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. The Developer shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the developer from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Developer. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the City guarantees or insures the repayment of money borrowed by the Developer, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.

(d) The City may require adequate fidelity bond coverage where the Developer lacks sufficient coverage to protect the City's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

SECTION 20. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 21. LEAD-BASED PAINT POISONING PREVENTION. Should HOME funding be utilized for rehabilitation of existing structures, the Developer will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Community Development Act of 1992. Compliance will include all activities required by these regulations. The Developer also agrees to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Developer will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The project will comply with section 92.355 of the HOME rule. The Developer will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Developer will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the regulations found at 24 CFR part 35.

SECTION 22. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Developer. If the contract is terminated by the City as provided herein, the Developer will be paid an amount which bears the same ratio to the total compensations the services actually performed bear to the total services of the Developer covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Developer shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Developer during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. If this contract is terminated due to the fault of the Developer, Section 13 herein relative to termination shall apply.

SECTION 23. REFUND OF INCOME. All income earned by the project as a result of entitlement funds (program income) shall be accounted for and refunded to the City as it is received, unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 24. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Developer agrees to transfer ownership of any real property purchased with HOME funds under this agreement or any prior written agreement, to the City, upon written notification. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 25. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 26. AFFORDABILITY. Housing assisted with HOME funds must meet the affordability requirements specified at 92.254 of the HOME Regulation (24 C.F.R. Part 92). HOME funds must be re-paid to the City if the housing does not meet the affordability requirements for the specified time period. The City will file a mortgage on each property upon purchase for redevelopment, and will hold said mortgage until such time as the property is re-sold to an owner-occupant homebuyer receiving a down payment and closing costs assistance loan through the City's HOMEownership 80 Program. The City will hold the long-term deed restriction placed on the property following the sale of the home as described within this paragraph.

SECTION 27. DISBURSEMENT OF HOME FUNDS. The Developer may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing and Community Services Department, payments to the Developer will be provided on a reimbursement basis, up to two times per month. The amount of each request will be limited to the amount needed. Developer must provide detailed records to substantiate the amount of HOME funds requested under this agreement, and must retain records, such as invoices, to substantiate said amounts.

SECTION 28. PROPERTY AND HOUSING STANDARDS. Housing that is constructed or rehabilitated with HOME funds must meet all applicable codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials (24 CFR 92.251), and be certified to be Energy Star compliant. (Developer to provide certification.)

SECTION 29. RELIGIOUS ORGANIZATIONS. Religious organizations may not require a beneficiary to participate in inherently religious activities, such as worship, religious instruction, or proselytizing.

Faith-based organizations may retain independence from Federal, state, and local governments to carry out their missions, including the definition, practice, and expression of its religious beliefs, provided that HOME funds do not financially support inherently religious activities. The organization's Board of Directors may not be selected based on religious practice. Religious references in the organization's mission statement and other governing documents are acceptable. 24 CFR 92.257(c).

Religious organizations must serve all eligible program beneficiaries without regard to religion, and may not restrict HOME-assisted housing to people of a particular religion or religious denomination. The eligibility of an applicant cannot be reliant on the applicant's participation in religious activities or programs supported by the organization, even if funded with other non-Federal sources.

SECTION 30. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

Community Housing Services, Inc.

_____
Signature

_____
Title of CHS Officer

_____
Date

CITY OF WICHITA, KANSAS
at the Direction of the City Council

_____
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 A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit B

PERFORMANCE CRITERIA
AND
CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and Community Housing Services, Inc., hereinafter referred to as the "City" and "Developer" (or CHS) respectively, that execution of this contract obligates the Developer to the following performance requirements.

In return for the $50,000 remuneration stated herein, the Developer agrees to undertake an affordable housing program, which will result in the acquisition of an existing vacant home located at 230 W 34th Street North, Wichita, Kansas. The existing structure is to be acquired for redevelopment and must be vacant and unoccupied for a period of at least 90 days, and must be demolished with a new single-family home to be constructed on each site.

The housing constructed under this agreement must be re-sold to a HOME-compliant owner-occupant buyer, 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 property and any 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 property 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.

I. Project Requirements

A. Project must conform to regulations under 24 CFR Part 92. The HOME Investment Partnerships Program regulation. Specific references can be found as follows:

24 CFR 92.250, Maximum Per Unit Subsidy: The amount of HOME funds invested per unit may not exceed the per-unit dollar limits established under section 221 (d)(3)(ii)of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the City of Wichita.

24 CFR 92.251, Property Standards: Housing constructed with HOME funds must meet all applicable local codes, ordinances and zoning ordinances at the time of project completion, and must comply with the current version of the CABO Model Energy Code. Housing must be inspected upon completion and throughout construction to verify compliance.

24 CFR 92.254(a)(2)(iii), Maximum Property Value: Housing created or acquired and rehabilitated with HOME funds must be modest in nature and affordable to a low-income buyer. The maximum purchase price or value cannot exceed 95 percent of median purchase price for the area, as determined by HUD.

24 CFR 92.352

B. Prior to executing any contracts for sale of the assisted properties the Developer must confirm that the City has certified that the applicant household meets the HOME Program income requirements and that the household's eligibility has been verified through a review of source documentation in accordance with 24 CFR 92.203.

II. Program Content

A. The use of HOME funds provided under this contract will be limited to the subsidy of actual costs involved in the acquisition of property, demolition of the vacant, blighted structure on the site, and construction of a single-family home, in addition to the eligible project soft costs and developer fees earned in connection with completion of each unit.

Funding under this agreement will be provided in the form of a 0% forgivable development subsidy loan.

Developer shall obtain construction loans in order to leverage HOME funds construction investment, in an amount equivalent to 50% or more of the appraised value of the home to be constructed.

III. Administration

The CHS President/C.E.O./Executive Director will supervise operations and administration on a day-to-day basis. The CHS 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 CHS for this project will be $50,000.00, in the form

of a forgivable development subsidy loan, to be used as set forth in the sections entitled Budget and Method of Payment.

B. Budget: The City shall pay the Developer as hereinafter set out; the maximum of $50,000.00 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 homes/projects, and extended grant authority as a result of repayments generated by the sale of completed homes. 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, Demolition, Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)	$50,000.00
TOTAL	$50,000.00

C. Method of Payment: The Developer agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME.

1. The City and CHS also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $10,000, other than those within the scope of this agreement must be approved by the City Council.

2. CHS will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this agreement will be retained in the Developer's files for five (5) years after the final audit of expenditures made under this contract and throughout the applicable period of affordability.

3. Construction costs to be reimbursed based on direct costs and percentage completion, as determined by the City, of each project. Fully documented draw requests will be processed on Friday of the week submitted. Payment will

be available for receipt by the Developer within three weeks of the Friday on which the draw request was received.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.

2. **The Developer will provide, for the year ending June 30 of each year, beginning June 30, 2010, an annual report of the HOME funded portion of the program**. It shall indicate yearly expenditures, cumulative expenditures since program inception and balance remaining. Yearly expenditures will be identified by category of expenditure (acquisition, rehabilitation, developers fee, accounting & legal, architects). The report shall also indicate, by race and sex, the number of households/persons served during the year with HOME funds. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority-and women-owned businesses. The City reserves the right to change the due dates and contents of reports to be submitted under this clause.

   The financial reports will be provided until such time as there are no expenditures. The owner shall continue to provide a report that indicates, by race and sex, the number of households/persons served during the year with HOME funds, when applicable. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority- and women-owned businesses. Said report shall be due to the City of Wichita **July 10** of each applicable year.

3. Additionally, a narrative or other description of progress may be provided.

4. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports.

IV. Conditions Precedent to Construction

The following items (matters) must be provided (completed) prior to beginning construction on the project and related improvements:

A. The Developer agrees to execute a document placing deed restrictions and covenants against the property on which the home is to be constructed, in order to comply with 24 CFR 92.254. Said restrictions and covenants will be in force until such time as the property/home are re-sold, as specified in this agreement.

B. Provide a detailed overall project/unit budget, including but not limited to a Sources and Uses of Funds Statement.

C. Provide Certificates regarding Debarment and Suspension, and/or lists of contractors/subcontractors to be utilized and other file documentation as requested by the City in order to comply with HOME regulations.

D. Submit final construction plans, specifications and a budget for each home to be constructed for approval by the Housing and Community Services Department, City of Wichita. (Not in connection with plan review or obtaining applicable permits.) Individual home construction may not begin until a Notice to Proceed has been issued by the Housing and Community Services Department.

E. Provide evidence that ownership interest in the property vests in Community Housing Services, Inc.. (Copy of Deed, and/or Title Insurance Binder/Policy)

F. The Developer will notify the City of any properties it contracts to purchase, or intends to develop with funding provided under this agreement, in order for the City to complete the environmental reviews required under **24 CFR 92.352**, as specified in Section 16 of this contract, prior to closing of the purchase. Developer agrees to comply with all requirements imposed on a particular project/site as a result of the environmental review process.

G. The Developer will obtain any and all permits required by the City prior to undertaking construction.

H. The Developer will obtain a construction loan from a private sector financial institution, or from its own lending resources, in an amount equivalent to a minimum of 50% of the appraised value of the home to be developed/constructed on each project site.

I. The Developer will obtain the approval of the City of Wichita Housing and Community Services Department for any changes to the previously submitted project plan. This includes changes in costs, as well as changes in the project scope or plans.

J. The Developer shall obtain Builder's Risk Insurance for the home to be constructed, in an amount sufficient to repay the amount of the face amount of the first mortgage construction loan, plus anticipated interest expense, and the total anticipated HOME funds investment in the project. The Developer is also responsible for workers compensation insurance and general liability insurance.

K. The Developer shall not undertake construction, reconstruction or rehabilitation on a site contaminated by hazardous materials without undertaking a Phase I

environmental assessment of the site in a form, scope and substance satisfactory to the City. The Developer shall consult with Wichita/Sedgwick County Department of Environmental Health regarding the necessity and scope of the environmental assessment. The Developer shall remediate or cause to be remediated all contaminants and hazardous materials as required or recommended by the Wichita/Sedgwick County Department of Environmental Health. Such remediation shall be accomplished in accordance with the requirements of applicable environmental laws of the Kansas Department of Health and Environment, the federal Environmental Protection Agency and the U.S. Department of Housing and Urban Development. During the process of redevelopment and/or construction, should the Developer discover any soil staining or odors emanating from soil at the project site, the Developer must cease work immediately, and notify the City.

L. The Developer shall submit any subdivision plats, street designs, variance requests, lot split requests, or any other documentation regarding zoning adjustments required to carry out construction of a home or a group of homes to the Housing and Community Services department for review and approval, prior to submission to the Wichita/Sedgwick County Metropolitan Area Planning Department, or the Wichita/Sedgwick County Metropolitan Area Planning Commission.

V. Other Program Requirements

A. The Developer agrees to adopt affirmative marketing procedures and requirements and prepare a written Affirmative Marketing Plan for this project. The Affirmative Marketing Plan must be available for public inspection in the Developer's office. The plan must contain specific steps and actions that the Developer will take to provide information and otherwise attract eligible persons for all racial, ethnic, and gender groups in the housing market area to the available housing. Specific activities that must be included in the Developer's Affirmative Marketing Plan include:

1. Display of the Equal Housing Opportunity logo, slogan or statement in all advertising material related to this project.

2. Display of the HUD Equal Housing Opportunity logo, slogan or statement at the construction site, from the start of construction, and properly maintained throughout the construction and rental period.

3. No later than 90 days prior to engaging in marketing activities, the Developer should notify the City of Wichita Housing and Community Services Department, either in writing or by telephone of the dates on which the Developer plans to: (1) begin initial marketing activities; (2) accept purchase contracts; and (3) start initial sales.

4. The Developer must begin marketing activities 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

5. The Developer must market/advertise the housing opportunity utilizing publications, such as community newspapers, in an effort to attract income-qualified homebuyers.

B. The City and agents designated by the City shall, at all reasonable times during the development of the project and construction or rehabilitation, have the right of entry and free access to the project and all parts thereof, and the right to inspect all work done, labor performed and materials furnished in or about the project and all records relative to all payments made in connection with the project.

The Developer shall have the responsibility of maintaining the property until such time as the development project is complete and the newly constructed home has been sold to a HOME-eligible buyer.

C. Site Improvements: The City may require a Developer to undertake site improvements upon completion of construction. Site improvements include, but are not limited to, seeding or sodding of front yards, and 4' chain-link fencing. Said site improvements must be undertaken when seasonally appropriate. The City reserves the right to make an exception on a case-by-case basis.

D. Warranty: The Developer must provide a one-year construction warranty for all homes constructed or rehabilitated under this contract.

E. Developer is required to obtain insurance coverage for all perils, including vandalism, in an amount equivalent to the amount of the first mortgage construction loan balance plus interest, and the total HOME funds investment, in the event that a home constructed under this agreement has not sold, as of the day of completion, and the Builder's Risk Insurance Policy will no longer provide adequate coverage.

F. Developer is responsible for retaining all records in connection with projects undertaken with HOME funding provided under this contract, including but not limited to, real estate purchase contracts, invoices, property development documentation, infrastructure development, and other records as further specified in this agreement.

G. Developer shall apply for City incentives, as available, for projects undertaken with funding provided under this agreement, including property tax rebates and permit fee waivers.

VI. Program Evaluation

The City shall evaluate this project based on the objectives stated in this Exhibit. Failure by the Developer to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Developer on a pro rata basis with level of service. The Developer's records are subject to review by the City to ensure the accuracy and validity of information reported in progress reports.

VII. Project Close-Out

The Developer shall provide all records and reports as deemed necessary by the City, in order to satisfy federal requirements related to final reporting and project close-out, in accordance with established HUD procedures.

Exhibit C

BUDGET

Contractual Expenses: (Acquisition, Demolition, Rehabilitation or Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)	
	$50,000.00
TOTAL	$50,000.00

Agenda Item No. XII-21.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: HOME Funding Allocations and CHDO Housing Development Funding Agreements (Districts I, III, IV, V, VI)

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve HOME funding allocations and the agreements for Mennonite Housing Rehabilitation Services (MHRS), Community Housing Services (CHS), Power CDC, and the new funding agreement for the Boarded-up House Program, and authorize the necessary signatures.

Background: On April 21, 2009, the City Council approved an allocation of $237,625 in HOME Program funding for housing development projects to be carried out by three of the City's designated Community Housing Development Organizations (CHDOs), as part of the 2009-2010 Consolidated Plan/One Year Action Plan. The following allocations were approved:

- Mennonite Housing Rehabilitation Services, Inc. (MHRS); $102,039
- Power CDC; $89,004
- Community Housing Services, Inc. (CHS); $46,582

The City Council also approved an allocation of $200,000 for the CHDO Boarded-up Home Program. This program provides a means for CHDOs to obtain zero-interest, forgivable loans to address blighted housing in the City's Local Investment Areas (LIAs). City-approved CHDOs with experience in single-family housing development are eligible for participation in the program, and may utilize the funding to acquire boarded-up or otherwise blighted structures for the purpose of rehabilitation or demolition and construction of a new home.

On June 2, 2009, staff advised the City Council of increases in HOME Program funding which were announced by U.S. Department of Housing and Urban Development (HUD). At this time staff recommended increased funding for the Boarded-up Home Program, from $200,000 to $300,000, and an increase in the total funding amount for the mandatory CHDO Set-Aside, from $237,625 to $275,031. Council approved the staff recommendations. With respect to the mandatory CHDO set-aside, staff proposes allocation of the additional funding to CHDOs already approved for 2009-2010 funding, on a pro rata basis, based on the Council's April 21 allocation decision.

Analysis: In accordance with funding allocations previously approved by the City Council and adding the pro-ration of the increased funding, Housing and Community Services is requesting approval for the following HOME funding agreements.

- $118,105 for MHRS, to partially finance the development of at least three new homes in the City's Local Investment Areas;

- $53,914 for CHS, to partially finance the construction of at least one new home in the City's Local Investment Areas;
- $103,012 for Power CDC to partially finance the development of at least two new homes in the City's Northeast Local Investment Area;
- $300,000 for the 2009-2010 Boarded-up House Program, to partially finance the re-development of at least five new homes in the City's Local Investment Areas. MHRS, CHS, Power CDC and Wichita Indochinese Center, Inc., will be parties to the agreement.

All homes constructed or rehabilitated with HOME funding under the aforementioned agreements will be sold to income-eligible, owner-occupant families receiving down payment and closing costs assistance through the City's HOMEownership 80 Program.

Financial Consideration: The total project cost of the three new CHDO housing development projects, and the projects to be undertaken with Boarded-up House Program funding is estimated to be $1,315.000. HOME funding may be utilized to cover the costs involved in acquisition, rehabilitation and/or construction, site improvements, developer fees, and when necessary, demolition, for 11 homes. Each CHDO will leverage HOME funds with private sector construction loans or other financing. CHDO's participating in the Boarded-up House Program will also leverage HOME funds with private sector construction loans.

Goal Impact: Projects to be funded under the subject HOME contracts will contribute to the goal of Economic Vitality and Affordable Living.

Legal Consideration: All funding agreements referenced herein, have been approved as to form by the City Law Department. HOME regulations require completion of HOME-eligible projects on sites purchased with HOME funds. With the exception of the funding allocated for the Boarded-up House Program, the CHDO project funding is provided as part of the City's mandatory 15% set-aside for eligible CHDO's.

Recommendation/Actions: It is recommended that the City Council approve the HOME funding allocations and the agreements for Mennonite Housing Rehabilitation Services (MHRS), Community Housing Services (CHS), Power CDC, and the new funding agreement for the Boarded-up House Program, and authorize the necessary signatures.

Attachment: Funding agreements.

GRANT AGREEMENT
Between

THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT
A
PARTICIPATING JURISDICTION
And

Mennonite Housing Rehabilitation Services, Inc.,
and
POWER CDC, Inc.
and
Community Housing Services, Inc.
and
Wichita Indochinese Center, Inc.

COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS

HOME Investment Partnerships
Program

2009 CHDO Set-Aside Funding

Housing and Community Services Department
City of Wichita
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3700
Fax (316) 462-3719

No._____

AGREEMENT

THIS CONTRACT, dated to be effective July 21, 2009, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Mennonite Housing Rehabilitation Services, Inc., Power CDC, Inc., Community Housing Services of Wichita/Sedgwick County, Inc., and Wichita Indochinese Center, Inc. (hereinafter referred to as the “Developers”).

WITNESSETH THAT:

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 Developers are desirous of participating in activities eligible under HOME, and further agree that the beneficiaries of their 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 City deems the activities to be provided by the Developers as consistent with, and supportive of the HOME Investment Partnership Program, and that the Developers require the financial assistance of the City to initiate their activities; and

WHEREAS, the cooperation of the City and the Developers is essential for the successful implementation of an Affordable Housing Program;

WHEREAS, the Developers shall be the responsible authorities, in connection with their respective projects undertaken with the funding provided under this agreement, without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of this agreement;

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

SECTION 1. SCOPE OF SERVICES. The Developers must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than $10,000 shall require a written contract amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 2. TIME OF PERFORMANCE. The services of the Developers are to begin as soon as possible, on the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract. The construction phase of this contract shall be complete by December 31, 2011, with all expenses incurred on or before that date. This contract shall otherwise remain in force through the period of affordability, which will end on a date up to 15 years following the date of completion of the final unit, as defined in 24 CFR 92.2, depending on the amount of HOME funds invested in each unit of construction. Deed restrictions filed in connection with each unit will specify the applicable affordability period for the unit.

SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Developers shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Developers shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Developers, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Developers shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Developer or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Developer or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or Developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Developers receiving funds pursuant to this contract.

B. The Developers further agree to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Developers will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If a particular Developer has fifteen or more employees, that Developer is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Developer's office.

SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

B. Assurance of Compliance.

1. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to

the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3. The Developers agree to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Developers agree to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Developers will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Developers which involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event a Developer sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Developer shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or redeveloper to assume the same obligations as the Developer for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or redeveloper shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS. Except with respect to the rehabilitation or construction of residential property containing less than twelve units, the Developers and all contractors and subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874, and 40 U.S.C. 276c) as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto, and the Fair Labor Standards Act of 1938, As Amended (29 U.S.C. 201, et seq.). **The Developers shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of more than 11 units, and is exempt from Davis-Bacon Act wage requirements.**

The Developers shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,
contracting or subcontracting, promotion, demotion,
transfer, layoff, termination, rates of pay or other
forms of compensation, and selection for training
including apprenticeship.

The Developers shall incorporate the foregoing requirements of this paragraph in all of their contracts, except those exempt by law, and will require all of their contractors to incorporate such requirements in all subcontracts.

SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Developers and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is $2,500 or more, including, but not limited, to the following:

a) The Developers will not discriminate against any employee or applicant for employment because of disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Developers agree to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their disability in all employment practices, including, but not limited to, the following:

Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

c) The Developers agree to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Developers' compliance with The Rehabilitation Act. Such notices shall state the Developers' obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Developers shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract, shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

SECTION 12. PAYMENTS.

A. Compensation and Method of Payment. Compensation and method of payment to the Developers, 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 Developers, accumulatively, will not exceed $300,000.00 as referenced in Exhibit B. Contract payments above $300,000.00 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 Developers 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.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by any of the Developers, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 29, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Developers agree to re-pay any HOME funds advanced under this agreement. The Developers further agree to transfer ownership of any properties that are the subject of incomplete projects that have been funded under this agreement to the City, or as directed by the City, in order to facilitate project completion, as required under the HOME regulation.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Developers mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than $10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of $100,000, the Developers agree to comply with all applicable standards, orders, or

regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), As Amended.

SECTION 16. FEDERAL ENVIRONMENTAL REVIEW AND APPROVAL PROVISIONS.

A. In accordance with 24 C.F.R. Part 58.22, the developer agrees to refrain from undertaking any physical activities or choice limiting actions until the City has approved the project's environmental review. Choice limiting activities include acquisition of real property, leasing, repair, rehabilitation, demolition, conversion, or new construction. This limitation applies to all parties in the development process, including public or private nonprofit or for-profit entities, or any of their contractors.

B. This agreement does not constitute an unconditional commitment of funds or site approval. The commitment of funds to the project may occur only upon satisfactory completion of the project's environmental review in accordance with 24 CFR Part 58 and related environmental authorities. Provision of funding is further conditioned on the City's determination to proceed with, modify, or cancel the project based on the results of the environmental review.

C. The Developer agrees to abide by the special conditions, mitigation measures or requirements identified in the City's environmental approval and shall ensure that project contracts and other relevant documents will include such special conditions, mitigation measures or requirements.

D. Until the City has approved the environmental review for the project, neither the Developer nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance to the project or activity.

E. The Developer agrees to provide the City with all available environmental information about the project and any information which the City may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the City's opinion is needed to fulfill its obligations under HUD environmental requirements.

F. The Developer agrees to advise the City of any proposed change in the scope of the project or any change in environmental conditions, including substantial changes in the nature, magnitude, extent or location of the project; the addition of new activities not anticipated in the original scope of the project; the selection of an alternative not in the original application or environmental review; or new circumstances or environmental

conditions which may affect the project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity.

SECTION 17. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (3.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (3.) as amended, and Section 504 of the Rehabilitation Act of 1973.

The Section 504 implementing regulations (24 CFR Part 8) apply to this project. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant's disability so requires. Should a prospective buyer request a modification to make a unit accessible, an owner/developer, receiving funding under this agreement must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Developers shall be permitted to depart from the standard in order to have the buyer/occupant's needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 18. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Developers, acting herein by and through their authorized agents, hereby convey, sell, assign and transfer to the City of Wichita all right, title and interest in and to all causes of action they may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Developers pursuant to this contract.

SECTION 19. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Developers shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

(a) Developers are required to relate financial data to performance data and develop unit cost information whenever practical.

(b) Developers' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in

§84.52. If a recipient maintains its records on other than an accrual basis, the Developers shall not be required to establish an accrual accounting system. The Developers may develop such accrual data for reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. The Developers shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the Developers from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Developers. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the City guarantees or insures the repayment of money borrowed by the Developers, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.

(d) The City may require adequate fidelity bond coverage where a certain developer lacks sufficient coverage to protect the City's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

SECTION 20. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 21. LEAD-BASED PAINT POISONING PREVENTION. Should HOME funding be utilized for rehabilitation of existing structures, the Developers will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Community Development Act of 1992. Compliance will include all activities required by these regulations. The Developers also agree to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Developers will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The project will comply with section 92.355 of the HOME rule. The Developers will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Developers will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the regulations found at 24 CFR part 35.

SECTION 22. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Developers. If the contract is terminated by the City as provided herein, the Developers will be paid an amount which bears the same ratio to the total compensations the services actually performed bear to the total services of the Developers covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Developers shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Developers during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. If this contract is terminated due to the fault of the Developers, Section 13 herein relative to termination shall apply.

SECTION 23. REFUND OF INCOME. All income earned by the project as a result of entitlement funds (program income) shall be accounted for and refunded to the City as it is received, unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 24. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Developers agree to transfer ownership of any real property purchased with HOME funds under this agreement or any prior written agreement, to the City, upon written notification. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 25. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 26. AFFORDABILITY. Housing assisted with HOME funds must meet the affordability requirements specified at 92.254 of the HOME Regulation (24 C.F.R. Part 92). HOME funds must be re-paid to the City if the housing does not meet the affordability requirements for the specified time period. The City will file a mortgage on each property upon purchase for redevelopment, and will hold said mortgage until such time as the property is re-sold to an owner-occupant homebuyer receiving a down payment and closing costs assistance loan through the City's HOMEownership 80 Program. The City will hold the long-term deed restriction placed on the property following the sale of the home as described within this paragraph.

SECTION 27. DISBURSEMENT OF HOME FUNDS. The Developers may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing and Community Services Department, payments to the Developers will be provided on a reimbursement basis, up to two times per month. The amount of each request will be limited to the amount needed. Developers must provide detailed records to substantiate the amount of HOME funds requested under this agreement, and must retain records, such as invoices, to substantiate said amounts.

SECTION 28. PROPERTY AND HOUSING STANDARDS. Housing that is constructed or rehabilitated with HOME funds must meet all applicable codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. Newly

constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. (24 CFR 92.251)

SECTION 29. RELIGIOUS ORGANIZATIONS. Religious organizations may not require a beneficiary to participate in inherently religious activities, such as worship, religious instruction, or proselytizing.

Faith-based organizations may retain independence from Federal, state, and local governments to carry out their missions, including the definition, practice, and expression of its religious beliefs, provided that HOME funds do not financially support inherently religious activities. The organization's Board of Directors may not be selected based on religious practice. Religious references in the organization's mission statement and other governing documents are acceptable. 24 CFR 92.257(c).

Religious organizations must serve all eligible program beneficiaries without regard to religion, and may not restrict HOME-assisted housing to people of a particular religion or religious denomination. The eligibility of an applicant cannot be reliant on the applicant's participation in religious activities or programs supported by the organization, even if funded with other non-Federal sources.

SECTION 30. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

Mennonite Housing Rehabilitation Services, Inc.

_____
Signature

_____
Title of MHRS Officer

_____
Date

Community Housing Services, Inc.

_____
Signature

_____
Title of CHS Officer

_____
Date

Wichita Indochinese Center, Inc.

_____
Signature

_____
Title of WIC Officer

_____
Date

Power CDC, Inc.

_____
Signature

_____
Title of POWER CDC Officer

_____
Date

CITY OF WICHITA, KANSAS
at the Direction of the City Council

_____
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 A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit B

PERFORMANCE CRITERIA
AND
CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and the Developers, that execution of this contract obligates the Developers to the following performance requirements.

In return for the $300,000 remuneration stated herein, the Developers agree to undertake an affordable housing program, which will result in the acquisition of existing vacant homes located within the boundaries of any of the City's six Local Investment Areas. The existing structures acquired for redevelopment must be vacant and unoccupied for a period of at least 90 days. A minimum of five, but no more than 11 single-family homes are to be rehabilitated/constructed/developed and sold to owner-occupant homebuyers, under this agreement.

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 Developers represent and agree that their 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.

Each Developer represents and agrees that it will remain the owner of the properties developed with funding provided under this agreement, until it reaches an agreement with a prospective buyer(s) of the subject property 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 a 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.

I. Project Requirements

A. Project must conform to regulations under 24 CFR Part 92. The HOME Investment Partnerships Program regulation. Specific references can be found as follows:

24 CFR 92.250, Maximum Per Unit Subsidy: The amount of HOME funds invested per unit may not exceed the per-unit dollar limits established under section 221 (d)(3)(ii)of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the City of Wichita.

24 CFR 92.251, Property Standards: Housing constructed with HOME funds must meet all applicable local codes, ordinances and zoning ordinances at the time of project completion, and must comply with the current version of the CABO Model Energy Code. Housing must be inspected upon completion and throughout construction to verify compliance.

24 CFR 92.254(a)(2)(iii), Maximum Property Value: Housing created or acquired and rehabilitated with HOME funds must be modest in nature and affordable to a low-income buyer. The maximum purchase price or value cannot exceed 95 percent of median purchase price for the area, as determined by HUD.

B. Prior to executing any contracts for sale of the assisted properties the Developers must confirm that the City has certified that the applicant household meets the HOME Program income requirements and that the household's eligibility has been verified through a review of source documentation in accordance with 24 CFR 92.203.

II. Program Content

A. The use of HOME funds provided under this contract will be limited to the subsidy of actual costs involved in the acquisition of property, construction of homes, purchase and re-habilitation of existing homes, demolition, and the developer fees earned in connection with completion of each unit.

Funding under this agreement will be provided in the form of 0% loans to complete projects as approved on a case-by-case basis by the Department of Housing and Community Services.

B. The purpose of this program is to provide a means for each Developer to address boarded-up or otherwise blighted, vacant homes and non-commercial structures in residential neighborhoods, located within one of the City's Local Investment Areas. Each agency will be able to apply for 0% loans to complete projects on a case-by-case basis. Priority will be given to boarded-up homes/structures located in the immediate neighborhood within which the applicable Developer is undertaking other rehabilitation or construction projects. Consideration will also be given to homes referred by Neighborhood Associations that are identified in their annual plans as priority properties. In order to be eligible for program participation, the house or structure must be boarded-up, vacant or in an otherwise blighted condition. Properties donated or available for sale at/or below appraised value, and for which clear title can be obtained, will also be eligible. Special provisions will be made for abandoned properties for which title can be acquired.

Loans provided under this agreement will be provided on a first-come, first-served basis.

III. Administration

The President/C.E.O. of each Developer's organization will supervise operations and administration on a day-to-day basis. Each Developer's Board of Directors is ultimately responsible for program administration.

A. Funding: It is mutually agreed by and between the City and the Developers that the total HOME funds available to the Developers for this project will be $300,000.00, in the form of a forgivable development subsidy loan, to be used as set forth in the sections entitled Budget and Method of Payment.

B. Budget: The City shall pay the Developers as hereinafter set out; the maximum of $300,000.00 for the program described in this contract. A developer fee in the amount of 10% of the total development cost will be paid to a Developer completing a project under this agreement. 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 homes/projects, and extended grant authority as a result of repayments generated by the sale of completed homes. 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, Demolition, Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)	$300,000.00
TOTAL	$300,000.00

C. Method of Payment: The Developers agree that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME.

1. The City and the Developers agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $10,000, other than those within the scope of this agreement must be approved by the City Council.

2. The Developers will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this agreement will be retained in the Developers' files for five (5) years after the final audit of expenditures made under this contract and throughout the applicable period of affordability.

3. Construction costs to be reimbursed based on direct costs and percentage completion, as determined by the City, of each project. Fully documented draw requests will be processed on Friday of the week submitted. Payment will be available for receipt by the Developers within three weeks of the Friday on which the draw request was received.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.

2. **Each Developer undertaking projects under this agreement will provide, for the year ending June 30 of each year, beginning June 30, 2010, an annual report of the HOME funded portion of the program**. It shall indicate yearly expenditures, cumulative expenditures since program inception and balance remaining. Yearly expenditures will be identified by category of expenditure (acquisition, rehabilitation, developers fee, accounting & legal, architects). The report shall also indicate, by race and sex, the number of households/persons served during the year with HOME funds. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority-and women-owned businesses. The City reserves the right to change the due dates and contents of reports to be submitted under this clause.

   The financial reports will be provided until such time as there are no expenditures. The owner shall continue to provide a report that indicates, by race and sex, the number of households/persons served during the year with HOME funds, when applicable. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority- and women-owned businesses. Said report shall be due to the City of Wichita **July 10** of each applicable year.

3. Additionally, a narrative or other description of progress may be provided.

4. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports.

IV. Conditions Precedent to Construction

The following items (matters) must be provided (completed) prior to beginning construction on the project and related improvements:

A. Each Developer agrees to execute a document placing deed restrictions and covenants against properties on which projects are constructed, in order to comply with 24 CFR 92.254. Said restrictions and covenants will be in force until such time as a property/home is re-sold, as specified in this agreement.

B. Provide a detailed overall project/unit budget, including but not limited to a Sources and Uses of Funds Statement.

C. Provide Certificates regarding Debarment and Suspension, and/or lists of contractors/subcontractors to be utilized and other file documentation as requested by the City in order to comply with HOME regulations.

D. Submit final construction plans, specifications and a budget for each home to be constructed for approval by the Housing and Community Services Department, City of Wichita. (Not in connection with plan review or obtaining applicable permits.) Individual home construction may not begin until a Notice to Proceed has been issued by the Housing and Community Services Department.

E. Provide evidence that ownership interest in the property vests in the Developer seeking to undertake a project under this agreement. (Copy of Deed, and/or Title Insurance Binder/Policy)

F. Each Developer seeking to undertake a project to be funded under this agreement, will notify the City of any properties it contracts to purchase, or intends to develop with funding provided under this agreement, in order for the City to complete the environmental reviews required under **24 CFR 92.352**, prior to closing of the purchase. Developer agrees to comply with all requirements imposed on a particular project/site as a result of the environmental review process.

G. Each Developer will obtain any and all permits required by the City prior to undertaking construction.

H. Each Developer will obtain construction loans from private sector financial institutions, in an amount equivalent to a minimum of 50% of the appraised value of the home to be developed/constructed on each project site.

I. Each Developer will obtain the approval of the City of Wichita Housing and Community Services Department for any changes to the previously submitted

project plan. This includes changes in costs, as well as changes in the project scope or plans.

J. Each Developer shall obtain Builder's Risk Insurance for the home to be constructed, in an amount sufficient to repay the amount of the face amount of the first mortgage construction loan, plus anticipated interest expense, and the total anticipated HOME funds investment in the project. Each Developer is also responsible for workers compensation insurance and general liability insurance.

K. Any Developer receiving funding under this agreement shall not undertake construction, reconstruction or rehabilitation on a site contaminated by hazardous materials without undertaking a Phase I environmental assessment of the site in a form, scope and substance satisfactory to the City. The Developer shall consult with Wichita/Sedgwick County Department of Environmental Health regarding the necessity and scope of the environmental assessment. The developer shall remediate or cause to be remediated all contaminants and hazardous materials as required or recommended by the Wichita/Sedgwick County Department of Environmental Health. Such remediation shall be accomplished in accordance with the requirements of applicable environmental laws of the Kansas Department of Health and Environment, the federal Environmental Protection Agency and the U.S. Department of Housing and Urban Development. During the process of redevelopment and/or construction, should a Developer receiving funding under this agreement discover any soil staining or odors emanating from soil at the project site, the Developer must cease work immediately, and notify the City.

L. The Developer shall submit any subdivision plats, street designs, variance requests, lot split requests, or any other documentation regarding zoning adjustments required to carry out construction of a home or a group of homes to the Housing and Community Services department for review and approval, prior to submission to the Wichita/Sedgwick County Metropolitan Area Planning Department, or the Wichita/Sedgwick County Metropolitan Area Planning Commission.

V. Other Program Requirements

A. Each Developer agrees to adopt affirmative marketing procedures and requirements and prepare a written Affirmative Marketing Plan for this project. The Affirmative Marketing Plan must be available for public inspection in each Developer's office. The plan must contain specific steps and actions that each Developer will take to provide information and otherwise attract eligible persons for all racial, ethnic, and gender groups in the housing market area to the available housing. Specific activities that must be included in each Developer's Affirmative Marketing Plan include:

1. Display the Equal Housing Opportunity logo, slogan or statement in all advertising material related to this project.

2. Display the HUD Equal Housing Opportunity logo, slogan or statement at the construction site, from the start of construction, and properly maintained throughout the construction and rental period.

3. No later than 90 days prior to engaging in marketing activities, a Developer receiving funding under this agreement should notify the City of Wichita Housing and Community Services Department, either in writing or by telephone of the dates on which the Developer plans to: (1) begin initial marketing activities; (2) accept purchase contracts; and (3) start initial sales.

4. Begin marketing activities 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

5. Market/advertise the housing opportunity utilizing publications, such as community newspapers, in an effort to attract income-qualified homebuyers.

B. The City and agents designated by the City shall, at all reasonable times during the development of the project and construction or rehabilitation, have the right of entry and free access to the project and all parts thereof, and the right to inspect all work done, labor performed and materials furnished in or about the project and all records relative to all payments made in connection with the project.

Each Developer receiving funding for a project undertaken with funding provided under this agreement shall have the responsibility of maintaining the property until such time as the development project is complete and the newly constructed home has been sold to a HOME-eligible buyer.

C. Site Improvements: The City will require each Developer to undertake site improvements upon completion of construction. Site improvements include, but are not limited to, sodding or seeding of front yards, and 4' chain-link fencing. Said site improvements must be undertaken when seasonally appropriate. The City reserves the right to make an exception on a case-by-case basis.

D. Warranty: Each Developer must provide a one-year construction warranty for all homes constructed or rehabilitated under this contract.

E. Each Developer is required to obtain insurance coverage for all perils, including vandalism, in an amount equivalent to the amount of the first mortgage construction loan balance plus interest, and the total HOME funds investment, in the event that a home constructed under this agreement has not sold, as of the day of completion, and the Builder’s Risk Insurance Policy will no longer provide adequate coverage.

F. Each Developer is responsible for retaining all records in connection with projects undertaken with funding provided under this contract, including but not limited to, real estate purchase contracts, invoices, property development documentation, infrastructure development, and other records as further specified in this agreement.

G. Each Developer shall apply for City incentives, as available, for projects undertaken with funding provided under this agreement, including property tax rebates and permit fee waivers.

VI. Program Evaluation

The City shall evaluate this project based on the objectives stated in this Exhibit. Failure by any Developer to provide the level of service stated herein may result in a determination by the City to modify the level of payment to that Developer on a pro rata basis with level of service. The Developers' records are subject to review by the City to ensure the accuracy and validity of information reported in monthly progress reports.

Exhibit C

BUDGET

Contractual Expenses: (Acquisition, Demolition, Rehabilitation or Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)	
	$300,000.00
TOTAL	$300,000.00

GRANT AGREEMENT
Between

THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT
A
PARTICIPATING JURISDICTION
And

Mennonite Housing Rehabilitation Services, Inc.,

A Community Housing Development Organization

HOME Investment Partnerships
Program

2009 CHDO Set-Aside Funding

Housing and Community Services Department
City of Wichita
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3700
Fax (316) 462-3719

No._____

AGREEMENT

THIS CONTRACT, dated to be effective July 21, 2009, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Mennonite Housing Rehabilitation Services, Inc. (MHRS, a Community Housing Development Organization, hereinafter referred to as the "Developer").

WITNESSETH THAT:

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 (CHDO Funding); 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;

WHEREAS, the Developer shall be the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of this agreement;

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

SECTION 1. SCOPE OF SERVICES. The Developer must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than $10,000 shall require a written contract

amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 2. TIME OF PERFORMANCE. The services of the Developer are to begin as soon as possible, on the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract. The construction phase of this contract shall be complete by December 31, 2011, with all expenses incurred on or before that date. This contract shall otherwise remain in force through the period of affordability, which will end on a date up to 15 years following the date of completion of the final unit, as defined in 24 CFR 92.2, depending on the amount of HOME funds invested in each unit of construction. Deed restrictions filed in connection with each unit will specify the applicable affordability period for the unit.

SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Developer shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Developer shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Developer, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Developer shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Developer or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Developer or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee

or agent of the owner or Developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Developer receiving funds pursuant to this contract.

B. The Developer further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Developer will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Developer has fifteen or more employees, the Developer is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Developer's office.

SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

B. Assurance of Compliance.

1. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u

(Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3. The Developer agrees to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Developer agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Developer will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject

to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Developer which involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event the Developer sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Developer shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or redeveloper to assume the same obligations as the Developer for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or redeveloper shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS. Except with respect to the rehabilitation or construction of residential property containing less than twelve units, the Developer and all contractors and subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874, and 40 U.S.C. 276c) as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto, and the Fair Labor Standards Act of 1938, As Amended (29 U.S.C. 201, et seq.). **The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of more than 11 units, and is exempt from Davis-Bacon Act wage requirements.**

The Developer shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,
contracting or subcontracting, promotion, demotion,
transfer, layoff, termination, rates of pay or other
forms of compensation, and selection for training
including apprenticeship.

The Developer shall incorporate the foregoing requirements of this paragraph in all of its contracts, except those exempt by law, and will require all of its contractors to incorporate such requirements in all subcontracts.

SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Developer and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is $2,500 or more, including, but not limited, to the following:

a) The Developer will not discriminate against any employee or applicant for employment because of disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Developer agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their disability in all employment practices, including, but not limited to, the following:

Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

c) The Developer agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Developer's compliance with The Rehabilitation Act. Such notices shall state the Developer's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Developer shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract, shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

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 $118,105.00 as referenced in Exhibit B. Contract payments above $118,105.00 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.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Developer, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 30, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Developer agrees to re-pay any HOME funds advanced under this agreement. The Developer further agrees to transfer ownership of any properties that are the subject of incomplete projects that have been funded under this agreement to the City, or as directed by the City, in order to facilitate project completion, as required under the HOME regulation.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Developer mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than $10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of $100,000, the Developer agrees to comply with all applicable standards, orders, or

regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), As Amended.

SECTION 16. FEDERAL ENVIRONMENTAL REVIEW AND APPROVAL PROVISIONS.

A. In accordance with 24 C.F.R. Part 58.22, the developer agrees to refrain from undertaking any physical activities or choice limiting actions until the City has approved the project's environmental review. Choice limiting activities include acquisition of real property, leasing, repair, rehabilitation, demolition, conversion, or new construction. This limitation applies to all parties in the development process, including public or private nonprofit or for-profit entities, or any of their contractors.

B. This agreement does not constitute an unconditional commitment of funds or site approval. The commitment of funds to the project may occur only upon satisfactory completion of the project's environmental review in accordance with 24 CFR Part 58 and related environmental authorities. Provision of funding is further conditioned on the City's determination to proceed with, modify, or cancel the project based on the results of the environmental review.

C. The Developer agrees to abide by the special conditions, mitigation measures or requirements identified in the City's environmental approval and shall ensure that project contracts and other relevant documents will include such special conditions, mitigation measures or requirements.

D. Until the City has approved the environmental review for the project, neither the Developer nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance to the project or activity.

E. The Developer agrees to provide the City with all available environmental information about the project and any information which the City may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the City's opinion is needed to fulfill its obligations under HUD environmental requirements.

F. The Developer agrees to advise the City of any proposed change in the scope of the project or any change in environmental conditions, including substantial changes in the nature, magnitude, extent or location of the project; the addition of new activities not anticipated in the original scope of the project; the selection of an alternative not in the original application or environmental review; or new circumstances or environmental

conditions which may affect the project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity.

SECTION 17. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (3.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (3.) as amended, and Section 504 of the Rehabilitation Act of 1973.

The Section 504 implementing regulations (24 CFR Part 8) apply to this project. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant's disability so requires. Should a prospective buyer request a modification to make a unit accessible, the owner/developer must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Developer shall be permitted to depart from the standard in order to have the buyer/occupant's needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 18. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Developer, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all right, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Developer pursuant to this contract.

SECTION 19. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Developer shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

(a) Developer is required to relate financial data to performance data and develop unit cost information whenever practical.

(b) Developer's financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the developer

shall not be required to establish an accrual accounting system. The Developer may develop such accrual data for reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. The Developer shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the developer from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Developer. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the City guarantees or insures the repayment of money borrowed by the Developer, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.

(d) The City may require adequate fidelity bond coverage where the Developer lacks sufficient coverage to protect the City's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

SECTION 20. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 21. LEAD-BASED PAINT POISONING PREVENTION. Should HOME funding be utilized for rehabilitation of existing structures, the Developer will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Community Development Act of 1992. Compliance will include all activities required by these regulations. The Developer also agrees to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Developer will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The project will comply with section 92.355 of the HOME rule. The Developer will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Developer will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the regulations found at 24 CFR part 35.

SECTION 22. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Developer. If the contract is terminated by the City as provided herein, the Developer will be paid an amount which bears the same ratio to the total compensations the services actually performed bear to the total services of the Developer covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Developer shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Developer during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. If this contract is terminated due to the fault of the Developer, Section 13 herein relative to termination shall apply.

SECTION 23. REFUND OF INCOME. All income earned by the project as a result of entitlement funds (program income) shall be accounted for and refunded to the City as it is received, unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 24. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Developer agrees to transfer ownership of any real property purchased with HOME funds under this agreement or any prior written agreement, to the City, upon written notification. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 25. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 26. AFFORDABILITY. Housing assisted with HOME funds must meet the affordability requirements specified at 92.254 of the HOME Regulation (24 C.F.R. Part 92). HOME funds must be re-paid to the City if the housing does not meet the affordability requirements for the specified time period. The City will file a mortgage on each property upon purchase for redevelopment, and will hold said mortgage until such time as the property is re-sold to an owner-occupant homebuyer receiving a down payment and closing costs assistance loan through the City's HOMEownership 80 Program. The City will hold the long-term deed restriction placed on the property following the sale of the home as described within this paragraph.

SECTION 27. DISBURSEMENT OF HOME FUNDS. The Developer may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing and Community Services Department, payments to the Developer will be provided on a reimbursement basis, up to two times per month. The amount of each request will be limited to the amount needed. Developer must provide detailed records to substantiate the amount of HOME funds requested under this agreement, and must retain records, such as invoices, to substantiate said amounts.

SECTION 28. PROPERTY AND HOUSING STANDARDS. Housing that is constructed or rehabilitated with HOME funds must meet all applicable codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. Newly

constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials (24 CFR 92.251), and be certified to be Energy Star compliant. (Developer to provide certification.)

SECTION 29. RELIGIOUS ORGANIZATIONS. Religious organizations may not require a beneficiary to participate in inherently religious activities, such as worship, religious instruction, or proselytizing.

Faith-based organizations may retain independence from Federal, state, and local governments to carry out their missions, including the definition, practice, and expression of its religious beliefs, provided that HOME funds do not financially support inherently religious activities. The organization's Board of Directors may not be selected based on religious practice. Religious references in the organization's mission statement and other governing documents are acceptable. 24 CFR 92.257(c).

Religious organizations must serve all eligible program beneficiaries without regard to religion, and may not restrict HOME-assisted housing to people of a particular religion or religious denomination. The eligibility of an applicant cannot be reliant on the applicant's participation in religious activities or programs supported by the organization, even if funded with other non-Federal sources.

SECTION 30. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

Mennonite Housing Rehabilitation Services, Inc.

_____
Signature

_____
Title of MHRS Officer

_____
Date

CITY OF WICHITA, KANSAS
at the Direction of the City Council

_____
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 A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit B

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.

The Developer, a Community Housing Development Organization (CHDO), is receiving this grant funding as CHDO Set-Aside Funding, under HOME regulations, as specified in 24 CFR 92.300.

In return for the $118,105 remuneration stated herein, the Developer agrees to undertake an affordable housing program, which will result in the acquisition of existing vacant homes or vacant lots located within the boundaries of any of the City's six Local Investment Areas. Existing structures acquired for redevelopment must be vacant and unoccupied for a period of at least 90 days, and must be demolished with a new single-family home to be constructed on each site. Vacant lots owned by the Developer are eligible for development with funding provided under this agreement, provided they are located within a local investment area. Vacant lots must also be re-developed with a new single family home on each site. A minimum of three new single-family homes are to be constructed/developed and sold to eligible owner-occupant homebuyers.

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.

I. Project Requirements

A. Project must conform to regulations under 24 CFR Part 92. The HOME Investment Partnerships Program regulation. Specific references can be found as follows:

24 CFR 92.250, Maximum Per Unit Subsidy: The amount of HOME funds invested per unit may not exceed the per-unit dollar limits established under section 221 (d)(3)(ii)of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the City of Wichita.

24 CFR 92.251, Property Standards: Housing constructed with HOME funds must meet all applicable local codes, ordinances and zoning ordinances at the time of project completion, and must comply with the current version of the CABO Model Energy Code. Housing must be inspected upon completion and throughout construction to verify compliance.

24 CFR 92.254(a)(2)(iii), Maximum Property Value: Housing created or acquired and rehabilitated with HOME funds must be modest in nature and affordable to a low-income buyer. The maximum purchase price or value cannot exceed 95 percent of median purchase price for the area, as determined by HUD.

24 CFR 92.352

B. Prior to executing any contracts for sale of the assisted properties the Developer must confirm that the City has certified that the applicant household meets the HOME Program income requirements and that the household's eligibility has been verified through a review of source documentation in accordance with 24 CFR 92.203.

II. Program Content

A. The use of HOME funds provided under this contract will be limited to the subsidy of actual costs involved in the acquisition of property, construction of homes, purchase and re-habilitation of existing homes, demolition, and the developer fees earned in connection with completion of each unit.

Funding under this agreement will be provided in the form of 0% loans to complete projects as approved on a case-by-case basis by the Department of Housing and Community Services.

Developer shall obtain construction loans in order to leverage HOME funds construction investment, in an amount equivalent to 50% or more of the appraised value of the home to be constructed.

III. Administration

The MHRS President/C.E.O. 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 $118,105.00, in the form of a forgivable development subsidy loan, to be used as set forth in the sections entitled Budget and Method of Payment.

B. Budget: The City shall pay the Developer as hereinafter set out; the maximum of $118,105.00 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 homes/projects, and extended grant authority as a result of repayments generated by the sale of completed homes. 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, Demolition, Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)

	$118,105.00
TOTAL	$118,105.00

C. Method of Payment: The Developer agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME.

1. The City and MHRS also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $10,000, other than those within the scope of this agreement must be approved by the City Council.

2. MHRS will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this agreement will be retained in the Developer's files for five (5) years after the final audit of

expenditures made under this contract and throughout the applicable period of affordability.

3. Construction costs to be reimbursed based on direct costs and percentage completion, as determined by the City, of each project. Fully documented draw requests will be processed on Friday of the week submitted. Payment will be available for receipt by the Developer within three weeks of the Friday on which the draw request was received.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.

2. **The Developer will provide, for the year ending June 30 of each year, beginning June 30, 2010, an annual report of the HOME funded portion of the program**. It shall indicate yearly expenditures, cumulative expenditures since program inception and balance remaining. Yearly expenditures will be identified by category of expenditure (acquisition, rehabilitation, developers fee, accounting & legal, architects). The report shall also indicate, by race and sex, the number of households/persons served during the year with HOME funds. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority-and women-owned businesses. The City reserves the right to change the due dates and contents of reports to be submitted under this clause.

   The financial reports will be provided until such time as there are no expenditures. The owner shall continue to provide a report that indicates, by race and sex, the number of households/persons served during the year with HOME funds, when applicable. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority- and women-owned businesses. Said report shall be due to the City of Wichita **July 10** of each applicable year.

3. Additionally, a narrative or other description of progress may be provided.

4. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports.

IV. Conditions Precedent to Construction

The following items (matters) must be provided (completed) prior to beginning construction on the project and related improvements:

A. The Developer agrees to execute a document placing deed restrictions and covenants against properties on which projects are constructed, in order to comply with 24 CFR 92.254. Said restrictions and covenants will be in force until such time as a property/home are re-sold, as specified in this agreement.

B. Provide a detailed overall project/unit budget, including but not limited to a Sources and Uses of Funds Statement.

C. Provide Certificates regarding Debarment and Suspension, and/or lists of contractors/subcontractors to be utilized and other file documentation as requested by the City in order to comply with HOME regulations.

D. Submit final construction plans, specifications and a budget for each home to be constructed for approval by the Housing and Community Services Department, City of Wichita. (Not in connection with plan review or obtaining applicable permits.) Individual home construction may not begin until a Notice to Proceed has been issued by the Housing and Community Services Department.

E. Provide evidence that ownership interest in the property vests in MHRS, Inc.. (Copy of Deed, and/or Title Insurance Binder/Policy)

F. The Developer will notify the City of any properties it contracts to purchase, or intends to develop with funding provided under this agreement, in order for the City to complete the environmental reviews required under **24 CFR 92.352**, as specified in Section 16 of this contract, prior to closing of the purchase. Developer agrees to comply with all requirements imposed on a particular project/site as a result of the environmental review process.

G. The Developer will obtain any and all permits required by the City prior to undertaking construction.

H. The Developer will obtain construction loans from private sector financial institutions, in an amount equivalent to a minimum of 50% of the appraised value of the home to be developed/constructed on each project site.

I. The Developer will obtain the approval of the City of Wichita Housing and Community Services Department for any changes to the previously submitted project plan. This includes changes in costs, as well as changes in the project scope or plans.

J. The Developer shall obtain Builder's Risk Insurance for the home to be constructed, in an amount sufficient to repay the amount of the face amount of the first mortgage construction loan, plus anticipated interest expense, and the total anticipated HOME

funds investment in the project. The Developer is also responsible for workers compensation insurance and general liability insurance.

K. The Developer shall not undertake construction, reconstruction or rehabilitation on a site contaminated by hazardous materials without undertaking a Phase I environmental assessment of the site in a form, scope and substance satisfactory to the City. The Developer shall consult with Wichita/Sedgwick County Department of Environmental Health regarding the necessity and scope of the environmental assessment. The Developer shall remediate or cause to be remediated all contaminants and hazardous materials as required or recommended by the Wichita/Sedgwick County Department of Environmental Health. Such remediation shall be accomplished in accordance with the requirements of applicable environmental laws of the Kansas Department of Health and Environment, the federal Environmental Protection Agency and the U.S. Department of Housing and Urban Development. During the process of redevelopment and/or construction, should the Developer discover any soil staining or odors emanating from soil at the project site, the Developer must cease work immediately, and notify the City.

L. The Developer shall submit any subdivision plats, street designs, variance requests, lot split requests, or any other documentation regarding zoning adjustments required to carry out construction of a home or a group of homes to the Housing and Community Services department for review and approval, prior to submission to the Wichita/Sedgwick County Metropolitan Area Planning Department, or the Wichita/Sedgwick County Metropolitan Area Planning Commission.

V. Other Program Requirements

A. The Developer agrees to adopt affirmative marketing procedures and requirements and prepare a written Affirmative Marketing Plan for this project. The Affirmative Marketing Plan must be available for public inspection in the Developer's office. The plan must contain specific steps and actions that the Developer will take to provide information and otherwise attract eligible persons for all racial, ethnic, and gender groups in the housing market area to the available housing. Specific activities that must be included in the Developer's Affirmative Marketing Plan include:

1. Display of the Equal Housing Opportunity logo, slogan or statement in all advertising material related to this project.

2. Display of the HUD Equal Housing Opportunity logo, slogan or statement at the construction site, from the start of construction, and properly maintained throughout the construction and rental period.

3. No later than 90 days prior to engaging in marketing activities, the Developer should notify the City of Wichita Housing and Community Services Department, either in writing or by telephone of the dates on which the Developer plans to: (1) begin initial marketing activities; (2) accept purchase contracts; and (3) start initial sales.

4. The Developer must begin marketing activities 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

5. The Developer must market/advertise the housing opportunity utilizing publications, such as community newspapers, in an effort to attract income-qualified homebuyers.

B. The City and agents designated by the City shall, at all reasonable times during the development of the project and construction or rehabilitation, have the right of entry and free access to the project and all parts thereof, and the right to inspect all work done, labor performed and materials furnished in or about the project and all records relative to all payments made in connection with the project.

The Developer shall have the responsibility of maintaining the property until such time as the development project is complete and the newly constructed home has been sold to a HOME-eligible buyer.

C. Site Improvements: The City may require a Developer to undertake site improvements upon completion of construction. Site improvements include, but are not limited to, seeding or sodding of front yards, and 4' chain-link fencing. Said site improvements must be undertaken when seasonally appropriate. The City reserves the right to make an exception on a case-by-case basis.

D. Warranty: The Developer must provide a one-year construction warranty for all homes constructed or rehabilitated under this contract.

E. Developer is required to obtain insurance coverage for all perils, including vandalism, in an amount equivalent to the amount of the first mortgage construction loan balance plus interest, and the total HOME funds investment, in the event that a home constructed under this agreement has not sold, as of the day of completion, and the Builder's Risk Insurance Policy will no longer provide adequate coverage.

F. Developer is responsible for retaining all records in connection with projects undertaken with HOME funding provided under this contract, including but not limited to, real estate purchase contracts, invoices, property development documentation, infrastructure development, and other records as further specified in this agreement.

G. Developer shall apply for City incentives, as available, for projects undertaken with funding provided under this agreement, including property tax rebates and permit fee waivers.

VI. Program Evaluation

The City shall evaluate this project based on the objectives stated in this Exhibit. Failure by the Developer to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Developer on a pro rata basis with level of service. The Developer's records are subject to review by the City to ensure the accuracy and validity of information reported in progress reports.

VII. Project Close-Out

The Developer shall provide all records and reports as deemed necessary by the City, in order to satisfy federal requirements related to final reporting and project close-out, in accordance with established HUD procedures.

Exhibit C

BUDGET

Contractual Expenses: (Acquisition, Demolition, Rehabilitation or Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)	
	$118,105.00
TOTAL	$118,105.00

GRANT AGREEMENT
Between

THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT
A
PARTICIPATING JURISDICTION
And

Community Housing Services, Inc.,

A Community Housing Development Organization

HOME Investment Partnerships
Program

2009 CHDO Set-Aside Funding

Housing and Community Services Department
City of Wichita
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3700
Fax (316) 462-3719

No._____

AGREEMENT

THIS CONTRACT, dated to be effective July 21, 2009, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Community Housing Services, Inc. (CHS, a Community Housing Development Organization, hereinafter referred to as the "Developer").

WITNESSETH THAT:

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 (CHDO Funding); 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;

WHEREAS, the Developer shall be the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of this agreement;

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

SECTION 1. SCOPE OF SERVICES. The Developer must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than $10,000 shall require a written contract

amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 2. TIME OF PERFORMANCE. The services of the Developer are to begin as soon as possible, on the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract. The construction phase of this contract shall be complete by June 30, 2011, with all expenses incurred on or before that date. This contract shall otherwise remain in force through the period of affordability, which will end on a date up to 15 years following the date of completion of the final unit, as defined in 24 CFR 92.2, depending on the amount of HOME funds invested in each unit of construction. Deed restrictions filed in connection with each unit will specify the applicable affordability period for the unit.

SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Developer shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Developer shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Developer, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Developer shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Developer or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Developer or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee

or agent of the owner or Developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Developer receiving funds pursuant to this contract.

B. The Developer further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Developer will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Developer has fifteen or more employees, the Developer is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Developer's office.

SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

B. Assurance of Compliance.

1. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u

(Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3. The Developer agrees to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Developer agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Developer will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject

to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Developer which involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event the Developer sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Developer shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or redeveloper to assume the same obligations as the Developer for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or redeveloper shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS. Except with respect to the rehabilitation or construction of residential property containing less than twelve units, the Developer and all contractors and subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874, and 40 U.S.C. 276c) as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto, and the Fair Labor Standards Act of 1938, As Amended (29 U.S.C. 201, et seq.). **The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of more than 11 units, and is exempt from Davis-Bacon Act wage requirements.**

The Developer shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,
contracting or subcontracting, promotion, demotion,
transfer, layoff, termination, rates of pay or other
forms of compensation, and selection for training
including apprenticeship.

The Developer shall incorporate the foregoing requirements of this paragraph in all of its contracts, except those exempt by law, and will require all of its contractors to incorporate such requirements in all subcontracts.

SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Developer and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is $2,500 or more, including, but not limited, to the following:

a) The Developer will not discriminate against any employee or applicant for employment because of disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Developer agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their disability in all employment practices, including, but not limited to, the following:

Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

c) The Developer agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Developer's compliance with The Rehabilitation Act. Such notices shall state the Developer's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Developer shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract, shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

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 $53,914.00 as referenced in Exhibit B. Contract payments above $53,914.00 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.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Developer, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 30, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Developer agrees to re-pay any HOME funds advanced under this agreement. The Developer further agrees to transfer ownership of any properties that are the subject of incomplete projects that have been funded under this agreement to the City, or as directed by the City, in order to facilitate project completion, as required under the HOME regulation.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Developer mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than $10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of $100,000, the Developer agrees to comply with all applicable standards, orders, or

regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), As Amended.

SECTION 16. FEDERAL ENVIRONMENTAL REVIEW AND APPROVAL PROVISIONS.

A. In accordance with 24 C.F.R. Part 58.22, the developer agrees to refrain from undertaking any physical activities or choice limiting actions until the City has approved the project's environmental review. Choice limiting activities include acquisition of real property, leasing, repair, rehabilitation, demolition, conversion, or new construction. This limitation applies to all parties in the development process, including public or private nonprofit or for-profit entities, or any of their contractors.

B. This agreement does not constitute an unconditional commitment of funds or site approval. The commitment of funds to the project may occur only upon satisfactory completion of the project's environmental review in accordance with 24 CFR Part 58 and related environmental authorities. Provision of funding is further conditioned on the City's determination to proceed with, modify, or cancel the project based on the results of the environmental review.

C. The Developer agrees to abide by the special conditions, mitigation measures or requirements identified in the City's environmental approval and shall ensure that project contracts and other relevant documents will include such special conditions, mitigation measures or requirements.

D. Until the City has approved the environmental review for the project, neither the Developer nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance to the project or activity.

E. The Developer agrees to provide the City with all available environmental information about the project and any information which the City may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the City's opinion is needed to fulfill its obligations under HUD environmental requirements.

F. The Developer agrees to advise the City of any proposed change in the scope of the project or any change in environmental conditions, including substantial changes in the nature, magnitude, extent or location of the project; the addition of new activities not anticipated in the original scope of the project; the selection of an alternative not in the original application or environmental review; or new circumstances or environmental

conditions which may affect the project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity.

SECTION 17. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (3.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (3.) as amended, and Section 504 of the Rehabilitation Act of 1973.

The Section 504 implementing regulations (24 CFR Part 8) apply to this project. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant's disability so requires. Should a prospective buyer request a modification to make a unit accessible, the owner/developer must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Developer shall be permitted to depart from the standard in order to have the buyer/occupant's needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 18. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Developer, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all right, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Developer pursuant to this contract.

SECTION 19. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Developer shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

(a) Developer is required to relate financial data to performance data and develop unit cost information whenever practical.

(b) Developer's financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the developer shall not be required to establish an accrual accounting system. The Developer may develop such accrual data for reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. The Developer shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the developer from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Developer. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the City guarantees or insures the repayment of money borrowed by the Developer, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.

(d) The City may require adequate fidelity bond coverage where the Developer lacks sufficient coverage to protect the City's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

SECTION 20. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 21. LEAD-BASED PAINT POISONING PREVENTION. Should HOME funding be utilized for rehabilitation of existing structures, the Developer will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Community Development Act of 1992. Compliance will include all activities required by these regulations. The Developer also agrees to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Developer will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The project will comply with section 92.355 of the HOME rule. The Developer will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Developer will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the regulations found at 24 CFR part 35.

SECTION 22. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Developer. If the contract is terminated by the City as provided herein, the Developer will be paid an amount which bears the same ratio to the total compensations the services actually performed bear to the total services of the Developer covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Developer shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Developer during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. If this contract is terminated due to the fault of the Developer, Section 13 herein relative to termination shall apply.

SECTION 23. REFUND OF INCOME. All income earned by the project as a result of entitlement funds (program income) shall be accounted for and refunded to the City as it is received, unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 24. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Developer agrees to transfer ownership of any real property purchased with HOME funds under this agreement or any prior written agreement, to the City, upon written notification. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 25. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 26. AFFORDABILITY. Housing assisted with HOME funds must meet the affordability requirements specified at 92.254 of the HOME Regulation (24 C.F.R. Part 92). HOME funds must be re-paid to the City if the housing does not meet the affordability requirements for the specified time period. The City will file a mortgage on each property upon purchase for redevelopment, and will hold said mortgage until such time as the property is re-sold to an owner-occupant homebuyer receiving a down payment and closing costs assistance loan through the City's HOMEownership 80 Program. The City will hold the long-term deed restriction placed on the property following the sale of the home as described within this paragraph.

SECTION 27. DISBURSEMENT OF HOME FUNDS. The Developer may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing and Community Services Department, payments to the Developer will be provided on a reimbursement basis, up to two times per month. The amount of each request will be limited to the amount needed. Developer must provide detailed records to substantiate the amount of HOME funds requested under this agreement, and must retain records, such as invoices, to substantiate said amounts.

SECTION 28. PROPERTY AND HOUSING STANDARDS. Housing that is constructed or rehabilitated with HOME funds must meet all applicable codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials (24 CFR 92.251), and be certified to be Energy Star compliant. (Developer to provide certification.)

SECTION 29. RELIGIOUS ORGANIZATIONS. Religious organizations may not require a beneficiary to participate in inherently religious activities, such as worship, religious instruction, or proselytizing.

Faith-based organizations may retain independence from Federal, state, and local governments to carry out their missions, including the definition, practice, and expression of its religious beliefs, provided that HOME funds do not financially support inherently religious activities. The organization's Board of Directors may not be selected based on religious practice. Religious references in the organization's mission statement and other governing documents are acceptable. 24 CFR 92.257(c).

Religious organizations must serve all eligible program beneficiaries without regard to religion, and may not restrict HOME-assisted housing to people of a particular religion or religious denomination. The eligibility of an applicant cannot be reliant on the applicant's participation in religious activities or programs supported by the organization, even if funded with other non-Federal sources.

SECTION 30. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

Community Housing Services, Inc.

_____
Signature

_____
Title of CHS Officer

_____
Date

CITY OF WICHITA, KANSAS
at the Direction of the City Council

_____
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 A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit B

PERFORMANCE CRITERIA
AND
CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and Community Housing Services, Inc., hereinafter referred to as the "City" and "Developer" (or CHS) respectively, that execution of this contract obligates the Developer to the following performance requirements.

The Developer, a Community Housing Development Organization (CHDO), is receiving this grant funding as CHDO Set-Aside Funding, under HOME regulations, as specified in 24 CFR 92.300.

In return for the $53,914 remuneration stated herein, the Developer agrees to undertake an affordable housing program, which will result in the acquisition of existing vacant homes or vacant lots located within the boundaries of any of the City's six Local Investment Areas. Existing structures acquired for redevelopment must be vacant and unoccupied for a period of at least 90 days, and must be demolished with a new single-family home to be constructed on each site. Vacant lots owned by the Developer are eligible for development with funding provided under this agreement, provided they are located within a local investment area. Vacant lots must also be re-developed with a new single family home on each site. A minimum of three new single-family homes are to be constructed/developed and sold to eligible owner-occupant homebuyers.

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.

I. Project Requirements

A. Project must conform to regulations under 24 CFR Part 92. The HOME Investment Partnerships Program regulation. Specific references can be found as follows:

24 CFR 92.250, Maximum Per Unit Subsidy: The amount of HOME funds invested per unit may not exceed the per-unit dollar limits established under section 221 (d)(3)(ii)of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the City of Wichita.

24 CFR 92.251, Property Standards: Housing constructed with HOME funds must meet all applicable local codes, ordinances and zoning ordinances at the time of project completion, and must comply with the current version of the CABO Model Energy Code. Housing must be inspected upon completion and throughout construction to verify compliance.

24 CFR 92.254(a)(2)(iii), Maximum Property Value: Housing created or acquired and rehabilitated with HOME funds must be modest in nature and affordable to a low-income buyer. The maximum purchase price or value cannot exceed 95 percent of median purchase price for the area, as determined by HUD.

24 CFR 92.352

B. Prior to executing any contracts for sale of the assisted properties the Developer must confirm that the City has certified that the applicant household meets the HOME Program income requirements and that the household's eligibility has been verified through a review of source documentation in accordance with 24 CFR 92.203.

II. Program Content

A. The use of HOME funds provided under this contract will be limited to the subsidy of actual costs involved in the acquisition of property, construction of homes, purchase and re-habilitation of existing homes, demolition, and the developer fees earned in connection with completion of each unit.

Funding under this agreement will be provided in the form of 0% loans to complete projects as approved on a case-by-case basis by the Department of Housing and Community Services.

Developer shall obtain construction loans in order to leverage HOME funds construction investment, in an amount equivalent to 50% or more of the appraised value of the home to be constructed.

III. Administration

The CHS President/C.E.O./Executive Director will supervise operations and administration on a day-to-day basis. The CHS 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 CHS for this project will be $53,914.00, in the form of a forgivable development subsidy loan, to be used as set forth in the sections entitled Budget and Method of Payment.

B. Budget: The City shall pay the Developer as hereinafter set out; the maximum of $53,914.00 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 homes/projects, and extended grant authority as a result of repayments generated by the sale of completed homes. 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, Demolition, Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)	$53,914.00
TOTAL	$53,914.00

C. Method of Payment: The Developer agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME.

1. The City and CHS also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $10,000, other than those within the scope of this agreement must be approved by the City Council.

2. CHS will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this agreement will be retained in the Developer's files for five (5) years after the final audit of

expenditures made under this contract and throughout the applicable period of affordability.

3. Construction costs to be reimbursed based on direct costs and percentage completion, as determined by the City, of each project. Fully documented draw requests will be processed on Friday of the week submitted. Payment will be available for receipt by the Developer within three weeks of the Friday on which the draw request was received.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.

2. **The Developer will provide, for the year ending June 30 of each year, beginning June 30, 2010, an annual report of the HOME funded portion of the program**. It shall indicate yearly expenditures, cumulative expenditures since program inception and balance remaining. Yearly expenditures will be identified by category of expenditure (acquisition, rehabilitation, developers fee, accounting & legal, architects). The report shall also indicate, by race and sex, the number of households/persons served during the year with HOME funds. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority-and women-owned businesses. The City reserves the right to change the due dates and contents of reports to be submitted under this clause.

   The financial reports will be provided until such time as there are no expenditures. The owner shall continue to provide a report that indicates, by race and sex, the number of households/persons served during the year with HOME funds, when applicable. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority- and women-owned businesses. Said report shall be due to the City of Wichita **July 10** of each applicable year.

3. Additionally, a narrative or other description of progress may be provided.

4. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports.

IV. Conditions Precedent to Construction

The following items (matters) must be provided (completed) prior to beginning construction on the project and related improvements:

A. The Developer agrees to execute a document placing deed restrictions and covenants against properties on which projects are constructed, in order to comply with 24 CFR 92.254. Said restrictions and covenants will be in force until such time as a property/home are re-sold, as specified in this agreement.

B. Provide a detailed overall project/unit budget, including but not limited to a Sources and Uses of Funds Statement.

C. Provide Certificates regarding Debarment and Suspension, and/or lists of contractors/subcontractors to be utilized and other file documentation as requested by the City in order to comply with HOME regulations.

D. Submit final construction plans, specifications and a budget for each home to be constructed for approval by the Housing and Community Services Department, City of Wichita. (Not in connection with plan review or obtaining applicable permits.) Individual home construction may not begin until a Notice to Proceed has been issued by the Housing and Community Services Department.

E. Provide evidence that ownership interest in the property vests in Community Housing Services, Inc.. (Copy of Deed, and/or Title Insurance Binder/Policy)

F. The Developer will notify the City of any properties it contracts to purchase, or intends to develop with funding provided under this agreement, in order for the City to complete the environmental reviews required under **24 CFR 92.352**, as specified in Section 16 of this contract, prior to closing of the purchase. Developer agrees to comply with all requirements imposed on a particular project/site as a result of the environmental review process.

G. The Developer will obtain any and all permits required by the City prior to undertaking construction.

H. The Developer will obtain construction loans from private sector financial institutions, in an amount equivalent to a minimum of 50% of the appraised value of the home to be developed/constructed on each project site.

I. The Developer will obtain the approval of the City of Wichita Housing and Community Services Department for any changes to the previously submitted project plan. This includes changes in costs, as well as changes in the project scope or plans.

J. The Developer shall obtain Builder's Risk Insurance for the home to be constructed, in an amount sufficient to repay the amount of the face amount of the first mortgage construction loan, plus anticipated interest expense, and the total anticipated HOME

funds investment in the project. The Developer is also responsible for workers compensation insurance and general liability insurance.

K. The Developer shall not undertake construction, reconstruction or rehabilitation on a site contaminated by hazardous materials without undertaking a Phase I environmental assessment of the site in a form, scope and substance satisfactory to the City. The Developer shall consult with Wichita/Sedgwick County Department of Environmental Health regarding the necessity and scope of the environmental assessment. The Developer shall remediate or cause to be remediated all contaminants and hazardous materials as required or recommended by the Wichita/Sedgwick County Department of Environmental Health. Such remediation shall be accomplished in accordance with the requirements of applicable environmental laws of the Kansas Department of Health and Environment, the federal Environmental Protection Agency and the U.S. Department of Housing and Urban Development. During the process of redevelopment and/or construction, should the Developer discover any soil staining or odors emanating from soil at the project site, the Developer must cease work immediately, and notify the City.

L. The Developer shall submit any subdivision plats, street designs, variance requests, lot split requests, or any other documentation regarding zoning adjustments required to carry out construction of a home or a group of homes to the Housing and Community Services department for review and approval, prior to submission to the Wichita/Sedgwick County Metropolitan Area Planning Department, or the Wichita/Sedgwick County Metropolitan Area Planning Commission.

V. Other Program Requirements

A. The Developer agrees to adopt affirmative marketing procedures and requirements and prepare a written Affirmative Marketing Plan for this project. The Affirmative Marketing Plan must be available for public inspection in the Developer's office. The plan must contain specific steps and actions that the Developer will take to provide information and otherwise attract eligible persons for all racial, ethnic, and gender groups in the housing market area to the available housing. Specific activities that must be included in the Developer's Affirmative Marketing Plan include:

1. Display of the Equal Housing Opportunity logo, slogan or statement in all advertising material related to this project.

2. Display of the HUD Equal Housing Opportunity logo, slogan or statement at the construction site, from the start of construction, and properly maintained throughout the construction and rental period.

3. No later than 90 days prior to engaging in marketing activities, the Developer should notify the City of Wichita Housing and Community Services Department, either in writing or by telephone of the dates on which the Developer plans to: (1) begin initial marketing activities; (2) accept purchase contracts; and (3) start initial sales.

4. The Developer must begin marketing activities 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

5. The Developer must market/advertise the housing opportunity utilizing publications, such as community newspapers, in an effort to attract income-qualified homebuyers.

B. The City and agents designated by the City shall, at all reasonable times during the development of the project and construction or rehabilitation, have the right of entry and free access to the project and all parts thereof, and the right to inspect all work done, labor performed and materials furnished in or about the project and all records relative to all payments made in connection with the project.

The Developer shall have the responsibility of maintaining the property until such time as the development project is complete and the newly constructed home has been sold to a HOME-eligible buyer.

C. Site Improvements: The City may require a Developer to undertake site improvements upon completion of construction. Site improvements include, but are not limited to, seeding or sodding of front yards, and 4' chain-link fencing. Said site improvements must be undertaken when seasonally appropriate. The City reserves the right to make an exception on a case-by-case basis.

D. Warranty: The Developer must provide a one-year construction warranty for all homes constructed or rehabilitated under this contract.

E. Developer is required to obtain insurance coverage for all perils, including vandalism, in an amount equivalent to the amount of the first mortgage construction loan balance plus interest, and the total HOME funds investment, in the event that a home constructed under this agreement has not sold, as of the day of completion, and the Builder's Risk Insurance Policy will no longer provide adequate coverage.

F. Developer is responsible for retaining all records in connection with projects undertaken with HOME funding provided under this contract, including but not limited to, real estate purchase contracts, invoices, property development documentation, infrastructure development, and other records as further specified in this agreement.

G. Developer shall apply for City incentives, as available, for projects undertaken with funding provided under this agreement, including property tax rebates and permit fee waivers.

VI. Program Evaluation

The City shall evaluate this project based on the objectives stated in this Exhibit. Failure by the Developer to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Developer on a pro rata basis with level of service. The Developer's records are subject to review by the City to ensure the accuracy and validity of information reported in progress reports.

VII. Project Close-Out

The Developer shall provide all records and reports as deemed necessary by the City, in order to satisfy federal requirements related to final reporting and project close-out, in accordance with established HUD procedures.

Exhibit C

BUDGET

Contractual Expenses: (Acquisition, Demolition, Rehabilitation or Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)	
	$53,914.00
TOTAL	$53,914.00

GRANT AGREEMENT
Between

THE CITY OF WICHITA
HOUSING AND COMMUNITY SERVICES DEPARTMENT
A
PARTICIPATING JURISDICTION
And

Power CDC, Inc.,

A Community Housing Development Organization

HOME Investment Partnerships
Program

2009 CHDO Set-Aside Funding

Housing and Community Services Department
City of Wichita
332 N. Riverview
Wichita, Kansas 67203
Phone (316) 462-3700
Fax (316) 462-3719

No._____

AGREEMENT

THIS CONTRACT, dated to be effective July 21, 2009, by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Power CDC, Inc. (Power CDC, a Community Housing Development Organization, hereinafter referred to as the “Developer”).

WITNESSETH THAT:

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 (CHDO Funding); 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;

WHEREAS, the Developer shall be the responsible authority without recourse to the City regarding the settlement and satisfaction of all contractual and administrative issues arising out of this agreement;

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

SECTION 1. SCOPE OF SERVICES. The Developer must follow the Performance Criteria and Program Description as outlined in Exhibit B. Any programmatic change substantially altering the contract's original intent or financial change in contract amount or line items in the approved budget that is greater than $10,000 shall require a written contract amendment. The amendment shall be approved by the City Council and shall also be approved and signed by all parties to the original contract.

SECTION 2. TIME OF PERFORMANCE. The services of the Developer are to begin as soon as possible, on the date of this contract, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this contract. The construction phase of this contract shall be complete by December 31, 2011, with all expenses incurred on or before that date. This contract shall otherwise remain in force through the period of affordability, which will end on a date up to 15 years following the date of completion of the final unit, as defined in 24 CFR 92.2, depending on the amount of HOME funds invested in each unit of construction. Deed restrictions filed in connection with each unit will specify the applicable affordability period for the unit.

SECTION 3. RECORDS, REPORTS AND INSPECTION.

A. Establishment and Maintenance of Records. The Developer shall establish and maintain records as prescribed by the Department, and/or the City, with respect to all matters covered by this contract. Except as otherwise authorized by the Department and/or the City, the Developer shall (Per 24 CFR 92.508) **retain such records for a period of five years following the date final payment is received under this contract.**

B. Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. Reports and information. The Developer, at such times and in such forms as the City or its designated and authorized representative(s) may require, shall furnish to the City or its designated and authorized representative(s) such statements, records, reports, data and information as the City may request pertaining to matters covered by this contract.

D. Audits and Inspections. The Developer shall at any time and as often as the Housing and Community Services Department, or the City or the Comptroller General, or the Department of Housing and Urban Development, (HUD) or the HUD Inspector General of the United States may deem necessary, make available all its records and data for the purpose of making audits, reviews, examinations, excerpts and transcriptions.

SECTION 4. CONFLICT OF INTEREST. No owner, Developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, Developer or sponsor) whether private, for profit or non-profit (including a Community Housing Development Organization (CHDO) when acting as an owner, Developer or sponsor) may occupy a HOME-assisted affordable unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or Developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (24 CFR 92.356 (f)(1)).

EXCEPTIONS: An exception may be granted in accordance and in compliance with 24 CFR 92.356 (f)(2)(I) through (V), and with the City's prior approval.

SECTION 5. DISCRIMINATION.

A. Discrimination Prohibited. No recipient or proposed recipient of any funds, services or other assistance under the provisions of this contract or any program related to this contract, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this contract on the grounds of race, color, national origin, ancestry, religion, disability, sex or age. (Reference Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352)). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Developer receiving funds pursuant to this contract.

B. The Developer further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity Statement for contracts or agreements" as provided in Exhibit A attached hereto.

C. The Developer will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246 – Equal Employment Opportunity, as amended and its implementing regulations at 41 CFR Part 60. If the Developer has fifteen or more employees, the Developer is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990 (ADA). Nondiscrimination notices should be included in all job postings and posted in a visible place in the Developer's office.

D. The Developer shall comply with Title

SECTION 6. EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS.

A. GENERAL. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701 u., and Sec. 7 (d), Department of HUD Act, 42 U.S.C. 3535 (d) is applicable to all projects assisted by any Department program in which loans, grants, subsidies or other financial assistance, including HOME Investment Partnerships Program under the Act are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community developments.

B. Assurance of Compliance.

1. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic

opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract will comply with the HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3. The Developer agrees to send to each labor organization or representative of workers with which the owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The Developer agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The Developer will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

8. Every contract or agreement entered into by the Developer which involves funds provided under this contract will have incorporated therein subsection B of Section 6 of this contract.

9. In the event the Developer sells, leases, transfers or otherwise conveys land upon which work in connection with this project is to be performed, the City must be notified in writing, thirty (30) days prior to such action. Further, prior to sale or lease of property purchases, funded under this agreement, the Developer shall include in each contract or subcontract for work on such land, a clause requiring the purchaser, lessee or redeveloper to assume the same obligations as the Developer for work under subsection B of Section 6 of this contract. Each such purchaser, lessee or redeveloper shall be relieved of such obligations upon satisfactory completion of all work to be performed under the terms of the redevelopment contract.

SECTION 7. FEDERAL LABOR STANDARDS PROVISIONS. Except with respect to the rehabilitation or construction of residential property containing less than twelve units, the Developer and all contractors and subcontractors engaged under contracts in excess of $2,000 for the construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract **will comply with the Davis-Bacon Act** (40 U.S.C. 276 a to a-7), as supplemented by Department of Labor (DOL) regulations (29 CFR, Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. 874, and 40 U.S.C. 276c) as supplemented in DOL regulations (29 CFR, Part 3), sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) as supplemented by DOL regulations (29 CFR, Part 5), and the regulations issued pursuant thereto, and the Fair Labor Standards Act of 1938, As Amended (29 U.S.C. 201, et seq.). **The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions consistent with applicable Federal Labor Standards.** No contracts under this section shall be awarded to any contractors or subcontractors debarred for violating Federal Labor Standards Provisions. **This Project does not include construction, prosecution, completion or repair of more than 11 units, and is exempt from Davis-Bacon Act wage requirements.**

The Developer shall take affirmative action to ensure that applicants for employment are employed, contractors or subcontractors receive contracts, and all employees are treated, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following:

employment, recruitment or recruitment advertising,
contracting or subcontracting, promotion, demotion,
transfer, layoff, termination, rates of pay or other
forms of compensation, and selection for training
including apprenticeship.

The Developer shall incorporate the foregoing requirements of this paragraph in all of its contracts, except those exempt by law, and will require all of its contractors to incorporate such requirements in all subcontracts.

SECTION 503 AFFIRMATIVE ACTION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES:

The Developer and any subcontractors will comply with the provisions of Section 503 of the Rehabilitation Act of 1973, if the funding award of their Agreement is $2,500 or more, including, but not limited, to the following:

a) The Developer will not discriminate against any employee or applicant for employment because of disability in regard to any position for which the employee or applicant for employment is qualified.

b) The Developer agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their disability in all employment practices, including, but not limited to, the following:

Employment, recruitment or recruitment advertising, contracting or subcontracting, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

c) The Developer agrees to post in conspicuous places, within administrative office and warehouse facilities available to employees and applicants for employment, notices, which make reference to the Developer's compliance with The Rehabilitation Act. Such notices shall state the Developer's obligation under the law not to discriminate on the basis of physical or mental disability and to take affirmative action to employ and advance in employment qualified individuals with disabilities.

SECTION 8. COMPLIANCE WITH LOCAL LAWS. All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments.

SECTION 9. ASSIGNABILITY. The Developer shall not assign any interest in this contract without prior written consent of the City.

SECTION 10. POLITICAL ACTIVITY PROHIBITED.

A. None of the funds, materials, property or services provided directly or indirectly under this contract, shall be used for partisan political activity.

B. The funds provided under this contract shall not be engaged in any way in contravention of Chapter 15 of Title 5, U.S.C.

SECTION 11. LOBBYING PROHIBITED. None of the funds provided under this contract shall be used for lobbying and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America or the Legislature of the State of Kansas.

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 $103,012.00 as referenced in Exhibit B. Contract payments above $103,012.00 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.

SECTION 13. TERMINATION CLAUSE. Upon breach of the contract by the Developer, the City, by giving written notification, may terminate this contract immediately. A breach shall include, but not be limited to, failure to comply with any or all items contained within Section 1 through Section 30, Exhibits and/or provisions of any subsequent contractual amendments executed relative to this contract. In the event of a breach of contract, the Developer agrees to re-pay any HOME funds advanced under this agreement. The Developer further agrees to transfer ownership of any properties that are the subject of incomplete projects that have been funded under this agreement to the City, or as directed by the City, in order to facilitate project completion, as required under the HOME regulation. Complete projects are defined as completed single-family homes that have been re-sold to eligible owner-occupant homebuyers.

SECTION 14. AMENDMENTS.

A. To provide necessary flexibility for the most effective execution of this project, whenever both the City and the Developer mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

B. Programmatic changes substantially altering the contract's original intent or financial changes in contract amount or line items in the approved budget (Exhibit C) that are greater than $10,000 shall require a written contract amendment. The amendment must be approved by the City Council and must also be approved and signed by all parties to the original contract.

SECTION 15. POLLUTION STANDARDS. In the event the grand total of Exhibit C is in excess of $100,000, the Developer agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 185, et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251, et seq.), As Amended.

SECTION 16. FEDERAL ENVIRONMENTAL REVIEW AND APPROVAL PROVISIONS.

A. In accordance with 24 C.F.R. Part 58.22, the developer agrees to refrain from undertaking any physical activities or choice limiting actions until the City has approved the project's environmental review. Choice limiting activities include acquisition of real property, leasing, repair, rehabilitation, demolition, conversion, or new construction. This limitation applies to all parties in the development process, including public or private nonprofit or for-profit entities, or any of their contractors.

B. This agreement does not constitute an unconditional commitment of funds or site approval. The commitment of funds to the project may occur only upon satisfactory completion of the project's environmental review in accordance with 24 CFR Part 58 and related environmental authorities. Provision of funding is further conditioned on the City's determination to proceed with, modify, or cancel the project based on the results of the environmental review.

C. The Developer agrees to abide by the special conditions, mitigation measures or requirements identified in the City's environmental approval and shall ensure that project contracts and other relevant documents will include such special conditions, mitigation measures or requirements.

D. Until the City has approved the environmental review for the project, neither the Developer nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance to the project or activity.

E. The Developer agrees to provide the City with all available environmental information about the project and any information which the City may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the City's opinion is needed to fulfill its obligations under HUD environmental requirements.

F. The Developer agrees to advise the City of any proposed change in the scope of the project or any change in environmental conditions, including substantial changes in the nature, magnitude, extent or location of the project; the addition of new activities not anticipated in the original scope of the project; the selection of an alternative not in the

original application or environmental review; or new circumstances or environmental conditions which may affect the project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity.

SECTION 17. ARCHITECTURAL BARRIERS. Every building or facility (other than a private residential structure) designed, constructed or altered with funds provided pursuant to this contract shall be designed, altered or constructed in accordance with the standards issued under the Architectural Barriers Act of 1968 (42 USC 4151 et. seq.), as amended, and the minimum guidelines and requirements issued by the Architectural and Transportation Compliance Board pursuant to Section 502 (b.) (3.) of the Rehabilitation Act of 1973 (29 USC 792 (b.) (3.) as amended, and Section 504 of the Rehabilitation Act of 1973.

The Section 504 of the Rehabilitation Act of 1973 (Section 504) and implementing regulations (24 CFR Part 8) apply to this project. Section 504 prohibits discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance. Newly constructed or rehabilitated housing for purchase or single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant's disability so requires. Should a prospective buyer request a modification to make a unit accessible, the owner/developer must work with the buyer to provide specific features that meet the need(s) of the prospective homebuyer/occupant. If the design features that are needed for the buyer are design features that are covered in the Uniform Federal Accessibility Standards (UFAS), those features must comply with the UFAS standard. The Developer shall be permitted to depart from the standard in order to have the buyer/occupant's needs met.

Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19), and Section 504 of the Rehabilitation Act of 1973, as applicable.

SECTION 18. ANTI-TRUST LITIGATION. For good cause, and as consideration for executing this contract, the Developer, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the City of Wichita all right, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the Developer pursuant to this contract.

SECTION 19. UNIFORM GRANT ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES. During the administration of this contract, the Developer shall comply with 24 CFR 84.21, Standards for financial management systems, as follows:

(a) Developer is required to relate financial data to performance data and develop unit cost information whenever practical.

(b) Developer's financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §84.52. If a recipient maintains its records on other than an accrual basis, the developer shall not be required to establish an accrual accounting system. The Developer may develop such accrual data for reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. The Developer shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the developer from the City, and the issuance or redemption of checks, warrants or payments by other means for program purposes by the Developer. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the City guarantees or insures the repayment of money borrowed by the Developer, The City, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the City.

(d) The City may require adequate fidelity bond coverage where the Developer lacks sufficient coverage to protect the City's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

SECTION 20. RENEGOTIATION. This contract may be renegotiated in the event alternate sources of funding become available during the term of the contract.

SECTION 21. LEAD-BASED PAINT POISONING PREVENTION. Should HOME funding be utilized for rehabilitation of existing structures, the Developer will comply with the lead-based paint provisions at 24 CFR Part 35 and at 24 CFR 570.608, and Title X of the Housing and Community Development Act of 1992. Compliance will include all activities required by these regulations. The Developer also agrees to document each client file with regard to these provisions, and action(s) taken if required. A copy of the current HUD Lead-Based Paint Certification will be retained in the file of each client assisted with HOME funds under this contract. The Developer will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The project will comply with section 92.355 of the HOME rule. The Developer will also comply with the lead-based paint provisions of section 982.401(j) and the Lead-Based Paint provisions of the Section 8 Housing Quality Standards (HQS), irrespective of the applicable property standard under section 92.251. The Developer will comply with sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and the regulations found at 24 CFR part 35.

SECTION 22. TERMINATION FOR CONVENIENCE. The City may terminate this contract at any time by a notice in writing from the City to the Developer. If the contract is terminated by the City as provided herein, the Developer will be paid an amount which bears the same ratio to the total compensations the services actually performed bear to the total services of the Developer covered by this contract, less payments of compensation previously made: Provided, however, that if less than sixty (60) percent of the services covered by this contract have been performed upon the effective date of such termination, the Developer shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expense (not otherwise reimbursed under this contract) incurred by the Developer during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. If this contract is terminated due to the fault of the Developer, Section 13 herein relative to termination shall apply.

SECTION 23. REFUND OF INCOME. All income earned by the project as a result of entitlement funds (program income) shall be accounted for and refunded to the City as it is received, unless otherwise specified in Exhibit B. Earned income shall be defined as fees received, subsidies, sales and any program income.

SECTION 24. REVERSION OF ASSETS. In the event this contract is terminated, due to breach, convenience, or expiration, the Developer agrees to transfer ownership of any real property purchased with HOME funds under this agreement or any prior written agreement, to

the City, upon written notification. This clause shall not apply if the project has been completed as contractually agreed, and the applicable affordability period has expired.

SECTION 25. OTHER FEDERAL REGULATIONS. Activities funded with HOME funds must comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity, as follows:

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, (42 U.S.C. 3601-3620) As Amended, and implementing regulations at 24 CFR 100. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and disability.

Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.). This law prohibits discrimination on the basis of race, color, and national origin in all Federally-assisted programs.

The Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101), and implementing regulations at 24 CFR Part 146. This law prohibits age discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.

Equal Opportunity in Housing (Executive Order 11063, and Executive Order 12259), and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

Title II of the Americans with Disabilities Act (ADA). Title II of ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity. (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225)

SECTION 26. AFFORDABILITY. Housing assisted with HOME funds must meet the affordability requirements specified at 92.254 of the HOME Regulation (24 C.F.R. Part 92). HOME funds must be re-paid to the City if the housing does not meet the affordability requirements for the specified time period. The City will file a mortgage on each property upon purchase for redevelopment, and will hold said mortgage until such time as the property is re-sold to an owner-occupant homebuyer receiving a down payment and closing costs assistance loan through the City's HOMEownership 80 Program. The City will hold the long-term deed restriction placed on the property following the sale of the home as described within this paragraph.

SECTION 27. DISBURSEMENT OF HOME FUNDS. The Developer may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. Unless otherwise approved by the Housing and Community Services Department, payments to the Developer will be provided on a reimbursement basis, up to two times per month.

The amount of each request will be limited to the amount needed. Developer must provide detailed records to substantiate the amount of HOME funds requested under this agreement, and must retain records, such as invoices, to substantiate said amounts.

SECTION 28. PROPERTY AND HOUSING STANDARDS. Housing that is constructed or rehabilitated with HOME funds must meet all applicable codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials (24 CFR 92.251), and be certified to be Energy Star compliant. (Developer to provide certification.)

SECTION 29. RELIGIOUS ORGANIZATIONS. Religious organizations may not require a beneficiary to participate in inherently religious activities, such as worship, religious instruction, or proselytizing.

Faith-based organizations may retain independence from Federal, state, and local governments to carry out their missions, including the definition, practice, and expression of its religious beliefs, provided that HOME funds do not financially support inherently religious activities. The organization's Board of Directors may not be selected based on religious practice. Religious references in the organization's mission statement and other governing documents are acceptable. 24 CFR 92.257(c).

Religious organizations must serve all eligible program beneficiaries without regard to religion, and may not restrict HOME-assisted housing to people of a particular religion or religious denomination. The eligibility of an applicant cannot be reliant on the applicant's participation in religious activities or programs supported by the organization, even if funded with other non-Federal sources.

SECTION 30. APPENDICES. All exhibits referenced in this contract, all amendments mutually agreed upon, and modifications made by both parties are hereby incorporated as though fully set forth herein.

Exhibit A: Revised Non-Discrimination & Equal Employment Opportunity Statement

Exhibit B: Performance Criteria and Program Description

Exhibit C: Budget

Power CDC, Inc.

_____
Signature

_____
Title of Power CDC Officer

_____
Date

CITY OF WICHITA, KANSAS
at the Direction of the City Council

_____
Carl Brewer, Mayor

_____
Date

ATTEST:

_____
Karen Sublett, City Clerk

_____
Date

Approved as to Form:

_____	_____
Gary E. Rebenstorf, City Attorney and Director of Law of the City of Wichita	Date

Exhibit A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit B

PERFORMANCE CRITERIA
AND
CONTRACT OBJECTIVES

It is mutually agreed and understood by the City of Wichita and Power CDC, Inc., hereinafter referred to as the "City" and "Developer" (or Power CDC) respectively, that execution of this contract obligates the Developer to the following performance requirements.

The Developer, a Community Housing Development Organization (CHDO), is receiving this grant funding as CHDO Set-Aside Funding, under HOME regulations, as specified in 24 CFR 92.300.

In return for the $103,012.00 remuneration stated herein, the Developer agrees to undertake an affordable housing program, which will result in the acquisition of existing vacant homes or vacant lots located within the boundaries of the City's Northeast Local Investment Area. Existing structures acquired for redevelopment must be vacant and unoccupied for a period of at least 90 days, and must be demolished with a new single-family home to be constructed on each site. Vacant lots owned by the Developer are considered to be eligible sites for development under this agreement. Vacant lots must be re-developed with one new single family home on each site. A minimum of two new single-family homes are to be constructed/developed and sold to eligible owner-occupant homebuyers with funding provided under this agreement.

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.

I. Project Requirements

A. Project must conform to regulations under 24 CFR Part 92. The HOME Investment Partnerships Program regulation. Specific references can be found as follows:

24 CFR 92.250, Maximum Per Unit Subsidy: The amount of HOME funds invested per unit may not exceed the per-unit dollar limits established under section 221 (d)(3)(ii)of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the City of Wichita.

24 CFR 92.251, Property Standards: Housing constructed with HOME funds must meet all applicable local codes, ordinances and zoning ordinances at the time of project completion, and must comply with the current version of the CABO Model Energy Code. Housing must be inspected upon completion and throughout construction to verify compliance.

24 CFR 92.254(a)(2)(iii), Maximum Property Value: Housing created or acquired and rehabilitated with HOME funds must be modest in nature and affordable to a low-income buyer. The maximum purchase price or value cannot exceed 95 percent of median purchase price for the area, as determined by HUD.

24 CFR 92.352

B. Prior to executing any contracts for sale of the assisted properties the Developer must confirm that the City has certified that the applicant household meets the HOME Program income requirements and that the household's eligibility has been verified through a review of source documentation in accordance with 24 CFR 92.203.

II. Program Content

A. The use of HOME funds provided under this contract will be limited to the subsidy of actual costs involved in the acquisition of property, construction of homes, purchase and re-habilitation of existing homes, demolition, and the developer fees earned in connection with completion of each unit.

Funding under this agreement will be provided in the form of 0% loans to complete projects as approved on a case-by-case basis by the Department of Housing and Community Services.

Developer shall obtain construction loans in order to leverage HOME funds construction investment, in an amount equivalent to 50% or more of the appraised value of the home to be constructed.

III. Administration

The Power CDC President/C.E.O. will supervise operations and administration on a day-to-day basis. The Power CDC 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 Power CDC for this project will be $103,012.00, in the form of a forgivable development subsidy loan, to be used as set forth in the sections entitled Budget and Method of Payment.

B. Budget: The City shall pay the Developer as hereinafter set out; the maximum of $103,012.00 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 homes/projects, and extended grant authority as a result of repayments generated by the sale of completed homes. 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, Demolition, Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)	$103,012.00
TOTAL	$103,012.00

C. Method of Payment: The Developer agrees that payments under this contract shall be made according to established budgeting, purchasing and accounting procedures of the City of Wichita and HOME.

1. The City and POWER CDC also agree that the categories of expenditures and amounts are estimates and may vary during the course of the contract. Changes greater than $10,000, other than those within the scope of this agreement must be approved by the City Council.

2. POWER CDC will ensure all costs are eligible according to the approved budget. The original documentation supporting any expenditure made under this agreement will be retained in the Developer's files for five (5) years after the final audit of expenditures made under this contract and throughout the applicable period of affordability.

3. Construction costs to be reimbursed based on direct costs and percentage completion, as determined by the City, of each project. Fully documented draw requests will be processed on Friday of the week submitted. Payment will be available for receipt by the Developer within three weeks of the Friday on which the draw request was received.

D. Records and Reports

1. Records shall be maintained documenting performance to be indicated in an annual report. Records are subject to review by the City.

2. **The Developer will provide, for the year ending June 30 of each year, beginning June 30, 2010, an annual report of the HOME funded portion of the program**. It shall indicate yearly expenditures, cumulative expenditures since program inception and balance remaining. Yearly expenditures will be identified by category of expenditure (acquisition, rehabilitation, developers fee, accounting & legal, architects). The report shall also indicate, by race and sex, the number of households/persons served during the year with HOME funds. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority-and women-owned businesses. The City reserves the right to change the due dates and contents of reports to be submitted under this clause.

   The financial reports will be provided until such time as there are no expenditures. The owner shall continue to provide a report that indicates, by race and sex, the number of households/persons served during the year with HOME funds, when applicable. The report shall also provide the total number of contracts awarded and the number of contracts awarded to minority- and women-owned businesses. Said report shall be due to the City of Wichita **July 10** of each applicable year.

3. Additionally, a narrative or other description of progress may be provided.

4. Records shall be maintained valuing in-kind services, and donated goods and services, to be reported in the same manner as other annual reports.

IV. Conditions Precedent to Construction

The following items (matters) must be provided (completed) prior to beginning construction on the project and related improvements:

A. The Developer agrees to execute a document placing deed restrictions and covenants against properties on which projects are constructed, in order to comply with 24 CFR 92.254. Said restrictions and covenants will be in force until such time as a property/home are re-sold, as specified in this agreement.

B. Provide a detailed overall project/unit budget, including but not limited to a Sources and Uses of Funds Statement.

C. Provide Certificates regarding Debarment and Suspension, and/or lists of contractors/subcontractors to be utilized and other file documentation as requested by the City in order to comply with HOME regulations.

D. Submit final construction plans, specifications and a budget for each home to be constructed for approval by the Housing and Community Services Department, City of Wichita. (Not in connection with plan review or obtaining applicable permits.) Individual home construction may not begin until a Notice to Proceed has been issued by the Housing and Community Services Department.

E. Provide evidence that ownership interest in the property vests in POWER CDC, Inc.. (Copy of Deed, and/or Title Insurance Binder/Policy)

F. The Developer will notify the City of any properties it contracts to purchase, or intends to develop with funding provided under this agreement, in order for the City to complete the environmental reviews required under **24 CFR 92.352**, as specified in Section 16 of this contract, prior to closing of the purchase. Developer agrees to comply with all requirements imposed on a particular project/site as a result of the environmental review process.

G. The Developer will obtain any and all permits required by the City prior to undertaking construction.

H. The Developer will obtain construction loans from private sector financial institutions, in an amount equivalent to a minimum of 50% of the appraised value of the home to be developed/constructed on each project site.

I. The Developer will obtain the approval of the City of Wichita Housing and Community Services Department for any changes to the previously submitted project plan. This includes changes in costs, as well as changes in the project scope or plans.

J. The Developer shall obtain Builder's Risk Insurance for the home to be constructed, in an amount sufficient to repay the amount of the face amount of the first mortgage construction loan, plus anticipated interest expense, and the total anticipated HOME

funds investment in the project. The Developer is also responsible for workers compensation insurance and general liability insurance.

K. The Developer shall not undertake construction, reconstruction or rehabilitation on a site contaminated by hazardous materials without undertaking a Phase I environmental assessment of the site in a form, scope and substance satisfactory to the City. The Developer shall consult with Wichita/Sedgwick County Department of Environmental Health regarding the necessity and scope of the environmental assessment. The Developer shall remediate or cause to be remediated all contaminants and hazardous materials as required or recommended by the Wichita/Sedgwick County Department of Environmental Health. Such remediation shall be accomplished in accordance with the requirements of applicable environmental laws of the Kansas Department of Health and Environment, the federal Environmental Protection Agency and the U.S. Department of Housing and Urban Development. During the process of redevelopment and/or construction, should the Developer discover any soil staining or odors emanating from soil at the project site, the Developer must cease work immediately, and notify the City.

L. The Developer shall submit any subdivision plats, street designs, variance requests, lot split requests, or any other documentation regarding zoning adjustments required to carry out construction of a home or a group of homes to the Housing and Community Services department for review and approval, prior to submission to the Wichita/Sedgwick County Metropolitan Area Planning Department, or the Wichita/Sedgwick County Metropolitan Area Planning Commission.

V. Other Program Requirements

A. The Developer agrees to adopt affirmative marketing procedures and requirements and prepare a written Affirmative Marketing Plan for this project. The Affirmative Marketing Plan must be available for public inspection in the Developer's office. The plan must contain specific steps and actions that the Developer will take to provide information and otherwise attract eligible persons for all racial, ethnic, and gender groups in the housing market area to the available housing. Specific activities that must be included in the Developer's Affirmative Marketing Plan include:

1. Display of the Equal Housing Opportunity logo, slogan or statement in all advertising material related to this project.

2. Display of the HUD Equal Housing Opportunity logo, slogan or statement at the construction site, from the start of construction, and properly maintained throughout the construction and rental period.

3. No later than 90 days prior to engaging in marketing activities, the Developer should notify the City of Wichita Housing and Community Services Department, either in writing or by telephone of the dates on which the Developer plans to: (1) begin initial marketing activities; (2) accept purchase contracts; and (3) start initial sales.

4. The Developer must begin marketing activities 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

5. The Developer must market/advertise the housing opportunity utilizing publications, such as community newspapers, in an effort to attract income-qualified homebuyers.

B. The City and agents designated by the City shall, at all reasonable times during the development of the project and construction or rehabilitation, have the right of entry and free access to the project and all parts thereof, and the right to inspect all work done, labor performed and materials furnished in or about the project and all records relative to all payments made in connection with the project.

The Developer shall have the responsibility of maintaining the property until such time as the development project is complete and the newly constructed home has been sold to a HOME-eligible buyer.

C. Site Improvements: The City may require a Developer to undertake site improvements upon completion of construction. Site improvements include, but are not limited to, seeding or sodding of front yards, and 4' chain-link fencing. Said site improvements must be undertaken when seasonally appropriate. The City reserves the right to make an exception on a case-by-case basis.

D. Warranty: The Developer must provide a one-year construction warranty for all homes constructed or rehabilitated under this contract.

E. Developer is required to obtain insurance coverage for all perils, including vandalism, in an amount equivalent to the amount of the first mortgage construction loan balance plus interest, and the total HOME funds investment, in the event that a home constructed under this agreement has not sold, as of the day of completion, and the Builder's Risk Insurance Policy will no longer provide adequate coverage.

F. Developer is responsible for retaining all records in connection with projects undertaken with HOME funding provided under this contract, including but not limited to, real estate purchase contracts, invoices, property development documentation, infrastructure development, and other records as further specified in this agreement.

G. Developer shall apply for City incentives, as available, for projects undertaken with funding provided under this agreement, including property tax rebates and permit fee waivers.

VI. Program Evaluation

The City shall evaluate this project based on the objectives stated in this Exhibit. Failure by the Developer to provide the level of service stated herein may result in a determination by the City to modify the level of payment to the Developer on a pro rata basis with level of service. The Developer's records are subject to review by the City to ensure the accuracy and validity of information reported in progress reports.

VII. Project Close-Out

The Developer shall provide all records and reports as deemed necessary by the City, in order to satisfy federal requirements related to final reporting and project close-out, in accordance with established HUD procedures.

Exhibit C

BUDGET

Contractual Expenses: (Acquisition, Demolition, Rehabilitation or Construction Expenses, Eligible Project Soft Costs deemed necessary and as approved by the Department of Housing and Community Services, Site Improvements, 10% Developer Fee.)	
	$103,012.00
TOTAL	$103,012.00

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Watershed Assessment Restoration and Protection Strategy (WRAPS) Contract (All Districts)

INITIATED BY: Environmental Services

AGENDA: Consent

Recommendation: Approve the consulting services contract to complete the WRAPS grant requirements.

Background: The City of Wichita, under a grant agreement with the Kansas Department of Health and Environment (KDHE), is actively engaged in developing a WRAPS Program for the Lower Arkansas River watershed within the City limits. This project is part of a coordinated effort by City of Wichita and Sedgwick County Conservation District as well as other federal, state, local agencies and private sector organizations to develop a watershed restoration and protection strategy for the Arkansas River watershed. At this time, the City has selected a contractor, Geotechnical Services Inc, to assist the City in performing the "Development Phase" of the KDHE WRAPS program. The scope of the project will include surveying stakeholders, identifying and collecting resource documents regarding the river impairment, assistance in developing a leadership team, developing commitment from stakeholders to participate in the a future strategic action plan, and disseminating Ark River information to the public.

Analysis: The selection process was in accordance with Administrative Regulation 1.2, Contracting for Professional Services, and a Staff Screening and Selection Committee (SSSC) was convened on March 4, 2009. The SSSC reviewed the four proposals and determined that three proposals met the qualifications. Therefore, a selection interview with each consultant was conducted on April 21, 2009. Geotechnical Services Inc, (GSI) was the chosen consultant by the Committee based upon the proposal qualifications, interview process, and proposed costs. The SSSC noted that GSI demonstrated a comprehensive website to disseminate pertinent WRAPS information as a mechanism to involve multiple stakeholders. The proposed costs provided the City with the most economical choice.

Financial Considerations: The GSI proposed costs for the required consulting services are $39,520 which is within in the current budget for the KDHE WRAPS Development Phase Activity of $50,000.

Goal Impact: The grant supports the goals for Safe and Secure Communities, Efficient Infrastructure and Quality of Life**.**

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

Recommendations/Actions: It is recommended that the City Council approve the contract with Geotechnical Services, Inc and authorize the necessary signatures.

Attachments: FP930004 Watershed Restoration and Protection Strategy Contract
Exhibit B – Fee Schedule

FEE SCHEDULE

Objective 1: Assist City Environmental Services Department with organization of city project management team

	Quantity	Unit	Unit Rate	Cost
Professional 4	6	hours	$95.00	$570.00
Marketing and PR Staff	12	hours	$75.00	$900.00
Subcontractor	6	hours	$95.00	$570.00
Quarterly Reporting	8		$75.00	$600.00
Objective 1 Total	**32**			**$2,640.00**

Objective 2: Identify and contact other potential stakeholders

	Quantity	Unit	Unit Rate	Cost
Professional 4	28	hours	$95.00	$2,660.00
Marketing and PR Staff	20	hours	$75.00	$1,500.00
Subcontractor	18	hours	$95.00	$1,710.00
Misc Expense		LS	$2,000.00	$2,000.00
Objective 2 Total	**66**			**$7,870.00**

Objective 3: Facilitate stakeholder meetings

	Quantity	Unit	Unit Rate	Cost
Professional 4	48	hours	$95.00	$4,560.00
Marketing and PR Staff	24	hours	$75.00	$1,800.00
Subcontractor	48	hours	$95.00	$4,560.00
Misc Expense		LS	$500.00	$500.00
Objective 3 Total	**120**			**$11,420.00**

Objective 4: Establish Resources to inform stakeholders and educate all interested parties, including general public

	Quantity	Unit	Unit Rate	Cost
Professional 4	8	hours	$95.00	$760.00
Marketing and PR Staff	50	hours	$75.00	$3,750.00
Subcontractor	8	hours	$95.00	$760.00
Misc Expense		LS	$1,500.00	$1,500.00
Objective 4 Total	**66**			**$6,770.00**

FEE SCHEDULE CONTINUED

Objective 5: Identify and assign priority to critical sub-watersheds withiin the project area and identify critical issues for improvement

	Quantity	Unit	Unit Rate	Cost
Professional 4	20	hours	$95.00	$1,900.00
Marketing and PR Staff	0	hours	$75.00	$0.00
Subcontractor	8	hours	$95.00	$760.00
Quarterly Reporting		LS	$100.00	$100.00
Objective 5 Total	**28**			**$2,760.00**

Objective 6: Identify previous and ongoing work within the watershed

	Quantity	Unit	Unit Rate	Cost
Professional 4	16	hours	$95.00	$1,520.00
Marketing and PR Staff	0	hours	$75.00	$0.00
Subcontractor	4	hours	$95.00	$380.00
Misc Expense		LS	$100.00	$100.00
Objective 6 Total	**20**			**$2,000.00**

Objective 7: Prepare WRAPS development project report and action plan to initiate watershed assessment and planning projects

	Quantity	Unit	Unit Rate	Cost
Professional 4	32	hours	$95.00	$3,040.00
Marketing and PR Staff	20	hours	$75.00	$1,500.00
Subcontractor	16	hours	$95.00	$1,520.00
Misc Expense		LS	$0.00	$0.00
Objective 7 Total	**56**			**$6,060.00**

Project Total

	Quantity	Unit	Unit Rate	Cost
Professional 4 Hours	158	hours	$95.00	$15,010.00
Marketing and PR Hours	126	hours	$75.00	$9,450.00
Subcontractor Hours	108	hours	$95.00	$10,260.00
Misc Expense		LS	$0.00	$4,800.00
Total Hours	490	hours		$34,720.00
Project Total				**$39,520.00**

FEE SCHEDULE

Objective 1: Assist City Environmental Services Department with organization of city project management team

	Quantity	Unit	Unit Rate	Cost
Professional 4	6	hours	$95.00	$570.00
Marketing and PR Staff	12	hours	$75.00	$900.00
Subcontractor	6	hours	$95.00	$570.00
Quarterly Reporting	8		$75.00	$600.00
Objective 1 Total	**32**			**$2,640.00**

Objective 2: Identify and contact other potential stakeholders

	Quantity	Unit	Unit Rate	Cost
Professional 4	28	hours	$95.00	$2,660.00
Marketing and PR Staff	20	hours	$75.00	$1,500.00
Subcontractor	18	hours	$95.00	$1,710.00
Misc Expense		LS	$2,000.00	$2,000.00
Objective 2 Total	**66**			**$7,870.00**

Objective 3: Facilitate stakeholder meetings

	Quantity	Unit	Unit Rate	Cost
Professional 4	48	hours	$95.00	$4,560.00
Marketing and PR Staff	24	hours	$75.00	$1,800.00
Subcontractor	48	hours	$95.00	$4,560.00
Misc Expense		LS	$500.00	$500.00
Objective 3 Total	**120**			**$11,420.00**

Objective 4: Establish Resources to inform stakeholders and educate all interested parties, including general public

	Quantity	Unit	Unit Rate	Cost
Professional 4	8	hours	$95.00	$760.00
Marketing and PR Staff	50	hours	$75.00	$3,750.00
Subcontractor	8	hours	$95.00	$760.00
Misc Expense		LS	$1,500.00	$1,500.00
Objective 4 Total	**66**			**$6,770.00**

FEE SCHEDULE CONTINUED

Objective 5: Identify and assign priority to critical sub-watersheds withiin the project area and identify critical issues for improvement

	Quantity	Unit	Unit Rate	Cost
Professional 4	20	hours	$95.00	$1,900.00
Marketing and PR Staff	0	hours	$75.00	$0.00
Subcontractor	8	hours	$95.00	$760.00
Quarterly Reporting		LS	$100.00	$100.00
Objective 5 Total	**28**			**$2,760.00**

Objective 6: Identify previous and ongoing work within the watershed

	Quantity	Unit	Unit Rate	Cost
Professional 4	16	hours	$95.00	$1,520.00
Marketing and PR Staff	0	hours	$75.00	$0.00
Subcontractor	4	hours	$95.00	$380.00
Misc Expense		LS	$100.00	$100.00
Objective 6 Total	**20**			**$2,000.00**

Objective 7: Prepare WRAPS development project report and action plan to initiate watershed assessment and planning projects

	Quantity	Unit	Unit Rate	Cost
Professional 4	32	hours	$95.00	$3,040.00
Marketing and PR Staff	20	hours	$75.00	$1,500.00
Subcontractor	16	hours	$95.00	$1,520.00
Misc Expense		LS	$0.00	$0.00
Objective 7 Total	**56**			**$6,060.00**

Project Total

	Quantity	Unit	Unit Rate	Cost
Professional 4 Hours	158	hours	$95.00	$15,010.00
Marketing and PR Hours	126	hours	$75.00	$9,450.00
Subcontractor Hours	108	hours	$95.00	$10,260.00
Misc Expense		LS	$0.00	$4,800.00
Total Hours	490	hours		$34,720.00
Project Total				**$39,520.00**

Agenda Item No. XII-23.

City of Wichita
City Council Meeting
July 21, 2009

TO: Mayor and City Council

SUBJECT: Authorization to Request Joinder in Exemption Application – Envision Project 2301 S. Water (Dist. III)

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize the Law Department to prepare and send a Motion or letter seeking Joinder in the pending Court of Tax Appeals matter involving improvements to the Envision facilities at 610 N. Main, which were financed with City of Wichita Industrial Revenue Bonds in 2006.

Background: Recently, Envision, Inc. filed for a permanent property tax exemption on its facilities at 610 N. Main. The property is titled in the City's name due to a 2006 Industrial Revenue Bond financing of Envision's acquisition and conversion of the property. Envision, Inc. sought exemption of the new additions based on its ownership and use of the facilities (as a 501(c)(3) organization), for exempt purposes. However, the Court of Tax Appeals will not process the application unless the City of Wichita (technically the fee "owner" of the facilities under the Bond Documents) requests to be joined as an applicant in the case (Docket 2009-932-TX). Karl Hesse, Envision, Inc.'s attorney in the tax exemption matter, has requested that the City provide a letter asking the Court of Tax Appeals to join the City as a party to the application.

Analysis: Envision, Inc. did not seek the ten-year, IRB-based abatement in connection with the Bond financing, because it is Envision's normal practice to seek the more permanent form of exemption based on its 501 status. Although the issue is not expressly covered in the IRB documents, it was implicit in Envision's letter of intent request that Envision intended to reserve the option to file for exemption based on its 501 status and charitable use of the property, and the City has approved joinder requests in relation to other Envision facilities in the past. Accordingly, it appears appropriate to take the action requested by Envision's tax counsel.

Financial Considerations: Joining in the application will simply allow Envision, Inc. to seek the same exemption it could seek if it had retained title to the property instead of deeding it to the City for the term of the outstanding bonds.

Goal Impact: Economic Vitality and Quality of Life. Cooperating with the Tenant and Trustee on IRB issues is a necessary part of preserving the credibility and integrity of the City's IRB program for future projects.

Legal Considerations: The City Attorney's Office will prepare and send an appropriate joinder request, if authorized to do so.

Recommendations/Actions: It is recommended the City Council authorize the preparation and mailing of a Motion or letter seeking joinder.

Second Reading Ordinances for July 21, 2009 (first read on July 14, 2009)

Public Hearing and Issuance of Industrial Revenue Bonds. (Bombardier Learjet) (Districts IV and V)

ORDINANCE NO. 48-368

An ordinance authorizing the city of Wichita, Kansas, to issue its taxable industrial revenue bonds in the original aggregate principal amount not to exceed $5,700,000 for the purpose of providing funds to finance the installation of improvements to certain existing aviation manufacturing and flight testing facilities as well as to finance the acquisition of certain machinery and equipment for such facilities located in the City of Wichita, Kansas; prescribing the form and authorizing execution of a fifteenth supplemental trust indenture by and between the city and the bank of New York Mellon Trust Company, N.A., St. Louis, Missouri (the "trustee"), as trustee with respect to the bonds; prescribing the form and authorizing the execution of a fifteenth supplemental lease by and between Learjet inc. and the city; approving the form of a guaranty agreement; and authorizing the execution of a bond purchase agreement by and between the City and Learjet Inc., as purchaser of the bonds.

Proposed Adoption of a New Ordinance Pertaining to Water Conditioning Contractors and Installers. (City Code Title 21.14)

ORDINANCE NO. 48-369

An ordinance creating sections 21.14.010, 21.14.020, 21.14.030, 21.14.040, 21.14.050, 21.14.060, 21.14.070, 21.14.080, and 21.14.090 of the code of the City of Wichita, Kansas, pertaining to Water Conditioning Contractors.

SUB 2008-95 -- Plat of Krug South Commercial Addition located on the southwest corner of 21st Street North and 143rd Street East. (District II)

ORDINANCE NO. 48-370

An ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

A09-07 Request by Billy J. Gray of GKCF,LLC to annex lands generally located south of MacArthur Road and west of Hoover Road. (District IV)

ORDINANCE NO. 48-371

An ordinance including and incorporating certain blocks, parcels, pieces and tracts of land within the limits and boundaries of the City of Wichita, Kansas. (A09-07)

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

ORDINANCE NO. 48-372

An ordinance making a special assessment to pay for the cost of cutting weeds in the City of Wichita, Kansas. 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.

ORDINANCE NO. 48-373

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.